

Approved: March 7, 2000 *Carl D. Holmes*
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:07 a.m. on February 8, 2000 in Room 522-S of the Capitol.

All members were present.

Committee staff present: Lynne Holt, Legislative Research Department
Mary Torrence, Revisor of Statutes
Jo Cook, Committee Secretary

Conferees appearing before the committee: Rep. Jim Morrison
Bruce Frahm
Ron Tremblay
Mike Akulow, National Weather Service
Kerry Steffens
Kim Gulley, League of Kansas Municipalities
Stephen Hill, Bowersock Mills & Power Company
Bill Griffith
Lori Forster
Charles Benjamin
Jim Ludwig, Western Resources
Bruce Graham, Kansas Electric Power Cooperatives
Jon Miles, Kansas Electric Cooperatives
Kim Gulley, League of Kansas Municipalities
Steve Rarrick, Assistant Attorney General

Others attending: See Attached Guest List

Chairman Holmes announced that there were two changes to the agenda that did not get printed in the calendar. **HB 2826** has been added to the agenda for Friday and **HB 2849** has been added for Thursday.

HB 2644 - Cities must conform to FCC rules regarding amateur radio operation and antennae placement.

Chairman Holmes opened the hearing on **HB 2644** by welcoming the bill sponsor, Rep. Jim Morrison. Rep. Morrison introduced the bill and stated that the bill should have a change on line 38 between the words "any" and "purpose" to include the word "like". Rep. Morrison noted the letter from James D. Douglass, Mayor of Garden City, (Attachment 1) in support of the bill. Mayor Douglass included with his testimony a copy of the Garden City local ordinance Article 37 on towers and antennas.

Bruce Frahm, Vice Director of Midwest Division of American Radio Relay League, provided testimony in support of **HB 2644** (Attachment 2). Mr. Frahm explained that amateur radio operators are licensed by the Federal Communications Commission. They are examined on radio theory and communications techniques and are not allowed to further their own business through use of amateur radio. He explained that amateur radio operators are involved in disaster relief assistance. Mr. Frahm stated that this bill would, among other items, reinforce reasonable accommodations and codify minimum tower height limitations and ensure continued efficient provisions of public service to Kansas.

Ron Tremblay, Salina, testified in support of **HB 2644** (Attachment 3). He stated that some of the problems in Salina centered around a cellular phone ordinance that included amateur radio operators and that the change caused them to have problems erecting towers. He indicated that passage of this bill would help address the antenna height problem.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES in Room 522-S on February 8, 2000 at 9:07 a.m.

Mr. Mike Akulow, Warning Coordination Meteorologist with the Topeka office of the National Weather Service, provided testimony in favor of **HB 2644** (Attachment 4). Mr. Akulow stated that the National Weather Service relies on the amateur radio operators for emergency weather assistance in that the radio operators have immediate contact with the Weather Service and the operators have had emergency weather training.

Mr. Kerry Steffens, Wichita, testified in support of **HB 2644** (Attachment 5). Mr. Steffens explained about problems he had in moving after a flood. He had problems securing a location that would allow his radio antenna. Mr. Steffens stated that this bill would help alleviate this type of problem.

Rep. Jim Morrison returned to state that the bill was intentionally written so that it tracks, with federal requirements, and will not put any requirements on cities, more strict than federal law. Rep. Morrison distributed copies of 'The Amateur Radio Service In Summary' (Attachment 6) and 'Memorandum Opinion and Order in PRB-1' (Attachment 7).

Chairman Holmes welcomed Kim Gulley, Director of Policy Development for the League of Kansas Municipalities, who testified in opposition to **HB 2644** (Attachment 8). Ms. Gulley stated that this bill would preempt local authority with regard to restrictions on towers and antennas used for amateur radio communications and, since such requirements vary from city to city, a statewide standard would not be favored.

Conferees responded to questions from Rep. McClure, Rep. Sloan, Rep. Dahl, Rep. Alldritt, Rep. Myers, Rep. Klein and Rep. Loyd.

HB 2634 - Authorizing consumer to choose provider of electricity if generated from renewable resources

Chairman Holmes welcomed Stephen Hill, President of The Bowersock Mills & Power Co., who testified in favor of **HB 2634** (Attachment 9). Mr. Hill stated that the passage of this bill would encourage the preservation and development of renewable energy sources in Kansas. It would, specifically for his company, permit the direct sale of their premium green power to local commercial and residential customers, which in turn could bring about an increase in revenues and generating capacity.

Mr. Bill Griffith presented testimony as a proponent of **HB 2634** (Attachment 10). Mr. Griffith is the Co-Chair on Conservation on the Executive Committee of the Kansas Sierra Club and takes part in the Western Resources Windstar Program. Mr. Griffith stated that in addition to the economic benefits renewable energy provided, there were important environmental benefits also.

Next to appear to testify in support of **HB 2634** was Lori Forster of Topeka (Attachment 11). Ms. Forster stated that Kansas ranks third in the nation for potential wind energy production, yet lags behind other states with less production due, in part, to the way the state regulates power production.

Mr. Charles Benjamin, representing the Kansas Natural Resource Council, testified in support of **HB 2634**. He stated that it is time for Kansas to move away from the current ways of electric generation. Mr. Benjamin stated he thought the potential for this bill is almost unlimited as far as what could occur in renewable energy.

Mr. Chuck Magerl, owner of the Free State Brewing Company in Lawrence, KS, provided written testimony in support of **HB 2634** (Attachment 12).

Bill Roush, President of Heartland Solar Energy Industries Association, provided written testimony in favor of **HB 2634** (Attachment 13).

Senior Director of Regulatory Affairs for Western Resources, Jim Ludwig, presented testimony in opposition to **HB 2634** (Attachment 14). Mr. Ludwig stated there were many questions and issues that needed to be addressed. They included stranded costs, transition costs, tax repercussions and competitive balance.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES in Room 522-S on February 8, 2000 at 9:07 a.m.

Bruce Graham, Vice President of Member Services and External Affairs for the Kansas Electric Power Cooperatives, testified against **HB 2634** (Attachment 15). Mr. Graham indicated that although Kansas Electric Power Cooperatives had hydro-power resources they could utilize, the way the bill was written they could not participate in the program.

Mr. Jon Miles, Vice President of Governmental & Technical Services for Kansas Electric Cooperatives, provided testimony in opposition to **HB 2634** (Attachment 16). Mr. Miles explained that they believed the concept of this bill was that retail providers could sell outside their service territories to any consumer, so long as they are selling renewable energy.

Burton Crawford, Manager of Deregulation Issues for Kansas City Power & Light Company, testified in opposition to **HB 2634** (Attachment 17). He stated that KCPL's overriding concern with the bill is that it allows retail electric competition without first settling the major policy decisions that must be made prior to allowing competition.

Kim Gulley, Director of Policy Development for the League of Kansas Municipalities, testified in a neutral position on **HB 2634** (Attachment 18). She shared the League's concerns about the bill. These concerns include Home Rule, KCC jurisdiction and the impact on small cities.

Deputy Attorney General Steve Rarrick appeared in a neutral position on **HB 2634** (Attachment 19). He expressed the concern about penalties for unauthorized switching or the ability to recover damages for consumers, similar to the types of problems with telecommunications' "slamming".

Conferrees responded to questions from Rep. Sloan, Rep. Alldritt, Rep. McClure, and Rep. Dahl.

Chairman Holmes distributed testimony provided by Craig Grant of the Kansas National Education Association in support of **HB 2635** (Attachment 20).

Meeting was adjourned at 11:00 a.m.

Next meeting will be Thursday, February 10, 2000 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 8, 2000

NAME	REPRESENTING
Star Pearson	KCC
BURTON CRAWFORD	KCP
Jon K Miles	KEC
DAVE HOLLAND	Western Resources
STEVE KARLIK	ATTORNEY GENERAL
Jim Ploger	KCC
Louie Stroup	KANSAS Municipal Utilities
COLIN HANSEN	KANSAS MUNICIPAL UTILITIES
Kerry Steffens	Amateur Radio
Bruce Frahm	Amateur Radio - ARRL
Ron Tremblay	Amateur Radio
MIKE AKULOW	NATIONAL WEATHER SERVICE
Bill Griffith	Kansas Sierra Club
Stacy Keenan	Western Resources, Inc.
Lester Murphy	KEC
Susan Cunningham	KCC
Dick F Roberts	Western Resources
W Steffens	
JC Long	UtiliCorp United Inc.
MEL WREN	visitor

Comments in Support of

HB 2644

THE KANSAS AMATEUR RADIO SERVICE ACT

By

James D. Douglass, Mayor
City of Garden City
Garden City, Kansas

February 8, 2000

Mr. Chairman and members of the committee:

Thank you for the honor and privilege of testifying before you this morning.

As the Mayor of Garden City and as an Amateur Radio Operator of more than twenty years it gives me great pleasure to represent the interests of both the people of my city and one of the important interests of my life. That interest being public service through Amateur Radio. I support House Bill 2644 and its significance to the Amateur Radio community.

The Federal Communication Commission in authorizing the Amateur Radio Service tasked it with three things:

1. To advance the state of the art in communications.
2. To maintain a pool of self-trained communications experts and operators.
3. To provide non-commercial communications services to the public in times of natural or manmade disaster.

Amateur Radio operators not only in Kansas but all over the country have a proud history of fulfilling this Federal mandate.

In western Kansas where I come from Amateur Radio operators have worked very closely with local law enforcement and civil authorities as Storm spotters during the summer for over two decades. In the past, blizzards and other severe winter weather has given rise to the need for the Amateur Radio operators to provide communications between various public and private agencies rendering aid and comfort to stranded travelers.

This cooperation between the Amateur Radio operators, City, and County government is of such benefit to the community that the Sand Hills Amateur Radio Club, of which I am a member, is listed by name in the official Finney County Emergency Response Plan. Mr. Dave Jones who is the Director of the Finney County Office Emergency Preparedness was unable to attend today's hearing due to a scheduling conflict. He has

HOUSE UTILITIES

DATE: 2-8-00

ATTACHMENT |

asked me to relay to this panel his support for Amateur Radio in general and more specifically HB 2644.

In 1998 the City of Garden City and Finney County through the City/County Planning Commission saw the coming wave of commercial wireless communications systems for public use and acted to re-define and strengthen local ordinances relating to radio towers and antennas. Through this process one group was singled out and their status was not only more clearly defined but strengthened for two reasons. This group was the Amateur radio operators. The first reason was of course the long and beneficial relationship between the Amateur Radio community and local government in the area of public service. The second reason was PRB-1. As other members of the our panel have undoubtedly stated already PRB-1 is the Federal Communication Commission's limited preemption of local tower height restrictions within certain guidelines.

In Finney County the Amateur Radio community and local government have enjoyed a long close relationship and look forward to continued cooperation in the future. This is not the case in every community. As Mr. Ron Tremblay of Salina has testified his community went from good sound engineering practices to a more severe interpretation of PRB-1. This was to the detriment of the Amateur Radio community, and in my view, the community as a whole. It is my belief that passage of HB 2644 will correct some actions that have been taken on the local level and prevent others from becoming controversial.

Thank you.

ARTICLE 37

TOWERS AND ANTENNAS

SECTIONS:

- 37.010 Purpose
- 37.020 Signs and Advertising
- 37.030 Setback Requirement
- 37.040 Safety Requirements
- 37.050 Height Requirements
- 37.060 Co-Location Requirements
- 37.070 Lights and Other Attachments
- 37.080 Radiation Standards
- 37.090 Existing Antennas and Towers
- 37.100 Non-Conforming Uses
- 37.110 Letter of Intent
- 37.120 Removal of Abandoned or Unused Towers
- 37.130 Interference with Public Safety Telecommunications

37.010 PURPOSE. The purpose of this Article is to facilitate the provision of wireless telecommunications services to the residents and businesses of Garden City, to minimize the adverse visual effects of towers through careful design and siting standards, to avoid potential damage to adjacent properties from tower failure through setback requirements, and to maximize the use of existing and approved towers and buildings to accommodate new wireless telecommunication antennas to reduce the number of towers needed to serve the community.

37.020 SIGNS AND ADVERTISING. The use of any portion of a tower for advertisements or signs other than warning or equipment information signs is prohibited.

37.030 SETBACK REQUIREMENTS. Except as otherwise specified in this Article, towers and accessory utility buildings shall be set back from surrounding properties and public rights-of-way a distance equal to one half the height of the tower, or a distance equal to the setback requirements of the underlying zoning district which pertain to principle structures, whichever is greater. The Board of Zoning Appeals may alter these setback requirements in accordance with Article 28 and/or 29 with such conditions, as they deem appropriate.

- A. Towers shall not be located between a principal structure and a public street, except that on sites adjacent to public streets on all sides, towers may be placed between a principle structure and a local street.
- B. In order to allow for the integration of a tower into an existing or proposed structure such as a church steeple, light standard, power line support device, or similar structure, a tower's setback may be reduced or its location in relation to a public street varied, at the discretion of the City Commission, following a recommendation from the Planning Commission.

37.040 SAFETY REQUIREMENTS. Adequate precautions shall be taken to protect the general public from hazards produced by the tower(s) such as falling ice, tower failure, etc.

37.050 HEIGHT REQUIREMENTS.

- A. The maximum height of any tower in a **residential zoning district**, including all antennas and other attachments, shall not exceed thirty-five (35') feet above a roof support or seventy (70') feet above a ground support, unless necessary to integrate a tower into an existing structure such as a church steeple, light standard, power line support device, or similar structure. However, towers in excess of fifty (50') feet above a ground support or fifteen (15') feet above a roof support are required to be reviewed and approved as required by Article 29.
- B. The maximum height of any tower in a **non-residential zoning district**, including all antennas and other attachments, shall not exceed one foot for every two feet the tower is set back from residentially zoned property, not to exceed a height of one hundred fifty (150') feet above a ground support or fifty (50') feet above a roof support. However, multi-user towers may exceed the height limitations by up to twenty (20') feet.
- C. The Board of Appeals shall impose such restrictions, terms, time limitations, landscaping, and other appropriate safeguards to protect adjoining property.

37.060 CO-LOCATION REQUIREMENTS.

- A. Any proposed commercial wireless telecommunication service tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional users if the tower is over one hundred (100') feet in height or for at least one additional user if the tower is between sixty (60') feet and one hundred (100') feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.
- B. A proposal for a new commercial wireless telecommunications service tower shall not be approved unless the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within a one (1) mile search radius (one-half [$\frac{1}{2}$] mile search radius for towers under one-hundred and twenty [120'] feet in height, one quarter [$\frac{1}{4}$] mile search radius for towers under eighty [80'] feet in height) of the proposed tower due to one or more of the following reasons:
 - 1. The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.
 - 2. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost.

3. Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer.
 4. Other unforeseen reasons that makes it unfeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.
- C. If a proposed antenna cannot be located on an existing tower for any of the above reasons, the applicant shall provide documentation from a qualified and licensed professional engineer certifying the applicability of one or more of the above conditions.

37.070 LIGHTS AND OTHER ATTACHMENTS. No antenna or tower shall have affixed or attached to it in any way, except during time of repair or installation, any lights, reflectors, flashers or other illuminating device, except as required by the Federal Aviation Agency or the Federal Communications Commission, nor shall any tower have constructed thereon or attached thereto, in any way, any platform, catwalk, crow's nest, or like structure, except during periods of construction or repair. When incorporated into the approved design of the tower, light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the tower.

37.080 RADIATION STANDARD. All proposed antennas shall comply with current standards of the Federal Communications Commission for non-ionizing electromagnetic radiation (NIER) and electromagnetic fields (EMF). Each application for a communication tower shall include certified documentation or a statement from a registered engineer indicating compliance with these standards. Amateurs covered under FCC part 97.13(c) shall be exempt from the requirements of this section.

37.090 EXISTING ANTENNAS AND TOWERS.

- A. Towers existing prior to the passage of this Ordinance may continue in use for the purpose now used and as now existing but may not be replaced or structurally altered without complying in all respects with this article, unless authorized by the Board of Zoning Appeals in accordance with Article 28 of the Zoning Regulations.
- B. If a tower existing prior to the passage of this Ordinance is hereafter damaged more than fifty (50%) percent of the fair market value, such tower shall not be restored except in conformance with regulations. The Board of Zoning Appeals shall make the determination of fair market value in accordance with Article 21.090.2.

37.100 NON-CONFORMING USES. Towers or other antenna mounts that are constructed and antennas that are installed in accordance with the provisions of this ordinance, although additions to the property, shall not be deemed to constitute the expansion of a nonconforming use or structure.

37.110 LETTER OF INTENT. Building permit applications for all commercial wireless telecommunication service towers shall include a letter of intent to be recorded in the office of the

Register of Deeds of Finney County, Kansas. The Letter of Intent shall commit the tower owner and his or her successors to allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.

- A. The Letter of Intent shall be recorded in the office of the Register of Deeds of Finney County, Kansas, which shall recite that a copy of this Letter of Compliance shall be filed in the office of the Clerk of the City and the office of Planning and Community Development Department of the City, and is there available for inspection and copying during normal business hours. This letter shall constitute covenants that run with the land and are binding on successors in interest.

37.120 REMOVAL OF ABANDONED OR UNUSED TOWERS.

- A. All abandoned or unused towers and associated facilities and structures shall be removed within twelve (12) months of the cessation of operations at the site unless the Planning Director approves a time extension. In the event that a tower is not removed within 12 months of the cessation of operations at a site, the tower and associated facilities may be removed by the City and the costs of removal assessed against the property.
- B. Unused portions of towers above a manufactured connection shall be removed within six months of the time of antenna relocation. The replacement of portions of a tower previously removed requires the issuance of a new building and/or conditional use permit.

37.130 INTERFERENCE WITH PUBLIC SAFETY TELECOMMUNICATIONS. No new or existing telecommunications service shall interfere with public safety communications. All applications for new service shall be accompanied by an intermodulation study, which provides a technical evaluation of existing and proposed transmissions and indicates all potential interference problems. Before the introduction of new service or changes in existing service, telecommunication providers shall notify the City at least ten calendar days in advance of such changes and allow the City to monitor interference levels during the testing process.

Comments in support of

HB 2644
The Kansas Amateur Radio Service Act

By
Bruce Frahm, KØBJ
Of Colby
Vice Director, Midwest Division of ARRL

Amateur Radio operators are licensed by Federal Communications Commission.
examined on radio theory and communications techniques
authorized to use wide variety of frequency bands and transmission types
non-commercial service self-training and public service
experience and frequency agility works well in communications disasters

ARRL (American Radio Relay League) non-profit national membership society
Policy affairs governed by board of 15 geographic division directors
Midwest Division – Kansas Nebraska Missouri Iowa
1500 members in Kansas

Height of antennas is critical in establishing communication links
Local governing bodies increasing attempts to limit tower heights
FCC's 1985 ruling PRB-1
Federal limited preemption of state and local tower height laws
Amateur Radio must be reasonably accommodated

Offering of HB 2644
Draw attention to PRB-1's preemption
Reinforce reasonable accommodation & codify minimum height limitations
Ensure continued efficient provision of public service comms. to Kansas
Bill crafted with assistance of ARRL

HOUSE UTILITIES

DATE: 2-8-00

ATTACHMENT 2

peka Kansas
February 8, 2000

Mr. Chairman and Members of the committee:

Thank you for the honor and privilege of being permitted to testify before you this morning on behalf of myself, and many hundreds of amateur radio operators in the state of Kansas.

My name is Ron Tremblay, and I live in Salina, where we recently went through the process of trying to defeat onerous regulations regarding amateur radio tower and antenna installations. I served as the Chief Building and Zoning Inspector for the City of Salina for fifteen years, during which time many amateur radio towers were installed without incident or problems.

Without going into the minutiae of the proceedings, just let me tell you, that after appearing at the city planning commission hearing and even going so far as being represented by an attorney conversant with the subject, we were "accommodated", as required by Federal Communications Commission (FCC) ruling PRB 1. The accommodation resulted in the creation of dozens of so called non-conforming uses among the owners of amateur radio towers; mine being one of them. We can now erect a tower of 35 feet in height without a hearing. Up to the time that the new regulations were proposed, we were able to install towers based on good, sound, engineering practice, without regard to zoning or other esthetic reasons. We can now, after applying for a permit, spend our time going before a city board and maybe, or maybe not, get permission to erect a tower of sufficient height to effectively communicate. The proposed House Bill 2644 certainly is a step in the right direction. It's passage will certainly help with permitting us to help in times of emergency.

One aspect of antenna height which was not addressed is that of permitted exposure to radio frequencies. The FCC has recently mandated that all amateur radio operators do a survey of their installations for the purpose of determining if they expose themselves, or their neighbors to an excessive amount of radio frequency exposure. They have provided us with tables and charts listing frequencies and power levels for this purpose. By limiting the height of antennas, there is a good chance that these limits could be exceeded. A matter of as little as 20 or 30 feet could mean the difference between building an effective tower and not being able to do so.

Thank you for the opportunity of speaking with you today.

HOUSE UTILITIES

DATE: 2-8-00

ATTACHMENT 3

Comments in support of
HB 2644
THE KANSAS AMATEUR RADIO SERVICE ACT

by
Mike Akulow,
Warning Coordination Meteorologist
National Weather Service, Topeka, KS

February 8, 2000

Mr Chairman and members of the committee:

Thank you for the honor and privilege of testifying before you this morning.

The National Weather Service is tasked by Congress with issuing severe storm watches and warnings to protect life and property. Amateur radio operators assist us greatly in this duty, and we are concerned that this excellent service may be in jeopardy.

Although our agency has seen a dramatic increase in recent years in the use of new technologies, such as Doppler radar, high resolution satellites images and advanced computer workstations, we still need and rely on real time eye-witness reports of hazardous weather events. As you probably know, in Kansas, our main weather threat is from severe storms and tornadoes.

Amateur radio operators play a major and very critical role for the National Weather Service in obtaining and relaying severe weather reports. Because amateur radio communications are nearly instantaneous, and can come from long distances, our offices are able to have a continuous flow of information during times of severe weather. These reports enable us to know the storms location, movement and the type of weather it may be producing. In addition, because amateur radio operators are well trained and knowledgeable about severe weather conditions, their reports are always very accurate, specific and beneficial.

An example of this excellent service occurred in the Wichita area on May 3rd, 1999, when a large tornado hit the area. Amateur radio volunteers were the first to spot the twister, tracked it along it's entire path while reporting continuously to the local National Weather Service office. Timely and accurate warnings were able to be issued, and prevented a larger death toll and additional injuries.

This scenario is repeated in many other counties across Kansas, as amateur radio volunteers deploy to strategic locations across the area when severe weather threatens. The operators report conditions at their location and remain until the storms have pass

HOUSE UTILITIES

DATE: 2-8-00

ATTACHMENT 4

Finally, in case of telephone or other normal communications outages, amateur radio frequencies can be used as a backup communication system for relay of National Weather Service information.

Again, the real-time ground truth information amateur radio operators provide is extremely critical not only to the National Weather Service warning decision process, but to all people of Kansas threatened by severe storms and tornadoes. Thus, we are opposed to any restrictions that may limit amateur radio communications.

Thank you for your time and attention.

Testimony Before The House Utilities Committee
Chaired by Carl Holmes
Room 522 South

Kansas Bill Number 2644

Testimony presented by
Kerry Steffens W00N

I have been an amateur radio operator since 1965. I am currently employed as an electrical engineer by the Boeing company in Wichita, Kansas. I have been living in my current location for 12 years. After I received flood damage in October of 1998, I began looking for a new home.

The idea I had in mind was to put up three separate antennas. This assortment would assure me that I could operate under most conditions. I felt that a one acre lot would be suffice as it would be within my budget range. As I had operated for 12 years in my current location without the neighbors even knowing that I was a ham operator, I felt that I would easily blend into any neighborhood.

I began my search for a new home soon after the 1998 flood. I first looked at new and older homes in a 5 mile radius from work. Existing home locations which had sufficient lot size were under restrictive covenants excluding antennas. I then narrowed my search and began looking at just newer home sites.

The home I was looking was around 1400 to 1800 square feet. My first targets were priced from 80 to 120 thousand dollars. Without exception when I read the covenant, no radio antennas were allowed.

An expanded search to a radius of 10 miles was performed and included any lot size up to 2 acres. Without exception all had a restrictive antenna covenant. As a last ditch effort I increased the search radius to 15 miles and lot size up to 5 acres, but again all the developments had zoned out antennas except for one development located in a flood plain. It became apparent that I was not going to buy a home in a development. A couple of developers said they would accommodate an antenna if I would buy a lot in a far corner away from everyone; later they changed their mind and said no.

A search was started for building lots up to 10 acres in size and expanded to parts of 3 counties. The lots could be located in a town or in the county. Again all locations excluded antennas except for property located in flood zones.

After a two year search, I just put a contract on a 5 acre site that will permit me to have an antenna as long as the highest point on the antenna doesn't extend 10 feet past the peak of the roof. I tried to explain that I needed a minimum of 20 feet just to meet federal guidelines for Radio Frequency Radiation exposure. I explained to them that the restriction was written to regulate antennas constructed for TV use and that these were positioned horizontally and did not require any set height for safe operation. Amateur radio antennas in many cases are built differently. The developer reviewing the restriction said they will not change the restriction. The problem is that they have no concept of radio operation or the requirements placed on it. Even though I went to great lengths to have them understand, they did not. The restriction will inhibit me from involvement in some on-air activity and training networks and limit my ability to contribute in case of an emergency, but I will have an antenna. I would also like to point out that there will be a distance of 600 or more feet between my house and any other house in the area. The only reason that antennas were allowed in the first place is that they don't have access to cable TV service and an outside antenna is the only way they can receive the local TV stations.

HOUSE UTILITIES

DATE: 2-8-00

ATTACHMENT 5

The reason for the restrictive covenant against antennas in many cases is lack of understanding by the writer. Many covenants are preprinted boilerplate forms. An example of this is a restriction I found in a housing development just south of Derby, Kansas. It states under the heading of Antennas, that: No antenna radiating or other wise may be located above ground level on poles or otherwise. The only exception is a satellite antenna not to exceed 18 inches wide and 32 inches in height may be mounted on the back side of the building as long as it can't be seen from either side or the front. This may work well for the house facing North, as a satellite antenna must view the south to capture the satellite signal. As the antenna can't be mounted on a pole or be seen from the front all other locations can't receive the satellite. Also Satellite antennas require another antenna to receive local stations and these cannot be installed per the covenant. These residence will be forced to pay for cable. The folks who write these covenants are good people. They are just writing restrictions about subjects on which they are not knowledgeable.

The community profits from our emergency service. Amateur radio will reach out when all other avenues are exhausted. 10 states have already passed a bill similar to this one. There are as many states in the process of passing the same type of bill including Kansas and several more are in the draft stage. This bill is so important to all states to insure emergency communications service to their communities.

Amateur Radio was legislated by congress in part to be a resource and service to the communities of the United States. Please help us provide the service we were chartered to do. With this bill we can continue to provide technical resources and emergency services to our communities in the State of Kansas.

Thank you for allowing me the privilege to testify.

The Amateur Radio Service
In Summary
For
Kansas Bill 2644

Bill Focal: Kerry Steffens, W0ON

Sponsor: James F. Morrison, K0CVY
Kansas House of Representatives 121 District.

HOUSE UTILITIES

DATE: 2-8-00

ATTACHMENT 6

Acknowledgment

I would like to thank the American Radio Relay League (ARRL) for all their work in providing the resources needed to maintain an organization in the Amateur Radio Service. Amateur Radio is a very dynamic service as technology is changing at a very rapid pace. ARRL provides the necessary publications and web site to keep amateur radio operators abreast on the changing world around us. This paper on the Amateur Radio Service was written using these services and support from ARRL. Additional information can be found at the www.arrl.org internet web site.

I would also like to thank the persons who contributed their time to review and help make this paper accurate and informative.

Introduction

Amateur Radio was created as a resource and service to the communities of the United States. This service is free at no cost to the community and has no financial support provided by the state or federal government. From the inception of the service, Amateur Radio has kept up with technology, the demands and changes of today's requirements. Amateur Radio Operators have accepted this challenge to advance the communication and technical skills of radio as well as the enhancement of international goodwill. Amateur Radio has a very serious side and important purpose, but it can not exist without the fun created by the hobby aspect. The tens of thousands of dollars required to maintain such a service comes from the private funding provided by those that use amateur radio as a hobby aspect. These operators donate their time, money and abilities to provide the service required to serve the communities in which they live. As radio has no boundaries, neither does the commitment given by these operators.

State and local agencies lack the resources to provide large scale interconnecting communication in case of a disaster. Amateur Radio operators supply these needed resources and have formal and informal groups to coordinate communication during these emergencies. These groups are united by a noncommercial association called the American Radio Relay League or ARRL. This service is enhanced through the Federal Emergency Management Agency, and through the Amateur Radio Emergency Service (ARES). In addition, in areas that are prone to tornadoes, such as Kansas, many Hams are involved in Skywarn, while others also operating under the National Weather Service provide message handling for other areas struck or affected by hurricanes or earthquakes. When these groups are not working such a disaster, they practice these skills in fun forms such as contests to sharpen operating skills and field day events to prepare for the event of complete loss of power and communication.

This service is being threatened by the uninformed. The Federal Communication Commission (FCC) has recognized this and passed a preemption order called PRB-1 to protect this service. The Kansas bill is to add strength to this preemption and to add clarity to specific areas. The purpose of this bill is to help preserve and retain this vital and valued resource that is provided to the state of Kansas.

The following commentary will provide a description of the Amateur Radio Service. Just what the PRB-1 preemption covers in an easy to understand summary format. The last topic covered is why are amateur antennas needed and tower safety.

The Amateur Radio Service

This unique mix of fun and public service is the distinguishing characteristic of Amateur Radio. Although Amateur Radio Operators, which are sometimes called Hams, get involved in the hobby for many reasons. What they all have in common is a basic knowledge of radio technology, regulations and operating principles, demonstrated by passing an examination for a license to operate on radio frequencies known as the "Amateur Bands." These Amateur (Ham) Bands are reserved by the Federal Communications Commission (FCC) for use by Hams at intervals from just above the AM broadcast band all the way up into extremely high microwave frequencies.

In 1912, Congress passed the first laws regulating radio transmissions in the U.S. By 1914, amateur experimenters were communicating nation-wide, and setting up a system to relay messages from coast to coast across the U.S. (whence the name "American Radio Relay League"). In 1927, the precursor agency to the FCC was created by Congress and specific frequencies were assigned for use by amateur radio called the Ham Bands.

Amateur Radio operators come from all walks of life -- movie stars, missionaries, doctors, students, politicians, truck drivers and other good folks from every community across the country. They are all ages, sexes, income levels and nationalities. These folks use amateur radio to open the door to new friendships all over the world and extend good will to all those they meet. Ham operators represent all of us and are true ambassadors in every sense of the word.

Like commercial broadcast stations, Amateur Radio stations are licensed and must meet requirement defined by the FCC. Learning new concepts are not easy. An amateur spends many hours in the text books preparing for exams. These exams are to prepare the Ham for his/her first contact and insure they have the understanding to properly operate an amateur radio station. As the electronics and radio understanding is quite extensive, the test requirements has been divided into levels of difficulty reflected by a license class. Over the years, five basic license classes have evolved. The higher the class of license the operator has, the more privileges and modes of operation earned. But each higher class license requires progressively more knowledge of technology, rules and regulations, as well as higher Morse code proficiency. This is part of the plan created to provide a pool of experts that can provide a source of skill to the military and emergency communications for the community.

Amateur Radio provides Emergency Communication

What do Amateur Radio operators do during and after disasters? Amateur Radio operators set up and operate organized communication networks locally for governmental and emergency officials, as well as non-commercial communication for private citizens affected by the disaster. Amateur Radio operators are most likely to be active after disasters that damage regular lines of communications due to power outages and destruction of telephone lines. Many radio amateurs are active as communications volunteers with local public safety organizations. In addition, in some disasters, radio frequencies are not coordinated among relief officials of local governments and Amateur Radio operators step in to coordinate communication when radio towers and other elements in the communications infrastructure are damaged.

Public service communication has been a traditional responsibility of the Amateur Radio Service since 1913. At the local level, Hams may participate in local emergency organizations, or organize local "traffic nets" using VHF (very high frequencies) and UHF (ultra high frequencies). At the state level, Hams are often involved with state emergency management operations. In addition, Hams operate at the national level through the Radio Amateur Civil Emergency Service (RACES) which is coordinated through the Federal Emergency Management Agency, and through the Amateur Radio Emergency Service (ARES) which is coordinated through the American Radio Relay League (ARRL) and its field volunteers. A new organization is being created to train the service to set up and maintain cellular service and maintain satellite links. Amateur radio operators are staying abreast with the change in technology.

Amateur Radio is recognized as a resource by national relief organizations. Many national organizations have formal agreements with the Amateur Radio Emergency Service (ARES) and other Amateur Radio groups including:

- Federal Emergency Management Agency
- National Communications System
- American Red Cross
- Salvation Army
- National Weather Service
- Association of Public Safety Communications Officials

Some examples of recent emergencies involving Amateur Radio?

- Tornadoes in Kansas - May 1999
- Tornadoes in Oklahoma - May 1999
- Flooding in Kansas - October 1998
- Flooding in Texas - September 1998
- Tornadoes in Alabama - April 1998
- Tornadoes in Minnesota - March 1998
- Tornadoes and flooding in Georgia - March 1998
- Flooding in San Francisco, Calif. - February 1998
- Tornadoes in Florida - February 1998
- Tornadoes in Jarrell, Texas - May 1997
- "500-Year Flood," Grand Forks, N.D., and East Grand Forks, Minn. - April 1997
- Tornadoes in Arkansas - March 1997
- Floods in Ohio and Kentucky - March 1997
- Western U.S. floods - January 1997
- Hurricane Fran - September 1996
- TWA plane crash - July 1996
- Blizzard of '96 - March 1996
- Hurricane Luis - September 1995
- Oklahoma City Bombing - April 1995

PRB-1 In Summary

PRB-1, cited as "Amateur Radio Preemption, 101 FCC2d 952 (1985)," is a limited preemption of local zoning ordinances. It delineates three rules for local governing bodies to follow in regulating antenna structures: (1) state and local regulations that operate to preclude amateur communications are in direct conflict with federal objectives and must be preempted; (2) local regulations that involve placement, screening or height of antennas based on health, safety or aesthetic considerations must be crafted to reasonably accommodate amateur communications; and (3) such local regulations must represent the minimum practicable regulation to accomplish the local authority's legitimate purpose. The heart of PRB-1 is codified in the FCC Rules [97.15(e)].

PRB-1 exempts Amateur Radio Antennas and Towers from Zoning Restrictions

In 1984, hundreds of comments were filed when the FCC established a pleading cycle, labeled PRB-1 ("PRB" being the designation for the FCC's Private Radio Bureau, the bureau in the FCC's internal organization that handled Amateur Radio matters at that time. It has been replaced by the Wireless Telecommunications Bureau). Comments were filed by amateurs, zoning authorities and city planners all across the United States. On September 19, 1985, the FCC issued PRB-1 declaratory Memorandum Opinion and Order, which says, in pertinent part, that "state and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted."

May 31, 1989, the Commission adopted the revised and reorganized Part 97. The new rules codify the essence of the PRB-1 ruling: ". . . State or local regulation of amateur antennas may not preclude, but must reasonably accommodate, such communications, and must constitute the minimum practicable regulation to accomplish the local authority's legitimate purpose... " [97.15(e)].

Under a preemption order called PRB-1. Local governments cannot prohibit antenna towers, nor can they unreasonably restrict them in terms of size and height. Federal law requires the local governing body or Zoning Board (ZB) to adopt as reasonable an interpretation as possible. PRB-1 and Section 97.15(e) are binding federal regulations that supersede the restriction, regulation or law, if there is a conflict. That is, its interpretation of its own zoning restriction, regulation or

ordinance should be guided by the binding order rendered by the FCC in PRB-1. State and local governments or governing organizations can, under the specific language of PRB-1, still regulate antennas for reasons of health, safety and welfare, as long as the regulations are reasonable.

It should be kept in mind that the purpose of PRB-1 is to insure the survival of the Amateur Radio Service and the ability of the Service to perform its function. This service is a vital asset to the United States, the states and the local community.

State and Local Regulation Defined

By definition a regulation is a governmental order having the force of law. A government is defined as a governing body or an organization. The act or process of governing, especially the political administration of an area is the function of the organization. Regulation may be in the form of a code, covenant, restriction, or law. Regulations created by the smallest of organizations or governing bodies are not permitted to violate regulations created by organizations of greater authority in ascending order. Such an ascending order from the smallest to the largest is an area council, home owners organization, township, town or city council/commissioners, county council/commissioners, state and federal government.

Zoning Regs Defined

A Zoning Board (ZB) is created by a governing body or organization that specifies intended use of property within an area under the governing bodies authority. Not all organizations have a Zoning Board as such. These organizations due to their size perform the function themselves. The organization or ZB creates covenant restrictions sometimes called zoning regulations. But what are zoning regulations, exactly? Zoning regulations are rules or restrictions that establish the permitted uses of property, types of primary structures and the minimum and maximum dimensional requirements of structures in established areas or "zones." These organizations or Zoning Boards can not create regulations or restrictions that are in conflict of higher organizations of empowerment. Organizations that implement or act as a Zoning Board ascending order is a commercial developer, area council, homeowners organization, township, county, town or city.

When dealing with residential property, the ZB or organization breaks down the improvement as either Primary or Secondary. Primary improvements are main structures such as homes and garages. Secondary improvements are considered be normal accessories. Such edifices as swimming pools, tennis courts, antenna/towers and tool sheds are considered as normal accessory structures on residential property.

Deed Restrictions

There are circumstances under which it may be legally impossible to erect a tower. Condominium owners are a prime example. A condo owner "owns" only that which exists within the confines of the four walls that forms his unit. The rest of the building and the land are owned by someone else or owned in common by all the unit owners. A tower can not be expected to be put on land or a building that is not owned outright without consent of the owners.

There are two types of covenant restrictions. These are private restrictions and restrictions imposed by a governing body. These are commonly called CC&Rs (covenants, conditions and restrictions).

Private Covenant Restrictions

Private restrictions by definition are restrictions that apply or are confined to a singular property. A singular action placing restrictions on a singular property. An action which removes the property from public control and participation and may limit or remove the property from public use.

Years ago a private land owner could create a covenant between himself and a prospective buyer or owner to control future land use. This act came from the English system of common law, that we have inherited, which permits a seller of land to impose certain restrictions on the use of that land, by the seller, even after the sale has long past. A change in this covenant can only be made by a court of law. The restrictions are part of the deed or title itself. The important factor that should be noted is that the property already has an existing condition or has been approved for its intended use through proper governing channels. The seller in this case can specify the future use of the property. This property then becomes exempt from future zoning and code changes as long as it is maintained in the specified condition and is not used for an illegal purpose. An example is an area or structure (on or with real-estate) that is sold or given such as a historical site, a memorial, a park or a preserve. The private restriction is exempt from all future local and federal zoning restrictions unless it affects the safety or welfare of the community. PRB-1 clearly exempts this restriction from its order.

Governing Body Restrictions

Governing body restrictions are those restrictions that apply to all property or real estate within its governing authority. Property within the authority is broken up by areas or zones that define property use. These restrictions are dynamic in nature. In other words, the restrictions may be changed to meet the needs of those that live or work within these zones.

Governing body restrictions are conditions specified by any level of government. Generally land restrictions are imposed by a governing body's Zoning Board. Some governing bodies due to their size may act on their own behalf without a separate agency such as a zoning board. These organizations set forth land use requirements. Any laws that affect or are created by these organizations are passed on to the governing body. As laws are dynamic in nature a land use protection provision is built in. The user is protected from changing laws by what is known as a Grandfather Clause. This clause states that a user/owner is not required to conform to new requirements or restrictions as long as there is no change in the property use or ownership. This clause does not apply if compliance is required for the reason of community safety or welfare.

Once a law is passed, by the governing body or higher level of governing body that affects the governing body's authority, it becomes a restriction (law) that requires compliance by the user or owner of property within the area of authority. Existing users/owners will be protected by the Grandfather Clause and new users/owners will be required to comply with the new restriction. What this means is that all property sold or developed on or after September 19, 1985, are preempted by PRB-1. This order supersedes any restriction that is in conflict with this order. On or after this date, no restriction may be placed on property unless a private restriction, as defined above, that is in conflict with this order.

Existing property and property which is to be constructed must conform to building codes and zoning requirements. These codes and zoning requirements/restrictions that have been put in place must meet all federal, state and local laws. Additional restrictions may be placed on the property by the owner, developer or the corporate developer. These restrictions may be in the form of material, looks of a structure or the appearance of the property. All these things may be done as long as they don't violate zoning, building codes, private restrictions and must be in compliance with federal, state and local laws. Laws are researched by the builder, developer or the developer's attorneys before the restrictions are filed to assure compliance. These restrictions, like any governing body's restrictions, can be changed at any time in the future should

the need arise. PRB-1 preempts all zoning to include the right to have amateur radio antennas and towers by licensed amateur radio operators. Any restriction eliminating the use of amateur radio antennas and towers may not appear in CC&R or zoning document filed on or after September 19, 1985 to be in compliance with federal law. Property sold after this date shall have any restrictions of this nature removed, the same as any new replacement law that has been enacted.

Amateur Radio Antennas

A properly designed amateur radio antenna will radiate a RF signal without producing interference to other property designed radios, stereos or televisions. A well designed antenna will also offer peak performance for the amateur receiver and transmitter. As the size of the antenna is decreased, there is a compromise between performance, gain and bandwidth. Amateur radio operators make these compromises in order to size the antennas to the property which they own. Operators who do not want to live with compromised performance acquire larger areas of real-estate.

Many times more than one antenna is required. The amateur band of operation is normally determined by the time of day and to what location or point that communication is expected to be made. An antenna is selected to perform the required operation. Some antennas are constructed as verticals, some are wire structures and others are beams. Each antenna has different mounting requirements for effective operation. Each antenna will work differently to provide optimum operating conditions to various parts of the country and world. This is the reason that several bands of operation are required. No one band or no one antenna will provide consistent and reliable communication during all conditions. This is why the amateur radio service can provide emergency communications when all other authorities fail.

An antenna structure, commonly known as a tower, is found in different shapes and sizes. Towers fall into two commonly used categories, which are guyed and self-supporting. These towers are either permanently affixed or collapsible. Antenna structures are used to support the antennas and give ground clearance. Most antennas used today require supporting structures. Amateurs use these structures to gain performance and also to meet FCC requirements.

Tower Safety Study

A tower height by zoning districts study was made and a report was put together in Cedar Rapids, Iowa. This report was put together by a committee which was made up of mechanical, industrial, electrical and broadcasting engineers plus representatives from other disciplines. Legal concerns and support was provided by the local district attorney and an attorney from Des Moines who was familiar with antenna and tower practices. The focal for the proposal was Dr. Robert Walstrom, PE. The result of this study and report was put into tabular form and passed into law. Hence we shall call this the Dr. Robert Walstrom Report.

The Dr. Walstrom Report showed that the debris of the failed guyed towers studied fell within a radius of about 30% of its height. The study showed that a guyed tower could be placed as close as 40% of its height from a property line with the guy anchors spaced a distance of 70% of the tower height, the Rohn Tower specified distance. This fall within 30% should be adequate and considered safe for a distance of 40% from a property line. Using this base line, the maximum tower height was calculated that could be placed on a "common" sized lot size in each zoning district. The resulting figures were tabulated for each zoning district. Free standing towers would also be limited to these maximum heights, but would also be limited by a fall zone of 100% of the tower height. As zoning designators are not universally common, area by size rather than zoning designator was used to tabulate tower height for the Kansas Bill.

ARRLWeb: The American Radio Relay League

**Amateur Radio News ARRL Information and Services ARRL Products Join/Renew ARRL
ARRLWeb Site Index Search ARRLWeb ARRLWeb Home Members Only Registration
View page with graphics**

Memorandum Opinion and Order in PRB-1

Memorandum Opinion and Order in PRB-1

Before the
Federal Communications Commission
Washington, DC 20554
FCC 85-506
36149

In the Matter of)
Federal preemption of state and)
local regulations pertaining) PRB-1
to Amateur radio facilities.)

MEMORANDUM OPINION AND ORDER

Adopted: September 16, 1985 ; Released: September 19, 1985

By the Commission: Commissioner Rivera not participating.

Background

1. On July 16, 1984, the American Radio Relay League, Inc (ARRL) filed a Request for Issuance of a Declaratory Ruling asking us to delineate the limitations of local zoning and other local and state regulatory authority over Federally-licensed radio facilities. Specifically, the ARRL wanted an explicit statement that would preempt all local ordinances which provably preclude or significantly inhibit effective reliable amateur radio communications. The ARRL acknowledges that local authorities can regulate amateur installations to insure the safety and health of persons in the community, but believes that those regulations cannot be so restrictive that they preclude effective amateur communications.

2. Interested parties were advised that they could file comments in the matter.\fn 1/ With extension, comments were due on or before December 26, 1984,\fn 2/ with reply comments due on or before January 25, 1985 \fn 3/ Over sixteen hundred comments were filed.

Local Ordinances

3. Conflicts between amateur operators regarding radio antennas and local authorities regarding restrictive ordinances are common. The amateur operator is governed by the regulations contained in Part 97 of our rules. Those rules do not limit the height of an amateur antenna but they require, for aviation safety reasons, that certain FAA notification and FCC approval procedures must be followed for antennas which exceed 200 feet in height above ground level or antennas which are to be erected near airports. Thus, under FCC rules some antenna support structures require obstruction marking and lighting. On the other hand, local municipalities or governing bodies frequentl

HOUSE UTILITIES

enact regulations limiting antennas and their support structures in height and location, e.g. to side or rear yards, for health, safety or aesthetic considerations. These limiting regulations can result in conflict because the effectiveness of the communications that emanate from an amateur radio station are directly dependent upon the location and the height of the antenna. Amateur operators maintain that they are precluded from operating in certain bands allocated for their use if the height of their antennas is limited by a local ordinance.

4. Examples of restrictive local ordinances were submitted by several amateur operators in this proceeding. Stanley J. Cichy, San Diego, California, noted that in San Diego amateur radio antennas come under a structures ruling which limits building heights to 30 feet. Thus, antennas there are also limited to 30 feet. Alexander Vrenios, Mundelein, Illinois wrote that an ordinance or the Village of Mundelein provides that an antenna must be a distance from the property line that is equal to one and one-half times its height. In his case, he is limited to an antenna tower for his amateur station just over 53 feet in height.

5. John C. Chapman, an amateur living in Bloomington, Minnesota, commented that he was not able to obtain a building permit to install an amateur radio antenna exceeding 35 feet in height because the Bloomington city ordinance restricted "structures" heights to 35 feet. Mr. Chapman said that the ordinance, when written, undoubtedly applied to buildings but was now being applied to antennas in the absence of a specific ordinance regulating them. There were two options open to him if he wanted to engage in amateur communications. He could request a variance to the ordinance by way of hearing before the City Council, or he could obtain affidavits from his neighbors swearing that they had no objection to the proposed antenna installation. He got the building permit after obtaining the cooperation of his neighbors. His concern, however, is that he had to get permission from several people before he could effectively engage radio communications for which he had a valid FCC amateur license.

6. In addition to height restrictions, other limits are enacted by local jurisdictions--anti-climb devices on towers or fences around them; minimum distances from high voltage power lines; minimum distances of towers from property lines; and regulations pertaining to the structural soundness of the antenna installation. By and large, amateurs do not find these safety precautions objectionable. What they do object to are the sometimes prohibitive, non-refundable application filing fees to obtain a permit to erect an antenna installation and those provisions in ordinances which regulate antennas for purely aesthetic reasons. The amateurs contend, almost universally, that "beauty is in the eye of the beholder." They assert that an antenna installation is not more aesthetically displeasing than other objects that people keep on their property, e.g. motor homes, trailers, pick-up trucks, solar collectors and gardening equipment.

Restrictive Covenants

7. Amateur operators also oppose restrictions on their amateur operations which are contained in the deeds for their homes or in their apartment leases. Since these restrictive covenants are contractual agreements between private parties, they are not generally a matter of concern to the Commission. However, since some amateurs who commented in this proceeding provided us with examples of restrictive covenants, they are

included for information Mr. Eugene O. Thomas of Hollister, California included in his comments an extract of the Declaration of Covenants and Restrictions for Ridgemark Estates, County of San Benito, State of California. It provides:

No antenna for transmission or reception of radio signals shall be erected outdoors for use by any dwelling unit except upon approval of the Directors. No radio or television signals or any other form of electromagnetic radiation shall be permitted to originate from any lot which may unreasonably interfere with the reception of television or radio signals upon any other lot.

Marshall Wilson, Jr. provided a copy of the restrictive covenant contained in deeds for the Bell Martin Addition #2, Irving, Texas. It is binding upon all of the owners or purchasers of the lots in the said addition, his or their heirs, executors, administrators or assigns. It reads:

No antenna or tower shall be erected upon any lot for the purposes of radio operations.

William J. Hamilton resides in an apartment building in Gladstone, Missouri. He cites a clause in his lease prohibiting the erection of an antenna. He states that he has been forced to give up operation amateur radio equipment except a hand-held 2 meter (144-148 MHz) radio transceiver. He maintains that he should not be penalized just because he lives in an apartment.

Other restrictive covenants are less global in scope than those cited above. For example, Robert Webb purchased a home in Houston, Texas. His deed restriction prohibited "transmitting or receiving antennas extending above the roof line."

8. Amateur operators generally oppose restrictive covenants for several reasons. They maintain that such restrictions limit the places that they can reside if they want to pursue their hobby of amateur radio. Some state that they impinge on First Amendment rights of speech. Others believe that a constitutional right is being abridged because, in their view, everyone has a right to access the airwaves regardless of where they live.

9. The contrary belief held by housing subdivision communities and condominium or homeowner's associations is that amateur radio installations constitute safety hazards, cause interference to other electronic equipment which may be operated in the home (television, radio, stereos) or are eyesores that detract from the aesthetic and tasteful appearance of the housing development or apartment complex. To counteract these negative consequences, the subdivisions and associations include in their deeds, leases or by-laws, restrictions and limitations on the location and height of antennas or, in some cases, prohibit them altogether. The restrictive covenants are contained in the contractual agreement entered into at the time of the sale or lease of the property. Purchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere.

Supporting Comments

10. The Department of Defense (DOD) supported the ARRL and emphasized in its comments that continued success of existing national security and emergency preparedness telecommunications plans involving amateur stations would be severely diminished if state and local ordinances were allowed to prohibit the construction and usage of effective amateur transmission

facilities. DOD utilizes volunteers in the Military Affiliate Radio Service (MARS), \fn 4/ Civil Air Patrol (CAP) and the Radio Amateur Civil Emergency Service (RACES). It points out that these volunteer communicators are operating radio equipment installed in their homes and that undue restrictions on antennas by local authorities adversely affect their efforts. DOD states that the responsiveness of these volunteer systems would be impaired if local ordinances interfere with the effectiveness of these important national telecommunication resources. DOD favors the issuance of a ruling that would set limits for local and state regulatory bodies when they are dealing with amateur stations.

11. Various chapters of the American Red Cross also came forward to support the ARRL's request for a preemptive ruling. The Red Cross works closely with amateur radio volunteers. It believes that without amateurs' dedicated support, disaster relief operations would significantly suffer and that its ability to serve disaster victims would be hampered. It feels that antenna height limitations that might be imposed by local bodies will negatively affect the service now rendered by the volunteers.

12. Cities and counties from various parts of the United States filed comments in support of the ARRL's request for a Federal preemption ruling. The comments from the Director of Civil Defense, Port Arthur, Texas are representative:

The Amateur Radio Service plays a vital role with our Civil Defense program here in Port Arthur and the design of these antennas and towers lends greatly to our ability to communicate during times of disaster. We do not believe there should be any restrictions on the antennas and towers except for reasonable safety precautions. Tropical storms, hurricanes and tornadoes are a way of life here on the Texas Gulf Coast and good communications are absolutely essential when preparing for a hurricane and even more so during recovery operations after the hurricane has past.

13. The Quarter Century Wireless Association took a strong stand in favor of the Issuance of a declaratory ruling. It believes that Federal preemption is necessary so that there will be uniformity for all Amateur Radio installations on private property throughout the United States.

14. In its comments, the ARRL argued that the Commission has the jurisdiction to preempt certain local land use regulations which frustrate or prohibit amateur radio communications. It said that the appropriate standard in preemption cases is not the extent of state and local interest in a given regulation, but rather the impact of the regulation on Federal goals. Its position is that Federal preemption is warranted whenever local government regulations relate adversely to the operational aspects of amateur communication. The ARRL maintains that localities routinely employ a variety of land use devices to preclude the installation of effective amateur antennas, including height restrictions, conditional use permits, building setbacks and dimensional limitations on antennas. It sees a declaratory ruling of Federal preemption as necessary to cause municipalities to accommodate amateur operator needs in land use planning efforts.

15. James C. O'Connell, an attorney who has represented several amateurs before local zoning authorities, said that requiring amateurs to seek variances or special use approval to erect reasonable antennas unduly restricts the operation of amateur stations. He suggested that the Commission preempt

zoning ordinances which impose antenna height limits of less than 65 feet. He said that this height would represent a reasonable accommodation of the communication needs of most amateurs and the legitimate concerns of local zoning authorities.

Opposing Comments

16. The City of La Mesa, California has a zoning regulation which controls amateur antennas. Its comments reflected an attempt to reach a balanced view.

This regulation has neither the intent, nor the effect, of precluding or inhibiting effective and reliable communications. Such antennas may be built as long as their construction does not unreasonably block views or constitute eyesores. The reasonable assumption is that there are always alternatives at a given site for different placement, and/or methods for aesthetic treatment. Thus, both public objectives of controlling land use for the public health, safety, and convenience, and providing an effective communications network, can be satisfied. A blanket to completely set aside local control, or a ruling which recognizes control only for the purpose of safety of antenna construction, would be contrary to...legitimate local control.

17. Comments from the County of San Diego state:

While we are aware of the benefits provided by amateur operators, we oppose the issuance of a preemption ruling which would elevate 'antenna effectiveness' to a position above all other considerations. We must, however, argue that the local government must have the ability to place reasonable limitations upon the placement and configuration of amateur radio transmitting and receiving antennas. Such ability is necessary to assure that the local decision-makers have the authority to protect the public health, safety and welfare of all citizens.

In conclusion, I would like to emphasize an important difference between your regulatory powers and that of local governments. Your Commission's approval of the preemptive requests would establish a "national policy." However, any regulation adopted by a local jurisdiction could be overturned by your Commission or a court if such regulation was determined to be unreasonable.

18. The City of Anderson, Indiana, summarized some of the problems that face local communities:

I am sympathetic to the concerns of these antenna owners and I understand that to gain the maximum reception from their devices, optimal location is necessary. However, the preservation of residential zoning districts as "liveable" neighborhoods is jeopardized by placing these antennas in front yards of homes. Major problems of public safety have been encountered, particularly vision blockage for auto and pedestrian access. In addition, all communities are faced with various building lot sizes. Many building lots are so small that established setback requirements (in order to preserve adequate air and light) are vulnerable to the unregulated placement of antennas.

...the exercise of preemptive authority by the FCC in granting this request would not be in the best interest of the general public.

19. The National Association of Counties (NACO), the American Planning Association (APA) and the National League of Cities

(NCL) all opposed the issuance of an antenna preemption ruling. NACO emphasized that federal and state power must be viewed in harmony and warns that Federal intrusion into local concerns of health, safety and welfare could weaken the traditional police power exercised by the state and unduly interfere with the legitimate activities of the states. NLC believed that both Federal and local interests can be accommodated without preempting local authority to regulate the installation of amateur radio antennas. The APA said that the FCC should continue to leave the issue of regulating amateur antennas with the local government and with the state and Federal courts.

Discussion

20. When considering preemption, we must begin with two constitutional provisions. The tenth amendment provides that any powers which the constitution either does not delegate to the United States or does not prohibit the states from exercising are reserved to the states. These are the police powers of the states. The Supremacy Clause, however, provides that the constitution and the laws of the United States shall supersede any state law to the contrary. Article III, Section 2. Given these basic premises, state laws may be preempted in three ways: First, Congress may expressly preempt the state law. See *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Or, Congress may indicate its intent to completely occupy a given field so that any state law encompassed within that field would implicitly be preempted. Such intent to preempt could be found in a congressional regulatory scheme that was so pervasive that it would be reasonable to assume that Congress did not intend to permit the states to supplement it. See *Fidelity Federal Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982). Finally, preemption may be warranted when state law conflicts with federal law. Such conflicts may occur when "compliance with both Federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142, 143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Furthermore, federal regulations have the same preemptive effect as federal statutes, *Fidelity Federal Savings & Loan Association v. de la Cuesta*, supra.

21. The situation before us requires us to determine the extent to which state and local zoning regulations may conflict with federal policies concerning amateur radio operators.

22. Few matters coming before us present such a clear dichotomy of view point as does the instant issue. The cities, counties, local communities and housing associations see an obligation to all of their citizens and try to address their concerns. This is accomplished through regulations, ordinances or covenants oriented toward the health, safety and general welfare of those they regulate. At the opposite pole are the individual amateur operators and their support groups who are troubled by local regulations which may inhibit the use of amateur stations or, in some instances, totally preclude amateur communications. Aligned with the operators are such entities as the Department of Defense, the American Red Cross and local civil defense and emergency organizations who have found in Amateur Radio a pool of skilled radio operators and a readily available backup network. In this situation, we believe it is appropriate to strike a balance between the federal interest in promoting amateur operations and the legitimate interests of local governments in regulating local zoning matters. The cornerstone

on which we will predicate our decision is that a reasonable accommodation may be made between the two sides.

23. Preemption is primarily a function of the extent of the conflict between federal and state and local regulation. Thus, in considering whether our regulations or policies can tolerate a state regulation, we may consider such factors as the severity of the conflict and the reasons underlying the state's regulations. In this regard, we have previously recognized the legitimate and important state interests reflected in local zoning regulations. For example, in *Earth Satellite Communications, Inc.*, 95 FCC 2d 1223 (1983), we recognized that

...countervailing state interests inhere in the present situation...For example, we do not wish to preclude a state or locality from exercising jurisdiction over certain elements of an SMATV operation that properly may fall within its authority, such as zoning or public safety and health, provided the regulation in question is not undertaken as a pretext for the actual purpose of frustrating achievement of the preeminent federal objective and so long as the non-federal regulation is applied in a nondiscriminatory manner.

24. Similarly, we recognize here that there are certain general state and local interests which may, in their even-handed application, legitimately affect amateur radio facilities. Nonetheless, there is also a strong federal interest in promoting amateur communications. Evidence of this interest may be found in the comprehensive set of rules that the Commission has adopted to regulate the amateur service. \fn 5/ Those rules set forth procedures for the licensing of stations and operators, frequency allocations, technical standards which amateur radio equipment must meet and operating practices which amateur operators must follow. We recognize the amateur radio service as a voluntary, noncommercial communication service, particularly with respect to providing emergency communications. Moreover, the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on in times of national or local emergencies. By its nature, the Amateur Radio Service also provides the opportunity for individual operators to further international goodwill. Upon weighing these interests, we believe a limited preemption policy is warranted. State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted.

25. Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in. For example, an antenna array for international amateur communications will differ from an antenna used to contact other amateur operators at shorter distances. We will not, however, specify any particular height limitation below which a local government may not regulate, nor will we suggest the precise language that must be contained in local ordinances, such as mechanisms for special exceptions, variances, or conditional use permits. Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose. \fn 6/

26. Obviously, we do not have the staff or financial resources to review all state and local laws that affect amateur operations. We are confident, however, that state and local governments will endeavor to legislate in a manner that affords appropriate recognition to the important federal interest at stake here and thereby avoid unnecessary conflicts with federal policy, as well as time-consuming and expensive litigation in this area. Amateur operators who believe that local or state governments have been overreaching and thereby have precluded accomplishment of their legitimate communications goals, may, in addition, use this document to bring our policies to the attention of local tribunals and forums.

27. Accordingly, the Request for Declaratory Ruling filed July 16, 1984, by the American Radio Relay League, Inc., IS GRANTED to the extent indicated herein and in all other respects, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION
William J. Tricarico
Secretary

Page last modified: 3:01 PM, 28 Jul 1998 ET

Page author: reginfo@arrl.org

Copyright © 1998, American Radio Relay League, Inc. All Rights Reserved.



League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

To: House Utilities Committee
From: Kim Gulley, Director of Policy Development
Date: February 8, 2000
Re: Opposition to HB 2644

Thank you for allowing me to appear today on behalf of the League of Kansas Municipalities and our 530 member cities. Because the provisions of HB 2644 would preempt local authority with regard to restrictions on towers and antennas used for amateur radio communications, we oppose this legislation.

The exercise of constitutional Home Rule is a fundamental principle upon which the cities of Kansas govern their local communities. Since the passage of the Home Rule Amendment by the voters of the State of Kansas in 1960, Kansas cities have had the authority to enact local legislation pertaining to local affairs unless expressly and uniformly preempted by enactments of this Legislature. HB 2644 would preempt local legislation in this area.

We believe that the determination concerning restrictions on towers and antennas used for amateur radio communications is a local one. For example, some cities have used their local zoning authority to require that utilities in certain areas be placed under ground. Allowing other facilities to be placed in the same area without strict regulation would defeat the public safety and aesthetic purposes behind underground utility requirements.

Because such requirements vary from city to city, we would ask that you reject a statewide standard for these facilities. We respectfully request that HB 2644 not be reported favorably for passage.

HOUSE UTILITIES



The Bowersock Mills & Power Company

HB2634

P.O. Box 66
Lawrence, KS 66044
(913) 843-1385

To: House Energy Committee

From: Stephen H. Hill
President
The Bowersock Mills & Power Co.

Re: Testimony Concerning HB2634

A. About The Bowersock Mills & Power Company

Business: Largest producer hydroelectric energy in Kansas

Location: Lawrence, Kansas on the Kaw River

Employs: Workforce of six

Capacity: 2.34 megawatts

Annual production: Ten to twelve million kilowatts, enough to serve about 1000 homes.

Founded: 1874

Currently serves: All production sold to Western Resources under the State's parallel generation statute.

Owned by: The Stephen Hill Family descendents of Justin D. Bowersock

B. Benefits of HB2634

Passage of this bill would encourage the preservation and development of renewable energy sources in the State.

Further the bill would enable interested citizens to express their environmental concerns by the purchase of green power produced from renewable energy sources. Sale of green power has been popular in other states where producers have been permitted to sell directly to the public.

Specifically, for Bowersock the bill would permit the direct sale of premium green power to local commercial and residential customers potentially increasing our revenues and enabling us to maintain our existing facilities and possibly increase our overall generating capacity.

HOUSE UTILITIES

DATE: 2-8-00

Manufacturers of Water Power & Inc. ATTACHMENT 9

Stephen H. Hill
President

Marcia Hannon Hill
Secretary-Treasurer

HOUSE BILL No. 2634

I would like to thank the Committee on Utilities for holding hearings on this bill. My name is Bill Griffith and I am a resident of Leavenworth. I take part in Western Resources Windstar Program and am a member of the Kansas Sierra Club having served on their Executive Committee as Co-Conservation Chair.

This bill is a marked improvement on what is available on the Kansas landscape for consumers who wish to purchase renewable energy if they desire from a utility. As of now there is no choice in the matter and even if the Windstar program was available to anyone it is severely limited. Consumers do want renewable energy. This energy can be an economic boon to Kansas or we can be short-sighted and be purchasing our energy supplies from other states and watching Kansas dollars flutter away in the wind elsewhere.

Renewable energy technologies cannot only keep dollars in this state, but also create significant benefits through economic development. Renewable technologies create jobs using local resources in a new, high-tech industry with enormous export potential.

Some renewable technologies, like biomass, are relatively labor intensive. For example, growing, harvesting, and transporting biomass fuels require labor, as does maintaining the equipment. This means that much of the revenue for installing, fuelling, and operating renewable power plants remains within the state where the power is used.

Renewables can mean increased revenues for local landowners. A Union of Concerned Scientists analysis found that farmers could increase their return on land by 30 to 100 percent from leasing part of it for wind turbines while continuing to farm. With the current farm crisis many farm families in Kansas are facing this could mean the difference between prosperity and oblivion.

A UCS study for Wisconsin found that, over a 30-year period, an 800-megawatt mix of new renewables would create about 22,000 more job-years than new natural gas or coal plants would. A New York State Energy office study concluded that wind energy would create 27 percent more jobs than coal and 66 percent more than a natural gas plant per kilowatt hour generated. A study of energy efficiency and renewable energy as an economic development strategy in Colorado by Economic Research Associates found an energy bill savings of \$1.2 billion for Colorado ratepayers by 2010 with a net gain of 8,400 jobs.

Because some renewable technologies are small and modular, they can be sited in or near buildings where energy is used. These distributed generation technologies offer some benefits that utilities have usually not considered.

Perhaps most importantly, distributed generation technologies can avoid costly expenditures on transmission and distribution. For example, a utility putting distributed generation in a new neighborhood might be able to use smaller transformers or reduce the size or number of power lines going to the neighborhood. Distributed generation reduces the wear and tear on existing distribution equipment, thereby delaying the need to replace or upgrade the equipment. And distributed generation reduces power losses through the transmission system, so that less electricity needs to be produced in the first place.

Typically, renewables are small, modular, and require short lead times for installation. This can benefit electricity companies' planning. Companies using modular technologies can add capacity in small increments as needed, rather than planning large power plants

HOUSE UTILITIES

DATE: 2-8-00

ATTACHMENT 10

many years in advance, only to find that they may not be needed them when they finally go on line.

Finally, the concept of value is changing the perception of renewables, as is consumer choice. Many surveys have shown that customers value the environmental benefits of renewables more than conventional polluting energy sources and prefer electricity companies that supply at least part of their power from renewable energy technologies. Renewables provide options that service-oriented companies can use to improve customer satisfaction. They can improve a company's public image and can create profitable new business opportunities for electricity generation or distribution companies that are customer-oriented. But if a company is not renewable friendly and we enter a market of open competition Kansas dollars could go to companies from other states. I know mine would if I had a choice right now. I find that troubling.

Besides economic benefits renewables provide important environmental benefits that need to be mentioned because of their importance even though we see the problems with electric generation and the environment quite often in the headlines.

Using fossil fuels to make electricity dirties the nation's air, consumes and pollutes water, hurts plants and animal life, creates toxic wastes, and causes global warming. Using nuclear fuels poses serious safety risks. Renewable energy resources can provide many immediate environmental benefits by avoiding these impacts and risks and can help conserve fossil resources for future generations.

Clean air is essential to life and good health. Air pollution aggravates asthma, the number one children's health problem. Air pollution also causes disease and even premature death among vulnerable populations, including children, the elderly, and people with lung disease. Studies by the American Cancer Society and Harvard Medical School suggest that small particles in the air may be responsible for as many as 64,000 deaths each year from heart and lung disease. Air pollution is responsible for more deaths than motor vehicle accidents, and ranks higher than many other serious health threats.

I would like to touch base briefly on windpower and Kansas. I attended a conference in Minnesota last year on utility deregulation and was surrounded by renewable energy experts who marveled at the wind potential for Kansas. They called us "The Saudi Arabia of windpower". As we know they are not off base.

Wind farms can bring significant economic benefits not only to the farmer or landowner upon whose land the plant is sited, but also to the local economy. For the farmer whose land is selected for a wind farm site, the turbines would only take up 5 percent or less of the land area, which means the farmer could still farm or graze livestock right up to the base of each tower. This integration of a wind farm with the existing use of the land can mean an increase of income from \$30 to \$140 per acre per year.

Farmers may also benefit by investing in their own turbines. For the farmer whose operation consumes a considerable amount of electricity, such as a dairy farmer or irrigator, a wind turbine might very well be a beneficial investment. If the farmer's land is windy, one or more wind turbines could cut the purchase of electricity down to nothing. Farmers or rural landowners could form cooperatives to build wind farms. Financing would be pooled so that the project costs are spread over a larger number of turbines, bringing down each units cost for operation and maintenance.

The most frequent objection to windpower is that the wind doesn't always blow. This is also the easiest objection to overcome. Other power plants do not operate all the time either. When Wolf Creek goes shuts down for refueling consumers still receive power. The electricity simply comes to them from some other source, usually at a higher cost. Utilities must be prepared for the contingency that the largest power plant in their system could go off-line at any time. So the intermittent nature of wind is not really the problem for utility planners that they claim it to be. When was the last time the wind didn't blow in Kansas for thirteen months straight?

In conclusion a bill such as this is a sound, practical start to leveling the playing field for renewable energy in the state of Kansas and assuring long-term economic, environmental, and health benefits for us and our children. Thank you.

House Committee on Utilities
Testimony of Lori Forster
February 8, 2000

House Bill 2634

Chairman Holmes, members of the committee, I am Lori Forster. I am the Institutional Conservation Program Manager in the Energy Programs Section of the Kansas Corporation Commission. I have taken annual leave from my position to appear before you today as a private citizen. I appear today in support of HB 2634.

Currently there is 5,607 kWh¹ of green power being produced by alternative energy production facilities in the state of Kansas. Of this power 4,107 kWh is being produced by Independent Power Producers (IPPs). Kansas Gas and Electric, Kansas Power & Light, Pioneer Electric Coop, Inc., Victory Electric Coop Assn., United Electric Coop, P R & W Electric Coop Assn., Midwest Energy, Sedgwick County Electric Coop, Norton-Decatur Coop Electric Co., Western Coop Electric Assn., Radiant Electric Coop, N C K Electric Coop, and USCE-Kansas City District currently purchase this power. Under K. S. A. # 66-1,184, every utility which provides electric service in this state is required to purchase parallel generation service from any person who is a customer of such utility, at an avoided cost. This means that an IPP must sell the power it produces at the utility's avoided cost, which is currently between 1 ½ and 2 ½ cents per kWh. The IPP must then purchase the power it uses at the utility's retail cost, which is currently 7 to 13 cents per kWh. Utilities in our state are allowed a reasonable rate of return for their investment, one would expect, that as power producers, they would respect a reasonable rate of return for other power producers.

¹U. S. Department of Energy-Energy Efficiency & Renewable Energy Network's Renewable Electric Plant Information System Database

At this time Western Resources is the only utility in the state that is selling green power, to its customers, from power produced at the Jeffrey Energy Center Wind Turbine site. Western Resources' customers can purchase the power at a premium cost of \$5 per 100 kWh block of power.

Kansas ranks third in the nation for potential wind energy production, yet lags behind other states with less potential production. This is in part due to the current way our state regulates power production. In the past five years Kansas has lost three major wind farm facilities due to our current regulations. We all know the economic struggles many areas of our state now face. It is time that Kansas look at its natural resources to develop industries to carry our state into the 21st Century.

But of far more concern is that Kansas consumers are not allowed the choice of using green energy. We have a pristine state and I would ask that you support HB 2634 to allow our citizens the choice to utilize our natural clean resources.

I thank you for your time, I would be happy to answer any questions you may have.

From: <CBluemoon@aol.com>
To: <sloan@house.state.ks.us>
Date: Tue, Feb 8, 2000 8:17 AM
Subject: Renewable retailing

Dear Rep Sloan, I am the owner of the Free State Brewing Company in Lawrence, a brewery and restaurant in the Historic Downtown District. When we opened 11 years ago, nobody was engaged in a similar business in this region, in fact Denver and Chicago were the nearest examples. We helped show people here in Kansas what was possible with a little innovation. That same spirit is why I support the need for retailing of electricity from renewable resources. Studies from Iowa report that 60% of the energy dollars spent in the state are lost to the region, allocated to fuel expenses. Kansas has a much greater potential for wind energy development than Iowa (Kansas ranked 3rd nationally, Iowa is 10th) but Iowa is far ahead of us in renewable energy development. As a proud Jayhawk, I'm not willing to accept "also ran" status to Iowa. The Federal Energy Regulatory Commission's open access policy for energy transmission lines will be changing the way we view electric services, and with the vast potential for economic development (particularly in rural areas) due to renewable resources, Kansas should not drag the process out, we should be on the leading edge. The technical aspect of transmission billing is being sorted out in a dozen other states, and should not be viewed as an obstacle. I would like to buy renewable-based electricity for my business and for my home. While the "green power" market will always be a specialty sector, it is an area of growth, and one we could supply in Kansas from homegrown independent power generators. I would truly value the consumer choice that is represented in HB 2634. Due to business schedules, I am unable to attend today's committee hearing, but I hope you will give strong consideration to the innovations and opportunities that renewable-based electricity could bring to Kansas consumers and producers. Thank you.
Chuck Magerl

HOUSE UTILITIES

DATE: 2-8-00

ATTACHMENT 12



Solar Electric Systems

OF KANSAS CITY, INC.

13700 W. 108th Street • Lenexa, Kansas 66215
(913) 338-1939 • Fax (913) 469-5522
solarbeacon@msn.com • www.solarbeacon.com

Rep. Tom Sloan

2/4/2000

Hon. Representative Sloan:

This letter is to express my support for HB 2634, Green Electricity for Kansas.

This bill would open up large new markets for the latest renewable energy technologies, including photovoltaics or solar electric equipment. In many of the 50 states customers are allowed to choose 'Green Electricity' and they are doing so in increasing numbers every day. In Kansas, citizen's are denied this choice in the marketplace.

In poll after poll citizen's have expressed their preference for power generated by new, clean, renewable technology.

I urge you to allow Kansas consumers the right to make these free choices in the marketplace.

By allowing your constituents the right to make the choice for renewable electricity the results will be;

- Fewer dollars exported for fuel.
- More farm/ranch income, especially from wind and biomass projects.
- More jobs in the growing renewable power industries.
- Cleaner air and water for all Kansan's.

Please let our group know how you and your committee voted on HB 2634. Thank you very much.

Sincerely,

Bill Roush
Heartland Solar Energy Industries Association, President

HOUSE UTILITIES

DATE: 2-8-00

ATTACHMENT 13

Testimony
before the
HOUSE UTILITIES COMMITTEE

by
Jim Ludwig, Senior Director, Regulatory Affairs
Western Resources
February 8, 2000

Chairman Holmes and members of the Committee:

Bill explanation

HB 2634 would allow retail choice effective July 1, 2002 for retail customers who purchase power generated exclusively from renewable resources. "Renewable resources" is defined as power from wind, solar, water, biomass and landfill gas. Western Resources believes key questions must be answered before the legislature enacts HB 2634. At a minimum, questions need to be answered before Western Resources can take a position on the bill.

What is an "exclusive" purchase requirement?

It would be difficult, maybe impossible, for anyone to buy power *exclusively* from renewable resources. The wind does not always blow, the sun does not always shine, and the water does not always flow fast enough to generate electricity. Retail customers who were trying to buy exclusively from renewable resources would not always have power. Would incumbent utilities be required to provide standby power when renewable power was unavailable? If so, should rates be set so that customers who chose to buy from renewable resources bear the entire cost of standby service since it is provided for their benefit? Or, should customers who have not chosen to buy renewable energy bear all or a part of the cost? Or, should renewable energy suppliers pay for standby power? What exactly does "exclusively" mean?

For example, Western Resources could provide renewable energy on the basis of retail choice from its wind generators located at Jeffrey Energy Center. If the wind wasn't blowing and the wind units weren't generating, what rate would we charge customers who were buying renewable power? Would they have to secure some other renewable source of power instead? Would Western Resources or the customer be responsible for securing the replacement power? Would replacement power have to be renewable? If Western Resources were responsible, would Western Resources' customers who chose not to buy renewable power bear the cost of backup capacity for customers who chose renewable power? Or, would customers buying renewable power have to pay for backup capacity? Or, would Western Resources' wind generating division have to pay Western Resources nonrenewable division for backup capacity? How would such an affiliate transaction be priced?

How would open access and comparability of terms of service be established?

Western Resources was one of the earliest supporters of nondiscriminatory transmission pricing and service. Requiring open access and comparable conditions of service for transmission was possible because the costs of those wholesale services are regulated by the Federal Energy Regulatory Commission (FERC) and are identifiable and distinguishable. This is not the case with retail services. Retail distribution and generation costs are not differentiated in retail electric rates. The KCC would have to conduct a lengthy process to unbundle distribution services from generation. The length of that process would make the retail choice date of July 1, 2002 unrealistic. In material presented to Chairman Holmes this summer, Western Resources estimated a time-line of 36 months for electric utilities and the KCC to unbundle retail rates.

Who pays the costs associated with HB 2634?

To implement HB 2634, utilities would face substantial costs to unbundle their rates and revise their computerized billing systems. Western Resources provided cost estimates to Chairman Holmes that ranged from about \$3 million to over \$8 million. Since the unbundling of services would be done for the benefit of renewable power purchasers, would they bear those costs? Or, would the cost be borne by renewable suppliers? Would the costs be recovered through a transition charge?

Incumbent utilities have been required to plan and provide service to all customers in their service territories. A portion of generation costs has been incurred on behalf of customers who would switch to renewable retail providers. HB 2634 makes no provision (e.g., an exit fee) for those customers to pay costs incumbent utilities have incurred to serve them. Who will bear these costs: renewable energy purchasers, renewable energy providers, remaining customers, or some combination of all of them?

How does Kansas deal with tax problems associated with the bill?

Renewable resource retail providers located outside of Kansas would escape paying Kansas property taxes. Kansas utilities pay property taxes based on the highest assessment rates under the state constitution. This results in a competitive disadvantage to instate firms and threatens to erode property tax revenues.

Should Kansas provide competitive advantage to federal hydroelectric power?

Some governmental and rural electric utilities have preferential access to federal hydroelectric power at lower costs than investor-owned utilities would be charged. Although hydroelectric power is properly defined as renewable, this preferential access to federal hydroelectric power would put investor-owned electric utilities at a competitive disadvantage and send artificial price signals to consumers. Does the Kansas legislature intend, as a matter of policy, to give a federal agency a competitive advantage over private industry?


Is competition for renewable resource power a meaningful retail choice experiment?

If the intent of HB 2634 is to run an experiment in retail wheeling or initiate a process toward full retail wheeling, this bill would not be very instructive or effective. With the exception of the preferentially lower price of federal hydroelectric power, renewable resource-based electricity is more expensive than non-renewable resource-based power. Allowing customer choice for power that is generally more expensive will not provide policy makers useful information about the economics of electric competition.

Western Resources poses these questions that ought to be answered before the legislature acts on HB 2634. Western Resources believes major issues (stranded costs, transition costs, tax repercussions, competitive balance, etc.) associated with HB 2634 have to be addressed.



Kansas Electric Power Cooperative, Inc.

A Touchstone Energy™ Partner 

Testimony on House Bill 2634
Before the House Utilities Committee -- February 8, 2000
Bruce Graham, Vice President, Member Services & External Affairs
Kansas Electric Power Cooperative, Inc. (KEPCo)

HB 2634 would allow retail customers to purchase power generated exclusively from renewable resources effective July 1, 2002. We reviewed the intent of this proposal both as an attempt to encourage the use of renewable energy and as a retail wheeling pilot project. In both circumstances, our reaction is caveat viridor emptor. (viridor -- to become green)

While HB 2634 seems noble on the surface, there are a number of fundamental problems with this concept. Among them is the call for a supply generated *exclusively* from renewable resources. Unless we put a windmill in the consumer's backyard, then wire the home directly to the generator, and remove the home from the grid, there is no way the customer can be certain he or she is actually getting electrons generated by a renewable resource. Then what happens when the wind doesn't blow? That consumer would be uncomfortable, inconvenienced, and certainly second-guessing his decision.

In states where retail wheeling is in place, renewable programs are similar to that already offered to native customers of Western Resources and Utilicorp. Customers buy blocks of green generation to replace other generation resources. They don't depend on renewable resources exclusively. If the goal of this legislation is to encourage the use of renewable generation, many Kansas consumers have had the chance to embrace the idea and have not overwhelmed Western Resources or Utilicorp with enrollment calls.

We'd also like to point out that the way HB 2634 is currently written, KEPCo could not participate in this program even though we have hydropower resources that could be utilized. Section 1(3)(b) restricts the program to those currently selling at retail. KEPCo combines its hydropower allocations with other resources to provide a wholesale power supply to its 21 member rural electric cooperatives. While we do not serve retail, we would hope that this language is not intended to exclude KEPCo or even a utility with renewable resources not currently serving at retail in Kansas.

Assuming KEPCo is not restricted, we would still have to evaluate the impact our participation would have on existing customers. Certainly, KEPCo could package its hydropower, market it across the state and pick up some new customers. However, KEPCo is a net purchaser of electricity. We own six percent of Wolf Creek, which provides approximately one-third of our power supply, another third is from our hydro allocations and the rest we purchase by contract from other utilities in the state. Therefore, while this would provide us the opportunity to sell our renewable energy to new customers, probably at a premium, in turn we would have to replace that generation on the open market where such a firm power supply might cost even more. The end result could conceivably be a rate increase for our existing customers.

HOUSE UTILITIES

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

DATE: 2-8-00

ATTACHMENT 15

Testimony of Jon K. Miles

**Vice President, Governmental & Technical Services
Kansas Electric Cooperatives, Inc.**

Submitted to the House Utilities Committee

Mr. Chairman, and members of the Committee, I appreciate the opportunity to provide our thoughts with you on House Bill 2634.

My name is Jon Miles. I have served as KEC's representative to the Legislature for over four years. KEC is the statewide association for 29 rural electric (distribution) systems across the state of Kansas and two generation and transmission cooperatives, Sunflower Electric Power Corporation, and Kansas Electric Power Cooperative, Inc. The rural electric cooperatives serve in 102 of the 105 counties in Kansas. KEC provides a number of services to its members that they could not otherwise economically afford.

While the rural electric cooperatives support the use of electricity derived from renewable resources whenever possible, we oppose House Bill 2634 that is before the Committee today for a couple of reasons.

The concept of this bill is that retail providers may sell outside their service territories to any consumer, so long as they are selling renewable energy.

In Section 1 of the bill, the term "retail provider" is defined in such a way that it could only apply to existing utilities in the state providing retail distribution service. We see this as a potential problem for KEPCo and Sunflower. It would not allow them the opportunity to sell renewables even if they wanted to, because they do not sell electricity at the retail level.

The bill requires the distribution provider to provide open access to the distribution system on a non-discriminatory basis. It appears that the bill addresses only the rates charged at the distribution side of the business on a "comparable" basis. The bill does not specify how this

HOUSE UTILITIES

DATE:

2-8-00

ATTACHMENT

16

would be done. The KCC would be left to iron out the details. These unknown details left to the KCC to decide would come at a price to consumers, as utilities will be required to invest in new accounting and metering technologies. The legislative body should have some idea as to what those costs might be and how those costs might affect the customer's bill.

The electric cooperatives have not really "unbundled" their rates to the extent necessary to charge for the distribution services. The bill does allow the recovery of charges and presumably, a margin for those services, but does not specify the methodology for unbundling.

My last comment on the bill deals with whether two years allows enough time to develop the rules and regulations to implement such a bill. The regulatory process regarding telecommunications is still sorting out various issues and charges four years after the bill was passed.

Mr. Chairman, I appreciate the opportunity to testify on HB 2634 and would stand for any questions that you may have.

Thank you.

**Testimony before the House Utilities Committee
In Opposition to House Bill No. 2634**

**Burton L. Crawford
Manager of Deregulation Issues
Kansas City Power & Light Company
February 8, 2000**

Chairman Holmes and Members of the Committee:

I am Burton Crawford, Manager of Deregulation Issues for Kansas City Power & Light Company and am appearing before you today in opposition of House Bill No. 2634 that allows for limited retail electric competition.

KCPL's overriding concern with this bill is that it allows retail electric competition without first settling the major policy decisions that must be made prior to allowing competition. While the bill does give authority to the state corporate commission to adopt rules and regulations as necessary to implement the act, some of the major policy decisions that must be made are more appropriately made by the legislature. I will mention just a few.

First is the issue of taxes. I know that this issue has been discussed by this committee in the past, but warrants repeating. If retail consumers are allowed to choose alternative providers of electricity, it is likely that they will avoid paying related taxes. Out-of-state supplies may not be subject to state sales tax, municipal franchise fees, or city and county taxes. This not only places in-state electric suppliers at a competitive disadvantage, it also can result in a substantial loss of tax revenue for many jurisdictions. Meaningful tax reform needs to be in place prior to the start of any retail competition.

A second issue concerns back-up generation. If a KCPL customer chooses an alternative supplier, will we be responsible for maintaining generation resources in case the alternative supplier fails to deliver (or the wind fails to blow)? Do the costs associated with providing back-up generation get applied to only those choosing

HOUSE UTILITIES

DATE: 2-8-00

ATTACHMENT 17

renewable resources, or do these cost shift to all customers? How much back-up generation must be supplied? When the renewable supplier fails to deliver, what price do these customers pay for the energy they consume? If the price is based on the cost to procure energy from the spot market (as is done in some states with retail competition), customers that have a supplier fail to deliver in the heat of the summer may experience huge increases in their electric bills. The answer to these questions depends upon how the state wants to structure their electric industry – none of which is addressed in this bill.

Last but not least, is the issue of stranded costs. If customers are allowed to leave KCPL, we will continue to have costs associated with the generation that was built to serve them. These costs must be considered in any move to retail competition. This is a consideration that the legislature should make.

We are not here today to say that this can not be done, because it can. It's just not as easy as HB 2634 makes it out to be. If retail competition is truly desired, leaving major policy decisions such as these unresolved can result in a long and costly implementation period. For example, New Hampshire was the first state to pass a retail competition bill in May of 1996. They also took the approach of leaving almost all decisions up to their state commission. While competition was legislated to start January 1998, it has yet to occur due to court challenges over commission decisions. While the well over 200-page law passed in Illinois may be overkill, the legislature must make several important decisions to implement any form of retail electric competition.

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

Background on KCPL:

One of the nation's first electric utilities, Kansas City Power & Light Company has been providing reliable and economical energy to its customers for more than a century. Today, KCPL is a leading provider of energy and related products and services in the Kansas City metropolitan area and nationwide.

KCPL is the second largest investor-owned electric utility in the state of Kansas, serving 203,250 customers in a population of over 1 million people in portions of 23 counties in northeastern Kansas, northwestern Missouri, and across the Kansas City metro area.

KCPL's Kansas service territory is centered in Johnson County, the fastest growing county in the Sunflower State. Major facilities located in Kansas include:

- Wolf Creek Station, one of the nation's most reliable nuclear generating units with a capacity of 1,170 megawatts in Coffey County;
- La Cygne Station, a dual-unit, coal-fired station with a generating capacity of 1,362 megawatts in Linn County; and
- Three major service centers – two in Johnson County and one in Miami County.

As we begin a challenging new Millennium, KCPL will continue to differentiate itself from other utilities, form promising partnerships for growth, and maintain its focus on outstanding customer service.



League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

To: House Utilities Committee
From: Kim Gulley, Director of Policy Development
Date: February 8, 2000
Re: Suggested Amendments to HB 2634

Thank you for allowing me to appear today on behalf of the League of Kansas Municipalities and our 530 member cities. We do not have a position with regard to customer choice for energy generated from renewable resources.

However, we are concerned about the impact of HB 2634 on the 121 cities that operate municipal electric utilities. We have three primary concerns:

- **Home Rule.** We believe that decisions which concern electric utilities that are operated by cities should be made by locally elected officials, not mandated at the state level.
- **KCC Jurisdiction.** The provisions of HB 2634 would subject municipal electric utilities to KCC jurisdiction for the purpose of carrying out the provisions of the bill.
- **Impact on Small Cities.** The vast majority of municipal electric utilities are operated in very small communities. The loss of even a small number of customers could have a serious impact on the revenues of the local utility and, in turn, the city itself.

For these reasons, we respectfully request that municipal electric utilities be exempted from the provisions of this bill and offer the following amendment for your consideration:

Line 27-28 Strike "municipal electric utility"

Add New Section *This act shall not apply to any municipal electric utility operated by an incorporated city.*

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



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General
CONSUMER PROTECTION/ANTITRUST DIVISION

301 S.W. 10TH, LOWER LEVEL, TOPEKA 66612-1597
PHONE: (785) 296-3751 FAX: 291-3699 TTY: 291-3767

Testimony of

Steve Rarrick, Deputy Attorney General
Consumer Protection Division
Office of Attorney General Carla J. Stovall
Before the House Utilities Committee

RE: HB 2634

February 8, 2000

CONSUMER HOTLINE
1-800-432-2310

Chairperson Holmes and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Carla J. Stovall today in regard to HB 2634. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

As the Committee is aware, HB 2634 would allow the practice commonly known as "retail wheeling." This allows the consumer the right to purchase, from any retail provider, electricity generated exclusively from renewable resources. I am not here this morning to take a position for or against "retail wheeling."

However, Attorney General Stovall is concerned with the language in HB 2634 which indicates the consumer's choice is to be shown by a "positive verifiable declaration," a term not defined in the bill. We believe the implementation of "retail wheeling" may bring with it the opportunity for the unauthorized switching of a consumer's utility service similar to the slamming problems that have developed with local and long distance service.

Two years ago, our office worked with this Committee to address the problem of slamming. At your request, we proposed language adopted by this Committee and passed in the slamming law (K.S.A. 50-6,103) which requires the "express authorization" of the consumer to switch the consumer's local or long distance service. We defined this term as ". . . an express, affirmative act by a consumer clearly agreeing to the change in the consumer's telecommunications carrier or local exchange carrier to another carrier." Rather than reinventing the wheel, we would recommend using similar language for retail wheeling. You may also recall that the burden of proving express authorization in a slamming case is on the carrier, a provision that is extremely helpful in our effort to curb slamming.

It appears that enforcement of the provisions contained in HB 2634 is with the Corporation Commission, but there do not appear to be any specified penalties for unauthorized switching or the ability to recover damages for consumers. It is unclear to us whether the Commission would be able

HOUSE UTILITIES

DATE: 2-8-00

ATTACHMENT 19

to set penalties and recover damages under its authority to adopt rules and regulations set forth in paragraph (e) at page 2, line 2 of the bill. As you recall, the penalties for slamming are between \$5,000 and \$20,000 per violation.

Should this Committee decide to recommend this bill for passage, it would be Attorney General Stovall's recommendation that the authorization language be modified, as discussed above, to better protect consumers in their choice of electricity providers. I would be happy to answer questions of the Chair or members of the Committee.

Craig Grant Testimony
House Utilities Committee
February 3, 2000

Thank you Mr. Chairman. I am Craig Grant with the Kansas NEA. I apologize to the committee as I missed notice of the hearing yesterday. I am writing this testimony to you and hope that you will excuse my error. Today I am representing the Unified School Finance Coalition. The coalition is made up of the Kansas Association of School Boards, the Kansas NEA, Unified School Administrators of Kansas, Schools for Quality Education, the Kansas Education Coalition, Kansans for Local Control, the Kansas Association of Educational Services Agencies, and the individual school districts of Blue Valley, Kansas City, Shawnee Mission, Topeka, and Wichita.

The coalition supports the **KAN-ED** proposal from the interim committee that is supported by the Governor. Technology is now a vital part of education and the proposed statewide technology backbone would ensure every Kansas school district has equal access to the Internet. The prospects of connecting our schools (and libraries which we believe are also important) to the already existing network of KAN-A-N and KANREN are exciting to our schools. Hearing Mr. Heiman speak about Internet 2 makes me believe that the support we could give our teachers would be invaluable. As I understand it, Mr. Heiman indicates that we can leverage a great deal more e-rate money with the \$4.5 million in state investment.

While Kansas' schools are leading the country in providing up-to-date computers, they are seriously lacking in Internet connectivity. Currently, Kansas ranks 36th in the nation in the percent of classrooms with Internet access. Our neighbor Nebraska ranks 2nd with over 80% of the classrooms connected. Colorado ranks 13th, Iowa ranks 7th, Missouri ranks 17th, and Arkansas ranks 27th. Only Oklahoma ranks below us in this category.

As far as expenditures for education technology, in the last five years, the following amounts have been appropriated by the states indicated:

- Oklahoma -- \$18.8 million
- Nebraska -- \$22.0 million
- Missouri -- \$130.0 million
- Iowa -- \$90.0 million
- Arkansas -- \$59.0 million
- Kansas -- \$12.5 million

HOUSE UTILITIES

DATE: 2-9-00

ATTACHMENT 20

This trend should not continue if our students in Kansas are to compete with students from other states in the coming years.

The coalition hopes this committee and the entire legislature will support the schools in finding the best way to create the “backbone” in technology we desperately need. We are not opposed to any provider assisting us in our efforts to bring connectivity to our children. We just believe that we have an opportunity to move now to provide inexpensive and quality programs to our children. We hope that the state will not make undue delays in this program.

As I indicated in this proposal, we support the Governor’s and the interim committee’s proposal for KAN-ED. If there is another proposal that could accomplish this connectivity in either a shorter time or cheaper way, we have yet to see it on paper or even talked about. We are behind the curve compared to other states. We need to step up and start to solve our problem. We stand ready to work with you and the entire legislature to help ensure our success. Thank you for considering our comments.