

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 9:08 a.m. on February 14, 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: J. C. Long, UtiliCorp
Burton Crawford, Kansas City Power & Light
Earl Watkins, Sunflower Electric
Bruce Graham, Kansas Electric Power Cooperatives

Others attending: See Attached Guest List

Rep. Dreher moved to approve the minutes of the February 1, February 2, and February 3 meetings. Rep. Compton seconded the motion. Motion carried.

HB 2826 - Oil and gas; unitization and unit operations

Chairman Holmes opened the debate on **HB 2826**. Copies of definitions used during the testimony on the bill were distributed (Attachments 1 and 2). Rep. Sloan moved to change the effective date from publication in the statute book to publication in the Kansas Register. Rep. Dreher seconded the motion. Motion carried. Rep. Alldritt moved to recommend HB 2826, as amended, favorable for passage. Rep. Loyd seconded the motion. Motion carried. Rep. Dahl will carry the bill.

HB 2779 - Independent power producers, deregulation and taxation as commercial and industrial property

Chairman Holmes opened the hearing on **HB 2779**.

J. C. Long, Director of Government Affairs for UtiliCorp United, testified as a proponent to **HB 2779** (Attachment 3). Mr. Long emphasized that this bill would reduce the tax burden on independent power plants and could encourage the building of a merchant power plant in Kansas.

Mr. Long responded to questions from Rep. Loyd, Rep. McClure, Rep. Sloan and Rep. O'Brien.

Burton Crawford, Manager of Deregulation Issues for Kansas City Power & Light, appeared as an opponent to **HB 2779** (Attachment 4). Mr. Crawford stated that KCPL had four concerns with the bill. They were: 1-It creates unequal tax treatment of similar property, 2-This unequal treatment will continue for an indefinite period of time, 3-With the advent of retail competition, it will increase the level of stranded costs, and 4-It provides a disincentive to build regulated generation to serve retail customers.

Sunflower Electric Power Corporation's General Counsel, Earl Watkins, testified in opposition to **HB 2779** (Attachment 5). Mr. Watkins stated that Sunflower supported the goal of the bill, to encourage construction of new generation resources through lower tax rates. However, that reduction could be mitigated by a local mill levy increase, which is difficult to support. He also raised a concern about the KCC's role in the process.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES in Room 522-S on February 14, 2000 at 9:08 a.m.

Mr. Bruce Graham, Vice President of Member Services and External Affairs for Kansas Electric Power Cooperatives, presented testimony as an opponent of **HB 2779** (Attachment 6). Mr. Graham explained that they were concerned about the equity of the bill and felt the most equitable solution would be to redefine all generation as non-utility property. He also stated that removing the non-nuclear verbiage would help equalize the bill.

Written testimony provided in opposition to **HB 2779** (Attachment 7) was distributed on behalf of Jim Ludwig, Senior Director of Regulatory Affairs for Western Resources.

Mr. Crawford, Mr. Watkins and Mr. Graham responded to questions from Rep. Kuether, Rep. Loyd, Rep. Sloan, Rep. Holmes, Rep. McClure and Rep. Krehbiel.

Susan Cunningham, Assistant General Counsel for the KCC, also responded to questions from Rep. McClure and Rep. Sloan.

Chairman Holmes announced his intent to hold hearings on **HB 2983** on February 21 and work the bill on February 22.

Meeting adjourned at 10:14 a.m.

Next meeting will be Tuesday, February 15, 2000 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE:

February 14, 2000
Happy Valentine's Day!

NAME	REPRESENTING
J.A. Long	Ut. iCorp limited
BURTON CRAWFORD	KCPCL
Dave Holtzhaus	Western Resources Inc
Bruce Graham	KEPCO
Patrick O'Sherley	KCPH
Joe Dick	BPU KCK
Stan Parsons	Smoot & Associates
Earl Williams	Sun Flower
Robert M. Badecchi	PVO
Floyd Ramsey	Revenue-PVO
Ken Peterson	KS Petroleum Council
Don Ryan	Kaw Valley USD 321
DICK CARTER JR	ENRON
Kevin Brone	Hein/Weir chrtd.
Susan Cunningham	KCC
Cynthia Smith	KCPCL
Jon Miles	KEC
Walker Hendrix	KURB
Whitney Dameron	
Tong Smith	SWKRA

TERMINOLOGY USED AND DEFINED DURING HEARING ON
HB 2826 - OIL & GAS UNITIZATION
FEBRUARY 11, 2000

Unitization - taking two or more different tracts of land with two or more different ownerships, and combining them into a solitary unit. For example, Owner of White Acre and Owner of Black Acre decide to make one unit and share costs, making those into a solitary unit. It is the combining or utilization of where it's necessary to combine to further develop oil and gas operations. It could be both working interests and royalty interests. You may have just one operator but you could have several land owners.

Working Interest - the person or persons that hold the leasehold estate that are responsible for the cost of the operation. When you go out and drill a well, say it's a \$200K venture, the working interest owners are going to pay the \$200K, versus an overriding royalty interest, which is carved out of the working interest, which is free of cost. The working interest are the people that we see that pay their share of the cost of operation and development of drilling wells and get their share of the proceeds after all the royalty interest and overriding royalty interest and other interests that are free of cost are taken out. A working interest could be one company or a group of investors who come together to drill that one well.

Royalty Interest - is an interest that is granted under an oil and gas lease. The operator goes to the mineral interest owner and says, I would like to lease your land. Usually they have a lease that they supply, but changes can be made. The most common today is a 1/8 royalty, which means the mineral owner(s) gets a share of the proceeds of any well that you drill on this land, free of cost. It can be split to, say the heirs of the property or the property has been partially sold.

Overriding Royalty Interest - an interest is a royalty is free of cost that is carved out of the lease-hold estate, in other words, it's granted out of the working interest. If Person A grants Person B a lease and Person A receives 1/5 royalty and Person B has 4/5 of the proceeds. If Person B wants to give Person C a share of the royalty, say 1/8, it comes out of the 4/5 that Person B has.

Other Like Interest - term to cover production payments, that is, if Person B gives Person C an interest that would allow 'C' to have so much of 'Bs' cost up to a set figure. It has a limit, which an overriding royalty interest doesn't.

Nonoperating Working Interest - generally speaking there is only one operator in a unit or in a lease and everybody else does not operation. The operator often has a working interest so there would be an operating working interest, but those that have working interest but don't operator would be a nonoperating working interest.

Water Flooding - Basically it's the injection of water or putting of water down through a well bore into a producing reservoir to move the oil with the injected water back to the well head. Eventually it will increase the pressure in the producing reservoir. The new CO2 process dissolves into the oil and helps move the oil to the well head.

Secondary recovery - any phase beyond the primary phase, beyond any type of mechanism be it gas drive, water drive or other to initially push to oil to the well bore. Any second type of energy introduced becomes a secondary recovery operations.

Production Zones - Most Kansas zones get their names from the town's location on the surface that the limestone formation appears at the surface, even if the zone is not in the immediate vicinity

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ATTACHMENT 1

82-3-100 GENERAL RULES AND REGULATIONS; EXCEPTION.

- (a) General rules and regulations shall be statewide in application unless otherwise specifically stated. Special orders shall be issued when required, and shall prevail over general rules and regulations if a conflict occurs.
- (b) An exception to the requirements of any regulation may be granted by the commission. Any interested party may file an application for exception. An original and four copies of the application shall be filed with the conservation division. The application for exception shall be set for hearing by the commission. The applicant shall publish notice of the hearing pursuant to K.A.R. 82-3-135.

(Authorized by and implementing K.S.A. 1989 Supp. 55-152, 55-604, K.S.A. 55-704; effective T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended April 23, 1990.)

82-3-101 DEFINITIONS.

- (a) As used in these regulations:
 - (1) "Acreage factor" means the quotient obtained by dividing the acreage attributable to a well by the basic acreage unit. The basic acreage unit shall be defined by the commission and promulgated in the basic proration order for the common source of supply in which the well is located.
 - (2) "Allowable" means the amount of oil or gas authorized to be produced by order of the commission.
 - (3) "Allowable period" means the time in which the allowable may be produced.
 - (4) "Alternate cementing materials" are materials used in lieu of portland cement blends, as prescribed by commission order, dated March 29, 1985, Docket No. 34,780-C (C-1825).
 - (5) "Artesian pressure" means groundwater under sufficient hydrostatic head to rise above the rock unit containing the aquifer.
 - (6) "Assessment" means any charge against the parties involved in any hearing, application, investigation, or the enforcement of an order, and the assessment on natural gas and oil produced to pay the costs associated with the administration of the oil or gas conservation act.
 - (7) "Attributable acreage" means the acreage assigned to a well in accordance with the well spacing program for each of the prorated fields.
 - (8) "Burn pit" means a surface pond used for the temporary confinement of oil leakage at a lease site or of materials commonly known as tank bottoms, basic sediment, bottom sediment, bottom settlings, or paraffin, for the purpose of burning such contents.
 - (9) "Casing" means tubular materials used to line a well bore.
 - (10) "Casing-head gas" means gas produced that was in solution with oil in its original state in the reservoir.
 - (11) "Cement" means portland cement or a blend of portland cement used in the oil and gas industry to support and protect casing and to prevent the migration of subsurface fluids by the formation of an impermeable barrier

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- (12) "Course ground bentonite" means a non-treated swelling sodium montmorillonite which exhibits the following properties:
- (A) a moisture content between 13 and 17 percent by dry weight;
 - (B) a clay aggregate particle size between 3/8 and 7/8 of an inch;
 - (C) a PH of 9 or less; and
 - (D) an inert solid percentage of less than 0.15 percent.
- (13) "Combination well" means a well that produces both oil and gas, excluding casing-head gas, from the same common source of supply.
- (14) "Commingling" means the mixing of production from more than one common source of supply.
- (15) "Commission" means the state corporation commission.
- (16) "Common source of supply" means each geographic area or horizon definitely separated from any other area or horizon which contains, or appears to contain, a common accumulation of oil, gas or both.
- (17) "Confining layer" means a formation which serves as a barrier between water, oil or gas bearing formations.
- (18) "Conservation division" means the division of the commission in charge of the administration of the oil and gas conservation acts, the protection of fresh and usable water, well plugging, salt water disposal, enhanced recovery and surface ponds.
- (19) "Core" means a continuous section of formation recovered during drilling.
- (20) "Core hole" means a hole drilled with the intention of collection geologic information by the recovery of cores.
- (21) "Correlative rights" means the privilege of each owner or producer in a common source of supply to produce from that supply only in a manner or amount that will not:
- (A) injure the reservoir to the detriment of others;
 - (B) take an undue proportion of the obtainable oil or gas; or
 - (C) cause undue drainage between developed leases.
- (22) "Day" means a period of 24 consecutive hours.
- (23) "Deliverability" means the amount of natural gas, expressed in Mcf per day, which a well is capable of producing into a pipeline, while maintaining a back-pressure against the well head. The amount of back-pressure to be maintained and the test procedure shall be specified by the commission in the basic proration order for the common source of supply in which the well is located.
- (24) "Department" means the Kansas department of health and environment.
- (25) "Dike" means a permanent structure constructed at or above the surface of the earth totally enclosing production facilities or lease equipment which

- is used to temporarily contain fluids resulting from oil and gas activities and which were discharged as a result of unforeseen circumstances.
- (26) "Director" means the director of the conservation division of the commission.
 - (27) "Discovery well" means the first well completed in a common source of supply which is not in communication with any other common source of supply.
 - (28) "Disposal well" means a well into which those fluids brought to the surface in connection with oil and natural gas production are injected, for purposes other than enhanced recovery.
 - (29) "Division order" means a dated, written statement, duly signed by the owners and delivered to the purchasers, certifying and guaranteeing the interests of ownership of production and directing payment according to those interests.
 - (30) "Drilling time log" is the chronological tabulation or plotting of the rate of penetration of subsurface rocks by the rotary bit.
 - (31) "Emergency pit" means a surface pond used to temporarily contain fluids resulting from oil and gas activities which were discharged as a result of unforeseen and unavoidable circumstances.
 - (32) "Enhanced recovery" means any process involving the injection of fluids into a pool to increase the recovery of oil or gas.
 - (33) "Enhanced recovery injection well" means a well into which fluids are injected to increase the recovery of hydrocarbons.
 - (34) "Exploratory hole" means a hole drilled for the purpose of obtaining geological information in connection with the exploration for or production of oil or gas.
 - (35) "Field" means a geographic area containing one or more pools.
 - (36) "First purchaser" means the person holding the division order and issuing checks to pay any working or royalty interest.
 - (37) "Fluid" means a material or substance which flows or moves in a semi-solid, liquid, sludge, or gas state.
 - (38) "Freshwater" means water containing not more than 1,000 milligrams of total dissolved solids per liter. This upper limit is approximately equivalent to 1,000 parts of salt per million or 500 parts of chlorides per million.
 - (39) "Gas" means the gas obtained from gas or combination wells, regardless of its chemical analysis.
 - (40) "Gas" (cubic foot) means the volume of gas contained in one cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit.
 - (41) "Gas-oil ratio" means the ratio of gas produced, in cubic feet, to one barrel of oil produced during the concurrent period.

- (42) "Gas" (sour) means any natural gas containing more than 1 ½ grains of hydrogen sulfide per 100 cubic feet or more than 30 grains of total sulphur per 100 cubic feet, or gas which is found by the commission to be unfit for sale due to its hydrogen sulfide content.
- (43) "Gas well" means a well that:
- (A) produces gas not associated with oil at the time of production from the reservoir; or
 - (B) produces more than 15,000 standard cubic feet of gas to each stock tank barrel of oil from the same common source of supply, as measured by the gas-oil ratio test prescribed by and reported on the form prescribed and furnished by the commission.
- (44) "Hardship well" means a well authorized by commission order to produce at a specified rate because reasonable cause exists to expect that production below the specified rate would damage the well and cause waste.
- (45) "Illegal production" means any production in violation of the statutes, rules, regulations or orders of the commission.
- (46) "Liquid" means a solution or substance, excluding gas, which flows freely at standard temperature and pressure.
- (47) "Minimum well" means any oil well which has a productivity of 25 barrels or less per day.
- (48) "Mousehole" means a service hole drilled at a slight angle and normally about 30 feet deep on those wells drilled by rotary tools.
- (49) "Mud-laden fluid," as the term is commonly used in the industry, means any commission-approved mixture of water and clay or other material which will effectively seal a formation to which it is applied.
- (50) "Multiple completion" means the completion of any well so as to permit production from two or more common sources of supply with the common sources of supply completely segregated.
- (51) "Oil" (crude) means any petroleum hydrocarbon which is produced from a well in liquid phase and which existed in a liquid phase in the reservoir.
- (52) "Oil, (pipeline)" means oil free from water and basic sediment to the degree that it is acceptable for pipeline transportation and refinery use.
- (53) "Oil well" means a well that produced one stock tank barrel or more of crude oil to each 15,000 standard cubic feet of gas, as measured by the gas-oil ratio test prescribed by and reported on the form prescribed and furnished by the commission.
- (54) "Open flow" means the volume of gas which a gas well is capable of producing at the wellhead during a period of 24 hours against atmospheric pressure, computed according to the standard procedure approved by the commission.
- (55) "Overage" or "overproduction" means the oil or gas produced in excess of the allowable.

- (56) "Person" means any natural person, corporation, association, partnership, governmental or political subdivision, receiver, trustee, guardian, executor, administrator, fiduciary, or any other legal entity.
- (57) "Pipeline" means any pipes above or below the ground used or to be used for the transportation of oil, gas, liquids, or gases.
- (58) "Pool" means a single and separate natural reservoir of oil or gas characterized by a single pressure system.
- (59) "Producer" means any person who owns, in whole or in part, a well capable of producing oil or gas or both.
- (60) "Production" means produced oil, gas, condensate, or casing-head gas.
- (61) "Productivity of a well" means the daily capacity of a well to produce oil or gas.
- (62) "Productivity of a pool" means the sum of the productivities of the wells completed in the pool.
- (63) "Proration" means the regulation of the amount of allowed production to prevent waste, undue drainage between developed leases, unratable taking, or unreasonable discrimination between operators, producers and royalty owners who are within a common source of supply, that would favor any one pool as compared to any other pool in this state.
- (64) "Purchaser" means any person who purchases production from a well, lease or common source of supply.
- (65) "Rathole" means the service hole drilled at a slight angle and normally about 40 feet deep on those wells drilled by rotary tools.
- (66) "Reasonable market demand" means the amount of crude petroleum or natural gas which must be produced to satisfy current rates of consumption.
- (67) "Recompletion" occurs when a well is re-worked for the purpose of developing new zones after its initial well completion.
- (68) "Reserve pit" means a surface pond used to store spent drilling fluids and cuttings transferred from working pits.
- (69) "Seismic shot hole" means the bore hole in which an explosive is detonated for the purpose of generating a seismic signal.
- (70) "Sensitive groundwater area" means a geographic area designated by the commission as having hydrogeologic, climatic, soil and other characteristics that make the area's fresh and usable groundwater vulnerable to pollution from oil and gas activities.
- (71) "Service well" means a well drilled for:
- (A) The injection of fluids in enhanced recovery projects;
 - (B) the supply of fluids for enhanced recovery projects; or
 - (C) the disposal of salt water.

- (72) "Shortage" means the amount by which the oil or gas legally produced and sold or removed from the premise is less than the allowable.
- (73) "Solid" means a material or substance which does not flow freely at standard temperature and pressure.
- (74) "Special order" means an order which is directed to specifically named persons or to a group which does not constitute a general class and which is dispositive of a particular matter as applied to a specific set of facts.
- (75) "Spill" means any escape of salt water, oil, or refuse by overflow, seepage or otherwise from the vicinity of wells, tanks, pipelines, dikes or surface ponds involved in the exploration for and gathering of oil and gas and the drilling, production, lease storage, treatment, abandonment and postabandonment of oil and gas wells.
- (76) "Spud date" means the date of first actual penetration of the earth with a drilling bit.
- (77) "Storage oil" means produced oil confined in tanks, reservoirs, or containers.
- (78) "Storage oil-lease" means produced oil in tanks, reservoirs, or containers on the lease where it was produced.
- (79) "Storage well" means a well used to inject or extract natural gas for storage purposes.
- (80) "Stratigraphic hole" means a hole, normally of small diameter, drilled through subsurface strata for exploratory purposes, with no intent to produce hydrocarbons through the hole being drilled and does not utilize a detonated explosive for generating a seismic signal.
- (81) "Surface casing" is the first casing put in a well which is cemented into place. It serves to shut out shallow water formations. It also acts as a foundation or anchor for all subsequent drilling activity. For purposes of compliance with K.A.R. 82-3-106, additional strings of casing, which are set and cemented in a well bore below the lowest fresh and usable water strata, shall be deemed to be surface casing.
- (82) "Surface pond" means any constructed, excavated or naturally occurring depression upon the surface of the earth.
- (83) "Tertiary recovery process" means the process or processes described in K.S.A. 1988 Supp. 79-4217.
- (84) "Treatment pit" means a surface pond used for the collection or treatment of fluids resulting from oil and gas activities.
- (85) "Undue drainage" means the uncompensated migration of either oil or gas between developed leases within the same common source of supply caused by the unratable production of some well or wells located there.
- (86) "Usable water" means water containing not more than 10,000 milligrams of total dissolved solids per liter. This upper limit is approximately equivalent to 10,000 parts of salt per million or 5,000 parts of chlorides per million.

- (87) "Waste oil" means any tank bottom, basic sediment, cut oil, reclaimed oil from pits, ponds or streams, dead oil, emulsions, or other types of oil not defined as pipeline oil.
- (88) "Waterflood" means the process of injecting fluids into one or more wells to enhance the recovery of oil.
- (89) "Wellhead working pressure" means the static pressure in the annulus while flowing through the tubing, or static pressure in the tubing while flowing through the annulus, except in cases where the casinghead is not in open communication with the producing formation because of the presence of a packer or other obstruction in the annular space between casing and tubing. In these cases, the wellhead working pressure shall be determined by adjusting the observed tubing pressure for the effect of friction caused by flow through the tubing, or by using a bottom-hole pressure bomb and correcting back to wellhead conditions.
- (90) "Well log" means the written record progressively describing the well's down-hole development.
- (91) "Well history" means the chronological record of the development and completion of a well.
- (92) "Working pit" means a surface pond used to temporarily confine fluids or refuse resulting from oil and gas activities during the drilling or completion of any oil, gas, exploratory, service or storage well.
- (93) "Workover pit" means a surface pond used to contain fluids during the performance of remedial operations on a well at any time after its initial completion.

- (b) Any term not defined in this definitional section shall be interpreted to be consistent with its common use in the industry or as set forth in K.A.R. 82-3-700 for cathodic protection boreholes.

(Authorized by and implementing K.S.A. 55-152, 55-171, 55-172, K.S.A. 55-602, 55-704, K.S.A. 55-604, 55-901, 74-623; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended, T-84-19, July 26, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended July 29, 1991; amended March 20, 1995; amended Oct. 25, 1996.)

82-3-102. CLASSIFICATION OF WELLS; DETERMINING AND NAMING COMMON SOURCES OF SUPPLY; NOMENCLATURE COMMITTEE.

Wells shall be classified by the common sources of supply from which they produce. Common sources of supply shall be determined and named by the commission after considering the recommendations of the conservation division and the nomenclature committee of the Kansas geological society. In naming common sources of supply, preference shall be given to common usage and geographic names. Separate common sources of supply within the same field shall, if possible, be named according to the producing formation. The commission may redetermine a common source of supply whenever necessary.

(Authorized by K.S.A. 55-604; implementing K.S.A. 55-603; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983.)

House Utilities Committee

Testimony in Favor of HB 2779

by

J. C. Long, Director
Government Affairs
UtiliCorp United Inc.

Chairman Holmes and members of the committee:

My name is J. C. Long, and I am Director of Government Affairs for UtiliCorp United in Colorado and Kansas. UtiliCorp's WestPlains Energy division has 70,000 electric customers in central and western Kansas and serves numerous cities wholesale power in the same area. I appear before you today to testify in favor of House Bill 2779 which reduces the tax burden on independent power plants from 33 to 25 % of assessed valuation.

Merchant Power plants are a business, they are not a utility and therefore should not be treated like a utility. Merchant plants do not have the ability to pass through property taxes like regulated power plants. Merchant power plants do not have imminent domain powers, an allowed rate of return nor a mechanism to recover "stranded costs" if the plant's product becomes uneconomic. Simply put, no matter how you slice the pie, Merchant Plants are not utilities - they are businesses.

Some will try to make the argument that if Merchant plants deserve this tax reduction then regulated power plants should also be given this reduction. We don't have a problem with lowering the assessed valuation of regulated plants; we do however believe

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that merchant plants will likely consider other states if the property tax burden is not addressed and Kansas could lose yet another opportunity to increase its tax base.

Aquila Energy, UtiliCorp's non-regulated power marketer, acutally looked at several sites in Kansas to locate the Aires power plant. In looking at Kansas we identified two major barriers to locating that plant here - the generation siting act and property taxes. This committee and the Legislature has addressed the generation siting act and we thank you from both the regulated side and the non-regulated side. Now let's address the second issue - property taxes.

As Max Sherman and Sheldon Hamilton testified last week, the difference in property taxes was a main factor in building the merchant plant on the Missouri side of the state line instead of the Kansas side. The power produced at this plant will compete with other utilities in the wholesale market whether it had been located in Kansas, Oklahoma or Nebraska. The big difference then is that, in all reality, the Kansas homeowner, business person and other Kansas property tax payers lost yet another potential business. Not addressing the property tax issue could very likely cost Kansas another merchant plant.

We strongly encourage this committee to report HB 2779 favorably. We do so knowing that some other company may build a merchant power plant here but, as Kansas taxpayers and a Kansas utility, we believe that this bill is a good public policy step for Kansas.

Testimony before the House Utilities Committee
In Opposition to House Bill No. 2779

Burton L. Crawford
Manager of Deregulation Issues
Kansas City Power & Light Company
February 14, 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. 2779 that results in taxing certain electric generation property at lower rates.

KCPL has four concerns with this bill:

- (1) It creates unequal tax treatment of similar property
- (2) This unequal treatment will continue for an indefinite period of time
- (3) With the advent of retail competition, it will increase the level of stranded costs
- (4) It provides a disincentive to build regulated generation to serve retail customers

Unequal Tax Treatment

As we continue to discuss electric competition, this type of legislation violates what we believe to be a fundamental requirement of a competitive market, that being fair competition. Taxation is a major component to fair competition, and this bill allows new entrants in the market to be taxed at a much lower rate than existing generation. Even without retail competition, we currently compete for business in the wholesale market and would be subject to the higher tax rates, while our competitors would not. We agree that property taxes on electric generation need to be reduced, but this reduction should apply to all generation, whether in ratebase or not.

Future Tax Treatment

Since we do not now know what form retail electric competition will take in this state, it is possible that the unequal taxation created by HB 2779 will continue. In most states moving to retail competition, rates for customers that stay with their existing utility continue to be regulated to some degree. This may result in existing generation assets remaining in

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ratebase even after the start of retail competition. Should Kansas decide to continue rate regulation through a transition period, this bill would continue the unequal level of taxation it creates.

Stranded Costs

Undoubtedly, stranded costs are one of the largest issues related to allowing retail electric competition, and this bill doesn't make this issue any easier. Since it lowers the costs associated with certain generating plants while continuing the high level of taxation on nuclear property, it increases the level of stranded costs associated with nuclear facilities. Where possible, we should be lowering the cost difference between nuclear and non-nuclear generation, not increasing it.

Disincentive to Build Regulated Generation

Historically, utilities have had the ability to build larger plants than currently needed for their retail customers, thus allowing for future load growth. In these cases, a portion of the new plant is placed into rates, while the remaining capacity can be sold into the wholesale market. Since this bill requires that to receive this tax break, no portion of these facilities can be in ratebase, existing utilities are left with a disincentive to place any amount of their new generation in ratebase. This may ultimately result in limiting the options available for a utility to meet existing retail load requirements.

For these reasons, we ask that this committee not move this bill forward.

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

Kansas City Power & Light Company is the second largest investor-owned electric utility in the state of Kansas, serving a population of over 1 million people in portions of 23 counties in northeastern Kansas, northwestern Missouri, and across the Kansas City metropolitan area. One of the nation's first electric utilities, KCPL 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.

**TESTIMONY SUBMITTED TO
THE HOUSE UTILITIES COMMITTEE**

By

SUNFLOWER ELECTRIC POWER CORPORATION

February 14, 2000

COMMENTS ON HOUSE BILL 2779

Thank you, Mr. Chairman and members of the Committee, for providing Sunflower time to share our thoughts with you on this proposed legislation. My name is Earl Watkins. I serve as Sunflower's General Counsel.

Sunflower comes before you today to testify in opposition to this bill—sort of. In our view, the goal of this legislation is to encourage the construction of new generation resources through lower tax rates. We certainly support that goal. If we were able to take advantage of a change like this, our taxes would be lowered by nearly \$1,000,000. However, that reduction would probably be mitigated by a local mill levy increase resulting in a net tax reduction between \$500,000 and \$750,000. Obviously, this would help us continue to lower the cost of power for our 150,000 ratepayers in western Kansas.

One thing that troubles us though, is the increase in tax that would be forced on just a few of our customers, primarily those living in Finney County. The majority of our employees live in Finney County and the City of Garden City is one of our largest customers. We don't really think they would support this change as proposed. To some, it may seem unusual that we would be worried about a tax shift to others, but our cooperative system of governance, one where our customers also own our facilities, demands that we be concerned not only with their power bills, but their tax bills as well.

This proposed change raises, but does not answer many intricate, yet substantial questions with regard to the role, if any, the KCC would play in the regulation of the rates we charge our Member Systems. For instance, if our generation facilities are

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ATTACHMENT S

removed from rate base, does that mean that we no longer need to ask KCC for approval to modify our rates?

After considerable internal discussion, we have concluded that this change, however desirable, should be postponed until the time when Kansas is prepared to consider implementing a competitive electric marketplace in Kansas. We worry that the competitive market place may cause great harm to our smallest customers, but we are concerned that this change could be detrimental to them as well.

Finally, we must oppose this bill because it results in two different tax rates for utility plants in Kansas. That simply doesn't seem fair. All of my automobiles are taxed at the same rate and if I owned two houses, they would be taxed at the same rate as well.

If we are unable, for whatever reason to take advantage of the \$1,000,000 tax reduction, then Sunflower will be forced to compete for wholesale business against other plants with a tremendous annual cost advantage. That's not fair. The only way for us to compete for that business on an equal basis would be to burden our existing owners with that \$1,000,000 cost just to be able to maintain our current position in the wholesale marketplace.

As we have maintained for a long time, we are ready to participate in retail wheeling when we can create a system that doesn't harm any of our customers. Until we can reach that point, our feeling is that we should not be trying to fix one problem on the back of others.


In our view, if the primary goal is to put Kansas in a position where we can attract new power plant construction projects, we need to lower the tax rates that everyone must pay.

We understand that most believe this is impossible because of the difficulty the Legislature would face if you tried to pass an amendment to our Constitution. We also understand that some are concerned that amending the definition of "public utility" could cause a constitutional problem as well. The reality is, we believe, that if a "two-rate" system is created, we'll be fighting over this issue in the courts for many years to come. I don't say that as a threat, but just think—if your neighbor's house was taxed at a different rate than yours...would you take somebody to court?

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



Kansas Electric Power Cooperative, Inc.

A Touchstone Energy™ Partner 

Testimony on HB 2779

Before House Utilities Committee – February 14, 2000

**Bruce Graham, Vice President of Member Services and External Affairs
Kansas Electric Power Cooperative, Inc. (KEPCo)**

Perhaps it's appropriate that we're hearing this bill on Valentines Day because while it may appear we're being handed a rose, it is certainly a thorny one!

KEPCo has consistently supported legislation that will encourage the construction of generation in the state of Kansas. One-third of KEPCo's power supply comes from contracts we have negotiated with other utilities. KEPCo constantly evaluates those contracts and other options and believes that new generation in Kansas, by native utilities or independent power producers, will provide KEPCo with additional power supply flexibility in the future.

HB 2779 would give merchant plants or independent power producers (IPPs) a tax break by assessing their property at the commercial and industrial rate of 25 percent vs. 33 percent for Kansas utilities. However, KEPCo is concerned about the equity of such a proposal.

HB 2779 attempts to address the tax equity matter by providing native utilities with the opportunity to move some assets from the regulated rate base to the competitive wholesale market and be assessed at a lower tax rate.

As you remember, Chairman Holmes requested an opinion from Attorney General Stovall regarding the constitutionality of this language when it was amended last year as part of HB 2400. That opinion appears to give the Legislature the latitude to redefine some types of utility property.

If every Kansas utility moved their generating plants to a separate, non-regulated division or company, the fiscal impact is reported to be a loss of at least \$25 million. At some point, as we get closer to a competitive utility environment, most everyone agrees that Kansas will need to reduce the tax burden on native utilities in order to assure a competitive position. However, previous studies have indicated that even at the 25 percent assessment rate, neighboring state tax rates are still lower and, therefore, achieving tax rate equity with out of state generators may require action beyond the assessment rate reduction.

The Legislature has been gathering a wealth of knowledge on this matter. A Special Committee on Assessment and Taxation conducted a comprehensive review of retail wheeling tax implications during the 1998 Interim Study and revisited the issue last summer by examining what is occurring in other states.

Testimony
before the
HOUSE UTILITIES COMMITTEE

by
Jim Ludwig, Senior Director, Regulatory Affairs
Western Resources
February 14, 2000

Chairman Holmes and members of the Committee:

Western Resources is opposed to HB 2779. This bill has been separately referred to this committee and the House Tax Committee.

Bill Explanation and Policy Goals

Under current law, power plants in Kansas are assessed at a property tax rate of 33 percent. HB 2779, after July 1, 2000, would give the lower 25 percent assessment level of commercial and industrial property to independent power producer plants (IPP) or to any plant that is not in rate base under the KCC's jurisdiction. If any portion of a plant is in rate base, the entire plant would be subject to the higher 33 percent assessment level. A nuclear plant, whether in rate base or not, would be assessed at 33 percent.

Western Resources supports a policy to equalize property tax burdens of those who will be competitors in the generation market when retail wheeling is implemented. There is a better and more evenhanded way to accomplish this goal than HB 2779.

Technical Error in Current Version of the Bill

At page 2, line 22, the word **construction** seems to have been inserted in error. It should be stricken. It doesn't make grammatical sense in its context and it is not included in otherwise identical new language on page 3, lines 31 through 39.

HB 2779 Makes Stranded Costs Worse

HB 2779 would not allow a nuclear plant to have a lower property tax assessment rate, even if it were removed from rate base. This arbitrarily fixes the tax costs associated with a nuclear plant at a higher level than the tax costs of other non-rate base plants. In a competitive environment, this would increase the difference between the market price and the formerly regulated rate for nuclear power, thereby increasing stranded costs. The policy of this bill flies in the face of nationwide efforts to mitigate stranded cost exposure.

HB 2779 Takes an "All or Nothing" Approach

Under HB 2779, if the KCC were to exclude any portion of a utility's new plant from rate base, the entire plant would be assessed at 33 percent. Since it is not economically feasible to build a generation plant to meet the exact levels of demand at a given moment in time, utilities should have the flexibility to put a portion of a plant in rate base to serve retail customers, and to reserve surplus capacity of the same plant for the wholesale market. HB 2779 creates a disincentive to place any plant in rate base. This disincentive could hamstring a utility trying to meet the requirements of its retail customers whom it has an obligation to serve.

Better Alternative

There is a simpler way to accomplish a lower tax rate than by enacting HB 2779. The House Tax Committee has before it HB 2589. This bill would refund to long distance telecommunications companies the difference between the 25 percent and 33 percent assessment levels via income tax credits. New telecommunications property receives the entire income tax credit. For existing telecommunications property, the bill phases the credits in gradually over four years to abate the impact of revenue erosion from the tax credits.

Western Resources supports amending HB 2589 to impose the lower assessment rate of 25 percent for any *new* plant built, whether it is an IPP or in rate base.

The distinction between new and existing plant is artificial, but we respect concerns about erosion of tax revenues. At the time retail choice and competition for generation is considered in Kansas, then it would be appropriate to reduce the property tax burden for all - new or existing - generating plants. If HB 2589 became law, then later, when retail competition is introduced, the statute could be amended to include *existing* plants. A 1999 interim committee on tax issues recommended the legislature consider whether treatment similar to telecommunications companies under HB 2589 should be provided to electric utilities

Because it amends the income tax provisions of applicable statutes, HB 2589 may successfully circumvent the difficulty of changing the property tax classification of utilities (33 percent assessment) to the commercial and industrial classification (25 percent assessment). Both assessment levels are set in the Kansas constitution. HB 2589 also avoids the difficulty of re-defining the meaning of "utility" in the statutes on property taxation of utilities.