

MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairperson Sen. Pat Ranson at 1:30 p.m. on February 15, 2000 in Room 531-N of the Capitol.

All members were present except:
Sen. Hensley was excused

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

Conferees appearing before the committee:
Leo Haynos, Supervisor of Natural Gas, Pipeline Safety, Kansas Corporation Commission
Larry Holloway, Acting Director of Utilities, Kansas Corporation Commission
Walker Hendrix, General Counsel, Citizens' Utility Ratepayer Board

Others attending:
See attached list

Sen. Ranson recognized members of the Junior ROTC in Wichita, who are paging for her today and have assisted the committee. Sen. Ranson announced the committee will hold a hearing on the following bill: **SB 514-natural gas pipeline safety; relating to compromise of civil penalties**. She then asked Lynne Holt to brief the committee on the bill and the Kansas Underground Utility Damage Protection Act. Ms. Holt gave an overview of the One-Call System in Kansas (Attachment 1), which includes a diagram of the One-Call process, a copy of the 1998 Operator Information Summary and a copy of the statutes effected. She also pointed out the Kansas Corporation Commission is responsible for administering and enforcing the act, which came about in response to a federal requirement that each state adopt a one-call damage prevention program to receive federal aid for pipeline safety programs. The Kansas One Call Center, Inc. is comprised of utility companies, who are required to be members and are assessed \$25.00 for yearly memberships and pay \$1.14 for each locate request. Ms. Holt also discussed how the One Call Center functions, emergency notifications and complaints. Sen. Clark stated that cable does not meet the definition of a utility and also why fiber optics was not included in the utility group. Sen. Morris told of difficulty finding owners of lines in rural areas, and Sen. Salisbury discussed penalties assessed and what portion of the fine goes into the general fund. Sen. Barone questioned if utilities are required or obligated to locate utility lines on private property, and if so, to what extent. Mr. Haynos responded that the utilities are not required to locate lines on private property, but that most utilities will respond as a matter of courtesy, up to the building wall. He added that the gas company will voluntarily locate gas lines to the primary building. Sen. Pugh questioned what section of the statute contains the penalty assessed, then noted it is in KSA 66-1,155. The committee discussed the summary attached to Ms. Holt's briefing, and Mr. Haynos stated the damages reported are voluntary and based on a survey, as the utilities are not required to report damages

Sen. Ranson then introduced Leo Haynos, who presented additional information to the committee (Attachment 2). Sen. Salisbury questioned Mr. Haynos regarding the fines that the Commission assessed and the consent agreement, which must be approved by the Commission, after being negotiated between the offending party and the Commission staff. In answer to a question, Mr. Haynos stated the establishment of the Kansas Underground Utility Damage Prevention Act and fines for violations to that Act are in response to a federal requirement. Mr. Haynos stated the Commission's legal staff do not believe they have the authority to negotiate compromises regarding the fines or other penalties it may deem appropriate. Ms. Holt also stated the proposed change would allow consent agreements to be entered into by the Commission in lieu of assessing penalties. Mr. Haynos added that the Commission would like additional flexibility to go beyond the fines to allow negotiation of consent agreements for public awareness programs and educational activities to be levied against a utility who has violated the Act. The committee also discussed the minimum and maximum amounts which can be assessed - \$25,000 to \$500,000; they also expressed opposition to the words, "voluntary contribution". Sen. Ranson

CONTINUATION SHEET

MINUTES OF THE SENATE UTILITIES COMMITTEE, Room 531-N Statehouse, at 1:30 p.m.
on February 15, 2000.

asked for clarification as to what the Commission wants by proposing the bill they are discussing, and Mr. Haynos answered that the Commission would like to have the ability to investigate violations, to determine if it is serious enough for penalties to be assessed and to be able to assess a penalty or stipulate in a consent agreement other avenues in place of the penalty. Sen. Ranson stated the committee would like to look at additional language and requested Ms. Torrence to draft an amendment to be discussed at the next meeting.

Sen. Ranson then announced the committee will hear testimony on **Sub HB 2290-certain loans and pledges of credit by certain public utilities**. She introduced J.C. Long, who presented testimony in support of the bill (Attachment 3) and stated this is the second round for this bill - the committee held hearings for it during the 1999 session. He also outlined amendments on the second page of his testimony and stated opposition to the House amendment. Sen. Pugh asked who proposed the House amendment, and Mr. Long stated it was Rep. McKinney, with the assistance of Walker Hendrix. Mr. Hendrix then presented additional information (Attachment 4) on the bill and stated that transactions need to be recorded so the Commission will be able to monitor them. He outlined responses to Mr. Long's proposed amendments and agreements with them, except deleting the language "terms and conditions". He stated the basic terms and conditions of affiliate transactions should be reported and would indicate whether a loan was prudent or not. He also stipulated the report need only include the principal nature of the loan agreement. Sen. Ranson asked Larry Holloway (from the KCC) to return to the committee tomorrow for additional information.

Sen. Ranson announced the committee has received word of being moved to another meeting room - Room 231-N in the immediate future. The committee will continue hearing the above bill tomorrow in this room.

Meeting adjourned at 2:30.

Next meeting will be February 16, 2000.

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: February 15, 2000

NAME	REPRESENTING
Larry Wolby	KCC
Susan Cunningham	KCC
LEO HAYNES	KCC
Paula Lentz	KCC
BILL HAYSIP	KCC
WALKER HENDRIX	CURB
J. C. LONG	UtiliCorp United Inc.
Whitney Damron	KS Gas Service
George Barbee	Barbee & Assoc's
Patrick Sherkley	KCPK
Cynthia Smith	KCPK
Neil Curtis	Enron
TOM DAY	KCC
BRUCE GRAHAM	KEPCO
Amy Campbell	Middlesex Energy

February 14, 2000

To: Senate Utilities Committee
From: Lynne Holt, Principal Analyst
Re: Overview of One-Call System in Kansas

Background

The Kansas Underground Utility Damage Prevention Act established a system in which excavators could make one phone call and determine the location of underground gas and electric lines, telephone conduits, and facilities for transporting hazardous liquids. The Kansas Corporation Commission is responsible for administering and enforcing the act.

The Kansas act became law on July 1, 1993. The law was enacted in response to a federal requirement that each state adopt a one-call damage prevention program to receive federal aid for pipeline safety programs. For example, in CY 1998, the United States Department of Transportation provided \$279,450 or 45 percent of Kansas' pipeline safety program (budget was \$621,000). This budget funds the enforcement activities of the Kansas Corporation Commission staff.

What is the One Call Center?

The Kansas One Call Center, Inc. is a nonprofit corporation formed by utility companies which are required to be members (KSA 66-1805(a).) All utilities, except for owners of sewer, water, oil, and gas production lines, must become members. The One Call Center's operations are funded through assessments against member utilities. Utilities pay \$25 for yearly memberships. They also pay \$1.14 for each locate request the Center forwards to them. The Center receives no state funds but has applied and received federal grants in the past for special projects. Representatives from the member utilities serve on the Board of Directors and various operating committees. An employee from the Kansas Corporation Commission also serves on the Board.

The Kansas One Call Center, Inc. has two full-time employees and contracts with One Call Concepts, Inc., headquartered in Maryland, to receive calls, dispatch locate requests, and maintain proper records. One Call Concepts employs between 35 and 50 people depending on the work-load. Call volumes increase significantly during the summer. For nights, weekends, and holidays, One Call Concepts also uses an answering service it maintains in Minnesota to take emergency calls.

*Senate Utilities
2-15-00
Attach. 1*

What Does the One Call Center Do?

The Center, through its contractual arrangement with One Call Concepts, discharges its dispatch responsibilities as follows. Excavators call the Center's toll free number at least two days but not more than ten days before the excavation date (KSA 66-1804(a).) They inform the Center staff when and where they plan to dig (KSA 66-1804 (b)). The Center records the information and alerts the utilities in the area of the dig site to mark their facilities. The utilities must mark their underground facilities no sooner than two days before the date of excavation (KSA 66-1806(a)). The notification requirements outlined above do not apply to public projects approved by a public agency, or to projects in which a city, county, state, or federal agency issues a permit that also requires the buried utility lines to be located and marked (KSA 66-1804(c)). See the enclosed diagram of how the one-call system works. This diagram is included in a report by the Division of Legislative Post Audit titled *Reviewing the One-Call System in Kansas* (August 1998).

Number of Locate Requests

Over the past several years, the use of the Call Center has increased significantly. In 1993, there were 204,000 locate requests. In 1999, there were 447,000 locate requests. For each locate request, the Call Center notifies five utilities to mark their facilities. For example, in 1999, there were 2.3 million requests made for utilities to mark their facilities.

Emergency Notifications

When excavators damage any buried utility lines or other underground facility, they are required to notify the utility that owns those facilities. The utility must immediately send personnel to the site to temporarily or permanently repair the damage. If an electric line is cut or dangerous gases or fluids are escaping from a broken line, the excavator is supposed to immediately inform emergency personnel, as well. Emergency personnel refers to local police and fire officials (KSA 66-1810).

Complaints

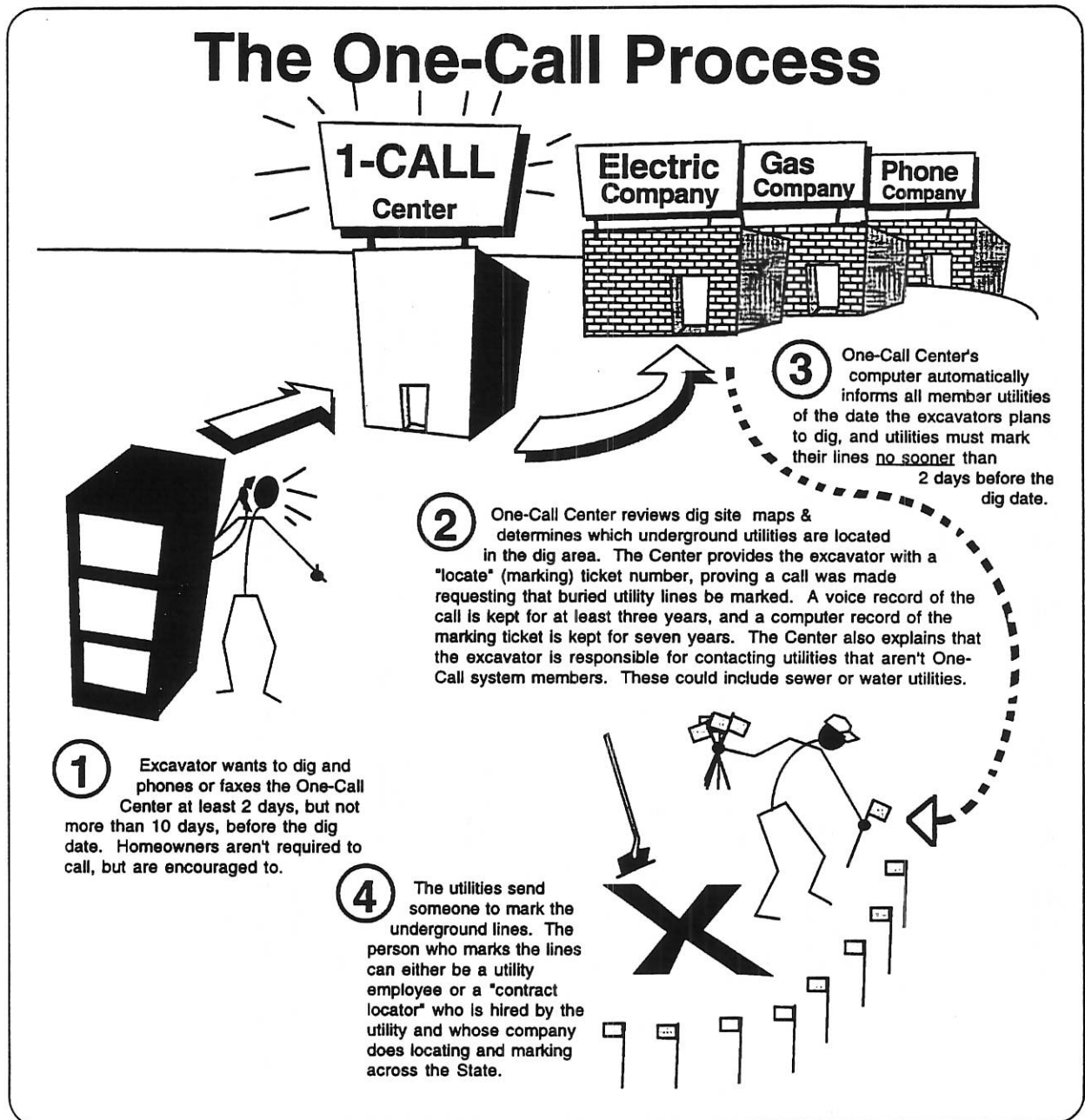
The Commission's Office of Pipeline Safety is responsible for administering and enforcing the Kansas Underground Utility Damage Prevention Act. For the most part, the Commission's enforcement activities are in response to complaints received. In 1999, staff logged 96 complaints. Many complaints are resolved through phone calls. However, after staff investigates a complaint, staff may send letters of probable noncompliance to the presumed offending party on issues that require additional response. From 1997 through 1999, a total of \$72,000 in fines was assessed for violations of the act. Damages totaled over \$2.3 million in 1998 (see enclosed). The fines for pipeline safety and one call violations are allocated pursuant to KSA 66-1,155. Twenty percent of the amount received is credited

to the State General Fund and the balance is credited to the Gas Pipeline Inspection Fee Fund.

Below are examples of recent complaints concerning reported violations of the Kansas Underground Utility Damage Prevention Act.

- The Commission staff investigated a complaint against Burnett Construction, which was initiated by Kansas Gas Service. On September 22, 1999, the Commission issued an order fining Burnett Construction \$193,000 for various violations, including damaging a gas line, making unauthorized repairs, and failing to notify the gas company of damage and repair. The Commission supported the Hearing Examiner's recommendation that a total of \$193,000 be paid in fines, with all but \$50,000 of the penalty to be suspended for two years. If Burnett Construction or its employees remain free of any violations during that time period, the remaining portion of the penalty would be waived. The fine of \$50,000 has yet to be collected. In its order, the Commission noted: "Mr. Burnett was essentially laying time bombs" throughout Johnson County. However, one component of a penalty is to deter this kind of behavior in the future. Mr. Burnett is now out of business. The suspended portion of the fine should serve as a deterrent to other excavators that this kind of behavior will not be tolerated."
- On January 20, 2000, Overland Trenching Company (OTC) filed a formal complaint with the Commission, alleging that on 6,000 separate occasions Western Resources, Kansas Power & Light, Kansas Gas Service, Kansas City Power & Light, Greeley Gas Company, and United Cities Gas Company failed to mark in a timely manner various excavation sites. OTC claims that this failure has caused the company substantial economic hardship, endangered the safety of members of the public, including that of the company, and has unduly delayed the timely excavation of underground facilities without just or legal cause. In its filing, OTC requested the Commission to open an investigation of its complaint which alleges the violations spanned over a period between January 1, 1997 and December 31, 1999. The Commission subsequently initiated an investigation and staff has requested responses from utility companies subject to the complaint. OTC also indicated in its formal complaint that it had simultaneously commenced an action in Johnson County District Court, requesting civil damages and attorney fees.

During calendar year 1997, the One-Call Center in Wichita received approximately 400,000 calls, which generated about four times that many outgoing notifications to member utilities. Excavators who call the Center are protected from liability for damaging utility lines, so long as they observe the markings and a two-foot "tolerance" zone on either side of the marked lines.



1998 Operator Information Summary

Type of Facility	Miles of Underground Utilities	Locates Requested	Number of Dig-Ins	Total Damages
Cable TV <i>Percent of Total</i>	2,972 1.83%	134,650 9.26%	347 7.69%	\$102,648 4.37%
Electric <i>Percent of Total</i>	11,106 6.82%	290,638 19.99%	360 7.98%	\$254,301 10.83%
Gas <i>Percent of Total</i>	32,910 20.21%	350,782 24.13%	1,873 41.49%	\$977,175 41.63%
Other <i>Percent of Total</i>	4,212 2.59%	42,132 2.90%	9 0.20%	\$21,102 0.90%
Sewer <i>Percent of Total</i>	5,491 3.37%	113,595 7.81%	96 2.13%	\$41,189 1.75%
Telephone <i>Percent of Total</i>	98,466 60.48%	401,905 27.65%	1,767 39.14%	\$934,771 39.82%
Water <i>Percent of Total</i>	8,608 5.29%	120,385 8.28%	62 1.37%	\$16,271 0.69%
Grand Total:	162,801	1,453,750	4,514	\$2,347,458

1-5

formed, the following options are available to such person:

(1) A person under protest may pay the utility for the work in accordance with the written cost estimate, but shall be entitled to seek recovery of all or any part of the money so paid in an arbitration proceeding as hereinafter provided; or

(2) prior to directing the work to be performed, the person or persons may submit to binding arbitration, as hereinafter provided, to resolve the issue of the reasonableness of the written cost estimate or the description or extent of the work to be performed by the public utility under such estimate.

(d) Disputes submitted to binding arbitration under this section shall be submitted in accordance with the procedures set forth in K.S.A. 5-401 et seq., and amendments thereto. The decision of the arbitrator or arbitrators as to the reasonableness of the costs or the necessity of the work to be performed shall be final and binding upon the parties.

66-1713. Posted of required warning signs.

Each person, individually or through an agent or employee, or as an agent or employee, who operates any crane, derrick, power shovel, drilling rig, hoisting equipment, or similar apparatus, any part of which is capable of operating in closer proximity to any high voltage overhead line than is permitted by this act, shall post and maintain in plain view of the operator thereof, a durable warning sign, legible at 12 feet, stating:

"Unlawful to operate this equipment within 10 feet of high voltage overhead lines unless protected from contact danger." Each day's failure to post or maintain such signs shall constitute a separate violation.

66-1714. Penalties; presumption of negligence.

(a) Except as provided further, every person as defined herein who violates any of the provisions of this act may be subject to a civil penalty in a sum set by the court of not more than \$1,000 for each violation. The provisions of this subsection shall not apply to a person who, at the time the act or acts occur which constitute a violation, is acting as an agent or employee under the direction of an individual, firm, joint venture, partnership, corporation, association, municipality or governmental unit.

(b) When it is shown by evidence in a civil action

that personal injury, death or other damages, including damage to any high voltage overhead line, occurred as a result of a violation of this act, there shall be a rebuttable presumption of negligence on the part of the violator.

(c) Nothing in this act is intended to limit or modify the provisions of:

- (1) K.S.A. 60-258a, and amendments thereto; or
- (2) the national electrical safety code, which would otherwise be applicable.

66-1715. Nonapplication of act to certain situations. This act does not apply to:

- (a) Construction, operation or maintenance by an authorized person as defined herein;
- (b) highway vehicles or agricultural equipment which in normal use may incidentally pass within the clearances prescribed by this act;
- (c) the operation or maintenance of any equipment traveling or moving upon fixed rails;
- (d) governmental entities responding to an emergency situation; or
- (e) moving buildings or structures on streets, alleys, roads and highways pursuant to K.S.A. 17-1914 et seq., and amendments thereto.

66-1716. Severability of act. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

66-1801. Kansas underground utility damage prevention act. This act shall be known and may be cited as the Kansas underground utility damage prevention act.

66-1802. Definitions. As used in this act: (a) "Damage" means any impact or contact with an underground facility, its appurtenances or its protective coating, or any weakening of the support for the facility or protective housing which requires repair.

(b) "Emergency" means any condition constituting a clear and present danger to life, health or property, or a customer service outage.

(c) "Excavation" means any operation in which earth, rock or other material below the surface is moved or otherwise displaced by any means, except tilling the soil, or railroad or road and ditch mainte-



nance that does not change the existing railroad grade, road grade and/or ditch flowline, or operations related to exploration and production of crude oil or natural gas, or both. (d) "Excavator" means any person who engages directly in excavation activities within the state of Kansas, but shall not include any occupant of a dwelling who: (1) Uses such dwelling as a primary residence; and (2) excavates on the premises of such dwelling.

(e) "Facility" means any underground line, system or structure used for gathering, storing, conveying, transmitting or distributing gas, electricity, communication, crude oil, refined or processed petroleum, petroleum products or hazardous liquids; facility shall not include, any production petroleum lead lines, salt water disposal lines or injection lines, which are located on unplatted land or outside the corporate limits of any city.

(f) "Marking" means the use of stakes, paint or other clearly identifiable materials to show the field location of underground facilities, in accordance with the resolution adopted August, 1984, by the utility location coordination council of the American public work association.

(g) "Municipality" means any city, county, municipal corporation, public district or public authority located in whole or in part within this state which provides firefighting, law enforcement, ambulance, emergency medical or other emergency services.

(h) "Notification center" means the statewide communication system operated by an organization which has as one of its purposes to receive notification of planned excavation in the state from excavators and to disseminate such notification of planned excavation to operators who are members and participants.

(i) "Operator" means any person who owns or operates an underground facility, except for any person who is the owner of real property wherein is located underground facilities for the purpose of furnishing services or materials only to such person or occupants of such property.

(j) "Preengineered project" means a public project or a project which is approved by a public agency wherein the public agency responsible for the project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project,

are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and where the location of all known and underground facilities are duly located or noted on the engineering drawing as specifications for the project.

(k) "Permitted project" means a project where a permit for the work to be performed must be issued by a city, county, state or federal agency and, as a prerequisite to receiving such permit, the applicant must locate all underground facilities in the area of the work and in the vicinity of the excavation and notify each owner of such underground facilities.

(l) "Person" means any individual, partnership, corporation, association, franchise holder, state, city, county or any governmental subdivision or instrumentality of a state and its employees, agents or legal representatives.

(m) "Tolerance zone" means the area within 24 inches of the outside dimensions in all horizontal directions of an underground facility.

(n) "Working day" means every day, except Saturday, Sunday or a legally proclaimed local, state or federal holiday.

66-1803. Excavator's duty to ascertain location of facilities. An excavator shall not engage in excavation near the location of any underground facility without first having ascertained, in the manner prescribed in this act, a location of all underground facilities in the proposed area of the excavation.

66-1804. Notice of intent of excavation. (a) An excavator shall serve notice of intent of excavation at least two full working days, but not more than 10 working days before commencing the excavation activity, on each operator having underground facilities located in the proposed area of excavation.

(b) The notice of intent of excavation shall contain the name, address and telephone number of the person filing the notice of intent, the name of the excavator, the date the excavation activity is to commence and the type of excavation being planned. The notice shall also contain the specific location of the excavation if it is to take place within the boundaries of a city or the specific quarter sections if outside the boundaries of any city.

(c) The provisions of this section shall not apply

to a preengineered project or a permitted project, except that the excavators shall be required to give notice in accordance with this section prior to starting such project.

66-1805. Notification center. (a) This act recognizes the value of and encourages and authorizes the establishment of a single notification center. Each operator who has an underground facility shall become a member of the notification center.

(b) Upon the establishment of a notification center in compliance with this act, notification, as required by K.S.A. 1993 Supp. 66-1804, to operators shall be given by notifying the notification center by telephone at the toll free number. The content of such notification shall be as required by K.S.A. 1993 Supp. 66-1804.

(c) Each operator who has an underground facility within the state shall be afforded the opportunity to become a member of the notification center on the same terms as the original members.

(d) A suitable record shall be maintained by the notification center to document the receipt of notices from excavators as required by this act.

66-1806. Identification of location of facilities; duties of operator; liability for damages.

(a) An operator served with notice shall, in advance of the proposed excavation, unless otherwise agreed between the parties, inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method no sooner than two working days prior to planned excavation.

(b) If the excavator notifies the notification center, within two working days after the initial identification of the tolerance zone by the operator, that the identifiers have been improperly removed or altered, the operator shall make a reasonable effort to reidentify the tolerance zone within one working day after the operator receives actual notice from the notification center.

(c) If the operator notifies the excavator that it has no underground facilities in the area of the planned excavation, fails to respond or improperly marks the tolerance zone for the facilities, the excavator may proceed and shall not be liable for any direct or indirect damages resulting from contact with the operator's facilities, except that nothing in this act shall be construed to hold any excavator

harmless from liability in those cases of gross negligence or willful and wanton conduct.

66-1807. Emergency excavations. In the case of an emergency which involves danger to life, health or property or which requires immediate correction in order to continue the operation of an industrial plant or to assure the continuity of public utility service, excavation, maintenance or repairs may be made without using explosives, if notice and advice thereof, whether in writing or otherwise are given to the operator or notification center as soon as reasonably possible.

66-1808. Application of other laws. This act shall not be construed to authorize, affect or impair local ordinances, resolutions or other provisions of law concerning excavating or tunneling in a public street or highway or private or public easement.

66-1809. Excavator's duty to exercise reasonable care. Upon receiving information as provided in K.S.A. 1995 Supp. 68-1806, an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility.

66-1810. Contact with or damage to facility; procedure. When any contact with or damage to any underground facility occurs, the operator shall be informed immediately by the excavator. Upon receiving such notice, the operator immediately shall dispatch personnel to the location to provide necessary temporary or permanent repair of the damage. If the protective covering of an electrical line is penetrated or dangerous gases or fluids are escaping from a broken line, the excavator immediately shall inform emergency personnel of the municipality in which such electrical short or broken line is located.

66-1811. Effect of violation of act, liability for damages; application of other laws. (a) In a civil action in a court of this state when it is shown by competent evidence that personal injury, death or other damages, including damage to any underground facilities, occurred as a result of a violation of this act, there shall be a rebuttable presumption of negligence on the part of the violator.

(b) The provisions of subsection (a) shall not apply if the operator whose underground facilities are



damaged fails to participate in the notification center.

(c) In no event shall the excavator be responsible for any damage to underground facilities if such damage was caused by the failure of the operator to correctly and properly mark the location of the tolerance zone of the damaged facility.

(d) Nothing in this act is intended to limit or modify the provisions of:

- (1) K.S.A. 60-258a, and amendments thereto; or
- (2) the national electrical safety code, which would otherwise be applicable.

66-1812. Violation of act, civil penalties and injunctive relief. Any person to whom this act applies, who violates any of the provisions contained in this act, shall be subject to civil penalties and injunctive relief as set out in K.S.A. 66-1,151, and amendments thereto.

66-1813. Administration and enforcement by corporation commission. This act shall be administered and enforced by the state corporation commission of the state of Kansas.

66-1814. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

66-Article 19. - Reserved

66-2001. Telecommunications; declaration of public policy. It is hereby declared to be the public policy of the state to: (a) Ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price; (b) ensure that consumers throughout the state realize the benefit of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates; (c) promote consumer access to a full range of telecommunications services, including advanced telecommunications services that are comparable in urban and rural areas throughout the state; (d) advance the development of a statewide telecommunications infrastructure that is capable of supporting applications, such as public safety, telemedicine, services for persons with special needs, distance learning, public library services, ac-

cess to internet providers and others; and (e) protect consumers of telecommunications services from fraudulent business practices and practices that are inconsistent with the public interest, convenience and necessity.

66-2002. Duties of state corporation commission. The commission shall: (a) Adopt a definition of "universal service" and "enhanced universal service," pursuant to subsections (p) and (q) of section 2;

(b) authorize any requesting telecommunications carrier to provide local exchange or exchange access service pursuant to subsection (a) of section 4; (c) on or before July 1, 1996, the commission shall initiate a proceeding to adopt guidelines to ensure that all telecommunications carriers and local exchange carriers preserve and enhance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers;

(d) review, approve and ensure compliance with network infrastructure plans submitted by local exchange carriers pursuant to section 6;

(e) review, approve and ensure compliance with regulatory plans submitted by local exchange carriers pursuant to section 6;

(f) on or before January 1, 1997, establish, pursuant to section 7, the Kansas lifeline service program, hereinafter referred to as the KLSF;

(g) initiate and complete a proceeding by January 1, 1997, to establish a competitively neutral mechanism or mechanisms to fund: dual party relay services for Kansans who are speech or hearing impaired; telecommunications equipment for persons with visual impediments; and telecommunications equipment for persons with other special needs. This funding mechanism or mechanisms shall be implemented by March 1;

(h) on or before January 1, 1997, establish the Kansas universal service fund pursuant to section 9, hereinafter referred to as the KUSF, and make various determinations relating to the implementation of such fund;

(i) authorize all local exchange carriers to provide internet access as outlined in section 12 and report on the status of the implementation provisions to specified legislative committees;

(j) review the federal act and adopt additional standards and guidelines as necessary for enforcing slamming restrictions;

(k) commencing on June 1, 1997 and periodically

Handwritten initials and a checkmark in the right margin.

A-2

**Before the Senate Utilities Committee
Comments by the
Staff of the Kansas Corporation Commission
February 15, 2000**

Senate Bill 514

Thank you Madam Chair. I am Leo Haynos, Chief of Pipeline Safety for the Kansas Corporation Commission and I'm appearing today on behalf of the Staff of the KCC. My comments will be brief. In Senate Bill 514, we have proposed to modify the statute K.S.A. 66-1,152, the statute that allows compromise of civil penalties for pipeline safety and underground utility damage prevention act violations.

Currently, this statute allows the Commission to consider various factors in compromising a penalty amount. However, once an appropriate fine amount is determined, the penalty still goes to specific statutorily dictated accounts. The changes we are suggesting will go a step further, and allow the Commission to specify that a portion of that fine can be used for investment in a related project that would benefit or enhance future compliance. The terms of the related project would be defined in a consent agreement, subject to Commission approval, negotiated between the offending party and the Commission Staff.

This minor change to the statute would give the Commission additional flexibility in establishing a fair and equitable penalty for a violation. It would also minimize the burden of administrative hearings while directing any penalty collected toward tangible projects that would promote the common good of the regulated community.

*Senate Utilities
2-15-00
Attach. 2*

Our current method of assuring compliance with One-Call and pipeline safety laws is to investigate complaints and then issue a probable non-compliance requesting the offender to respond to our findings. If the offender agrees with the findings, we request him to explain how he will change his operations to assure future compliance. If the offender doesn't agree, we request that he explain his side of the story. We then investigate further, and the process goes through another iteration. This so-called "warning ticket" approach works well in most cases. However, there are times when a violation is serious enough to compel Staff to refer the case for a Commission hearing and recommend a monetary penalty. According to statute, any penalties assessed by the Commission for pipeline safety or One-Call violations are allocated 80% to the pipeline safety budget and 20% to the general fund.

I believe the proposed modification to statute 66-1,152 will give the Commission an additional enforcement tool that would rank somewhere between the "warning ticket" and a hearing. It would also allow penalties that would have very little impact on either the pipeline safety budget or the general fund to be directed toward enhancing compliance.

For example, a penalty related to a violation of the damage prevention act could be directed to One-Call public awareness efforts in the community where the violation took place. Other possibilities that could be effective when dealing with gas utilities would be giving them the option to purchase related safety equipment in lieu of paying a penalty.

Senate Utilities Committee

Testimony in Support of Sub. HB 2290

by

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

Senator Ranson and members of the Committee:

My name is J. C. Long and I am Director of Government Affairs for UtiliCorp United. UtiliCorp operates WestPlains Energy which serves 70,000 customers in central and western Kansas. I am pleased to appear before you today as a proponent of Sub. HB 2290 as passed by the House Utilities Committee. We oppose the amendments adopted by the House Committee of the Whole.

House Bill 2290 eliminates a Kansas filing requirement that is generated when an energy utilities' foreign subsidiary guarantees securities.

The bill is necessary because the current system causes unnecessary delays when utilities are attempting to acquire new properties in foreign countries. Such acquisitions are often very competitive and delays can impede or prevent the transaction.

The bill keeps in place all other KCC authorities, including requiring the filing of reports, audits of books and records and initiating full rate hearings on motions of the Commission.

In regards to the House Floor amendment, our company does not have any opposition requiring us to notify the KCC on an affiliate transactions, we do however

Senate Utilities
2-15-00
Attach. 3

have concerns with the current language of the amendment and ask that the amendment be stricken.

On line 15, the words “directly or indirectly,” have been interpreted by some of our attorneys that we would have to notify the KCC every time Aquila Energy makes an energy trade because some could consider that an indirect pledging of credit – which happens between 400-700 times per day – did occur. We also have other attorneys that do not believe this would be the case.

On line 17, the words “the terms and conditions,” we believe that these terms and conditions of the loan are proprietary in nature. We also believe if the KCC deems these conditions to be known, they can file a discovery motion to obtain the documents or quite possibly request them for us.

On lines 18 and 19, the words “not less than 10 days before making such loan or pledging such credit” could pose problems for us in the bidding process. The current law speaks of approving the deal; this speaks of notifying the KCC before the deal and could pose problems with other regulatory bodies if abnormal trading activity or other types of activity occurred before the transaction was publicly announced. We would also view this as proprietary.

Finally, we would ask that the bill’s effective date of implementation be advanced to the Kansas Register do to the uncontroversial nature of the bill.

Thank you again.

Full Text of Bills

Kansas Legislative Services



brought to you by the
Information Network of Kansas

[INK Home](#) > [Government](#) > [Legislative](#) > [Full Text of Bills](#) > House Bill No. 2290

[As Amended by House Committee of the Whole]

Session of 2000

Substitute for House Bill No. 2290

By Committee on Utilities

1-20

10 AN ACT [relating to certain loans and pledges of credit by certain
11 public utilities;] repealing K.S.A. 66-1213, relating to public utilities.

12

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

14 [Section 1. Any public utility subject to the jurisdiction of the
15 state corporation commission which, directly or indirectly, loans
16 its funds or pledges its credit to any person or entity having an
17 affiliated interest shall report the terms and conditions of such loan
18 or pledge of credit to the state corporation commission not less
19 than 10 days before making such loan or pledging such credit.]

20 Section 1. [Sec. 2.] K.S.A. 66-1213 is hereby repealed.

21 Sec. 2. [3.] This act shall take effect and be in force from and after
22 its publication in the statute book.

3-3

Repeal

1213

appear to the satisfaction of the board of county commissioners of any county in this state that any corporation, company or person is operated a railroad in the state of Kansas for not less than ten years, and has paid all taxes on its property and right of way assessed for said ten years, and thereafter has ceased to operate said railroad for two years, because it did not have sufficient money to do so, and the taxes on such property and right of way have not been paid for a period of five (5) years, such county commissioners may cancel said taxes for said last five (5) years, when said railroad company, or its receiver, or legal representatives, resumes operation of said railroad in the state of Kansas.

History: L. 1923, ch. 174, § 1; June 9; R.S. 1923, 66-1209.

66-1210 to 66-1212.

History: L. 1931, ch. 238, §§ 1 to 3; Repealed, L. 1949, ch. 340, § 1; June 30.

CASE ANNOTATIONS

1. Act held unconstitutional and void. Capital Gas & Electric Co. v. Boynton, 137 K. 717, 718, 22 P.2d 958.

66-1213. Loaning money or pledging credit by public utilities to persons having affiliated interest; procedure; hearing. Before any public utility company subject to the jurisdiction of the state corporation commission shall loan its funds or pledge its credit, except to secure money actually borrowed by it or for its proper corporate needs, directly or indirectly to any person or corporation having an affiliated interest, such company shall make application to the corporation commission for the approval of same. When such application has been filed with the commission for permission to make such loan or pledge the credit of such company, the commission shall make such investigation as it deems necessary, and within 10 days either approve such loan or set same for hearing with due notice to applicant. If the commission finds that the making of such loan or pledge would substantially impair the financial condition of such public utility company or the ability of such company to furnish and maintain sufficient and efficient service, the commission shall deny such application; otherwise it shall grant such application.

Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

History: L. 1933, ch. 88, § 1 (Special Session); L. 1988, ch. 356, § 263; July 1, 1989.

Cross References to Related Sections:

Holding companies, see ch. 66, art. 14.

66-1214. Payment of dividends prohibited, when; hearing. The state corporation commission, if it shall determine on complaint or upon its own initiative, and after hearing on due notice in accordance with the provisions of the Kansas administrative procedure act, that the payment of any dividend by a public utility company subject to the jurisdiction of the commission will impair the financial condition of such company so that such company cannot maintain its property in reasonably efficient operating condition and render adequate service to its patrons at reasonable rates, shall enter an order prohibiting the payment of such dividends until such time as such company has shown to the commission that the conditions upon which such order was based have ceased to exist.

History: L. 1933, ch. 88, § 2 (Special Session); L. 1988, ch. 356, § 264; July 1, 1989.

66-1215. Judicial review. The provisions of chapter 66 of the Kansas Statutes Annotated, relative to review of orders of the commission, and penalties for violation of orders of the commission shall be applicable to the provisions of this act.

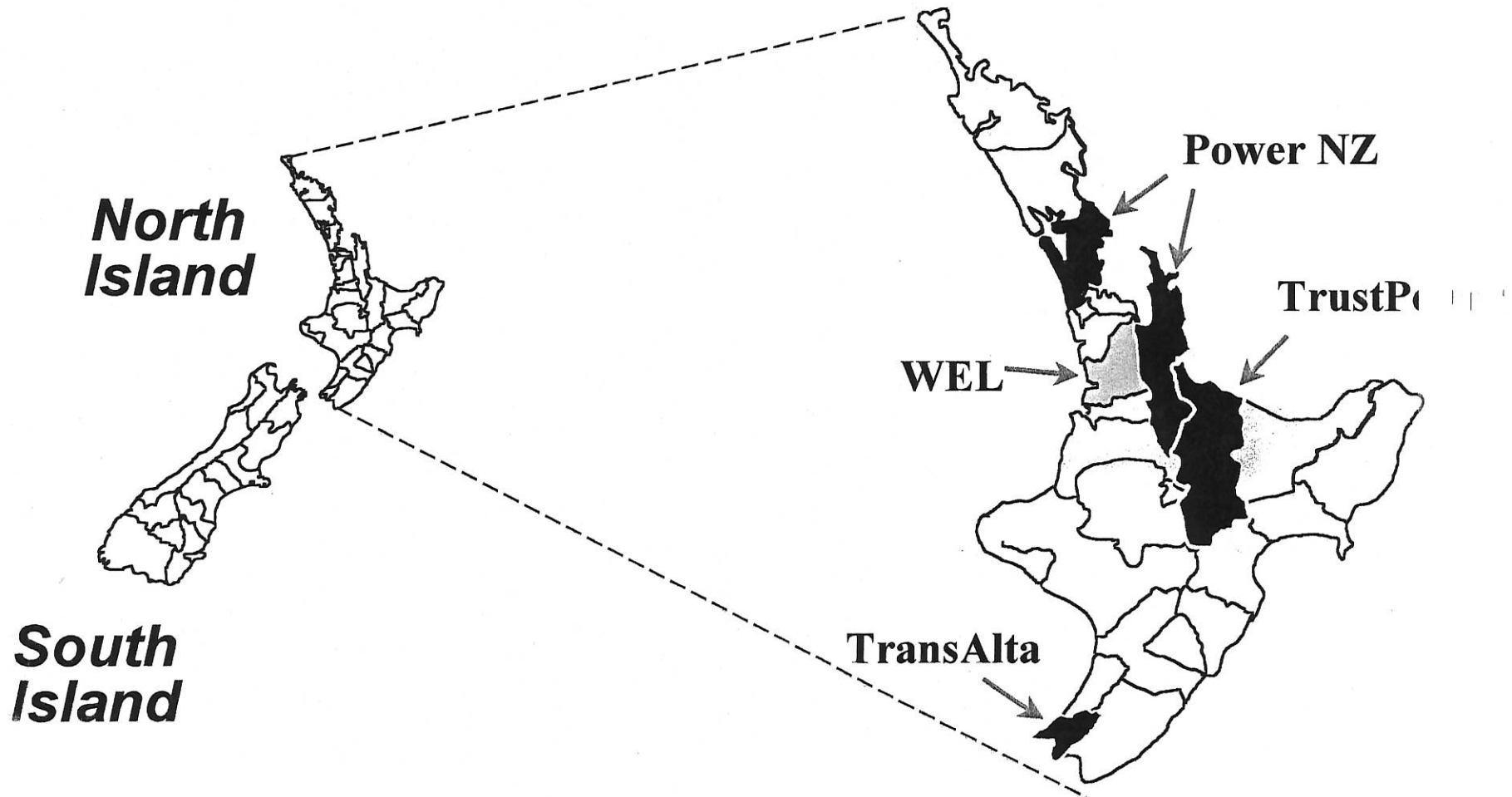
History: L. 1933, ch. 88, § 3 (Special Session); L. 1986, ch. 318, § 125; July 1.

66-1216. "Affiliated interest" defined. For the purpose of this act, the term "affiliated interest" shall include the interest so designated and defined in K.S.A. 74-602a.

History: L. 1933, ch. 88, § 4 (Special Session); Nov. 27.

66-1217. Recordation of real and personal property mortgages or security interests in fixtures made by railroad and utility companies; filing with secretary of state, when; liens. Any mortgage of real property or of both real property and personal property, including fixtures, or a security interest in fixtures alone, made by a corporation which is a railroad company as defined in K.S.A. 66-180 or a public utility as defined in K.S.A. 66-104, shall be recorded in the office of the register of deeds of the county or counties in which the real property is located, and when so recorded shall be a lien on the real property and fixtures described in the mortgage or security agreement from the time of recording and, if the instrument so provides, shall be a lien on any real property and fixtures thereafter acquired

United Networks Limited



3-5

3-5



A-4

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

GOVERNOR
CHAIR
VICE-CHAIR
MEMBER
MEMBER
MEMBER
CONSUMER COUNSEL

Citizens' Utility Ratepayer Board

1500 Southwest Arrowhead Road
TOPEKA, KANSAS 66604-4027
Phone: (785) 271-3200
Fax: (785) 271-3116

SENATE UTILITIES COMMITTEE
SUBSTITUTE FOR H.B. NO. 2290
On behalf of the Citizens' Utility Ratepayer Board
By Walker Hendrix

The Substitute for H.B. No. 2290 was amended by the House Committee of the Whole. As amended, the House found some need to have public utility affiliated loan transactions reported to the Corporation Commission.

The Citizens' Utility Ratepayer Board supports the bill as amended. This gives the Corporation Commission the ability to monitor the financial transaction between the regulated utility and an affiliate. If the loan proves to be imprudent and a default occurs, the Commission would be able to track the transaction and can take it into account with respect to future rate adjustments that are requested by the utility.

The bill would also permit the Corporation Commission to track affiliated relationships of the regulated utility. It would also allow a public record to be made of any loan made to an affiliate.

Based on the experience of this summer when one public utility extended credit to an affiliate in the form of cross collateralizing its public utility line of credit, it is apparent that this legislation is needed. In this situation, the utility's own credit rating was impaired by the cross-collateralization and in turn the stock value of the utility appreciably declined. The utility blamed the Corporation Commission for the decline in its stock, when the financial condition created by the cross collateralization was creating a default situation that was causing the stock to decline. Had the Commission had this information in a timely manner, it would have been available to rebut the false allegation that were being made about the Corporation Commission.

Senate Utilities
2-15-00
Attach. 4

Utilicorp has suggested changes to the substitute bill. It has suggested that the time interval be changed to **within 10 days**. CURB has no objection to this change. Utilicorp wants to delete the language "**directly and indirectly**". CURB has no objection to this change, if Utilicorp can assure committee that by not referencing indirectly, there will not be a loophole by which reporting can be avoided altogether. Lastly, Utilicorp wants to delete the language "**terms and conditions**". CURB does not agree with this change, because it will affect the meaningfulness of what is reported. The terms and conditions of a loan could indicate whether the loan was prudent or not.

Utilicorp has suggested that it will have to report every transaction that may occur under a line of credit and will have to report all the gas transaction its affiliate makes as a result of a line of credit. This information was not reported under the previous language in K.S.A. 66-1213 and it is not CURB's position that this type of information needs to be reported as an affiliate transaction. All that needs to be reported is the principal nature of the loan agreement.

This would conclude my testimony. Thank you.