

Approved: March 1, 2001

Date

Carl Dean Holmes

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:12 a.m. on February 9, 2001 in Room 526-S of the Capitol.

All members were present except: Rep. Richard Alldritt
 Rep. Tricia Lightner
 Rep. Margaret Long

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

Conferees appearing before the committee: Larry Holloway, Kansas Corporation Commission
 Jon Miles, Kansas Electric Cooperatives
 Walker Hendrix, Citizens' Utility Ratepayer Board

Others attending: See Attached List

HB 2307 - Relating to mergers; concerning standards for approval by KCC

Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission, testified on **HB 2307 (Attachment 1)**. Mr. Holloway explained that the Commission does not support or oppose the bill, however, he noted that the adoption of this legislation may be somewhat restrictive in the Commission's ability to respond to changes in the industries it regulates. Mr. Holloway responded to questions from the committee.

Jon Miles, Vice President of Governmental and Technical Services for Kansas Electric Cooperatives (KEC), appeared in opposition to **HB 2307 (Attachment 2)**. He stated that they do not believe the factors the bill raises are applicable to rural electric cooperatives. Mr. Miles responded to questions from the committee.

Walker Hendrix, Consumer Counsel for the Citizens' Utility Ratepayer Board, testified in a neutral position on **HB 2307 (Attachment 3)**. Mr. Hendrix explained that this bill may create some hardship for consumers, but to the extent that it protects ratepayers, he has no objection. He asked that the committee take into account the various provisos proposed and to consider the interest of ratepayers by placing the highest priority on protecting the public interest in adopting merger standards. Mr. Hendrix responded to questions from the committee.

Mike Murray, representing Sprint, distributed a written statement on **HB 2307** that included comments on **HB 2309 (Attachment 4)**. Mr. Murray stated that this bill would likely result in costly and damaging delays in completing a merger.

HB 2309 - Relating to certain employee compensation, prohibiting inclusion in rates

Walker Hendrix, Consumer Counsel for the Citizens' Utility Ratepayer Board, testified in support of **HB 2309 (Attachment 5)**. Mr. Hendrix stated that this bill compels the Commission to review the compensation of employees as part of its review in a utility rate case. Mr. Hendrix responded to questions from the committee. Members of the Kansas Corporation Commission's staff were present and also responded to questions from the committee.

Mr. Murray's remarks (Attachment 4) on **HB 2309** stated that dealing with compensation could impair a utility's ability to attract the best talent for its business.

Meeting adjourned at 10:58 a.m.

Next meeting is Monday, February 12, 2001.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 9, 2001

NAME	REPRESENTING
TOM DAY	KCC
[scribble]	KCC
Mike Murray	Sprint
Larry Hollung	KCC
WALKER HENDRIX	CURB
Marty Bregman	Western Resources
D. Berman	WR
Jon Miles	KEC
Susan Cunningham	KCC
BRUCE GRAHAM	KEPCO
Katrina	AP
Jim McLean	Top Cap Journal
Rob Hodges	KTI A

**BEFORE THE HOUSE UTILITIES COMMITTEE
PRESENTATION OF THE
KANSAS CORPORATION COMMISSION
FEBRUARY 9, 2001
HOUSE BILL NO. 2307**

Thank you, Chairman and members of the Committee. I am Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission. I appreciate the opportunity to be here today to testify for the Commission on House Bill No. 2307.

The Commission does not support or oppose HB 2307. This bill adopts into legislation the current Commission policy regarding utility mergers. The bill would require, by statute that the Commission find that the proposed merger would promote the public interest and the bill requires the Commission to consider certain factors.

The requirement that the Commission find that the merger would promote the public interest is the current policy followed by the Commission and reaffirmed and adopted in the Commission's 1992 final order in the KGE and KPL merger, Docket Nos. 172,754-U and 174,155-U. While this has been the KCC's policy, it does differ from that of some other state commissions. For example, Missouri has a "no detriment" policy. This means that in Missouri, rather than show that the utility merger promotes the public interest, and therefore benefits the public, the policy is merely to show that it does no harm.

The remaining portions of this bill adopt what is commonly referred to as the KCC's "merger standards" for the Commission to weigh and consider. These standards are identical to those first adopted by the Commission in the KGE and KPL merger and later amended to include the language in the latter part of section 1 (c) referring to labor dislocations from the failed Western Resources and KCPL merger, Docket No. 97-WSRE-676-MER.

TESTIMONY of JON K. MILES

**House Utilities Committee
February 9, 2001**

COMMENTS ON HOUSE BILL 2307

Good morning, Mr. Chairman and members of the Committee. My name is Jon K. Miles. I am Vice President of Governmental and Technical Services for Kansas Electric Cooperatives, Inc. (KEC), the statewide association of rural electric cooperatives in Kansas.

I would like to take the opportunity to thank you for allowing me to appear in opposition of HB 2307, and offer the attached amendment to the bill for the Committee's consideration.

As you are aware, there are unique differences in Kansas among the investor-owned, municipal and rural electric cooperatives in Kansas.

Rural electric cooperatives are member-owned. The member owners elect representatives to represent each distribution cooperative, as is the case with the generation and transmission cooperatives.

Over the years, several rural electric cooperatives have entered into discussions to examine the potential benefits and savings that could be realized through the sharing of human, equipment, and material resources in an effort to stabilize rates. As a result, several consolidations have occurred in the state, saving millions of dollars for rural consumers in Kansas.

Existing Kansas law requires cooperatives to submit the terms of a proposed merger or consolidation to the membership for approval. Kansas law also provides that once the merger or consolidation is approved by the members, the cooperatives must gain the approval of the

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Kansas Corporation Commission. As the members and consumers of cooperatives are one and the same, there is no need for the detailed review by the KCC contemplated by this bill.

We do not believe the factors this bill raises have application to rural electric cooperatives and request the attached balloon to the bill be adopted.

HOUSE BILL No. 2307

By Committee on Utilities

2-5

9 AN ACT concerning public utilities; relating to mergers; concerning
10 standards for approval by the state corporation commission.

11
12 Be it enacted by the Legislature of the State of Kansas;

13 Section 1. The state corporation commission shall not approve any
14 merger involving a public utility unless the commission determines that
15 the merger will promote the public interest. In determining whether this
16 standard is met, the commission shall weigh and consider the following
17 factors:

18 (a) The effect of the merger on consumers, including, but not limited
19 to:

20 (1) The effect of the proposed merger on the financial condition of
21 the newly created entity as compared to the financial condition of the
22 stand-alone entities if the merger did not occur;

23 (2) the reasonableness of the purchase price, including whether the
24 purchase price was reasonable in light of the savings that can be dem-
25 onstrated from the merger and whether the purchase price is within a
26 reasonable range;

27 (3) whether ratepayer benefits resulting from the merger can be
28 quantified;

29 (4) whether there are operational synergies that justify payment of a
30 premium in excess of book value; and

31 (5) the effect of the proposed merger on the existing competition;

32 (b) the effect of the merger on the environment;

33 (c) whether the proposed merger will be beneficial on an overall basis
34 to state and local economies and to communities in the area served by
35 the resulting public utility operations in the state, including, but not lim-
36 ited to, whether the proposed merger will likely create labor dislocations
37 that may be particularly harmful to local communities, or the state gen-
38 erally, and whether measures can be taken to mitigate that harm;

39 (d) whether the proposed merger will preserve the jurisdiction of the
40 commission and the capacity of the commission to effectively regulate
41 and audit public utility operations in the state;

42 (e) the effect of the merger on affected public utility shareholders;

43 (f) whether the merger maximizes the use of Kansas energy

1 resources;

2 (g) whether the merger will reduce the possibility of economic waste;

3 (h) what impact, if any, the merger has on the public safety; and

4 (i) any other factors that the commission determines to be relevant
5 to circumstances existing at the time of the merger proposal.

6 Sec. 2. This act shall take effect and be in force from and after its
7 publication in the statute book.

This act shall not apply to any cooperative as defined by K.S.A. 17-4603, and amendments thereto, or any non-stock member-owned cooperative corporation incorporated in this state.

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GENE MERRY
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HOUSE UTILITIES COMMITTEE

H.B. 2307

CITIZENS' UTILITY RATEPAYER BOARD

Walker Hendrix, Consumer Counsel

February 9, 2001

H.B. 2307 adopts in statutory form the standards which the Corporation Commission first proposed in the KPL/KGE merger. Drafting these standards into law may create some hardships for consumers, although on their face they seem protect ratepayers. To the extent the standards protect ratepayers, CURB has no objection.

CURB does take issue with the factor in paragraph (a) 4 of the bill. This factor provides for an acquisition premium in excess of book value if justified by "operational synergies." This standard is somewhat ambiguous, but the utilities have relied on this factor to justify paying large premiums for the acquisition of a public utility. Inevitably, the acquiring utility develops a rate plan or some other funding mechanism to permit the acquisition premium to be borne in whole or in part by ratepayers. CURB opposes the concept that ratepayers should pay for an acquisition premium. The acquisition premium permits the shareholders of the acquired company to extract a large sum knowing that the ratepayers will have to pick it up. It also facilitates the shareholders of the acquiring company, who stand to gain from the transaction through a larger revenue stream while passing the acquisition premium along to ratepayers.

An acquisition premium is a fictional expense which is designed to

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create a regulatory liability for ratepayers. Missouri, for example, has never formally approved an acquisition premium. Should you decide to pass H.B. No. 2307, CURB would request that you make it clear that no acquisition premium shall be borne by utility ratepayers. CURB would prefer a provision which states: "No identifiable costs to consummate the merger transaction, including acquisition premiums, transaction costs, control premiums, proxy costs and other like costs, shall be assigned to ratepayers."

On behalf of residential and small business customers, CURB would encourage the committee to adopt other measures which would protect consumers from the negative aspects of mergers. To permit a reasonable investigation of affiliate transactions, which could become a concern if a holding company arrangement is advanced as part of the merger, CURB would recommend the following language be inserted: "The surviving utility shall be required to secure an agreement from each of its unregulated subdivisions and affiliates to surrender jurisdiction to the Commission to permit access to books, records, and other documentation required for monitoring affiliate transactions and ascertaining the accuracy of cost allocations."

Reliability is stressed as an objective in some merger transactions. To afford protection to customers, some reference should be made to the reliability of the utility after the merger transaction. CURB would propose the following language: "The reliability of the utility operations shall not deteriorate as a result of the merger."

The merger standards as proposed provide little or no protection for the effects of market power which may result from the combination of two or more large corporations. To assure that market power is factored into the mix, CURB would propose language which states as follows: "The merger, combination or reorganization shall not result in the concentration of market power that will adversely affect competition." Additionally, CURB would recommend that the bill

contain a sentence which provides that "the Commission shall be have wide latitude investigating market power, taking into account conditions before and after the merger."

To afford the Commission with adequate authority to regulate the utility after the merger, CURB would recommend adding a sentence which states: "The merger shall not impair the ability or authority of the Commission to effectively regulate the surviving utility." The Commission should also be able to "impose and enforce conditions and terms of a merger which the Commission finds sufficiently mitigate the negative impacts of the transaction."

Often times the savings which are envisioned from a merger are not passed along to ratepayers commensurately with the completion of the merger transaction. To afford ratepayers the benefits of a merger, CURB would recommend that the acquired utility file a rate case within 30 days of the completion of the merger. This will guarantee that the ratepayers benefit from the cost savings which may occur through workforce reductions. To eliminate piecemeal ratemaking, CURB would also request that the bill contain a prohibition against "predetermining rate case issues as part of the merger proceedings."

Taking into account the various provisions advanced by CURB, it is our belief that ratepayers could be reasonably protected. The Commission's standards are extremely broad and have been interpreted in various ways. Please consider the interest of ratepayers and place the highest priority in protecting the public interest in adopting any merger standards.



February 9, 2001

TO: Members of the House Utilities Committee
FROM: Mike Murray
RE: HB 2307 and HB 2309

Since copies of these bills were only made available to us in the bill packets on Wednesday of this week, we simply have not had time to analyze fully their implications for public utilities in Kansas, and the Kansas business climate in general. However, on first reading, they could be significant.

HB 2309 dealing with compensation could impair a public utility's ability to attract the best talent for its business. In other words HB 2309 could unduly constrain a public utility's ability to effectively manage its human resources.

As it concerns HB 2307 dealing with mergers, a company like Sprint would not entertain such a transaction if it were not in the best interests not only of its shareholders but also its customers and employees. For Sprint, a proposal like HB 2307 would likely result only in costly and damaging delays in completing a merger.

The Kansas Corporation Commission currently has the authority to disallow inappropriate costs when setting the rates of rate base, rate-of-return companies and does so regularly. In addition, the Commission has demonstrated its willingness to become involved in mergers when it believes it has jurisdiction. Thus, HB 2309 and HB 2307 are unnecessary and would constrain the Commission's ability to exercise its discretion in these matters.

Sprint encourages the Committee not to rush to the passage of such legislation without first assuring itself that it thoroughly understands intended and perhaps unintended consequences of both HB 2309 and HB 2307.

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HOUSE UTILITIES COMMITTEE
H.B. 2309
CITIZENS' UTILITY RATEPAYER BOARD
Walker Hendrix, Consumer Counsel
February 9, 2001

H. B. 2309 restricts the level compensation for executives and top managers of a public utility. The bill defines excessive compensation to include pension, insurance, stock and deferred compensation which exceeds the value of similar packages for the utility's fulltime employees. It also includes restrictions on severance compensation and prohibits compensation which is out of proportion to compensation for people holding similar positions with other utilities in Kansas. The bill also limits compensation to the engagement in public utility activities.

CURB supports this legislation and recommends its consideration as part of your deliberation on mergers. Generally, top executives are awarded handsome severance packages as an inducement to assure that a merger transaction will be completed. This compensation which is characterized as a "golden parachute" has no impact on the companies productivity. As a matter of ratemaking policy, this form of compensation should not be borne by ratepayers. The compensation is awarded to enhance the position of shareholders and the managers themselves.

The bill compels the Corporation Commission to review the compensation of employees as part of its review in a utility rate case. It has been brought to the attention of CURB that

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sizeable severance compensation for public utilities executives in Kansas was facilitated by borrowing against insurance policies which was taken out on the life of the retiring executives. It has been reported in various prospectuses that severance compensation is being awarded for certain executives in Kansas, and the compensation is being awarded based on a short employment commitment by the employees. These forms of compensation should not be an obligation of ratepayers.