

Approved: March 6, 2001

Date

*Carl Dean Holmes*

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:07 a.m. on February 19, 2001 in Room 526-S of the Capitol.

All members were present.

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

Conferees appearing before the committee: Burton Crawford, Kansas City Power & Light  
Bruce Graham, Kansas Electric Power Cooperatives  
Jim Ludwig, Western Resources  
J. C. Long, UtiliCorp United  
Charles Benjamin, Kansas Sierra Club  
Walker Hendrix, Citizens' Utility Ratepayer Board

Others attending: See Attached List

Responses to questions posed during the hearing on **HB 2307** were provided by Jon Miles, Kansas Electric Cooperatives ([Attachment 1](#)).

**HB 2266 - Independent power producers, coal-fired generation; exemption from regulation; bonds for pollution control devices; property tax**

Burton Crawford, Manager of Deregulation Issues for the Kansas City Power & Light Company (KCPL), addressed the committee in support of **HB 2266** ([Attachment 2](#)). Mr. Crawford outlined three major provisions of the bill and noted two areas they would like to see expanded.

Bruce Graham, Vice President of Member Services and External Affairs for the Kansas Electric Power Cooperative, Inc. (KEPCo), expressed general support for **HB 2266** ([Attachment 3](#)). Mr. Graham asked that the bill be amended to include natural gas peaking/intermediate units.

Jim Ludwig, Senior Director of Regulatory Affairs for Western Resources, spoke in support of the intent of **HB 2266** ([Attachment 4](#)). Mr. Ludwig's comments also included their support of the concept and intent of **HB 2268**. Mr. Ludwig explained that the incentives proposed in these two bills were a good step in the removal of obstacles preventing new generation facilities from being built in Kansas.

The Director of Government Affairs for UtiliCorp United, J. C. Long, testified as a proponent of **HB 2266** ([Attachment 5](#)). Mr. Long stated that this bill is intended to encourage investment of electric generation facilities in the state.

Mr. Charles Benjamin, Legislative Coordinator for the Kansas Sierra Club appeared as an opponent to **HB 2266** ([Attachment 6](#)). Mr. Benjamin's testimony also included comments on **HB 2268**. He stated that they were opposed to any incentives that would use taxpayer funds to assist in building coal-fired power plants in Kansas. Mr. Benjamin said that they believe the path to our energy future lies in wind energy and in energy efficiency.

Walker Hendrix, Consumer Counsel for the Citizens' Utility Ratepayer Board (CURB), appeared in a neutral position on **HB 2266** ([Attachment 7](#)). Mr. Hendrix said that the bill raises important issues of public concern over whether it is desirable to have the state's generating capacity outside the jurisdiction of the Corporation Commission and the protections provided ratepayers under the Public Utilities Act.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 526-S Statehouse, at 9:07 a.m. on February 19, 2001.

**HB 2268 - Electric public utilities; coal-fired generation; construction work in progress; bonds for pollution control; property tax exemption**

Burton Crawford, KCPL, spoke in support of **HB 2268 (Attachment 8)**. Mr. Crawford said that KCPL agrees with the intent to encourage the construction of new transmission facilities and this incentive should also be extended to include 161kV facilities.

Bruce Graham, KEPCo, expressed support of **HB 2268 (Attachment 9)**. Mr. Graham stated that they had consistently supported legislation that encourages the construction of generation in Kansas. He also asked that the committee review a provision that limits the advantages of this act to coal-fired generation.

J. C. Long, UtiliCorp, testified in support of **HB 2268 (Attachment 10)**. Mr. Long also distributed two spreadsheets (**Attachments 11 & 12**) that showed the tax schedule for two 600 MW Combined Cycle plants, one with a cost of \$285 million and the other \$660 million.

Walker Hendrix, CURB, addressed the committee in opposition to **HB 2268 (Attachment 13)**. Mr. Hendrix stated that this bill permits the Corporation Commission to allow a public utility to include construction costs into the rates of customers before the facilities are ready to provide service. This places the risk on ratepayers instead of the shareholders.

Conferees for both **HB 2266** and **HB 2268** responded to questions from the committee. Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission, also responded to questions from the committee.

**HB 2477 - Income tax credit for certain building insulation**

There were no conferees for **HB 2477**.

The meeting adjourned at 10:28 a.m.

The next meeting will be Tuesday, February 20, 2001.

# HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: \_\_\_\_\_ February 19, 2001 \_\_\_\_\_

NAME	REPRESENTING
<del>XXXXXXXXXXXXXXXXXXXX</del>	KCC
Johnny Doherty	KCC
BIZTON GRANFORD	KCAP
BRUCE GRAHAM	KEPCO
Cynthia Smith	KCP
Jim Lummis	WR
J.C. Long	UCA
<del>Offutt</del>	WR
Peter F. Husley	KCP
Jack Stone	PH-Healy-KM & Oly
Keith M. Deane	KOR-PO
John Miles	KEC
Joe Duck	KCKBPU
Ron Appletoft	WATER DIST No 1 of Jo Co
Karmi Ann Power	KS Governmental Consulting
Tom DAY	KCC
Rihet Kuhlend	KIOBA
WALKER HENDRIX	CURB
Kevin Barone	Hen/weir chtd.
Denny Koch	



# HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 19, 2001

NAME	REPRESENTING
<i>Sandy Braden</i>	
<i>Mike Reecht</i>	
<i>Charles Benjamin</i>	<i>Sierra Club</i>



**Jon K. Miles**

**Vice President, Governmental & Technical Services**

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To: Chairman and Members of the House Utilities Committee  
From: Jon K. Miles, V.P., Governmental and Technical Services  
Kansas Electric Cooperatives, Inc. (KEC)  
RE: Questions regarding House Bill No. 2307, an Act concerning Public Utilities, relating to Merger or Consolidations

This memo is to respond to questions raised during House Utilities Committee meeting last Friday, February 9, 2001. The questions were regarding electric customers served by a city receiving wholesale power under contract from a rural electric cooperative in Kansas.

The issue raised relates to the potential impact a merger or consolidation of two or more cooperatives might have on the wholesale power contract if any, and what recourse would a city or it's customers have under a wholesale power contract to argue the merits of a proposed merger or consolidation.

If a city is a member of either cooperative, as such membership is defined by cooperative bylaws, then the city would have the opportunity to be heard during any merger or consolidation meetings scheduled by its cooperative. The meeting requires notice be given regarding the meeting date, time and place.

If the city is not a member of either cooperative, then its voice in the discussions would likely be determined by its rights under its wholesale power contract.

In any event, since the merger or consolidation would require KCC action, the administrative process would probably allow for public input from impacted persons, providing the city an opportunity to be heard on the matter.

*HOUSE UTILITIES*

DATE: 2-19-01

ATTACHMENT 1

**Testimony before the House Utilities Committee  
House Bill No. 2266**

**Burton L. Crawford  
Manager of Deregulation Issues  
Kansas City Power & Light Company  
February 19, 2001**

Chairman Holmes and Members of the Committee:

My name is Burton Crawford, appearing on behalf of Kansas City Power & Light Company (KCPL). HB 2266 is intended to encourage investment in electric generation facilities in the state. In general, the bill includes the following major provisions:

- Commercial and Industrial (C&I) property tax treatment for additions to coal-fired and limited gas-fired electric generation property placed in service after 1/1/01 of an independent power producer (IPP) that is not in rate base.
- A 10-year exemption from property taxes on IPP generation facilities and revenue bond financing and tax abatement for IPP pollution control devices.
- Finally, 345kv transmission facilities also receive a 10-year exemption from property taxes.

While KCPL supports this bill in concept, the incentives in this bill should be expanded in two areas:

**(1) Fuel Diversity.** One of the most important tools in managing electricity supply risks is having a mix of generation resources that utilize different fuels. KCPL's current mix of generating plants includes coal, nuclear, gas, and oil fired units. This mix helps insure that we can continue to serve our customers in the event of a problem effecting a particular fuel supply. For example, in extremely cold weather coal piles can freeze, making it difficult to fuel a boiler or a rail strike can occur, impacting the delivery of coal. Price spikes in the price of fuel can also occur, making it more economical to change fuel sources. Even some of our coal plants have the ability of using natural gas or oil. Therefore, we feel that Kansas should not focus attention on coal only resources. The bill should be expanded to include all types of generation.

*HOUSE UTILITIES*

DATE: 2-19-01

ATTACHMENT 2

**(2) Returns on new transmission.** With respect to the 10-year property tax abatement on 345kv transmission facilities, KCPL proposes that a better incentive would be to allow a premium of 300 basis points on the total return allowed by the KCC. This should also include new 161kv or larger electric transmission property.

In addition to the expanding the incentives, a definition clearly identifying the components of the electric production facility that qualify as tangible personal property needs to be made. Federal Energy Regulatory Commission accounts can be used for this purpose. Qualified IPP electric generation property will be assessed by the county as commercial and industrial property and not as public utility property. Having a clear and uniform definition of personal property is essential for purposes of consistent application of the seven-year depreciation schedule. This is needed to allow for proper planning and establishment of a business case for the siting of new power production in the state. Additionally, since this generation will not be centrally assessed, a clear definition would help ensure the consistent appraisal treatment of such new facilities in counties throughout the state.

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





# **Kansas Electric Power Cooperative, Inc.**

## ***Testimony on HB 2266***

***Before House Utilities Committee – February 19, 2001***

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

The Kansas Electric Power Cooperative (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.

However, KEPCo respectfully requests a review of the provisions in HB 2266 that limit the advantages of this act to coal-fired generation and natural gas as back up to renewable generation. While we are sensitive to the immediate concern regarding the price and availability of natural gas, all indications are that the market is acting to bring down the cost of gas.

Meanwhile, KEPCo is working on the development of its future power supply resources and our studies indicate that by constructing some peaking/intermediate generation using natural gas, we can provide cost stability and assurance to our member cooperatives and their consumers. Our initial projections are that this facility would not be used more than 35 percent of the year as a lower cost alternative to meeting peak demand through the volatile electricity wholesale market. Permitting peaking/intermediate units to qualify for the provisions of this act could provide additional cost benefits for rural Kansas ratepayers.

One of the primary benefits of HB 2266 would be to provide 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. Native utilities could also declare a new generation facility eligible for the lower assessment rate under provisions in this bill.

This idea makes sense because for such a facility there is no franchise/certified territory and no retail customer transaction. Simply put, an IPP is more like a Subway sandwich shop than a traditional utility. The owner determines if there is demand for his product, locates the business in an appropriate location, and then markets the product. The only difference is that an IPP will usually try to find a buyer for some, most, or even all of its generation before construction.

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*HOUSE UTILITIES*

DATE: 2-19-01

ATTACHMENT 3

KEPCo can support HB 2266 if amended to include natural gas peaking/intermediate units. Of course, we would prefer that it provide equitable treatment for existing utility generation especially for companies like KEPCo. Currently, we are no different than an IPP, providing wholesale generation and transmission service for 21 rural electric cooperatives in Kansas and KEPCo has no direct retail customers.

As has been discussed in the past, the Kansas Attorney General has issued an opinion regarding the constitutionality of this type of language and it appears to give the Legislature the authority to redefine some types of utility property.

The Attorney General stated that the Legislature "...has some latitude in the instant situation due to the change of circumstances attending generation and distribution of electric power over the past few years." Furthermore, the Legislature may define the term "public utility" for purposes of property tax classification as long as the legislative definition remains consistent with the commonly understood meaning of the term.

The most equitable solution would be to redefine all generation as non-utility property. Most customers are not aware of who or what generates their electricity. For example, even though KEPCo has been providing service for the past 25 years, I would argue that an REC member/customer would define their utility as Jewell-Mitchell Rural Electric Cooperative, not Jewell-Mitchell and KEPCo. Most customers have no idea from whom, what, when or where their distribution utility gets the energy. KEPCo has long term contracts with its members which guarantee that KEPCo will meet all of their generation needs and those contracts are KEPCo's loan security. This arrangement again is no different than an IPP that would secure a bank loan with agreements from their prospective customers. Furthermore, KEPCo's members have the ability to buy out of their contract, therefore exposing KEPCo to marketplace risk, a situation similar to an IPP.

We appreciate the Legislature's willingness to consider steps that can be taken now to ensure adequate generation, transmission, and an equitable tax structure, in order to maintain the state's history of reliable and affordable electric service.

Testimony  
Before the  
House Utilities Committee  
By  
Jim Ludwig, Western Resources  
February 19, 2001

Chair Holmes and Members of the Committee:

Western Resources supports the intent and concept of HB 2266 and 2268. We regard the two bills as "companions." We are asking the Committee to approve an amendment to HB 2266.

*Explanation*

HB 2266 provides incentives to independent power producers (IPP) to build coal plants by assessing their generation facilities at the rate of 25% for real and personal property. Under current law, IPP generation would be assessed at 33%, the rate for public utility property. IPP property is defined as generation facilities not in rate base of a KCC jurisdictional electric utility.

HB 2268 would give the KCC discretion to allow utilities to recover the costs of construction work in progress, if the construction involved new coal-fired electric plants or additions to them, or if the new construction is an electric transmission line transmitting electricity from a coal-fired plant. The bill provides a ten-year property tax exemption for both the new coal-fired generation and transmission lines. It also provides for Kansas development financing revenue bonds for pollution control equipment on power plants.

*Making incentives and removing obstacles*

Although there may not be any way for the legislature to guarantee new generation facilities are built in Kansas, the incentives proposed in HB 2266 and HB 2268 are a good step to remove obstacles and a competitive tax disadvantage to surrounding states.

*Preserving the tax base*

Enacting HB 2266 and HB 2268 will not erode the current property tax base. Any generation built before January 1, 2001 would continue to be assessed at 33%. Any non-rate base generation built after that date would be assessed at 25%, while rate-based generation built after that date would be assessed at 33%.

HOUSE UTILITIES

DATE: 2-19-01

ATTACHMENT 4



*Amendment*

Attached is our balloon amendment. It provides that any portion of an electric utility owned plant not in rate base could qualify for the lower 25% assessment. The remaining portion in rate base would be assessed at 33%.

Under HB 2266, as introduced, if an electric utility or the KCC were to exclude *any portion* of a utility's new plant from rate base, the *entire* plant would be assessed at 33%. It is often economically better to build a larger plant, because higher efficiencies can be attained. When an electric utility has generation facility not in rate base, it markets in the same wholesale market as any other independent power producer or marketer, and therefore should be assessed at the same tax rate for whatever portion of plant is in the competitive market.

*Suggestion*

This Committee has introduced several bills regarding renewable generation sources, especially wind and hydro. We urge the Committee to allow renewable resource generation the same advantages given to coal-fired generation in both these bills. We believe the kinds of incentives incorporated in HB 2266 and HB 2268 are appropriate for both fossil fuel and renewable generation, whereas having utilities and their customers subsidize renewable generators is inappropriate.

We urge the Committee to approve HB 2268 and HB 2266 with our amendment.

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HOUSE BILL No. 2266

By Committee on Utilities

2-1

AN ACT concerning electricity; relating to certain generators of electricity; relating to taxation, economic development incentives and exemption from regulation; providing for issuance of bonds for certain purposes; providing for certain property tax exemptions; amending K.S.A. 2000 Supp. 66-104 and 79-5a01 and repealing the existing sections.

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

Section 1. K.S.A. 2000 Supp. 66-104 is hereby amended to read as follows: 66-104. (a) The term "public utility," as used in this act, shall be construed to mean every corporation, company, individual, association of persons, their trustees, lessees or receivers, that now or hereafter may own, control, operate or manage, except for private use, any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages or for the transmission of telegraph messages in or through any part of the state, or the conveyance of oil and gas through pipelines in or through any part of the state, except pipelines less than 15 miles in length and not operated in connection with or for the general commercial supply of gas or oil, and all companies for the production, transmission, delivery or furnishing of heat, light, water or power. No cooperative, cooperative society, nonprofit or mutual corporation or association which is engaged solely in furnishing telephone service to subscribers from one telephone line without owning or operating its own separate central office facilities, shall be subject to the jurisdiction and control of the commission as provided herein, except that it shall not construct or extend its facilities across or beyond the territorial boundaries of any telephone company or cooperative without first obtaining approval of the commission. As used herein, the term "transmission of telephone messages" shall include the transmission by wire or other means of any voice, data, signals or facsimile communications, including all such communications now in existence or as may be developed in the future.

(b) The term "public utility" shall also include that portion of every municipally owned or operated electric or gas utility located outside of and more than three miles from the corporate limits of such municipality, but nothing in this act shall apply to a municipally owned or operated

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1 utility, or portion thereof, located within the corporate limits of such  
2 municipality or located outside of such corporate limits but within three  
3 miles thereof except as provided in K.S.A. 66-131a, and amendments  
4 thereto.

5 (c) Except as herein provided, the power and authority to control and  
6 regulate all public utilities and common carriers situated and operated  
7 wholly or principally within any city or principally operated for the benefit  
8 of such city or its people, shall be vested exclusively in such city, subject  
9 only to the right to apply for relief to the corporation commission as  
10 provided in ~~K.S.A. 66-133~~, and amendments thereto, and to the provisions  
11 of K.S.A. 66-131a and K.S.A. 2000 Supp. 66-104e, and amendments  
12 thereto. A transit system principally engaged in rendering local transpor-  
13 tation service in and between contiguous cities in this and another state  
14 by means of street railway, trolley bus and motor bus lines, or any com-  
15 bination thereof, shall be deemed to be a public utility as that term is  
16 used in this act and, as such, shall be subject to the jurisdiction of the  
17 commission.

18 (d) The term "public utility" shall not include any activity of an  
19 otherwise jurisdictional corporation, company, individual, association of  
20 persons, their trustees, lessees or receivers as to the marketing or sale of  
21 compressed natural gas for end use as motor vehicle fuel.

22 (e) At the option of an otherwise jurisdictional entity, the term "public  
23 utility" shall not include any activity or facility of such entity as to the  
24 generation, marketing and sale of electricity generated by an electric  
25 generation facility or addition to an electric generation facility which:

26 (1) Is placed in service on or after January 1, 2001;

27 (2) (A) is coal-fired; or (B) uses natural gas to generate electricity,  
28 but only if: (i) The facility exists for the purpose of generating  
29 electricity to provide uninterrupted power when a renewable generation  
30 facility is unable to provide uninterrupted power; and (ii) not more than 20%  
31 of the average annual combined total output of the two facilities is  
32 generated from natural gas; and

33 (3) is not in the rate base of: (A) An electric public utility that is  
34 subject to rate regulation by the state corporation commission; (B) any  
35 cooperative, as defined by K.S.A. 17-4603 and amendments thereto, or  
36 any nonstock member-owned cooperative corporation incorporated in  
37 this state; or (C) a municipally owned or operated electric utility.

38 (f) As used in this section, "renewable generation facility" means a  
39 facility which generates electricity solely by use of wind, solar, thermal,  
40 photovoltaic, biomass, refuse incineration, hydropower, geothermal, land-fill  
41 gas or other renewable resources or technologies, other than nuclear  
42 resources or technologies.

43 New Sec. 2. (a) As used in this section, "independent power pro-  
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all or any portion of

1 ducer property'' means property used solely in the generation, marketing  
2 and sale of electricity generated by an electric generation facility de-  
3 scribed in subsection (e) of K.S.A. 66-104, and amendments thereto.

4 (b) For all taxable years commencing on or after January 1, 2001,  
5 independent power producer property is commercial and industrial prop-erty  
6 assessed at the rate of 25% for the purposes of taxation of real prop-erty  
7 and tangible personal property.

8 New Sec. 3. For purposes of any ad valorem tax exemption, income  
9 tax credit or other incentive for economic development provided by law,  
10 any activity or facility described in subsection (e) of K.S.A. 66-104, and  
11 amendments thereto, shall not be considered a public utility and shall be  
12 eligible for such exemption or incentive in the same manner as any other  
13 business.

14 Sec. 4. K.S.A. 2000 Supp. 79-5a01 is hereby amended to read as  
15 follows:79-5a01. (a) As used in this act, the terms ``public utility'' or  
16 ``public utilities'' shall mean every individual, company, corporation,  
17 association of persons, lessees or receivers that now or hereafter are in  
18 control, manage or operate a business of:

19 (1) A railroad or railroad corporation if such railroad or railroad  
20 corporation owns or holds, by deed or other instrument, an interest in right-  
21 of-way, track, franchise, roadbed or trackage in this state;

22 (2) transmitting to, from, through or in this state telegraphic  
23 messages;

24 (3) transmitting to, from, through or in this state telephonic messages;

25 (4) transporting or distributing to, from, through or in this state  
26 natural gas, oil or other commodities in pipes or pipelines, or engaging pri-  
27 marily in the business of storing natural gas in an underground formation;

28 (5) generating, conducting or distributing to, from, through or in this  
29 state electric power;

30 (6) transmitting to, from, through or in this state water if for profit  
31 or subject to regulation of the state corporation commission;

32 (7) transporting to, from, through or in this state cargo or passengers  
33 by means of any vessel or boat used in navigating any of the navigable  
34 watercourses within or bordering upon this state.

35 (b) The terms ``public utility'' or ``public utilities'' shall not  
36 include: (1) Rural water districts established under the laws of the state of  
37 Kansas; or (2) any individual, company, corporation, association of persons,  
38 lessee or receiver owning or operating an oil or natural gas production  
39 gathering line which is situated within one county in this state and does not  
40 cross any state boundary line; (3) any individual, company, corporation,  
41 association of persons, lessee or receiver owning any vessel or boat operated  
42 upon the surface of any manmade waterway located entirely within one county in  
43 the state; or (4) for all taxable years commencing after Decem-

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1 ber 31, 1998, any natural gas distribution system which is owned and  
2 operated by a nonprofit public utility described by K.S.A. 66-104c, and  
3 amendments thereto, and which is operated predominantly for the purpose  
4 of providing fuel for the irrigation of land devoted to agricultural  
5 use; or (5) for all taxable years commencing on or after January 1, 2001,  
6 at the option of the taxpayer, the taxpayer's business of generating, marketing  
7 and selling electricity generated by an electric generation facility  
8 described in subsection (e) of K.S.A. 66-104, and amendments thereto.

9 New Sec. 5. (a) For the purpose of financing the construction, purchase  
10 and installation of pollution control devices at electric generation  
11 facilities described in subsection (e) of K.S.A. 66-104, and amendments  
12 thereto, the Kansas development finance authority is hereby authorized  
13 to issue revenue bonds in amounts sufficient to pay the costs of such  
14 construction, purchase and installation, including any required interest  
15 on the bonds during construction and installation, plus all amounts required  
16 for costs of the bond issuance and for any required reserves on  
17 the bonds. The bonds, and interest thereon, issued pursuant to this section  
18 shall be payable from revenues derived from sales of generation from  
19 the electric generation facility. As used in this subsection, "pollution con-  
20 trol devices" means any device or structure required to meet air emission  
21 or water discharge standards imposed by state or federal law.

22 (b) Revenue bonds, including refunding revenue bonds, issued hereunder  
23 shall not constitute an indebtedness of the state of Kansas, nor  
24 shall they constitute indebtedness within the meaning of any constitutional  
25 or statutory provision limiting the incurring of indebtedness.

26 (c) Revenue bonds, including refunding revenue bonds, issued hereunder  
27 and the income derived therefrom are and shall be exempt from  
28 all state, county and municipal taxation in the state of Kansas, except  
29 Kansas estate taxes.

30 New Sec. 6. The following described property, to the extent herein  
31 specified, shall be exempt from all property or ad valorem taxes levied  
32 under the laws of the state of Kansas:

33 (a) All electric generation facilities described in subsection (e) of  
34 K.S.A. 66-104, and amendments thereto.

35 (b) The provisions of this section shall apply for the 10 taxable years  
36 immediately following the taxable year in which construction of such  
37 property is completed.

38 (c) The provisions of this section shall apply to all taxable years  
39 commencing after December 31, 2000.

40 New Sec. 7. The following described property, to the extent herein  
41 specified, shall be exempt from all property or ad valorem taxes levied  
42 under the laws of the state of Kansas:

43 (a) All electric transmission lines used for the bulk transfer of 345 or  
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1 more kilovolts of electricity, including all towers, poles and other neces-sary  
2 appurtenances to such lines and the right-of-way on which such lines  
3 are located.

4 (b) The provisions of this section shall apply to property the construc-  
5 tion of which is completed after December 31, 2000, and for the 10  
6 taxable years immediately following the taxable year in which construction  
7 of such property is completed.

8 (c) The provisions of this section shall apply to all taxable years com-  
9 mencing after December 31, 2000.

10 Sec. 8. K.S.A. 2000 Supp. 66-104 and 79-5a01 are hereby repealed.

11 Sec. 9. This act shall take effect and be in force from and after its  
12 publication in the statute book.

4-7

Testimony of J. C. Long  
Director of Government Affairs  
UtiliCorp United Inc.  
House Utilities Committee  
House Bills 2266

Mr. Chairman and Members of the Committee:

My name is J. C. Long and I am the Director of Government Affairs for UtiliCorp United. Our electric division in Kansas is WestPlains Energy. Thank you for the opportunity to testify in support of House Bill 2266 today.

House Bill 2266 is intended to encourage investment of electric generation facilities in the state. The bill provides for: (1) an IPP (Independent Power Producer or Merchant power plant) to be taxed at the commercial and industrial rate of 25% instead of the utility rate of 33%; (2) giving the ability to issue revenue bonds for pollution control devices and (3) giving a ten year tax abatement for IPP's and transmission lines developed by IPP's. Since IPP's are not utilities, the suggested change in law makes sense.

For example, Aquila Energy Corporation, (a non-regulated subsidiary of UtiliCorp), has 21 IPP's either in production or under construction in 13 states. Aquila recently announced that their new \$130 million peaking plant in Mississippi will pay only \$158,000 per year in PILOT's (payment in lieu of taxes) for 20 years (or \$3.160 million for 20 years). If this same plant was built in Kansas under the current taxing scheme the property taxes paid would be above \$3 million per year.

We do, however have concerns with the bill. Specifically, on page 2 line 27 after (B), the bill calls for using gas fired generation only as a backup to a wind farm. UtiliCorp believes that to tie the hands of the IPP owner or of the regulated generation owner concerning the fuel used could be short sighted. For example, in just the last 3 weeks, the price of coal has increased by 40% on the spot market, whereas the natural gas market has decreased during the same time frame almost 40%. Allowing any fuel gives flexibility.

UtiliCorp would propose the following changes to 2266:

On page 2, line 27 by striking the comma after electricity and placing a semicolon and on page 2 by striking lines 28-32 and striking subsection (f).

Thank you for the opportunity to testify today.

*HOUSE UTILITIES*

DATE: 2-19-01

ATTACHMENT 5



Testimony in Opposition to H.B. 2268 and H.B. 2266  
Presented to the Kansas House Utilities Committee  
On February 19, 2001  
By the Kansas Sierra Club

Written by Bill Griffith, member of the Kansas Sierra Club Executive Committee  
Presented by Charles Benjamin, Kansas Sierra Club's Legislative Coordinator

The Kansas Chapter of the Sierra Club would like to thank the chairman and the committee for the opportunity to submit testimony on HB 2268 and 2266.

We are opposed to any incentives that would use taxpayer funds to assist in building coal-fired power plants in Kansas. Generating facilities that use coal have serious drawbacks and there are better options available at a lesser cost.

Facilities using this industrial-age technology are subject to major siting concerns. These are large plants and are required to go through an extensive permitting process. Delays from legal challenges, federal regulatory rules, and construction problems can be extensive. Kansas needs energy solutions that can promise a quick turn around in implementation time to meet new energy demands.

Generating facilities using coal also have been fingered as the culprit in deaths in asthmatic children and the elderly. They are also the main source of mercury poisoning in the United States today. Also, the price of coal may go up in the future due to international concerns over greenhouse gas emissions from these facilities.

Instead of gambling on coal we buy from Wyoming or Montana we need to look at a Kansas commodity-wind. We have not even scratched the surface of this power source. Wind-power can easily provide 20-30% of our entire demand while providing income to Kansas farmers and ranchers. Wind is also easy to deploy with no significant siting problems, and is relatively non-controversial.

Another sleeping giant lies in energy efficiency upgrades. Tax credits for energy efficiency in homes and businesses, integrating life cycle costs in buildings, and having utilities doing demand-side management programs are proven ways to cut demand significantly and keep more money in the pockets of Kansans. To give an example of this untapped power, if every home in California installed four energy efficient light bulbs California would need 17 less power plants. We have many ways of acquiring energy efficiency and have only begun to make inroads in this area as well.

In conclusion we believe that the path to a cleaner and cheaper energy future lies in wind energy and energy efficiency and we should put our time and efforts there for the benefit of Kansans and not in coal-fired power plants.

*HOUSE UTILITIES*

DATE: 2-19-01

ATTACHMENT 6



BILL GRAVES  
A.W. DIRKS  
GENE MERRY  
FRANK WEIMER  
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HOUSE UTILITIES COMMITTEE

H.B. 2266

Testimony of the Citizens' Utility Ratepayer Board

By Walker Hendrix

February 19, 2001

H.B. 2266 establishes a new direction for the development of electric generating capacity in the state of Kansas. Coal-fired and certain natural gas generating facilities that are used in conjunction with renewable resources become exempt as public utility facilities if the owner or lessee elects to have the facility not included in rate base. In essence, H.B. 2266 establishes a statutory exemption for certain newly constructed facilities and allows for unregulated merchant power plants. Power from the facilities can be freely bought and sold without regard to the obligations which would otherwise be required under the Public Utilities Act. H.B. 2266 changes the assessment rate from 33% to 25% for property tax purposes and exempts the generating facilities from property tax during the first 10 years after construction.

Unlike current regulations, a power plant operator under the statute could sell electricity at unregulated market rates. In time, this law could shift more and more generation to an unregulated status. The bill is also designed to spur construction of additional generating capacity at a time when concerns about the supply of electricity have been placed into question.

This bill raises important issues of public concern over whether it is desirable to have the generating capacity of this state outside the jurisdiction of the Corporation Commission and the protections afforded to ratepayers under the Public Utilities Act.

Because of the importance of this debate, several public policy issues must be considered. First, will unregulated generating capacity subject ratepayers to uncertainties over the rates that will become applicable for the sale of electricity. Second, will the cost of electricity be more or less if power is generated from unregulated facilities. Third, assuming that long term rate stability can be established under long term supply contracts which would have to be approved by the Corporation Commission, do periodic renegotiations and the prospect that power can be sold to other entities at the time of renewal place the continued future energy supply at risk or at prices which would be higher than under a regulated source of supply. Fourth, do the tax implications and the future funding of electricity require new revenue sources for funding public education in Kansas.

It should be noted that the public debate is somewhat restricted because there are no analyses which have been provided to show what the energy needs for Kansans are and how

HOUSE UTILITIES

DATE: 2-19-01

ATTACHMENT 7

existing capacity is unable to supply those needs. This bill is being considered without a reliable independent study.

Without more information, CURB has certain doubts about the passage of this bill. It is the consensus of CURB that residential and small business customers are better protected by the traditional regulatory model which requires efficient and sufficient service at just and reasonable rates. Shifting to an unregulated supply concept will no doubt subject ratepayers to some price volatility.

**Testimony before the House Utilities Committee  
In Support of House Bill No. 2268**

**Burton L. Crawford  
Manager of Deregulation Issues  
Kansas City Power & Light Company  
February 19, 2001**

Chairman Holmes and Members of the Committee:

Kansas City Power & Light supports House Bill No. 2268 that allows for the inclusion of electric utility property in ratebase prior to the property being placed in service and provides property tax exemption for new transmission lines.

Theoretically, this measure can result in significant savings for electric consumers in the state. These savings are a result of placing new utility assets into ratebase earlier than currently allowed by law. By allowing an electric utility to place property in ratebase earlier (and therefore charging rates that cover expenses related to construction work in progress) the overall costs of utility additions is reduced. These savings can be substantial for new generating plants that take several years to construct.

Typically, building a new coal fired generating plant can take 4 to 5 years from the time construction begins, until the time it is placed in service. If the utility is allowed to place assets into ratebase as construction progresses (instead of after it is placed in service), the overall cost of the project can be reduced 15 to 20%, depending on the length of construction and financing costs. This reduction in costs is then reflected in consumer electric rates since the investment required by the utility is reduced.

While KCPL fully agrees with the intent to encourage the construction of new transmission facilities, we suggest that a better incentive would be to allow a premium of 300 basis points on the total return allowed by the KCC. This incentive should also be extended to include 161 kV facilities.

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

*HOUSE UTILITIES*

DATE: 2-19-01

ATTACHMENT 8





# **Kansas Electric Power Cooperative, Inc.**

## ***Testimony on HB 2268***

***Before House Utilities Committee – February 19, 2001***

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

The Kansas Electric Power Cooperative (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 agreements and is in the process of acting on options to replace some of its current contracts.

Our studies indicate that by constructing some peaking/intermediate generation using natural gas, we can provide cost stability and assurance to our member cooperatives and their consumers. While we are sensitive to the immediate concern regarding the price and availability of natural gas, all indications are that the market is acting to bring down the cost of gas.

Therefore, KEPCo respectfully requests a review of the provision that limits the advantages of this act to coal-fired generation. Our initial projections are that this facility would not be used more than 35 percent of the year to meet peak demand for electricity. Furthermore, it would improve reliability, provide security of ownership and a lower cost alternative to the wholesale market for electricity which can be even more volatile and expensive a commodity than natural gas. Permitting peaking/intermediate units to qualify for the provisions of this act could benefit rural Kansas ratepayers as well as encourage KEPCo and other utilities to consider Kansas as the site for construction of these generation projects as well as baseload coal plants.

We appreciate the Legislature's willingness to consider steps that can be taken now to ensure adequate generation, transmission, and an equitable tax structure, in order to maintain the state's history of reliable and affordable electric service.

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KEPCo is a generation and transmission utility that provides wholesale electricity and other services to 21 rural electric distribution cooperatives with member/consumers spanning two-thirds of rural Kansas.

Phone: 785.273.7010

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[www.kepco.org](http://www.kepco.org)

P.O. Box 4877

Topeka, KS 66604-0877

600 Corporate View

Topeka, KS 66615

*HOUSE UTILITIES*

DATE: 2-19-01

ATTACHMENT 9

Testimony of J. C. Long  
Director of Government Affairs  
UtiliCorp United Inc.  
House Utilities Committee  
House Bills 2268

Mr. Chairman and Members of the Committee:

My name is J. C. Long and I am the Director of Government Affairs for UtiliCorp United. Our electric division in Kansas is WestPlains Energy. Thank you for the opportunity to testify in support of House Bill 2268 today.

House Bill 2268 is an attempt to encourage electric and generation facilities to be built in Kansas by our current utilities. We support these steps for electric generation and transmission, which includes allowing construction work in progress (CWIP), Revenue Bonds for pollution control devices on generation facilities and 10 year tax abatements for "regulated" generation facilities and electric transmission lines.

We are concerned however, that gas fired generation is not included in the bill. Even with today's record prices for natural gas, gas generation is still an attractive fuel for electric generation. For example, our gas fired power plant in Missouri, which will produce 603 megawatts of electricity, will cost around \$275 million to build. For a similar sized coal fired power plant, the cost would be over \$660 million -- over two times the cost of gas fired generation.

We would encourage the committee that if tax abatements are allowed for coal fired generation, then the same tax abatements and CWIP provisions should be allowed for gas fired generation.

Thank you for the opportunity to testify today.

*HOUSE UTILITIES*

DATE: 7-19-01

ATTACHMENT 10

HOUSE UTILITIES

600 MW Com Cycle ----- Tax calculation under current tax law ----- Tax under C & I Stat.

Year	Cost	Deprec	Net Book	Market Value	Assessment Rate	Assessed Value	Mill Levy	Tax	Depreciation	Taxable Value	Assess Rate	Assessed Value	Mill Levy	Tax	Difference	
1	285,000,000	11,400,000	273,600,000	232,560,000	0.3333	77,512,248	11.8710%	9,201,479	25,857,143	257,142,857	0.25	64,285,714	11.8710%	7,631,357	1,570,122	
2		11,400,000	262,200,000	222,870,000	0.3333	74,282,571	11.9897%	8,906,265	25,857,143	231,285,714	0.25	57,821,429	11.9897%	6,932,622	1,973,643	
3		11,400,000	250,800,000	213,180,000	0.3333	71,052,894	12.1096%	8,604,226	25,857,143	205,428,571	0.25	51,357,143	12.1096%	6,219,148	2,385,078	
4		11,400,000	239,400,000	203,490,000	0.3333	67,823,217	12.2307%	8,295,256	25,857,143	179,571,429	0.25	44,892,857	12.2307%	5,490,712	2,804,544	
5		11,400,000	228,000,000	193,800,000	0.3333	64,593,540	12.3530%	7,979,247	25,857,143	153,714,286	0.25	39,429,571	12.3530%	4,747,085	3,232,161	
6		11,400,000	216,600,000	184,110,000	0.3333	61,363,863	12.4765%	7,656,087	25,857,143	127,857,143	0.25	31,964,286	12.4765%	3,988,037	3,668,050	
7		11,400,000	205,200,000	174,420,000	0.3333	58,134,186	12.6013%	7,325,666	25,857,143	102,000,000	0.25	25,500,000	12.6013%	3,213,333	4,112,334	
8		11,400,000	193,800,000	164,730,000	0.3333	54,904,509	12.7273%	6,987,872		49,720,000	0.25	12,430,000	12.7273%	1,582,006	5,405,866	
9		11,400,000	182,400,000	155,040,000	0.3333	51,674,832	12.8546%	6,642,589		49,720,000	0.25	12,430,000	12.8546%	1,597,826	5,044,763	
10		11,400,000	171,000,000	145,350,000	0.3333	48,445,155	12.9831%	6,289,701		49,720,000	0.25	12,430,000	12.9831%	1,613,804	4,675,897	
11		11,400,000	159,600,000	135,660,000	0.3333	45,215,478	13.1130%	5,929,092		49,720,000	0.25	12,430,000	13.1130%	1,629,942	4,299,150	
12		11,400,000	148,200,000	125,970,000	0.3333	41,985,801	13.2441%	5,560,641		49,720,000	0.25	12,430,000	13.2441%	1,646,241	3,914,400	
13		11,400,000	136,800,000	116,280,000	0.3333	38,756,124	13.3765%	5,184,228		49,720,000	0.25	12,430,000	13.3765%	1,662,704	3,521,524	
14		11,400,000	125,400,000	106,590,000	0.3333	35,526,447	13.5103%	4,799,731		49,720,000	0.25	12,430,000	13.5103%	1,679,331	3,120,401	
15		11,400,000	114,000,000	96,900,000	0.3333	32,296,770	13.6454%	4,407,026		49,720,000	0.25	12,430,000	13.6454%	1,696,124	2,710,902	
16		11,400,000	102,600,000	87,210,000	0.3333	29,067,093	13.7819%	4,005,987		49,720,000	0.25	12,430,000	13.7819%	1,713,086	2,292,901	
17		11,400,000	91,200,000	77,520,000	0.3333	25,837,416	13.9197%	3,596,486		49,720,000	0.25	12,430,000	13.9197%	1,730,216	1,866,270	
18		11,400,000	79,800,000	67,830,000	0.3333	22,607,739	14.0589%	3,178,394		49,720,000	0.25	12,430,000	14.0589%	1,747,519	1,430,876	
19		11,400,000	68,400,000	58,140,000	0.3333	19,378,062	14.1995%	2,751,581		49,720,000	0.25	12,430,000	14.1995%	1,764,994	986,588	
20		11,400,000	57,000,000	48,450,000	0.3333	16,148,385	14.3415%	2,315,914		49,720,000	0.25	12,430,000	14.3415%	1,782,644	533,271	
21		11,400,000	45,600,000	38,760,000	0.3333	12,918,708	14.4849%	1,871,259		49,720,000	0.25	12,430,000	14.4849%	1,800,470	70,789	
22		11,400,000	34,200,000	29,070,000	0.3333	9,689,031	14.6297%	1,417,479		49,720,000	0.25	12,430,000	14.6297%	1,818,475	-400,996	
23		11,400,000	22,800,000	19,380,000	0.3333	6,459,354	14.7760%	954,436		49,720,000	0.25	12,430,000	14.7760%	1,836,660	-882,224	
24		11,400,000	11,400,000	9,690,000	0.3333	3,229,677	14.9238%	481,990		49,720,000	0.25	12,430,000	14.9238%	1,855,026	-1,373,036	
25		11,400,000	0	0	0.3333	0	15.0730%	0		49,720,000	0.25	12,430,000	15.0730%	1,873,576	-1,873,576	
														<u>124,342,633</u>	<u>69,252,937</u>	<u>55,089,696</u>

600 MW Coal

Tax calculation under current tax law

Tax under C & I

Year	Cost	Deprec	Net Book	Market Value	Assessment Rate	Assessed Value	Mill Levy	Tax	Taxable Assessment		Assessed Value	Mill Levy	Tax	Difference	
									Depreciation	Value					
1	660,000,000	26,400,000	633,600,000	538,560,000	0.3333	179,502,048	11.8710%	21,308,688	79,428,571	578,571,429	0.25	144,642,857	11.8710%	17,170,554	4,138,135
2		26,400,000	607,200,000	516,120,000	0.3333	172,022,796	11.9897%	20,625,034	79,428,571	499,142,857	0.25	124,785,714	11.9897%	14,961,445	5,663,589
3		26,400,000	580,800,000	493,680,000	0.3333	164,543,544	12.1096%	19,925,577	79,428,571	419,714,286	0.25	104,928,571	12.1096%	12,706,438	7,219,139
4		26,400,000	554,400,000	471,240,000	0.3333	157,064,292	12.2307%	19,210,067	79,428,571	340,285,714	0.25	85,071,429	12.2307%	10,404,834	8,805,233
5		26,400,000	528,000,000	448,800,000	0.3333	149,585,040	12.3530%	18,478,255	79,428,571	260,857,143	0.25	65,214,286	12.3530%	8,051,327	10,422,328
6		26,400,000	501,600,000	426,360,000	0.3333	142,105,788	12.4765%	17,729,886	79,428,571	181,428,571	0.25	45,357,143	12.4765%	5,659,002	12,070,884
7		26,400,000	475,200,000	403,920,000	0.3333	134,626,536	12.6013%	16,964,701	79,428,571	111,200,000	0.25	27,800,000	12.6013%	3,503,163	13,461,538
8		26,400,000	448,800,000	381,480,000	0.3333	127,147,284	12.7273%	16,182,440		111,200,000	0.25	27,800,000	12.7273%	3,538,195	12,644,246
9		26,400,000	422,400,000	359,040,000	0.3333	119,668,032	12.8546%	15,382,837		111,200,000	0.25	27,800,000	12.8546%	3,573,577	11,809,261
10		26,400,000	396,000,000	336,600,000	0.3333	112,188,780	12.9831%	14,565,624		111,200,000	0.25	27,800,000	12.9831%	3,609,312	10,956,312
11		26,400,000	369,600,000	314,160,000	0.3333	104,709,528	13.1130%	13,730,528		111,200,000	0.25	27,800,000	13.1130%	3,645,405	10,085,123
12		26,400,000	343,200,000	291,720,000	0.3333	97,230,276	13.2441%	12,877,274		111,200,000	0.25	27,800,000	13.2441%	3,681,860	9,195,414
13		26,400,000	316,800,000	269,280,000	0.3333	89,751,024	13.3765%	12,005,582		111,200,000	0.25	27,800,000	13.3765%	3,718,678	8,286,903
14		26,400,000	290,400,000	246,840,000	0.3333	82,271,772	13.5103%	11,115,168		111,200,000	0.25	27,800,000	13.5103%	3,755,865	7,359,303
15		26,400,000	264,000,000	224,400,000	0.3333	74,792,520	13.6454%	10,205,745		111,200,000	0.25	27,800,000	13.6454%	3,793,424	6,412,321
16		26,400,000	237,600,000	201,960,000	0.3333	67,313,268	13.7819%	9,277,022		111,200,000	0.25	27,800,000	13.7819%	3,831,358	5,445,664
17		26,400,000	211,200,000	179,520,000	0.3333	59,834,016	13.9197%	8,328,704		111,200,000	0.25	27,800,000	13.9197%	3,869,671	4,459,033
18		26,400,000	184,800,000	157,080,000	0.3333	52,354,764	14.0589%	7,360,492		111,200,000	0.25	27,800,000	14.0589%	3,908,368	3,452,124
19		26,400,000	158,400,000	134,640,000	0.3333	44,875,512	14.1995%	6,372,083		111,200,000	0.25	27,800,000	14.1995%	3,947,452	2,424,632
20		26,400,000	132,000,000	112,200,000	0.3333	37,396,260	14.3415%	5,363,170		111,200,000	0.25	27,800,000	14.3415%	3,986,926	1,376,244
21		26,400,000	105,600,000	89,760,000	0.3333	29,917,008	14.4849%	4,333,442		111,200,000	0.25	27,800,000	14.4849%	4,026,796	306,646
22		26,400,000	79,200,000	67,320,000	0.3333	22,437,756	14.6297%	3,282,582		111,200,000	0.25	27,800,000	14.6297%	4,067,063	-784,482
23		26,400,000	52,800,000	44,880,000	0.3333	14,958,504	14.7760%	2,210,272		111,200,000	0.25	27,800,000	14.7760%	4,107,734	-1,897,462
24		26,400,000	26,400,000	22,440,000	0.3333	7,479,252	14.9238%	1,116,187		111,200,000	0.25	27,800,000	14.9238%	4,148,811	-3,032,624
25		26,400,000	0	0	0.3333	0	15.0730%	0		111,200,000	0.25	27,800,000	15.0730%	4,190,300	-4,190,300
								<u>287,951,361</u>					<u>141,862,157</u>	<u>146,089,204</u>	





BILL GRAVES  
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HOUSE UTILITIES COMMITTEE

H.B. 2268

Testimony of the Citizens' Utility Ratepayer Board  
By Walker Hendrix  
February 19, 2001

H.B. 2268 allows for construction work in progress for newly constructed coal-fired generating facilities and associated transmission lines. The bill also exempts these facilities from property tax for ten years after construction.

This bill permits the Corporation Commission to allow a public utility to include construction costs into the rates of customers before the facilities are ready to provide service. Although this treatment was permitted under prior law if the facilities were sited by the Commission, CURB has consistently opposed the accounting treatment for construction work in progress and believes that CWIP should not be applicable for power plants and associated utilities as a matter of law.

Public utilities are given an exclusive service territory and are accorded with a monopoly status. As regulated utilities, they are constitutionally entitled to receive a return for shareholder investment.

Construction work in progress would place the risk of constructing facilities on ratepayers by including construction costs in the rates of customers as the facilities are being constructed. Even if the facilities are determined to be unnecessary, ratepayers would be required to pay for construction. If ratepayers are going to carry the risk and financial burden of construction, they might as well own the facilities. The shareholders, in essence, would be given a free ride and be entitled to earn a return on ratepayer investment.

This practice is not common place in utility regulation, and H.B. 2268 should not be approved.

HOUSE UTILITIES

DATE: 2-19-01

ATTACHMENT 13