

Approved: March 28, 2001
Date

Carl D. 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 20, 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: Sandy Jacquot, Kansas League of Municipalities
Joan Wagnon, City of Topeka
Jim Kaup, City of Garden City
Walker Hendrix, Citizens' Utility Ratepayers Board
Anne Tymeson, Kansas Corporation Commission
Bill Griffith, Kansas Sierra Club
Donna Johnson, Pinnacle Technology
Stephen Hill, Bowersock Milling
Bob Courtney, Olathe School District
Greg Bryant, Individual
Bill Jackson, Individual
Richard Nelson, Kansas State University
Leslie Kaufman, Kansas Farm Bureau
Jon Miles, Kansas Electric Cooperatives
Burton Crawford, Kansas City Power & Light
Dick Rohlf, Western Resources
Justin Holstin, Kansas Cooperative Council
Larry Holloway, Kansas Corporation Commission

Others attending: See Attached List

HB 2397 - Intervention of cities in rate hearings before the corporation commission

Sandy Jacquot, Legal Counsel for the League of Kansas Municipalities, appeared as a proponent to **HB 2397 (Attachment 1)**. Ms. Jacquot stated that they believe a city should be authorized to intervene on behalf of their citizens in rate cases.

Mayor Joan Wagnon, City of Topeka, addressed the committee in support of **HB 2397 (Attachment 2)**. Mayor Wagnon explained that the need for this legislation was a result of several recent Kansas Corporation Commission orders allowing cities to intervene in public utility proceedings only in their limited capacities as utility customers. She also expressed concern over the Citizens' Utility Ratepayer Board providing adequate representation to both commercial customers and individual citizens.

Jim Kaup, appearing on behalf of the City of Garden City, appeared in support of **HB 2397 (Attachment 3)**. Mr. Kaup stated that there was no argument, other than convenience, that could be offered in support of a position that city residents should not be able to use their collective voice to express their interests in utility rate matters. He also explained that individual residents normally have neither the technical background nor the financial means to appear and represent their individual interests. Where these individual interests may be in conflict with CURB, they are not heard. Cities, through their governing bodies, are best able to do so.

Walker Hendrix, Consumer Counsel for the Citizens' Utility Ratepayer Board (CURB), spoke to the committee as a neutral party to **HB 2397 (Attachment 4)**. Mr. Hendrix explained that current Kansas law gives CURB the official intervener status to represent residential and small business customers. CURB also works with cities to help them represent their municipal clients.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 526-S Statehouse, at 9:07 a.m. on February 20, 2001.

Anne Tymeson, Assistant General Counsel for the Kansas Corporation Commission, stated that the Commission took no position on **HB 2397 (Attachment 5)**. Ms. Tymeson did state that the committee might wish to change CURB's enabling statutes should this bill pass.

A member of the committee specifically questioned Ms. Tymeson regarding the City of Garden City's request to intervene in a rate case last year. All conferees then responded to questions from the committee.

Chairman Holmes closed the hearing on **HB 2397**.

HB 2245 - Electric generation from renewable resources; contracts for parallel generation; income tax credits

Bill Griffith appeared on behalf of the Kansas Sierra Club in support of **HB 2245 (Attachment 6)**. Mr. Griffith said that the utilities will benefit from this bill by their encouragement of customer distributive generation. This would improve their distribution voltage profile and could reduce line losses.

Donna Johnson, President of Pinnacle Technology, Inc., spoke as a proponent of **HB 2245 (Attachment 7)**. Ms. Johnson stated that the bill was a good start at promoting renewable energy development in the state. She also addressed a few areas of concern.

Mr. Stephen Hill, owner of the Bowersock Mill in Lawrence, also spoke in support of **HB 2245**.

Bob Courtney, Energy Manager for the Olathe Unified School District, addressed the committee in support of **HB 2245 (Attachment 8)**. Mr. Courtney explained how this bill would enhance the school district's wind generation capability to help offset rising utility expenditures.

Greg Bryant spoke in favor of **HB 2245 (Attachment 9)**. Mr. Bryant explained that he is considering the feasibility of investing in a wind turbine and was encouraged by the proposals contained in the bill.

Bill Jackson appearing in favor of **HB 2245 (Attachment 10)**. Mr. Jackson is also considering the purchase of a wind turbine. He stated that the bill was a good start, but he had some concerns.

Richard Nelson spoke in favor of **HB 2245 (Attachment 11)**. Dr. Nelson works in the field of renewable energy resources and is particularly interested in biomass, biodiesel and wind. Dr. Nelson addressed those interests in his remarks.

Leslie Kaufman, Associate Director for the Public Policy Division of the Kansas Farm Bureau, testified in support of **HB 2245 (Attachment 12)**. Ms. Kaufman explained that the Kansas Farm Bureau had recently reaffirmed and strengthened their commitment for initiatives that can increase renewable fuel use.

Jon Miles, Vice President of Governmental and Technical Services for Kansas Electric Cooperatives, appeared as a proponent for **HB 2245 (Attachment 13)**. Mr. Miles stated they felt the bill correctly approaches the issue of parallel generation and the provision for compensating the consumer at a rate equal to the cooperative's avoided cost is addressed.

Burton Crawford, Kansas City Power & Light's Manager of Deregulation Issues, appeared in opposition to **HB 2245 (Attachment 14)**. Mr. Crawford expressed three concerns with the bill in that it: 1) requires a utility to purchase energy at a rate above their avoided cost, 2) places additional liability on the regulated utility and 3) may shift distribution costs to other customers.

Dick Rohlfs, Regulatory Requirements Senior Manager at Western Resources, spoke in opposition to **HB 2245 (Attachment 15)**. Mr. Rohlfs expressed concerns that this proposed legislation could be in conflict with the Public Utilities Regulatory Policy Act and suggested that utilities should be responsible for metering and the customer responsible for the protective devices.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 526-S Statehouse, at 9:07 a.m. on February 20, 2001.

Justin Holstin, representing the Kansas Cooperative Council, stated they did not have a position on **HB 2245** (Attachment 16). Mr. Holstin indicated that if an amendment were offered to allow farmer-owned cooperatives to invest in the production of renewable energy they would be able to support the bill as a whole.

The Chief of Energy Operations for the Kansas Corporation Commission, Larry Holloway, addressed the committee on behalf of the Commission (Attachment 17). Mr. Holloway stated that the Commission generally supports renewable energy, however, they are concerned that this bill would provide a subsidy for renewable energy, possibly at the expense of all ratepayers.

The conferees responded to questions from the committee.

Chairman Holmes closed the hearing on **HB 2245**.

The meeting adjourned at 10:25 a.m.

The next meeting will be Wednesday, February 21, 2001.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: _____ February 20, 2001 _____

NAME	REPRESENTING
Aleg Bryant	self
Bill Jackson	self
BURTON CRAWFORD	KCPCL
TOM DAY	KCC
Joe Duck	KCKBPU
Anne Tymeson	KCC
Jon Miles	KCC
Richard Nelson	MANHATTAN -
BOB COURTNEY	OLATHE SCHOOL DISTRICT
DOWNIA SUHNEW	PINNACLE TECHNOLOGY
Judy Jacquot	LKM
Bill Miller	Univ. Service Club
John Pinegar	City of Topeka
Diane Hunter	Kansas Coop Council
Dave Holman	WR.
Wade F. Rokke	Western Resources
JC Jones	UCM
Justin Holstin	Ks Co-op Council
Leslie Kaufman	Ks Farm Bureau
Patrick Hurley	KCPCL

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 20, 2001

NAME	REPRESENTING
Cynthia Smith	KCP
WALKER HENDRIX	CURB
Jim Ploger	KCC
Ken Peterson	
Bruce Graham	KEPCo
Gary Holloway	KCC
Susan Cunningham	KCC
Stephen Hill	Powerco



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

League of Kansas Municipalities

TO: House Utilities Committee
FROM: Sandy Jacquot, Legal Counsel
DATE: February 20, 2001
RE: HB 2397

Thank you for allowing the League of Kansas Municipalities to testify today in favor of HB 2397. It has been our understanding that cities have had the ability to intervene in utility rate cases as individual consumers, but have been denied the ability to intervene on behalf of their citizens. We believe that a city, as a representative of all of its citizens, should be authorized to intervene on their behalf and offer comments pertaining to those citizens, rather than just as a large consumer. Therefore, the League requests that the Committee report HB 2397 out favorably. Thank you again for allowing the League to testify as a proponent on this bill.

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ATTACHMENT 1



Memorandum

Office of the Mayor

Date: February 20, 2001
To: House Committee on Utilities
Room 526-South

From: Joan Wagnon, Mayor

Re: HB 2397

The need for this legislation has arisen as a result of several recent Orders by the Kansas Corporation Commission allowing cities to intervene in public utility proceedings in their limited capacities as utility customers, but prohibiting cities from representing the interests of their own citizens. A series of such Orders were issued in KCC Docket No. 97-WSRE-676-MER involving the proposed merger between Western Resources, Inc. and Kansas City Power & Light Company ("the Western/KCPL Merger Docket"). While the City of Topeka and the City of Wichita were allowed to participate in that docket as customers of KPL and KGE, respectively, their requests to represent the interests of their own citizens were denied.

In the Western/KCPL Merger Docket, the KCC initially reasoned that the interests of each city are distinct from that of its citizens and that the interests of municipal citizens would be represented by CURB. See, e.g., KCC Docket No. 97-WSRE-676-MER (Order, filed Jan. 25, 1999, at para. 3). In acting upon Wichita's request for reconsideration, the KCC stated: **"While the desire of the City to advocate a position on behalf of its individual and commercial citizens may be**

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ATTACHMENT 2

understandable, it is simply not provided for by law.” Id. (Order No. 25, filed Feb. 19, 1999, p. 2 at para. 5) (emphasis added).

The KCC’s rationale for prohibiting cities from representing the interests of their own citizens is problematic for several reasons. First, as municipal corporations, cities are charged with the responsibility for representing and protecting the interests of their respective citizenry – just like corporations must represent and protect the interests of their shareholders. Second, in the Western/KCPL Merger Docket, the interests of intervening cities were identical to the interests of their citizen ratepayers. For example, Topeka and its citizens uniformly opposed shifting the costs of Wolf Creek to KPL ratepayers.

Third, CURB may be unable to provide adequate representation to the commercial and individual citizens of a municipality in certain utility proceedings. For example, when the interests of commercial and resident ratepayers are divided, CURB cannot credibly or reasonably attempt to represent the conflicting interests of such ratepayers. It would be unreasonable to suggest that CURB can adequately represent the interests of all commercial and residential consumers in Kansas on an issue such as “rate parity” between KPL and KGE since the interests of KPL ratepayers clearly conflict with the interests of KGE ratepayers. This sort of conflict existed in the Western/KCPL Merger Docket and currently exists in Western’s pending rate case scheduled for hearing in May of this year. In addition, because CURB has a fixed budget with limited staff and resources, it must carefully allocate its resources in a manner that does not coincide with municipal citizens in a particular docket.

LOGAN RILEY
CARSON & KAUP, L.C.

9200 INDIAN CREEK PARKWAY, SUITE 230

OVERLAND PARK, KS 66210

(913) 661-0399

FACSIMILE (913) 661-9757

CATHERINE P. LOGAN*
DOROTHEA K. RILEY**
MARY F. CARSON
JAMES M. KAUP
QUENTIN L. BROWN, OF COUNSEL*

* ADMITTED IN KANSAS AND MISSOURI
** ADMITTED IN MISSOURI
ALL OTHERS ADMITTED IN KANSAS

700 JACKSON STREET
JAYHAWK TOWER BUILDING
ROOF GARDEN SUITE
TOPEKA, KS 66603
(913) 233-5223
FACSIMILE (913) 233-9247

1500 MERCHANTS BANK BUILDING
1125 GRAND AVENUE
KANSAS CITY, MO 64106
(816) 221-7757
FACSIMILE (816) 842-9704

LEGISLATIVE TESTIMONY-----CITY OF GARDEN CITY

To: Chairman Holmes and Members, House Utilities Committee
From: Jim Kaup, on behalf of the City of Garden City
Re: Support for House Bill 2397; Intervention in KCC Rate Matters
Date: February 20, 2001

On behalf of the City of Garden City I am appearing today in support of HB 2397.

A city is both a "body corporate" and a "body politic".

There appears to be no issue as to the propriety, the necessity, of a city being able to intervene in utility rate matters before the Kansas Corporation Commission, when it does so in its corporate capacity--as a consumer of the service provided by that utility. A city which, for example, buys and uses electricity to operate its public water supply and treatment system, and to keep its street lamps lit. A city which buys natural gas to heat the public library and the fire station can intervene in rate proceedings, again as a consumer of that utility's product.

There should likewise be no question that a city should also be allowed to intervene in that very same KCC rate matter in its role as the "body politic", the political body which it is. Cities are people. They are public entities whose residents elect representatives and charge them with protecting and advancing the public's health, safety and welfare at the city level---just as you are elected and charged to do at the state level.

We can think of no argument--other than convenience--that can be offered up in support of a position that city residents should not be able to use their collective voice to express their interests in utility rate matters.

Convenience is not enough to justify a state law, policy or practice that prevents that collective voice of citizens from being heard.

The City of Garden City respectfully asks for your favorable action on HB 2397.

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ATTACHMENT 3



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

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

HOUSE UTILITIES COMMITTEE
H.B. 2397

Testimony of the Citizens' Utility Ratepayer Board
By Walker Hendrix
February 20, 2001

H.B. 2397 would permit a city to intervene on behalf of its residents in proceedings before the Corporation Commission.

The Commission has traditionally granted intervention to cities, but has limited their intervention to representation of the city's own electric usage and not to the representation of the residents.

In limiting the intervention of a city, the Commission has made a legal determination under the civil procedure statute, K.S.A. 60-224 (a), that CURB is an existing party who has a statutory obligation to represent residential and small business customers. The Commission also has limited intervention under K.S.A. 77-521 where the Commission has been given authority to impose conditions on an intervener's participation in a proceeding.

Under Kansas law, CURB is given official intervenor status to represent residential and small business customers. In this capacity, CURB has worked with intervening cities and has supported the cities in their efforts to lower rates. CURB is appreciative of the help given by cities, because CURB's budget is limited and often times the cities will lend support which enhances consumer representation. For cities who have had limited experience before the Commission, CURB works with counsel to help them represent their municipal clients.

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CURB does not object to the cities intervening in public utility cases and is supportive of the role cities fulfill.

The limitation of representation by cities is based on the legal principle of standing and the nature of how many parties are able to represent a particular interest. CURB has standing to represent small customers which for the most part include the residents of a city.

There are issues, such as the issue of rate parity which currently separates the cities of Wichita and Topeka, where CURB is reluctant to choose sides and where the cities are clearly better at advancing the concerns of their respective citizens.

The Commission has existing statutory authority to expand the representation by cities and should do so when it is practical to do so. If the Commission properly exercises its discretion under current law, cities can fully participate and the Commission can properly align the interests to permit the orderly conduct of public utility rate proceedings.

**BEFORE THE HOUSE UTILITIES COMMITTEE
PRESENTATION OF THE KANSAS CORPORATION COMMISSION
FEBRUARY 20, 2001
HOUSE BILL 2397**

Thank you, Chairman and members of the Committee. I am Anne Tymeson, Assistant General Counsel for the Kansas Corporation Commission. I appreciate the opportunity to testify for the Commission today on House Bill 2397.

The Commission takes no position on House Bill 2397, but I would like to share several concerns the Commission has with the bill. If passed, the bill requires the Commission to permit a city to intervene, on behalf of its residents, in any rate proceeding that involves the rates of a public utility serving the residents of that city.

The Commission first notes that the Citizens' Utility Ratepayer Board's consumer counsel is authorized by statute¹ to represent the interests of all residential and small commercial customers in the State of Kansas. In fact, the statutes specifically permit CURB's consumer counsel to function as the official intervener in rate cases filed with the Kansas Corporation Commission. Since CURB was established by law, at one time CURB must have been deemed to be the appropriate entity to represent the interests of residential and small commercial customers. If this bill is passed, the Commission suggests that CURB's enabling statutes must also be amended. Without also amending CURB's enabling statutes, the passage of House Bill 2397 could result in two separate and unaffiliated attorneys purporting to represent the same client, namely residential and small commercial ratepayers.

An additional concern with House Bill 2397 is the legal question of standing. The

¹K.S.A. 66-1222 *et seq.*

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Commission has regulations in place which govern intervention in proceedings before it.² To be granted intervention, a petitioner must demonstrate that its legal rights, duties, or privileges may be substantially affected by the proceeding. It may be arguable whether a city will be able to demonstrate that its legal rights or duties will be affected if it is not permitted to intervene on behalf of its residents. It is important to note that the Commission rarely, if ever, denies intervention to any party. To my knowledge, a city has never been denied intervention in any proceeding before the Commission. The Commission does on occasion limit a party's intervention to certain issues, or requests that one or more interveners consolidate discovery or cross-examination.

A final concern with House Bill 2397 is the possibility of conflict of interests that may arise when a city intervenes on behalf of its residents. If a city is a franchiser to a public utility through the granting of access to rights-of-way, the city has a particular interest in a Commission proceeding for which it should intervene. If the same city also intervenes on behalf of its residents, the interests of the city on behalf of its residents may be divergent from the city's interests as a franchiser, thereby resulting in a conflict of interest.

Unless there are questions from the Committee, I have no further comments on House Bill 2397. Thank you for the opportunity to appear before you this morning.

²K.A.R. 82-1-225

TESTIMONY ON HB 2245

BY
BILL GRIFFITH

Thank you Mr. Chairman and members of the committee for the opportunity to speak on HB 2245. I recall the meeting last fall when parties interested in the subject of net metering gathered here and worked on this issue attempting to find the common ground. This bill does allow that goal to be reached in no small degree for many Kansans.

The Kansas Chapter of the Sierra Club supports HB 2245 because of its objective of narrowing the gap between the avoided cost that is now proffered by utilities to independent power producers and the retail rate they are charged. This rate has caused frustration among independent producers for years. Kansas has the dubious distinction of having the largest spread between the two rates of any state in the country.

My friend Paul Burmeister, of Claflin gets 3 cents and pays out 8. Larry Spiva owns a wind turbine down at Belle Plaine. Mr. Spiva receives 2 cents and is charged 9.5 cents. These are just some of the disparities that exist and that discourage folks who wish to generate some of their own power. Over thirty states have addressed this discrepancy and it is time we did as well.

This bill will increase the economic value of small renewable energy technologies for customers. In Kansas this will be done primarily with wind turbines. Kansas is the third windiest state and as Governor Graves stated at the Kansas Wind Conference this summer in Manhattan, "WIND IS AN ENERGY RESOURCE WE CAN'T IGNORE. IT IS IMPORTANT TO US BECAUSE IT IS A DOMESTIC SOURCE. IT IS HERE FOR US TO HARNESS." I am heartened but not surprised at the Governor's endorsement of the next important Kansas crop. Wind's potential to help this state's economy is truly eye-opening.

2245 will make it easier economically for independent power producers to use the utility grid to "bank" their energy. This banking ability affords self-generating customers more flexibility. They do not have to alter their consumption or install energy storage devices to maximize the value of their generation.

The utilities will also benefit from this bill. By encouraging distributed customer generation they can improve their distribution voltage profile and reduce losses. If they choose to use only one meter they could reduce their administrative costs because there is only one meter to read and no special

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accounting such as cutting a check for one dollar that costs ten dollars to generate. I hope the utilities will recognize the good public relations that can be gained by supporting renewable energy efforts such as this one.

I am concerned, however, that this legislation excludes customers of rural electric cooperatives. Areas covered by the cooperatives have excellent wind regimes and many wind enthusiasts. Moreover, the number of independent producers in any one rural electric cooperative would be small enough not to interfere with the cooperatives power grid. Other states have not had a problem in this area. I would hope the committee would expand the eligibility requirements to include everyone who wishes to generate their own power in a safe, well-established manner.

In lieu of net metering such as most states have this legislation will give better compensation for independent producers and encourage others to follow in their footsteps. Thank you.

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**Utilities Committee
Kansas House of Representative
Testimony on HB 2245**

By

Donna Johnson, President
Pinnacle Technology, Inc.
619 East 8th Street, Suite D
Lawrence, Kansas 66044
(785) 832-8866
donnai@pinnacle.com

Thank you Mr. Chairman and members of the Committee for allowing me to testify in support of HB 2245 (with concerns but with hopes of altering the legislation). I would first like to start by thanking the members for their strong interest and support of renewable energy technology in the state. As you all know by this point, Kansas has a wealth of renewable energy options that are available, including wind, ethanol, biodiesel and solar. Today, I would like to address HB 2245 with respect to developing wind energy as a means of generating electricity within the state.

However, before I address this bill, I would like to express my regrets for not being able to attend last week's hearing on HB 2267 and would like to express my full support for that legislation and encourage you to move forward rapidly with this important legislation. I have separate testimony that I would like to leave with you regarding that legislation and in addition, Dodge City School District will be providing written testimony this week supporting the bill. Regretfully, many of wind energy proponents do not have full time lobbyists nor jobs that pay us to be before you today. I did not hear about the hearing last week until 11 pm the night before and was unable to change my commitments for that morning. I apologize for the delay and hope that you realize that our absence that morning in no way reflects a lack of support or interest.

As you all know, Kansas has the third best wind resource in the nation. Only Texas and North Dakota have more potential wind resources. However, while we have these resources, we lag well behind many other states in developing wind power. A recently released study examined the economic impacts of developing wind energy in Nebraska. Nebraska ranks sixth in the potential for wind development, but like Kansas only has a couple of megawatts installed in demonstration projects. This study found that the total net benefits to the state economy of developing wind power instead of coal and natural gas are nearly \$15 million per year over a 20-year period. This was based on generating 10% of Nebraska's electricity from wind (800 MW) by the year 2012.

New jobs and economic activity come from building, operating, and maintaining wind facilities as well as from local business supplying goods and services to support those activities. Eight hundred megawatts of wind would create 360 more jobs, \$8 million more in earnings and \$35 million more in gross state product than the same power produced by coal or natural gas. If Kansas makes a major commitment to wind, it would also encourage the development of manufacturing facilities that build wind components.

"Wind Farming" is also becoming common in many rural areas. Returning to the Nebraska numbers, if 800 MW of wind were developed, local farmers would receive approximately \$2.2 million in lease payments, assuming \$2,000 per year for each turbine installed on their property.

All of these benefits would most likely help the counties that need them the most. Many of Kansas's windiest counties, also have low median income levels, and declining populations. Pinnacle is currently working with JAL Research to do a pre-economic survey at some of the

areas in Kansas where wind energy has the best chance for initial development. We are focusing on Kiowa and Gary Counties where Clipper and Florida Power and Light are looking at sites for wind farms. The State Energy Program is funding this study.

One additional point that I would like to address is the statement "*wind cannot be counted on since there are times when the wind does not blow.*" This statement is true if we only look at one turbine at one specific site. However, the final page of this testimony is a graph by the National Renewable Energy Laboratory that explores how, as a group of turbines is added to the power grid in a locale, the wind fluctuations are no longer seen in the total power output. As we expand this further over the state, the wind might be very low in Topeka at 3 pm on February 20, but more than likely that same wind regime is not seen in Wichita or Garden City. Our weather patterns in this state usually move from west to east and south to north so the odds that the wind will stop blowing all over the state at the same time is relatively small.

The statement also assumes that baseload power must always be available, as opposed to being statistically available. On average, a wind farm will produce some fixed amount of power over time. In the same sense, on average, a large thermal plant like the Lawrence Energy Center will produce about 300 MW of power, but for the next several weeks the plant will be shut down for maintenance, and the load will be picked up by other generation sources. The lights in Lawrence will not even flicker. Is it any more difficult to say that the Lawrence Energy Center will not be producing any power in March then it is to say that a particular wind farm will not be producing much power in August?

HB 2245 is a good start at promoting renewable energy development in the State. However, I do have a few issues with several sections.

The first area of concern is Section 2.b.2. By tying the tax credits to the payment rate versus avoided cost, this arguably violates PURPA because it provides for a sale above avoided cost.

We are proposing instead net metering, which involves an offset or exchange of power rather than a sale, so there are no PURPA violations. Net metering provides a very simple, inexpensive means for customers to connect their renewable energy system to the grid using their existing electricity meter (that the vast majority of meters used in residential and small commercial applications are bidirectional). This reduces the cost of the hook-up to either the customer or the utility by \$200 to over \$1,000. This is obviously very important for small-scale generating facilities.

Net billing policies simplify the process of metering, accounting, and administering these small-scale facilities. These customers are usually still net *purchasers* of electricity over the billing period, and still pay their regular utility bills. The bills are simply smaller, reflecting the difference between the electricity the customers consumed and the amount they generated during the billing period. Utilities avoid the administrative burden of reading a second meter, calculating the value of electricity purchased from the customer, and cutting a check to the customer (often for amounts as small as \$1). The overall cost to the utility is minimal (Appendix A).

- * The eligible customer-generator shall be a customer who owns and operates an electrical generating facility with a capacity of not more than 1000 kW and is intended primarily to offset part or all of the customer's own electricity requirements.
- * Eligible customers are available for net metering on a first come, first serve basis for the 100 MW or 1% of the state's electric production, whichever is less.
- * The period during which the net energy measurement is calculated shall be annualized.
- * At the end of the period, any remaining unused credit for the excess kilowatt hours generated by the customer-generator shall be purchased by the local utility or distribution company at its avoided cost.

The second area of concern is Section b.2 and 3 on interconnection. Customers are required to pay for all interconnection equipment for systems above 10 kW, and allow the utility to limit production from the customer's facility "for purposes of insuring the safety and quality" of the utility's power system, and allow a utility to "require a special agreement for conditions related to technical and safety aspects of parallel generation."

- * We propose that interconnecting facilities shall meet safety and power quality and interconnection codes and standards established by the National Electrical Code, Institute of Electrical and Electronics Engineers and accredited testing laboratories such as Underwriters Laboratories.

The third area of concern is that since this is a tax credit based legislation, areas served by the Rural Electric Cooperatives and the Municipal Utilities are not covered. By implementing a net billing program instead of tax credits, renewable energy options are open to all Kansas citizens and not a select group.

By proposing these changes, we realize that we have excluded small generators who are in the business of producing electricity from renewable resources, out of the legislation. In order to promote small-scale renewable electricity generation, we are proposing that the state investigate standard contracts as a means of purchasing this power at a cost other than avoided cost. It's critical to protect the existing renewable generation operators that we have in this state and pay them a fair rate for their power. By diversifying the state's energy portfolio to the maximum extent possible, we leave ourselves in the best position to have a secure energy future.

Appendix A

Data From Court Testimony Supreme Court of Iowa

No. 99-1529

BRIEF OF AMICI CURIAE RENEWABLE ENERGY ADVOCATES

Thomas J. Starrs
Kelso Starrs & Associates LLC
14502 SW Reddings Beach Road
Vashon, WA 98070

Portion of Testimony Referenced Above that relates to costs of Net Billing:

During MidAmerican's hypothetical week, the utility delivers 32 kWh to the customer and the customer generates 28 kWh. The customer consumes 50 kWh, and the remaining 10 kWh is delivered to the utility and allowed to offset an equal amount of electricity delivered to the customer during the remainder of the billing period. The practical effect of these metering options depends on the retail and avoided cost prices. MidAmerican indicates that its retail rate is approximately \$0.07 per kWh, and that its avoided cost is \$0.015 per kWh. Attachment D, appended to this brief, illustrates that these figures lead to the following results: Offering this hypothetical customer net billing (instead of net purchase and sale) saves the customer – and costs the utility – \$0.43 for the week. Assuming similar patterns of production and consumption over the year, the equivalent monthly and annual differences are \$1.86 and \$22.36 respectively.

Thus, net billing provides the customer with an incremental economic benefit in the form of a lower bill, which in turn means lower revenues for the utility. In the absence of any other allegations of harm, it appears to be this loss of revenue that is troubling MidAmerican. It should not be so troubled. Although the incremental effects of net billing can be significant from the customer's perspective, where bill savings of even a few dollars a month may represent a significant portion of the customer's bill, these few dollars a month are inconsequential in the context of even a small utility's annual revenue requirement.

A more generalized analysis of these revenue impacts and their implications for MidAmerican's shareholders or ratepayers confirms that even on a much larger scale the effects of offering net billing are trivial. According to the Iowa State Energy Office, MidAmerican currently has total net billing obligations of 270 kW (including the three complainants in these cases).

Appended as Attachments E-1, E-2, and E-3 are the results of an analysis performed on behalf of the Renewable Energy Amici using an economic model that assesses the revenue and rate implications of MidAmerican's net billing program. The analysis assumes three levels of market penetration by net billing customers. The first run of the model corresponds to a baseline estimate of 300 kW of net billing capacity, roughly 10 percent higher than MidAmerican's current net billing enrollment. The second and third runs assume net billing customer facilities with generating capacities ten times and one hundred times higher than the baseline level (3 MW and 30 MW respectively) in order to assess the 'worst-case' effects of dramatically higher levels of market penetration by net billing customer facilities in MidAmerican's service territory. The economic model lists the operational assumptions regarding the net billing facilities, and it derives the data for MidAmerican's total kilowatt-hour sales, revenues, and other financial data from MidAmerican's 1997 Annual Report.

The results of the analysis are summarized in Table I, which shows for each level of market penetration the effect on either shareholders (column B) or ratepayers in different

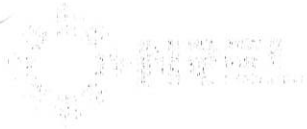
customer classes (columns C, D, E) being asked to absorb the revenue losses from customer net billing facilities.

Table I. Summary of 'Worst Case' Economic Impacts From MidAmerican Implementation of Net Billing

Column: A	B	C	D	E
Amount of Generating Capacity Enrolled in MidAmerican Net Billing Program	Effect on Shareholders, Change in Earnings Per Share (\$ and % Change)	Effect on Residential Customers, Bill Increase (\$/month and % Change)	Effect on Small General Service Customers, Bill Increase (\$/month and % Change)	Effect on Large General Service Customers, Bill Increase (\$/month and % Change)
300 kW	\$0.00 (-0.02%)	\$0.00 (0.00%)	\$0.01 (0.00%)	\$0.89 (0.00%)
3,000 kW	\$0.00 (-0.17%)	\$0.01 (0.02%)	\$0.07 (0.02%)	\$8.93 (0.04%)
30,000 kW	\$0.03 (-1.73%)	\$0.09 (0.17%)	\$0.75 (0.23%)	\$89.55 (0.37%)
Assumptions detailed in Attachments. EPS figures from MidAmerican 1997 Annual Report. Assumed customer usage: Residential 600 kWh/month; Small General Service 5,000 kWh/month; Large General Service 600,000 kWh/month. Retail rates derived from MidAmerican 1997 Annual Report: Residential \$0.0881/kWh; Small General Service \$0.0663/kWh; Large General Service \$0.0402/kWh. Corresponding base bills from which percentage bill increases are derived: Residential \$52.86; Small General Service \$331.50; Large General Service \$24,120.				

This analysis indicates that even if the amount of generating capacity subject to net billing increased 100-fold, corresponding to 30 MW of net billing capacity in MidAmerican's service territory, the incremental revenue losses from offering net billing (as opposed to net purchase and sale) would barely register on MidAmerican's shareholders or customers. Residential customers, for example, would see a monthly bill increase of nine cents per month.

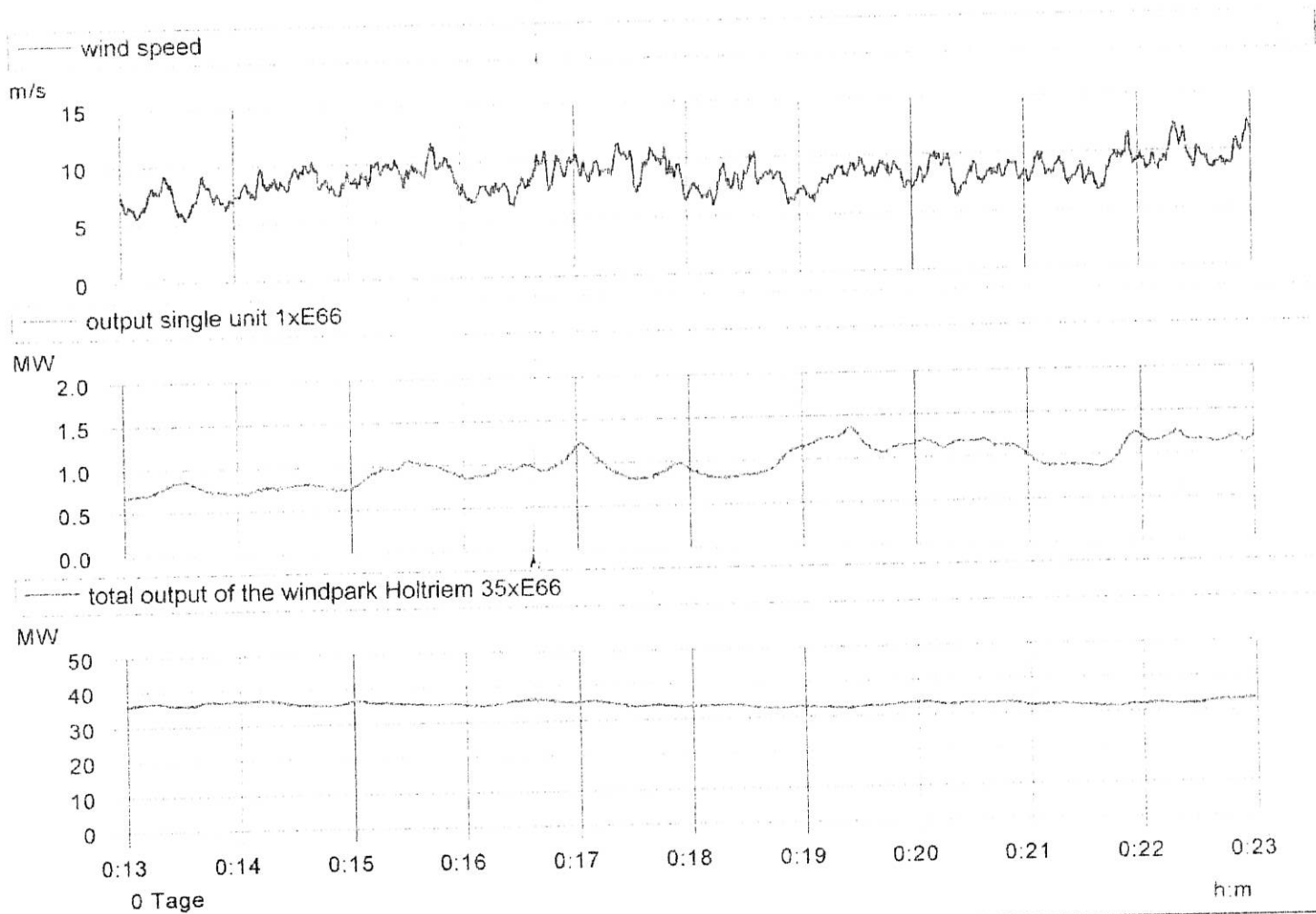
(Note: Pinnacle believes that these numbers will be even less since the assumption made above is that the power not purchased by the renewable customer will not be sold. We believe that in most cases this power will be sold to another customer since states have increasing demands for electricity each year.)



Utility Analysis

6/27

Wind Power Smoothing at a Wind Farm



windpark Holtriem 35 * E 66
output of the windpark/single unit about 10 minutes



HOUSE UTILITY COMMITTEE

February 20, 2001
Room 526 S - Statehouse
Topeka, Kansas

I am Bob Courtney, Energy Manager for the Olathe Unified School District #233, a position I have held for the past 9 years. In my remarks today, I will present some background information to support legislative action in favor of "Net Metering."

Our school district has 51 total buildings, 20,800 students, and over 3,000 staff.

Our annual utility expenditures are around \$2,800,000. We are the 4th largest district in the state. We grow at the rate of about 600 additional students a year.

We closely monitor energy consumption in our district. Over the last 8 years, our square footage has increased 44% while our utility expenditures have risen only 27%. We vigorously pursue efficient use of all energy to conserve tax dollars.

The current uncertainty of the energy market seems to emphasize the need for renewable energy sources as we look to the future.

Last spring, it was indicated the cost of natural gas was going to increase significantly.

\$400,000 was added to the line item for natural gas in the school's budget, doubling what we normally spend. What we could not foresee was the severity of the record

winter temperatures. This situation created a "double-double." The gas costs more than doubled and the consumption more than doubled, also. During just the first half

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of the school year, the district has had to expend \$300,000 of the extra \$400,000 allotment.

Governor Graves has proposed a \$50 increase in the Basic State Aid Per Pupil (BSAPP). Our projected enrollment will be over 21,000 next school year (2001 - 2002). 21,000 students times \$50 each would be \$1,050,000. We are planning to increase our natural gas budget by an additional \$500,000 next year. In addition, one of our electric providers has a rate change on file with the KCC that would increase costs annually by 19% (as currently filed), or an increase of \$120,000. These two increases combined would consume over half of the governor's proposed BSAPP increase to our district. This money would go to utility companies rather than school curriculum and instruction. Schools are similar to patrons on fixed income. Our dollars are limited. Extreme changes in expenses are difficult.

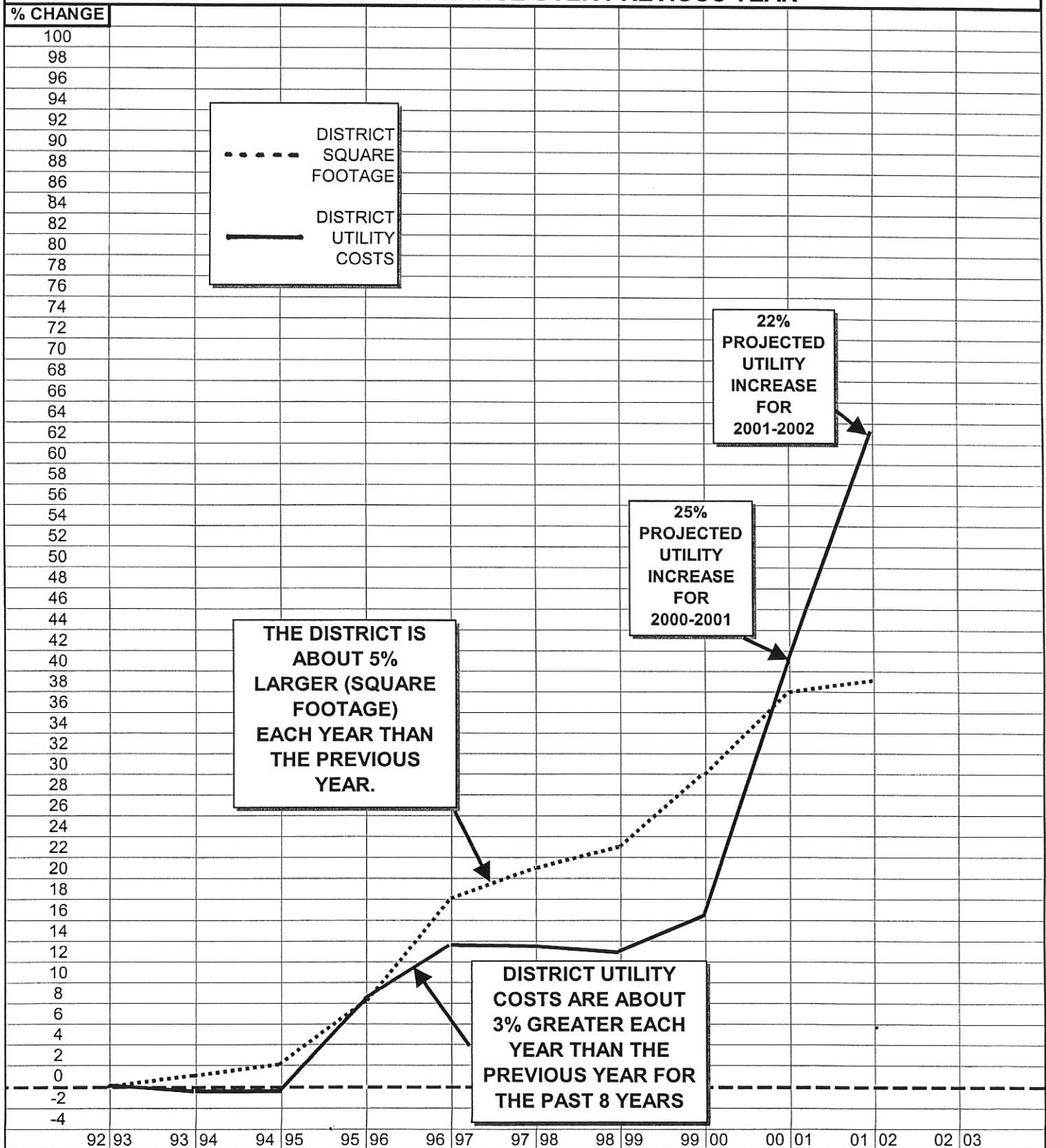
Again, what better time to consider renewable energy sources to give us needed options.

Kansas is the 3rd leading state (following South Dakota and Texas) with potential for wind energy production because of natural weather conditions. Kansas could be an exporter of wind-generated electricity with the right legislation in place. 32 states now have some form of net metering which encourages wind energy production. Kansas could be next. We need to wisely develop this resource. HB2267 is supported as is HB2245 with modification.

Thank you

8-2

PERCENTAGE CHANGE OVER PREVIOUS YEAR



8-3

Testimony in favor of HB 2245 by Greg Bryant

February 20, 2001, 9:00 a.m. -- Kansas House Committee on Utilities -- Carl Holmes, Chair

Mr. Chairman and members of the committee, thank you for this opportunity to address HB 2245. I'm Greg Bryant from Robinson, and I'm here as a homeowner who is considering buying a residential-size wind turbine, as a member of Brown-Atchison Rural Electric Cooperative, and as a citizen interested in the future of Kansas's energy production.

My wife Susan and I recently moved to a windy hill in the country. I watch the trees bend in the wind day after day while I work my calculator trying to determine if investing in a wind turbine would pay off before the warranty runs out.

So you can guess that I support HB 2245, but with some qualifications. This bill and several others introduced this session would use the state's authority to break Kansas out of its inertia regarding renewable energy. This is wise. Kansas is rich in untapped renewable resources, including its world-famous wind. Bills like this can help us compete.

There is an obvious reason this is important. When natural gas prices spiked this winter, the wind and sun were still free. Unfortunately, this didn't help Kansas consumers because our state relies almost completely on non-renewable energy sources.

Some less obvious reasons to encourage development of renewable energy:

- little or no waste
- less toxic waste
- buying Kansas resources as opposed to importing them
- "modular" construction -- *i.e.*, erect a few wind turbines or solar arrays immediately, then add more as needed

And because of this modular quality, encouraging consumer-generators adds these values:

- the possibility of "distributed" generation all over the grid, instead of at a few centralized plants
- the opportunity for consumers, cooperatives, schools, and cities to participate directly in the development of renewable energy

The cost to the utilities of maintaining capacity, which seems to get emphasized to the exclusion of all other factors when the subject of avoided cost comes up, is in fact receding relative to the cost of fuel. It is appropriate to compensate consumer-generators at a higher rate than in the past.

And a higher rate will help relieve consumer-generators of the pressure to size their equipment exactly to their own consumption. Larger equipment takes advantage of the economy of scale and also makes more renewable energy available to neighboring consumers.

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Some form of net metering, one of the most aggressive incentives for the development of co-generated power, is already in place in more than 30 states, but not in Kansas. Properly amended, 2245 would be a step in the right direction. 70% of the residential consumer rate (85% for hydropower) is a respectable fragment of net metering and would help consumer-producers justify the substantial investment.

It's been argued that this bill raises the rates consumers now pay for renewable energy. After all, they can get a kilowatt-hour of co-generated power for about two cents now. Why approximately double it?

But this is a false picture, for two reasons. First, there is almost no renewable energy on the market at any price, so consumers aren't benefiting from that legendary two-cent-per-kilowatt-hour rate. Second, most of what exists is generated by two wind turbines owned by a large utility. Consumers who elect to buy this power pay \$5 per 100 kilowatt-hour block *in addition to* the consumer rate. This is falsely inflated.

A bill like 2245, by attracting consumer-generators to the marketplace, would improve the customer's options. Consumers and consumer-generators would mutually benefit.

Or some of them would. This brings up the major flaw in 2245, from my point of view:

Why should municipal utilities and cooperatives be excused and allowed to pay the minimal "avoided cost" rate?

As a cooperative member, I cannot see the logic of this exemption. Even if I weren't hoping to install a wind turbine, I would welcome the economy of buying energy from a neighbor who did. And I would like to see my local municipality, schools, and farming neighbors have the opportunity to participate in this market. Many other REC members feel this way, too.

Cooperative members are typically rural, and are more likely to have a place to erect a wind generator, solar array, or other renewable plant. From my point of view as a potential generator, this exemption makes the bill worthless. And from my point of view as a consumer and citizen who wants to see renewable alternatives developed, excluding municipal utilities and cooperatives defeats the purpose of the bill.

I urge you to amend HB 2245 to re-include municipal utilities and cooperatives in the plan.

Thank you.

Greg Bryant
2054 Raven Road
Robinson, KS 66532
(785) 544-7735, bryants@rainbowtel.net

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House Bill 2245 — Kansas House Committee on Utilities

February 20, 2001

Proponent Testimony

Bill Jackson

2127 205th Street

Robinson, KS 66532

(785) 544-6700 - allan@rainbowtel.net

Chairman and members of the House Committee on Utilities, thank you for giving me the opportunity to speak today. My name is Bill Jackson. I am a registered nurse. My wife is an elementary school teacher, and we have two boys, 12 and 16. On our 120 acres in Brown County, Kansas we raise small livestock, an extensive garden, and lots of flowers. We are considering putting up a wind generator for our residential use.

We live on an exposed hill and frequently have strong winds. This affects the type of flowers and vegetables we can grow. It requires us to stake new trees until they are of substantial size. Some days it's hard to even do chores because you have to fight the wind so much.

Some nights we lie in bed and our whole farmhouse actually shakes. We often hear on the radio that the temperature isn't too bad but the wind chill is below zero. I want to get some good out of the wind, not just have it seem like a nuisance. You know that old joke about manure "smelling like money"? That wind we have so much of in Kansas *could be* money.

On our farm we cut, haul, and burn wood. We have propane delivered by truck and use electricity that comes through the power lines.

Wind comes delivered right to my door, free of charge.

In the bigger picture, Kansas ranks third in the whole United States for potential wind energy. Everyone talks about our dependence on foreign oil, and we are debating opening up Alaska's wilderness, drilling off the west coast, and we already have extensive coal mining and oil and gas production in the Midwest. Kansas imports a large amount of our energy, either already in the form of electricity or in the raw form of coal, gas, or uranium. Wind is a local product that we don't even have to pay for.

Studies show that, depending on the season, 10 to 30 percent of Kansas's electricity could come from wind power. That's like two or three months of free fuel on the level payment plan. I would like to see Kansas state policy encourage wind-powered electrical generation, and not just encourage it for large power companies.

For years we have used public policy and taxes to help ensure that we have electricity. We've used the power of eminent domain to site plants and run power lines. We've hired nuclear engineers as inspectors and regulators. We've spent money to maintain railroads, highways, and pipelines for transporting power-producing materials. I don't think it is unreasonable for the state to encourage private, small-scale wind generation.

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HB 2245 is a good start, but I think it falls short in several areas. Currently 31 states have some type of net metering. This bill requires public utilities to pay parallel generators 70% of their consumer rates. This seems like a fair price. But pity the person who's a cooperative member or a municipal customer. They will only get avoided cost, which is closer to 30%. I think the rate should be 70% across the board, especially since most of the places that you can put a wind generator will be in the rural cooperative areas.

I also question the state giving 110% tax credit to utilities that buy wind power from customers. Why shouldn't that bonus go to the people who actually generated the power?

Furthermore, the utility can trade on Clean Air Act emission allowances for clean power that someone else produced. That allowance should be the property of the actual producer of the clean energy. Why should the utility be able to use the wind turbine that I'm buying and maintaining, to lessen their obligations under the Clean Air Act?

I am also concerned about the vague language in the clause that allows the cooperative to limit the customer's production to their own load in certain situations. Is this a loophole that the utility might use to avoid some of their obligations under this bill? Exactly when can they refuse to buy power that I might produce?

Please consider modifying this bill to address my concerns. Thank you for your time and your efforts to develop renewable energy in Kansas.

2-01

**Utilities Committee
Kansas House of Representatives**

**Written Testimony of Dr. Richard Nelson
Manhattan, KS**

February 20, 2001

House Utilities Committee on HB 2245

As an introduction, I am Richard Nelson from Manhattan. Although I have been employed by the Kansas State University Engineering Extension Service for 11 years, my comments this morning are my own and do not necessarily represent the position of Kansas State University or the Extension Service. Much of my work over the past 11 years has focused on evaluating renewable energy resources, technologies and strategies to incorporate them into our energy system. Biomass, biodiesel, and wind have been my areas of greatest effort.

I am here today to speak in favor of HB 2245, and in particular the proposed amendment to expand opportunities for renewable energy development by adjusting the definition of the agricultural marketing act to include **renewable energy resources** such as **biomass, biodiesel, bioethanol, solar, and wind** as a farm and ranch products. I will focus my comments on this issue.

Following are some highlights:

- Kansas is extremely rich in **renewable energy resources**.
- Development of these resources is critical to our future energetic and economic health. Renewable resources are diffuse – they are distributed across the land. If renewable energy resources are to be developed at a meaningful scale, it will take quite a bit of land – certainly more than any one or two or several individuals own.
- Renewable energy development has **economies of scale** - whether it is a liquid fuels plant, a biomass pelleting plant, or a wind farm, it takes a certain minimum size to compete. Individually farmers, ranchers, and rural land owners do not control enough land or have access to the planning and financial resources to construct and operate a facility large enough to achieve the economy of scale to compete. As a result farmers and ranchers typically yield to large, often out of state, corporations, when it comes time for actually developing these renewable resources and in exchange they get relatively miniscule prices and royalty payments.
- In some states rural land owners have been threatened with eminent domain and accepted a one time payment for perpetual forfeiture of the renewable energy resources on their land.

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Land owners need access to **business structures** that allow them to work together to develop renewable resources in a manner that maximizes their profits and the benefits rural communities. The traditional tool to accomplish this is the cooperative. "A cooperative is a business owned and controlled by the people who use its services. By working together, they can reach an objective that would be unattainable if acting alone."¹ A cooperative:

- 1) **Improves bargaining power**- Combining the volume of several members leverages their position when dealing with other businesses. Can an individual farmer bargain with an international corporation attempting to develop wind energy? Unlikely, but a cooperative more than likely be able to.
- 2) **Obtain market access or broaden market opportunities**-Value is added to products by processing or offering larger quantities of an assured quality. Can an individual farmer develop a biodiesel facility? Doubtful, but a cooperative might be able to. Concept has been used quite effectively in Austria.
- 3) **Improve product or service quality** - Adding value to products, by providing, and improved facilities, equipment, and services. Can an individual rancher develop a biopellet business? Unlikely, but a cooperative might be able to.
- 4) **Obtain products or services otherwise unavailable** - provide services or products that would not attract other private businesses. Can an individual farm acquire the services required to conduct a marketable wind resource assessment? Doubtful, but a cooperative probably would be able to.
- 5) **Reduce Cost/Increase Income**- Reducing the cooperative's operating costs increases the amount of earnings available for distribution to members to boost their income. Will renewable energy development by international corporations maximize landowner profit and benefit to the rural community? Unlikely, but that is what a cooperative is supposed to do.

This is not a silver bullet. To my knowledge the concept is not put forward to benefit a specific project or developer. The goal is to open doors, empower Kansas land owners, farmers, ranchers, and entrepreneurs to find new ways to begin and sustain broad development of renewable energy in a way that maximizes benefits to all Kansans.

Existing renewable energy cooperatives

Prairie Lands Bio-Products, Inc. in southcentral Iowa is a not-for-profit Organization with a current membership of close to 60 switchgrass growers. Prairie Lands members are working to identify and develop switchgrass products and markets, including renewable energy.

¹ Cooperative Information Report 7, Revised September 1996, Galen Rapp and Gerald Ely.



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON UTILITIES

RE: HB 2245 – income tax credits for parallel electricity generation from renewable fuels

**February 20, 2001
Topeka, Kansas**

**Presented by:
Leslie J. Kaufman, Associate Director
Public Policy Division
Kansas Farm Bureau**

Chairman Holmes and members of the committee, thank you for the opportunity to appear before you today on behalf of Kansas Farm Bureau's farmer and rancher members across the state and share our support for concepts contained in HB 2245. I am Leslie Kaufman and I serve KFB as Associate Director of Public Policy.

The voting delegates at our 82nd Annual Meeting, who are agricultural producers, reaffirmed and strengthened our commitment for initiatives that can increase renewable fuel use. Kansas Farm Bureau has long been a supporter of crop-based renewable fuels. This past summer, our focus expanded beyond the crop-based fuels to include wind energy, through our co-sponsorship of a wind energy conference.

In November, our members adopted new language urging the legislature, governor and appropriate agencies to examine wind as a renewable energy source and develop a plan that encourages wind generation in Kansas. Chairman Holmes, we commend you and your committee for considering this plan, HB 2245, to encourage the development of wind and other renewable electricity generation.

We believe the work you are doing fits with the concepts of our policy encouraging the growth of wind generation in Kansas. While there may be other approaches that are valid, as well, HB 2245 can be a catalyst for renewable energy development in Kansas. As such, we encourage the committee to look favorably on the concepts contained in HB 2245. Thank you.

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HOUSE UTILITIES COMMITTEE
February 20, 2001

Testimony of Jon K. Miles

COMMENTS ON HOUSE BILL 2245

Good morning Mr. Chairman and members of the Committee. I am Jon K. Miles, Vice President of Governmental and Technical Services for Kansas Electric Cooperatives, Inc. (KEC). KEC is the statewide association for twenty-nine rural electric cooperatives and the state's two generation and transmission cooperatives.

I appreciate the opportunity to testify in support of HB 2245. KEC feels the bill correctly approaches the issue of parallel generation providing a \$10 kW tax credit allowed against the tax imposed by the Kansas Income Tax Act, going directly to the consumers of rural electric cooperatives. In addition, the bill contains the provision for compensating the consumer at a rate equal to the cooperative's avoided cost.

KEC has some concern regarding the author's intent in Section 1, paragraph b(6), on page 2 and offers the attached balloon to possibly clarify the bill. Beginning on line 37, striking the words "customer any charge or fee to connect to the cooperative's or utility's system" and inserting in it's place- "the cooperative or utility shall not charge the generating customer any additional charge or fee beyond that charged to other similar non-generating customers." In other words, utilities' treatment for charges and fees would be the same as other customers.

Another area of concern we wish to raise is regarding whether the utility or consumers pay for the equipment costs covered in Section 1, paragraphs b(2) and b(3) of the bill. The treatment outlined in the bill represents a departure from current law as outlined in Section 3 of the bill requiring utilities be responsible for the cost and installation of various pieces of

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equipment beyond the meter if the unit's capacity is 10 kW or less. Conversely, the customer would be responsible for the same costs of equipment for units 10 kW and greater.

Currently, the customer arranges for the purchase and installation of the locks, seals, automatic synchronizer and other protective devices, and the rural electric cooperatives provide the customer with the necessary metering and meter socket. The cost absorbed by rural electric cooperatives to provide the equipment would be spread across ratepayers and members.

Mr. Chairman, we appreciate the merits of this bill and the treatment of rural electric cooperatives and their consumers.

Thank you for allowing us the opportunity to share our thoughts on this bill.

HOUSE BILL No. 2245

By Committee on Utilities

1-31

AN ACT concerning certain electric generation facilities; relating to contracts for parallel generation services; providing certain income tax credits with regard to electricity generated by such facilities; amending K.S.A. 66-1,184 and repealing the existing section.

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

New Section 1. (a) As used in this section:

(1) "Avoided cost" means: (A) The utility's or cooperative's cost of generation, as reflected in the utility's or cooperative's avoided fuel cost and avoided capacity cost, if any; or (B) the utility's or cooperative's cost to purchase electricity from another source, as reflected in the energy component of wholesale rates paid by the utility or cooperative, plus the utility's or cooperative's avoided capacity cost, if any.

(2) "Electric cooperative" means a cooperative, as defined by K.S.A. 17-4603, and amendments thereto, or a nonstock member-owned electric cooperative corporation incorporated in this state.

(3) "Electric public utility" has the meaning provided by K.S.A. 66-101a, and amendments thereto.

(4) "Municipal electric utility" means an electric utility owned or operated by a municipality.

(5) "Renewable energy resources and technologies" means wind, solar, thermal, photovoltaic, biomass, refuse incineration, hydropower, geothermal, landfill gas or other renewable resources or technologies, other than nuclear resources or technologies.

(6) "Renewable generation facility" means a facility which generates electricity solely by use of renewable energy resources or technologies.

(b) An electric cooperative, electric public utility or municipal electric utility shall enter into a contract for parallel generation service with any customer of such cooperative or utility, upon request of such customer, whereby such customer may attach or connect to the cooperative's or utility's delivery and metering system an apparatus or device for the purpose of feeding excess electrical power which is generated by such customer's renewable generation facility into the cooperative's or utility's system. No such apparatus or device shall either cause damage to the cooperative's or utility's system or equipment or present an undue hazard

1 to personnel of the cooperative or utility. Every such contract shall in-
2 clude, but need not be limited to, the following provisions:

3 (1) The electric cooperative, municipal electric utility or electric pub-
4 lic utility shall compensate such customer for energy supplied to such
5 cooperative or utility as follows: (A) For an electric public utility other
6 than an electric cooperative or municipal electric utility, compensation
7 shall be at a rate not less than 85% of such utility's residential customer
8 rate, for electricity generated by hydropower, and not less than 70% of
9 such utility's residential customer rate, for electricity generated by re-
10 newable resources or technologies other than hydropower; and (B) for an
11 electric cooperative or municipal electric utility, compensation shall be at
12 a rate equal to such cooperative's or utility's avoided cost.

13 (2) If the customer's renewable generation facility has a capacity of
14 10 kilowatts or less, the cooperative or utility, at the cooperative's or
15 utility's expense, shall furnish, install, own, operate and maintain in good
16 order and repair: (A) All necessary meters and associated equipment util-
17 ized for billing and for connection to the cooperative's or utility's system;
18 and (B) such relays, locks and seals, breakers, automatic synchronizer and
19 other control and protective apparatus as required for the operation of
20 the generator in parallel with the cooperative's or utility's system.

21 (3) If the customer's renewable generation facility has a capacity of
22 more than 10 kilowatts, the customer, at the customer's expense, shall
23 furnish, install, own, operate and maintain in good order and repair: (A)
24 All necessary meters and associated equipment utilized for billing and for
25 connection to the cooperative's or utility's system; and (B) such relays,
26 locks and seals, breakers, automatic synchronizer and other control and
27 protective apparatus as the cooperative or utility designates as being re-
28 quired for the operation of the generator in parallel with the cooperative's
29 or utility's system.

30 (4) The cooperative or utility, at its expense, may install load research
31 metering for purposes of monitoring customer generation and load and
32 may install, own and maintain a disconnecting device located near the
33 electric meter or meters.

34 (5) The customer shall supply, at no expense to the cooperative or
35 utility, a suitable location for meters and associated equipment used for
36 billing and load research.

37 (6) The cooperative or utility shall not charge the ~~customer any~~
38 ~~charge or fee to connect to the cooperative's or utility's system.~~

generating customer any additional
charge or fee beyond that charged
to other similar non-generating
customers.

39 (7) For purposes of insuring the safety and quality of the cooperative's
40 or utility's system power, the cooperative or utility shall have the right to
41 require the customer, at certain times and as electrical operating condi-
42 tions warrant, to limit the production of electrical energy from the cus-
43 tomer's generating facility to an amount no greater than the load at the

13-4

1 customer's facility of which the generating facility is a part.

2 (8) Interconnection facilities between the customer's and the coop-
3 erative's or utility's equipment shall be accessible at all times to personnel
4 of the cooperative or utility.

5 (9) The customer shall notify the cooperative or utility prior to the
6 initial energizing and start-up testing of the customer-owned generation
7 facility and the cooperative or utility shall have the right to have a rep-
8 resentative present at such test.

9 (10) Service under any such contract shall be subject to any rules and
10 regulations of the cooperative or utility that are on file with the state
11 corporation commission.

12 (c) In addition to the provisions required by subsection (b), an electric
13 cooperative, municipal electric utility or electric public utility may require
14 a special agreement for conditions related to technical and safety aspects
15 of parallel generation.

16 (d) To the extent authorized by law, an electric cooperative, munic-
17 ipal electric utility or electric public utility may utilize the purchase of
18 electricity pursuant to this section for emission allowance trading pursu-
19 ant to the federal clean air act.

20 (e) In any case where the customer and an electric public utility can-
21 not agree to terms and conditions of any contract provided for by this
22 section, the state corporation commission shall establish the terms and
23 conditions for such contract.

24 New Sec. 2. (a) As used in this section:

25 (1) Terms have the meanings provided by section 1, and amendments
26 thereto.

27 (2) "Qualified renewable generation facility" means a renewable gen-
28 eration facility which is located in this state and which has a capacity of:
29 (1) Not more than five megawatts, in the case of a facility using hydro-
30 power; and (2) not more than two megawatts, in the case of a facility using
31 renewable energy resources or technologies other than hydropower.

32 (b) For any taxable year commencing after December 31, 2000, and
33 for each of the 20 consecutive taxable years after the taxable year in which
34 first allowed, a credit shall be allowed against the tax imposed by the
35 Kansas income tax act on the Kansas taxable income of a taxpayer who is
36 an electric public utility, other than an electric cooperative or a municipal
37 electric utility, and who, pursuant to section 1, and amendments thereto,
38 purchases electricity generated by a qualified renewable generation fa-
39 cility during such year. Such credit shall be in an amount equal to 110%
40 of the difference between:

41 (1) The total amount paid by the taxpayer for such electricity during
42 the taxable year; and

43 (2) the total amount that the taxpayer would have paid for such elec-

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1 tricity if the taxpayer had paid at a rate equal to the taxpayer's avoided
2 fuel cost.

3 (c) For any taxable year commencing after December 31, 2000, and
4 for each of the 20 consecutive taxable years after the taxable year in which
5 first allowed, a credit shall be allowed against the tax imposed by the
6 Kansas income tax act on the Kansas taxable income of a taxpayer who
7 sells electricity generated by a qualified renewable generation facility dur-
8 ing such year to an electric cooperative or a municipal electric utility.
9 Such credit shall be in an amount equal to \$10 per kilowatt of the facility's
10 rated capacity during the taxable year if the facility produces at least 50%
11 of its rated capacity during the taxable year.

12 (d) No credit allowed by this section shall exceed the income tax
13 liability for the taxable year and no such credit shall be carried over for
14 deduction from the taxpayer's income in a subsequent taxable year. In no
15 event shall a credit allowed by this section exceed \$500,000 for any tax-
16 payer during any taxable year.

17 (e) The secretary of revenue shall adopt such rules and regulations
18 as necessary to carry out the purposes of this section.

19 Sec. 3. K.S.A. 66-1,184 is hereby amended to read as follows: 66-
20 1,184. (a) Every public utility which provides retail electric services in
21 this state shall enter into a contract for parallel generation service with
22 any person who is a customer of such utility, upon request of such cus-
23 tomer, whereby such customer may attach or connect to the utility's de-
24 livery and metering system an apparatus or device for the purpose of
25 feeding excess electrical power which is generated by such customer's
26 energy producing system into the utility's system. No such apparatus or
27 device shall either cause damage to the public utility's system or equip-
28 ment or present an undue hazard to utility personnel. Every such contract
29 shall include, but need not be limited to, provisions relating to fair and
30 equitable compensation on such customer's monthly bill for energy sup-
31 plied to the utility by such customer, and the following terms and con-
32 ditions: ~~(a)~~ (1) The utility will supply, own, and maintain all necessary
33 meters and associated equipment utilized for billing. In addition, and for
34 the purposes of monitoring customer generation and load, the utility may
35 install at its expense, load research metering. The customer shall supply,
36 at no expense to the utility, a suitable location for meters and associated
37 equipment used for billing and for load research; ~~(b)~~ (2) for the purposes
38 of insuring the safety and quality of utility system power, the utility shall
39 have the right to require the customer, at certain times and as electrical
40 operating conditions warrant, to limit the production of electrical energy
41 from the generating facility to an amount no greater than the load at the
42 customer's facility of which the generating facility is a part; ~~(c)~~ (3) the
43 customer shall furnish, install, operate, and maintain in good order and

1 repair and without cost to the utility, such relays, locks and seals, breakers,
 2 automatic synchronizer, and other control and protective apparatus as
 3 shall be designated by the utility as being required as suitable for the
 4 operation of the generator in parallel with the utility's system. In any case
 5 where the customer and the utility cannot agree to terms and conditions
 6 of any such contract, the state corporation commission shall establish the
 7 terms and conditions for such contract. In addition, the utility may install,
 8 own, and maintain a disconnecting device located near the electric meter
 9 or meters. Interconnection facilities between the customer's and the util-
 10 ity's equipment shall be accessible at all reasonable times to utility per-
 11 sonnel. The customer may be required to reimburse the utility for any
 12 equipment or facilities required as a result of the installation by the cus-
 13 tomer of generation in parallel with the utility's service. The customer
 14 shall notify the utility prior to the initial energizing and start-up testing
 15 of the customer-owned generator, and the utility shall have the right to
 16 have a representative present at such test; and ~~(d)~~ (4) the utility may
 17 require a special agreement for conditions related to technical and safety
 18 aspects of parallel generation.

19 (b) Service under any ~~such~~ contract *provided for by this section* shall
 20 be subject to the utility's rules and regulations on file with the state cor-
 21 poration commission.

22 (c) *The provisions of this section shall not apply to contracts for par-*
 23 *allel generation services which are subject to the provisions of section 1,*
 24 *and amendments thereto.*

25 Sec. 4. K.S.A. 66-1,184 is hereby repealed.

26 Sec. 5. This act shall take effect and be in force from and after its
 27 publication in the statute book.

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**Testimony before the House Utilities Committee
In Opposition to House Bill No. 2245**

**Burton L. Crawford
Manager of Deregulation Issues
Kansas City Power & Light Company
February 20, 2001**

Chairman Holmes and Members of the Committee:

I am Burton Crawford, Manager of Deregulation Issues for Kansas City Power & Light Company and am appearing before you today in opposition of House Bill No. 2245 relating to contracts for parallel generation service and certain income tax credits.

KCPL has three concerns with this bill, it:

- (1) Requires a utility to purchase energy at a rate above their avoided cost
- (2) Places additional liability on the regulated utility
- (3) May shift distribution costs to other customers

Purchase Above Avoided Costs

As House Bill 2245 requires utilities to purchase electricity at prices above their avoided costs, it violates the Public Utility Regulatory Policies Act of 1978 (PURPA).

PURPA was signed into law to combat the energy crisis in the 70's with the primary purpose of encouraging alternative sources of power and to promote conservation. As a result, utilities are required to purchase generation from qualifying facilities at rates that do not exceed a utility's avoided costs. KCPL has a tariff on file that provides for these purchases.

Litigation over the past few years has clarified the authority of a state to order purchases above avoided cost. One of these cases involved KCPL (Kansas City Power & Light Co. V. State Corporation Commission, 234 Kan. 1052 676 P.2d 764 (1984))

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holding that a state may not require a utility to purchase power from qualifying facilities at a rate in excess of PURPA's avoided cost cap. In addition, the Federal Energy Regulatory Commission (FERC) has since ordered that:

“If parties are required by state law or policy to sign contracts that reflect rates for QF sales at wholesale that are in excess of avoided costs, those contracts will be considered void” (Connecticut Light & Power Co., 70 FERC 61,012 (1995))

While New York was initially successful at requiring purchases above avoided costs (their now repealed law that required a minimum purchase price of 6 cents), it is now clear that this action violates PURPA.

While the bill does make provisions for an income tax credit of 110% of the difference between avoided cost and the amounts paid to the supplier, this credits are capped at \$500,000 and are not paid for the entire life of the facilities.

If the state determines that it is good policy to provide incentives for these types of resources, the approach taken in this bill with respect to municipals and electric cooperatives should be extended statewide. The \$10/kw tax credit eliminates the issue of purchases above avoided cost, while providing an incentive for these types of generation.

Added Liability

For renewable generation facilities 10kw or less, the bill requires a utility to “furnish, install, own, operate, and maintain” all equipment necessary to operate the generator in parallel with the utility system (Page 2 lines 13-20). This places the utility on the other side of the meter and responsible for the operation of this equipment. KCPL does not want to be responsible for what should be customer owned and operated equipment. Not only would this be an added expense, but also raises potential liability issues.

Shift of Distribution Costs

This bill states that a utility “shall not charge the customer any charge or fee to connect” to the system (Page 2, lines 37 & 38). Currently, if costs to extend service to a new customer exceed certain thresholds, the customer pays for the additional expense of connection. For example, to extend service to a residential customer, we extend service up to ¼ mile for no charge. Anything over ¼ mile is paid for (over time) by the customer.

This bill would appear to prevent collection of these charges, therefore shifting these costs to other customers.

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

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

Testimony of
Dick F. Rohlfs
Senior Manager, Regulatory Requirements
Western Resources, Inc.

On
House Bill No. 2245
February 20, 2001

Chairman Holmes and members of the committee, my name is Dick Rohlfs. I am Senior Manager, Regulatory Requirements at Western Resources. Thank you for letting Western Resources present testimony to you today on House Bill 2245. This proposed legislation amends K.S.A 66-1,184 the Parallel Generation and Small Power Production section of the statute. We have concerns that this proposed legislation could be conflict with Public Utilities Regulatory Policy Act. In addition, the proposed legislation has internal conflicts as it is written.

The bill will provide a tax credit to renewable generation facilities based on the renewable's generators rated capacity and the utility based on the difference between the 85% (for hydropower or 70% for other renewable resources) of the utility's residential rate and the utilities avoided cost.

Permit me to provide all of you some background on PURPA. In 1978 PURPA was passed as part of a comprehensive national energy policy. PURPA was designed to encourage cogeneration and renewable energy. It required utilities to purchase the excess energy at no more than the utility's avoided cost. In 1981 and 1982, the Kansas Corporation Commission examined and considered evidence on the rate to be paid cogenerators for their power. (Docket No. 115,379-U). In accordance with PURPA, avoided cost of electric energy was defined as the incremental cost of electric energy, which the utility would have to generate or purchase from another source, if it did not buy from a cogenerator. The KCC found that since Kansas electric utilities bill their

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customers based on average embedded cost for energy, cogenerators should be paid on the same basis. Cogenerators can request to be reimbursed at the utility's incremental rate provided that the extra cost of metering is paid for by the cogenerators.

The definition of avoided cost of energy can include adjustments to the cost of energy. The KCC considered the cost of avoided capacity in their decision making. While this component is controversial, the KCC ruled that some capacity credit shall be included in the payment to cogenerators. This part of the KCC's ruling was challenged in court. The court found that the KCC's decision to include a credit for capacity exceeded avoided cost if a utility had excess capacity.

The final component part of avoided cost is the losses in the transmission and distribution system. The KCC ruled that utilities would avoid some losses of energy in their transmission and distribution system. While the amount of line losses avoided was unknown the KCC found that a credit equal to 50% of each utilities average line loss be provided to cogenerators.

Getting back to the HB 2245, since utilities can pay no more than avoided cost under PURPA regulations the question that will be asked is, "Does the avoided cost limit refer to the payment to the renewable generator or does it refer to the net transaction?" Regardless, once the tax credit limit of \$500,000 per utility is reached the utility will be paying more than avoided cost in violation of the PURPA regulations

Finally, New Section 1 (b) (2) and (3) conflict with Section 3 (a) (1) and (3). These sections describe which party is responsible for metering and protective devices. Western suggests that utilities should be responsible for metering and the customer responsible for the protective devices.

Testimony on HB 2245
House Committee on Utilities
February 20, 2001

Prepared by Justin Holstin, Kansas Cooperative Council

Mr. Chairman and members of the Committee, I'm Justin Holstin, Intern for the Kansas Cooperative Council working with Joe Lieber, President of the Kansas Cooperative Council who was unable to be here today. The Council has a membership of nearly 200 cooperative businesses who have a combined membership of nearly 200,000 Kansans. The majority of our members are farmer-owned cooperatives.

The Kansas Cooperative Council currently does not have a position on HB 2245, but it is our understanding that Representative McClure will be offering an amendment which would allow farmer-owned cooperatives to invest in the production of energy through renewable energy resources such as biomass, biodiesel, ethanol, solar, and wind resources. Cooperatives have been organized to allow Kansas producers to work together and increase their livelihood. Allowing farmer-owned cooperatives to utilize renewable resources and the associated benefits under the bill and the amendment would offer these cooperatives and their members more options, possibly reducing costs.

If Representative McClure's amendment is added to HB 2245 we would support the bill as a whole. I appreciate being allowed to present the position of the Kansas Cooperative Council on HB 2245 and would be happy to answer any questions the committee might have.

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**BEFORE THE HOUSE UTILITIES COMMITTEE
PRESENTATION OF THE
KANSAS CORPORATION COMMISSION
FEBRUARY 20, 2001
HOUSE BILL NO. 2245**

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. 2245.

The Commission does not take a position on HB 2245. The Commission generally supports renewable energy. However, the Commission does want the legislature to realize that this bill would provide a subsidy for renewable energy, possible at the expense of all ratepayers.

This bill would require different electric utilities to purchase generation from renewable generators at different rates. While municipal and cooperative electric utilities would only be required to compensate the renewable generator at avoided cost, the investor owned utility must purchase the generation at a percentage of the retail residential rate; at least 85% of the residential retail rate for electricity generated by hydropower, and at least 70% of the residential retail rate for electricity generated by other renewable resources. The investor owned utility is compensated by tax credits for the amount it pays above avoided cost, up to a maximum credit of \$500,000 per year for the next 20 years. In addition the bill would provided a tax incentive to renewable generators.

While the bill would appear to have no major effect on municipal or cooperative utilities, the same cannot be said of investor owned utilities. Depending on the subsidized difference between the amount paid to the generator and the avoided cost, and the amount of renewable generation qualified under this bill, there could be a substantial revenue shortfall experienced by the investor owned utility. Eventually the utility's ratepayers would see this revenue shortfall in terms of

increased rates. Of course, in the first twenty years this revenue shortfall only occurs after the utility has exceeded the \$500,000 tax credit. Different generating capacity levels supported by this tax credit, at varying subsidy levels and capacity factors, are illustrated on the attached graph. As shown, for example, only 3.8 megawatts of generating capacity would be supported by the tax credit if the renewable generating capacity had an average capacity factor of 50% and the difference between the purchase cost and the avoided cost was a 3 cents per kilowatthour subsidy. For the larger investor owned utilities the tax credit could be exceeded by a relatively small percentage of renewable generation. This is important because any shortfall in the tax credit provided will eventually increase the electric bills of the utility's retail customers.

Additionally there are two other minor concerns with the legislation as proposed. While Section 1(a)(5) & 1 (a)(6) provide a relatively good definition of renewable generation, Section 1(b)(1)(A) is somewhat vague on its designation of hydropower. For example, it would appear under this section that a wind generator could pump water from a pond in a valley to a pond on a hill, and then generate hydropower by the water as it flows to the pond in the valley. This would allow the generator to be compensated at a higher rate than if the electricity were merely sold by the wind generator. While this language is clearly intended to compensate the higher capacity factor of most hydropower generators, it could allow someone to game the system. Second, as the bill is written, it appears that it would also apply to multistate electric utilities that operate in Kansas. While this Commission does not oppose this, it may not be the intent of the bill sponsor to allow tax credits to support, for example, renewable generation added by a Missouri customer of KCPL, and the Committee should probably be aware of this possible interpretation.

Megawatts Supported by \$500,000 Tax Credit

