Approved:_
Date 1-17-01

MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairperson Senator Stan Clark at 9:30 a.m. on January 11, 2001 in Room 231-N of the Capitol.

All members were present except: Senator Wagle, excused

Ja

Committee staff present: Raney Gilliland, Legislative Research
Emalene Correll, Legislative Research
Tom Severn, Legislative Research
Bruce Kinzie, Revisor of Statutes
Lisa Montgomery, Revisor of Statutes
John C. Crowder, Intern

Conferees appearing before the committee:
John McNish, Attorney, KCC
Walker Hendrix, CURB

Others attending: List not passed for signatures

Kansas Corporation Commission (KCC)
John McNish, Advisory Counsel, KCC, described the Federal Energy Regulatory Commission (FERC), the history of federal regulation of electricity and natural gas and recent FERC cases in which the KCC has participated. (Attachment 1)

Citizens' Utility Ratepayer Board (CURB)
Walker Hendrix, consumer counselor for CURB, testified on utility issues of the past, present and future. (Attachment 2)

Minutes of the meetings of the Senate Utilities Committee held on January 9 and 10, 2001 were approved by the committee.

Next meeting of the Senate Utilities Committee will be held on Tuesday, January 16 at 9:30 a.m. in Room 231-N.

Adjournment.

Respectfully submitted,
Ann McMorris, Secretary

Attachments - 2

#1

Kansas Corporation Commission

Bill Graves, Governor John Wine, Chair Cynthia L. Claus, Commissioner Brian J. Moline, Commissioner

MEMORANDUM

Date: January 11, 2001

To: Sen. Stan Clark
Chair
Senate Utilities Committee

Fr: John McNish
Advisory Counsel

Re: Federal Regulation of Electricity and Natural Gas

Please find attached materials concerning the Federal Regulation of Electricity and Natural Gas. The materials include an outline describing the Federal Energy Regulatory Commission (FERC), the history of federal regulation of electricity and natural gas and recent FERC cases in which the Kansas Corporation Commission (KCC) has participated in.

Should you need additional information, please don't hesitate to contact us at the KCC.

Thank you for your attention.

Senate Utilities Committee
January 11, 2001
Attachment 1-1

FEDERAL REGULATION OF NATURAL GAS AND ELECTRICITY

1. Introduction:

2. Federal Energy Regulatory Commission (FERC):

   A. FERC is an independent regulatory agency within the Department of Energy, created in 1977 to replace the Federal Power Commission.
   B. FERC is made up of five members who serve five-year staggered terms and are appointed by the President and confirmed by the Senate. The current FERC membership consists of James Hoecker, Linda Breathitt, Curt Hebert, Jr., and William Massey. There is one vacancy.
   C. No more than three commissioners may belong to the same political party. The chairman is selected by the President and serves as the administrative head.
   D. FERC exercises jurisdiction over wholesale rates for electricity in interstate commerce and the interstate transportation of gas and electricity, including the disposition or acquisition of facilities through mergers or other reorganizations. FERC also has jurisdiction over private, municipal and state hydroelectric projects and the transportation of oil in interstate commerce.
   E. The mission of the current FERC Commissioners is to foster competitive markets whenever possible, assure access to reliable service at a reasonable price, and give full and fair consideration to environmental and community impacts in accessing the public interest of energy projects.

3. Short History of Federal Regulation of Electricity:

   A. In 1920, Congress passed the Federal Water Power Act which authorized the creation of the Federal Power Commission (FPC). At that time, the FPC's principal function was licensing of hydropower projects.
   B. The United States Supreme Court limited a state's jurisdiction over electricity to retail activities even though Congress had not acted in the wholesale area. *Public Utility Commission of Rhode Island v. Attleboro Steam Electric Co.*, 273 U.S. 83 (1927). This decision left wholesale electric utility transactions unregulated.
   C. In 1935, Congress passed the Federal Power Act. The Federal Power Act granted the FPC the authority to regulate the sale of power for resale and the interstate transmission of electricity. The FPC was charged with the regulatory responsibility to implement the Federal Power Act.
   D. In 1992, Congress passed the Energy Policy Act of 1992. This act eased the way for more competition with respect to the generation of electricity by creating a new category of independent power producer–exempt wholesale generators (EWGs)–which can generate and sell power to affiliate without

triggering regulation by the Security and Exchange Commission. The act also expanded FERC's authority under the Federal Power Act to encourage wholesale wheeling of power for third parties.

E. In 1996, FERC issued Order 888 which requires each electric transmission owning company to make its facilities available to all competing sellers of wholesale power on a nondiscriminatory basis. FERC prescribed in detail the terms and conditions for this transmission service.

F. In 1999, FERC issued Order 2000, which requires each transmission owning utility to join a "regional transmission organization," or file an explanation why not.

4. <u>Short History of Federal Regulation of Natural Gas</u>:

A. State regulation over retail sales commenced in 1910's.

B. The United States Supreme Court limited a state's jurisdiction over natural gas to retail activities even though Congress had not acted in the wholesale area. *Missouri ex rel Barrett v. Kansas Natural Gas*, 265 U.S. 298 (1924). This decision left interstate gas transactions unregulated.

C. In 1938, Congress passed the Natural Gas Act. The act charged the FPC with the regulatory responsibility to implement rate regulation of the sale and transportation of natural gas. The price paid by an interstate pipeline for gas as well as the price charged by the interstate pipeline for transportation was subject to FPC's jurisdiction to ensure "just and reasonable" rates.

D. In 1954, the United States Supreme Court extended the regulatory authority of the FPC under Natural Gas Act to include gas producers. *Phillips Petroleum v. Wisconsin*, 347 U.S. 672 (1954), *reh'g denied*, 348 U.S. 851 (1954). Before *Phillips*, the FPC exercised its gas rate regulatory authority over a small number of interstate pipelines. After *Phillips*, the FPC had jurisdiction over thousands of producers of gas for resale in the interstate market.

E. In 1978, Congress passed the Natural Gas Policy Act. The act raised the price allowed to be charged for all gas except old gas, effectively deregulating the price of new gas. Second, this act provided for phasing out regulation of gas prices. By July 1, 1987, the price of all gas except old gas, was set by the marketplace.

F. In 1985, FERC issued Order 436, which established voluntary rules for open access transportation on interstate pipelines. Under this rule, FERC created economic conditions that forced open access pipelines to transport the gas of other pipelines, marketers and producers who competed with the pipelines for the sale of gas. Although pipelines could still engage in gas commodity sales, many customers converted to transportation-only service and purchased the gas commodity directly from producers.

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G. In 1989, Congress passed the Natural Gas Wellhead Decontrol Act, which ended the remaining federal price controls on gas producers as of January 1, 1993.

H. In 1992, FERC issued Order 636, which mandated that interstate pipelines completely unbundle gas sales from transportation and to provide comparable transportation services, with the same rates, terms and conditions.

I. In 2000, FERC issued Order 637, which lifted price caps on short term capacity releases on interstate pipelines. The intent of the order was to bolster secondary market activities by making more capacity available during peak periods and by providing more flexibility for shippers.

5. <u>How FERC activities affect Kansas</u>:

A. Although FERC does not set retail rates, FERC regulated wholesale and transportation rates must be honored by state regulators in setting retail rates. In other words, state regulators must accept a FERC rate determination to the extent that the service or commodity is a component of the retail costs.

B. FERC has moved way from relying exclusively on cost based rates for electric energy and toward policies allowing market based rates. The benefits of market based rates depend on a truly competitive market in which no one seller or group of sellers can control the price.

C. FERC has required open, nondiscriminatory access to transmission and transportation services. This requirement facilitates the development of competitive commodity markets.

D. FERC has authority under the Federal Power Act to approve mergers and other dispositions involving transmission facilities. FERC has used this authority to obtain concessions to foster competition. It is not uncommon for FERC to condition the approval of a merger on the new company committing to join a regional transmission group.

6. <u>Recent Cases at FERC the KCC is involved in</u>:

A.	RP97-369 *et al.*	Ad Valorem Tax Refund Matters
B.	RP99-485	Kansas Pipeline Company
C.	RP93-109	Williams Natural Gas Company
D.	RP98-117	K N Interstate Transmission Company
E.	EL99-90	City of Wichita v. Western Resources, Inc.
F.	ER00-2348	Westar Generating II, Inc.

7. <u>Conclusion</u>:

A. As the gas industry continues to adjust to changes brought by increased competition in both gas sales and transportation segments of the business, corporate changes will continue to occur that enable the industry to reposition itself to achieve lower costs, economies of scale, new expertise as needed in new market conditions, and access to new markets. Federal, as well as state regulators, will adjust their regulatory policies to the changes in the industry. Because the transportation of gas, as well as the transmission of electricity, will remain a regulated monopoly, the regulatory jurisdiction of FERC is significant.

B. Changes in the electric industry have been rapid. Market-based generation sales, regional transmission proposals and mergers are increasing in number and complexity. Kansas utilities are active participants in these events. State regulators should also be active participants in these events to ensure that the interest of consumers are protected.

C. FERC decisions and the decisions of Kansas utilities and other utilities in the region will affect Kansas profoundly. The common forum for many of the events or issues affecting either the electric or natural gas industry is FERC. For these reasons, the KCC expects to continue identifying important FERC events that warrant its participation.

F[...]al Energy Regulatory Commission

Electric Gas Hydro Oil Intro to FERC Notices Meetings Orders Public Info & Admin ALJ & OGC Energy Info Online

Introduction to FERC

The Federal Energy Regulatory Commission is an independent regulatory agency within the Department of Energy that

- regulates the transmission and sale for resale of natural gas in interstate commerce;
- regulates the transmission of oil by pipeline in interstate commerce;
- regulates the transmission and wholesale sales of electricity in interstate commerce;
- licenses and inspects private, municipal and state hydroelectric projects;
- oversees related environmental matters and
- administers accounting and financial reporting regulations and conducts of jurisdictional companies.

Key FERC Contacts

FERC Organizational Chart

FERC Vision Statement

Budget Requests to Congress

Public Access

A public reference room is available where the public can use FERC facilities for research. The Office of External Affairs provides information to the public and to county, state and federal governmental entities. The Commission maintains several electronically accessible information services, available by using the FERC web site or by visiting the Public Reference Room at FERC's Headquarters.

Fees are charged for other printed documents or publications and for photocopying. For details of fees and acceptable methods of payment, see FERC Fees for Selected Information Services Provided to the Public . Fees and method of payment are posted in the Public Reference Room as well.

The FERC also maintains Government Information Locator Service (GILS) records which identify the public information resources available at the FERC. For more information about these resources, search the Federal Energy Regulatory Commission's GILS database.*You will be leaving the FERC. Choose FERC from the Selection List once you reach GPO's GILS Database.*

More about FERC

The Commission was created by the Department of Energy Organization Act on October 1, 1977, to replace the Federal Power Commission. It is made up of five members who serve staggered five-year terms and are appointed by the President and confirmed by the Senate. The Commission's current membership consists of James J. Hoecker (chairman), Linda Key Breathitt, Curt Hebert, Jr., William L. Massey.

No more than three commissioners may belong to the same political party. The chairman, designated by the

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Pr... ...ent, serves as the Commission's administrative head.

The Commission's legal authority comes from the Federal Power Act of 1935, the Natural Gas Act (NGA) of 1938, the Natural Gas Policy Act (NGPA) of 1978, the Public Utility Regulatory Policies Act of 1978, and the Energy Policy Act of 1992. Read more Enabling Legislation

The Commission recovers all of its costs from regulated industries through fees and annual charges.

Updated May 5, 2000

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Fe…al Energy Regulatory Commission

text only version of this page

Federal Energy Regulatory Commission

Vision

Promoting Competitive Markets
Protecting Customers
Respecting the Environment
Serving and Safeguarding the Public

Mission

The Commission regulates key interstate aspects of the electric power, natural gas, oil pipeline, and hydroelectric industries. The Commission chooses regulatory approaches that foster competitive markets whenever possible, assures access to reliable service at a reasonable price, and gives full and fair consideration to environmental and community impacts in assessing the public interest of energy projects.

FERC Values

Employees -- People are our most valued asset. We provide the support needed for all employees to excel.

Integrity -- We maintain the highest level of professionalism and an environment of fairness, trust, respect, and honesty.

Diversity -- We value diversity in people and ideas.

Working Together -- We clearly communicate expectations, encourage cooperation and teamwork, and share responsibility.

Progress and Innovation -- We are creative and flexible, and seek out opportunities to improve.

Action -- Prompt and fair resolution of matters before the Commission is essential to our mission.

Reaching Out -- Two-way communication with the public is key to our effectiveness.

Public Service -- Our ultimate objective is to provide valued services to the public.

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Updated April 29, 1998

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Federal Energy Regulatory Commission

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Natural Gas

An interstate natural gas facility on my land? What do I need to know? (pdf, 154k)

Overview

The Natural Gas Act (NGA) of 1938, the Natural Gas Policy Act (NGPA) of 1978, the Outer Continental Shelf Lands Act (OCSLA), the Natural Gas Wellhead Decontrol Act (NGWDA) of 1989, and the Energy Policy Act (EPAct) of 1992 are the primary laws the Commission administers to oversee America's natural gas pipeline industry.

Under the NGA, the Commission regulates both the construction of pipeline facilities and the transportation of natural gas in interstate commerce. Companies providing services and constructing and operating interstate pipelines must first obtain Commission certificates of public convenience and necessity.

In addition, Commission approval is required to abandon facility use and services, as well as to set rates for these services. The Commission also regulates the transportation of natural gas as authorized by the NGPA and the OCSLA. The Commission oversees construction and operation of facilities needed by pipelines at the U.S. point of entry or exit to import or export natural gas.

Information Available

Natural gas information available through this page is broken down into several categories:

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- Office of Energy Projects
- Notice of Second Interstate Natural Gas Facility-Planning Seminar (pdf)(15kb)
  9/26 Feedback Summary (pdf) (21kb) NEW
- Major Rulemakings and Policy Statements - Commission Orders and important policy statements
- Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act
- Online Gas Pipeline Data - Data filed with the Commission - Form No. 11, Index of Customers, Discount Rate Reports, Form No. 2, Form No. 2A
- Rate Filings - Electronic data filed with the Commission in rate cases
- Forms and Reports - List of Reports, Filing Dates, Hardcopy Reports
- FERC Gas Tariffs Page (FASTR) - Links to natural gas pipeline tariff data as filed with the Commission and to recent tariff updates
- Environmental Data - Guidelines for preparing environmental reports
- Natural Gas Pipeline Companies - Links to natural gas pipeline company Web sites
- Associations - Links to associations with a connection to the natural gas industry

Pipeline Capacity Auctions

- October 20, 1998, Pipeline Capacity Auctions Workshop
- December 8, 1998, Staff Conference on Pipeline Capacity Auctions

Demonstration Project:

- Filing in HTML

Other Information

- Interest Rates - Calculated in Accordance with Section 154.501(d) of the Commission's regulations and its predecessors.
- Pipeline Code Lists - Used with electronic filings.

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Updated: December 5, 200100

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Federal Energy Regulatory Commission

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Electric Power Regulation

The Commission approves rates for wholesale electric sales of electricity and transmission in interstate commerce for private utilities, power marketers, power pools, power exchanges and independent system operators. The Commission acts under the legal authority of the Federal Power Act (FPA) of 1935, the Public Utility Regulatory Policies Act (PURPA), and the Energy Policy Act (EPAct). The Commission oversees the issuance of certain stock and debt securities, assumption of obligations and liabilities, and mergers. The Commission reviews the holding of officer and director positions between top officials in utilities and certain other firms they do business with. Finally, the Commission reviews rates set by the federal power marketing administrations, such as the Bonneville Power Administration, confers exempt wholesale generator status under the EPAct, and certifies qualifying small power production and cogeneration facilities.

- **Designation of Electric Rate Schedule Sheets, Order No. 614** [PDF] [RIMS] NEW
- **Mergers and Other Corporate Application Information**
- **Automated Numbering Sheet (ANS) - Report** (Replacement of the *Rate and Tariff Indexing System* (RATIS))
- **Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (New)**
- **FERC Form No.1** Electric Utility Annual Report
- **Form 423** Cost and Quality of Fuels for Electric Plants
- **Form 561** Interlocking Directorates
- **Form 566** Top 20 Purchasers List
- **Form 580** Interrogatory on Fuel and Energy Purchase Practices
- **Form 714** Annual Electric Control and Planning Area Report
- **Form 715** Annual Transmission Planning and Evaluation Report UPDATED
- **Power Marketer Information**
- **Qualifying Facility Information**
- Open Access Rules **(Order's 888 Order's 889**)
- **Refund Interest Rates**
- **Major Orders, Rules, and Policy Statements**
- **Links To** Electric Related Sites
- **Staff Report on June, 1998 Midwest Electric Price Spikes**

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Updated: December 28, 200100

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Federal Energy Regulatory Commission

Oil Pipelines

Electric Gas Hydro Intro to FERC Notices Meetings Orders Public Info & Admin ALJ & OGC En

Under the Interstate Commerce Act (ICA) and the EPAct, the Commission regulates the rates and practices of oil pipeline companies engaged in interstate transportation. The objective is to establish just and reasonable rates to encourage maximum use of oil pipelines--a relatively inexpensive means of bringing oil to market--while protecting shippers and consumers from unjustified costs.

The Commission does not oversee the construction of oil pipelines or regulate the supply and price of oil or oil products. Rather, it helps to assure shippers equal access to pipeline transportation, equal service conditions on a pipeline, and reasonable rates for moving petroleum and petroleum products by pipeline.

Information Available

Major Rulemakings and Policy Statements

Commission Orders and important policy statements

Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act

Oil Pipeline Listing

List of oil pipelines maintaining tariffs at FERC

Industry Links

Docket Prefix

Notice of expanded use of "IS" docket prefix and availability of information

Interest Rates

Pursuant to section 340.1(c)(2) of the Commission's regulations. (To view the regulatory text you will leave FERC's site.)

Index

Index calculated in accordance with section 342.3 of the Commission's regulations. (To view the regulatory text you will leave FERC's site.)

Forms List

List of forms which must be submitted by oil pipelines regulated by the Commission.

Pursuant to section 341.12 of the Commission's regulations, carriers may informally submit tariff publications or related material for suggestions of staff prior to the filing of the tariff publications with the Commission. Carriers may do so by faxing the request and/or materials to (202) 208-0393.

Updated: March 22, 200100

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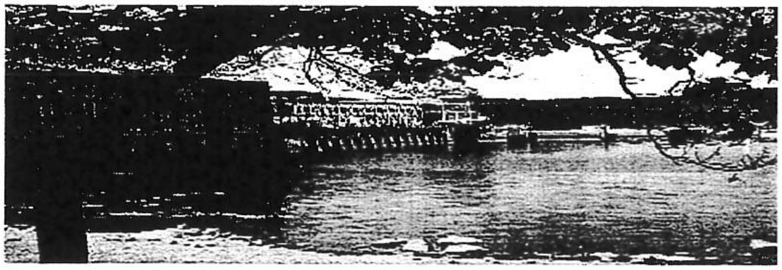
Electric Gas Oil Intro to FERC Notices Meetings Orders Public Info & Admin ALJ & OGC Energy Info Online

Federal Energy Regulatory Commission

Hydropower

Washington - Atlanta - New York - Chicago - Portland - San Francisco



The Origin of Hydroelectric Regulation

- Office of Energy Projects
- FERC Dam Safety Independent Consultant Workshop NEW
- Section 603 (Comprehensive Review of Hydro Licensing) NEW
- Engineering Guidelines for the Evaluation of Hydropower Projects NEW
- The Use and Regulation of a Renewable Resource
- The Division of Dam Safety and Inspections Conducts the Commission's Dam Safety Program
- Hydroelectric Projects Under Commission License
  pdf format (157 kb) Excel format (391kb)
- Hydroelectric Projects Exempted From Licensing Requirements
  pdf format (168kb) Excel format (109kb)
- Public Outreach Meetings Scheduled
- Division of Dam Safety and Inspections Operating Manual (pdf) (616kb)
- Guidelines for Public Safety at Hydropower Projects (pdf) (1.96mb)
- Order No.596, Regulations for the Licensing of Hydroelectric Projects
- Recreational Fishing at Hydropower Projects
- L, E, and P Forms - Standard Licensing Articles
- Annual Charges
- Licensing Workflow Diagrams
- Comprehensive Plans In FERC's Licensing Process
- Third Party Contractors
- Jurisdiction Determination

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Updated 12/20/2000

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Hydroelectric Regulation

Hydroelectric power regulation was the first work undertaken by the Federal Power Commission, the Commission's predecessor, after Congress passed the Federal Water Power Act of 1920.

Subsequent statutes under which the Commission regulates non-federal hydroelectric power projects that affect navigable waters, occupy U.S. lands, use water or water power at a government dam, or affect the interests of interstate commerce include the FPA (Federal Power Act), the PURPA (Public Utility Regulatory Policies Act), the Electric Consumers Protection Act of 1986, and the EPAct (Energy Policy Act of 1992).

This work includes: Issuing preliminary permits, project licenses and exemptions from licensing; ensuring dam safety; performing project compliance activities; investigating and assessing payments for headwater benefits; and coordinating with other agencies.

Licenses are issued for a term of between 30 to 50 years, and exemptions are granted in perpetuity. Commission costs are offset by annual charges collected from license and exemption holders. The Commission also determines charges for a licensee's use of federal lands, federal dams, and Native American reservations.

Licensed projects receive comprehensive safety inspections from Commission engineers stationed in Washington and at five regional offices. The Commission is responsible for dam safety at over 2,600 licensed and exempted dams and related water retention structures. The dam safety program is a key Commission priority.

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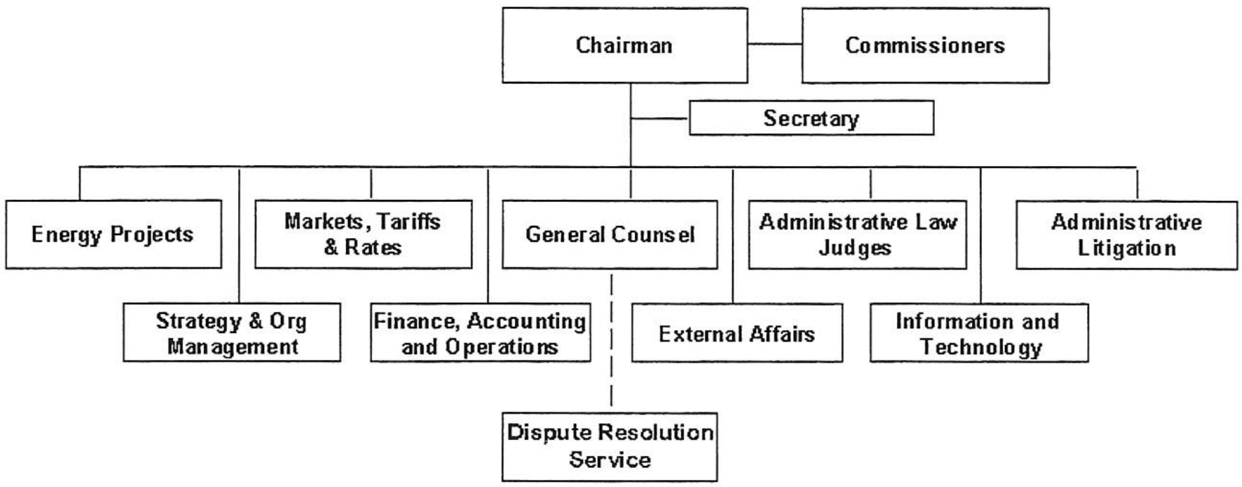
FERC Target 2000



Updated December 3, 1999

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Federal Energy Regulatory Commission

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James John Hoecker

James John "Jim" Hoecker was designated by President Clinton to lead the agency on June 19, 1997. Chairman Hoecker has served as a Member of FERC since May 1993 and in August 1995 was reconfirmed to a five-year term which expires on June 30, 2000.

Before becoming a Commissioner, Mr. Hoecker, a Democrat, was of counsel to Jones, Day, Reavis & Pogue from 1990 to 1993 and a partner in Keck, Mahin & Cate from 1988 to 1990. His work focused on gas production, transmission and distribution issues as well as on electric utility matters. A former Commission staff member, his positions at FERC included Assistant General Counsel for Gas and Oil Litigation and Assistant General Counsel for Rulemaking and Legislative Analysis. Mr. Hoecker has published and spoken widely on energy policy and law.

Born: July 12, 1945, Rhinelander, Wisconsin.

Education: Northland College, B.A., 1967; University of Kentucky, M.A., Ph.D., 1975; University of Wisconsin, J.D., 1978.

Profession: History professor, lawyer.

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Updated June 29, 1998

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Federal Energy Regulatory Commission

Linda Key Breathitt

Linda Key Breathitt was nominated by President Clinton on October 24, 1997, and confirmed by the Senate on November 7, 1997. Her term expires June 30, 2002.

Before joining the Commission , Ms. Breathitt, a Democrat, was Chairman of the Kentucky Public Service Commission. She was responsible for the regulation of intrastate rates and services of investor-owned electric, natural gas, telephone, water and telephone cooperatives and water districts and associations. She serves on the Electricity Committee of the National Association of Regulatory Utility Commissioners and is a Past President of the Southeastern Association of Regulatory Utility Commissioners.

From 1980 to 1993, Ms. Breathitt was the Executive Director of the Commonwealth of Kentucky's Washington office, where she served as the state/federal liaison.

Born: September 9, 1951, Lexington, Kentucky.

Education: University of Kentucky, B.A., 1975

Profession: Seventeen years in State Government prior to joining FERC.

Updated March 17, 1998

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Federal Energy Regulatory Commission

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Curt Hebert, Jr.

Curt Hebert, Jr., was confirmed to a five-year term by the Senate on July 30, 1999, following his nomination by President Clinton on July 1, 1999. His term expires June 30, 2004. He was first nominated by President Clinton on October 23, 1997, and confirmed by the Senate on November 7, 1997, to a term that ended June 30, 1999.

Before joining the Commission, Mr. Hebert, a Republican, served as Commissioner of the Southern District of the Mississippi Public Service Commission. From 1994 to 1996, he served as Chairman of the Commission. He has also served on the Electricity Committee of the National Association of Regulatory Utility Commissioners and is a former President of the Southeastern Association of Regulatory Utility Commissioners.

Mr. Hebert is a former Member of the Mississippi House of Representatives, where he served as Chairman of the Oil and Gas Committee and Chairman of the Ways and Means Severance Subcommittee.

Mr. Hebert and his wife Virginia have two daughters, Lane and Ashley.

Born: November 27, 1962, Pascagoula, Mississippi.

Education: University of Southern Mississippi, B.S., 1985; Mississippi College School of Law, J.D., 1990.

Profession: Lawyer

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Updated August 4, 1999

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William L. Massey

William L. Massey was nominated by President Clinton and was confirmed by the Senate on May 20, 1993. He was renominated by President Clinton and confirmed by the Senate on June 26, 1998, for a five-year term ending June 30, 2003.

Before joining the Commission, Mr. Massey, a Democrat, practiced law in Washington from 1989 to 1993. He served on the Presidential Transition Team for the Department of Energy during December 1992. He served as chief counsel to U.S. Senator Dale Bumpers (D-AR) from 1981 to 1989. From 1978 to 1980, he served as law clerk to the Honorable Richard S. Arnold (now Chief Judge) of the U.S. Circuit Court of Appeals for the Eighth Circuit. Earlier, Mr. Massey served as chief attorney and then executive director for Central Arkansas Legal Services. During 1973, he served as a captain in the U.S. Army Field Artillery.

Born: October 19, 1948, Little Rock, Arkansas.

Education: University of Arkansas School of Law, JD, 1973; Georgetown University Law Center, Master of Laws, 1985.

Profession: Lawyer.

Updated July 27, 1999

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Federal Energy Regulatory Commission

Electric Gas Hydro Oil Intro to FERC Notices Meetings Orders Public Info & Admin Energy Info Online

Office of Administrative Law Judges • Office of Administrative Litigation • Office of the General Counsel

• Enforcement Hotline • Complaints Filed with the Commission

Office of Administrative Law Judges

The Office of Administrative Law Judges' web pages contains the office mission and functions, an office directory, judges' biographical information, hearing room information, procedural dates and milestones for all active cases pending in the Office of Administrative Law Judges, and the calendar of hearings and conferences for the upcoming 30 days. Our web site also contains links to restricted service lists established by the Administrative Law Judges in cases set for hearing, to the Commission's Issuance Posting System, and to the Office of the General Counsel.

Office of Administrative Litigation

The Office of Administrative Litigation staff consists of attorneys and expert witnesses who participate in litigated electric, gas, oil, and hydroelectric cases. Information on the status of active cases may be found on this web page.

Office of the General Counsel

The Office of General Counsel's web pages contain the Office of the Solicitor's service list for Order Nos. 888 and 889 and the General Counsel Opinion Letters.

Enforcement Hotline

Complaints Filed with the Commission

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Updated July 29, 1999

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Federal Energy Regulatory Commission

Office of Administrative Law Judges

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- Judges
- CIPS
- Hearing Rooms

Our Mission:

- Resolve contested cases and investigations, as directed by the Commission, effectively, efficiently, and expeditiously, either through impartial hearing and decision or through negotiated settlement, ensuring that the rights of all parties are preserved. Also performs all forms of ADR procedures.

The Judges of the Federal Energy Regulatory Commission

Other Helpful Information

- Processing Time Guidelines for Hearing Cases
- Time Standards for Discovery
- Model Protective Order

Chief Judge's Notices to the Public

Contact Information

Telephone

1-21

(202) 219-2500

FAX

(202) 219-3289

Postal address

888 1st St. NE, Washington, DC 20426

Updated October 24, 2000

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Federal Energy Regulatory Commission

Office of Administrative Litigation

The Office of Administrative Litigation was created on March 31, 1999, through the combination of litigation elements from the Office of General Counsel, the Office of Electric Power Regulation, and the Office of Pipeline Regulation. It is led by Office Director Virginia Strasser and Deputy Director William Froehlich.

Thousands of filings are made with the Commission every year. The Commission sets a small percentage for hearing before Administrative Law Judges. Litigated issues typically involve rates natural gas pipelines and electric utilities may charge for their services, and the terms and conditions under which they may provide them. The Commission's trial staff participates in cases set for hearing, serving two unique roles. First, it advocates positions for the public interest. The "public interest" is manifested in the policy and precedent of the Commission and is developed by the trial staff in on-the-record proceedings. Second, trial staff actively leads the settlement process in most cases and routinely explores alternative dispute resolution techniques. Over the years, approximately 70 to 80 percent of all cases set for hearing have settled.

The Commission's trial staff consists of lawyers and expert witnesses from the Office of Administrative Litigation. The trial staff, like other participants, pursues discovery, files and presents expert testimony, conducts cross-examination, and files briefs with the presiding judges and later with the Commission. Trial staff may also serve in a neutral, facilitative role in settlement negotiations, settlement judge proceedings, and mediations. Members of the trial staff are considered non-decisional employees and under Rule 2202 are barred from any role in the Commission's decisional process after participating in a pending case.

A summary of each active case in litigation has been prepared and may be accessed by clicking Active Cases to the right. The information contained therein is believed to be an accurate summary of the case profiled, as of the date of its preparation. However, it is not an official statement of the Commission and should not be relied upon as the basis for any legal pleading. The Commission speaks only through its issued Orders and

Gas & Oil Cases

Electric & Hydroelectric Cases

Inactive Cases

Topsheet Procedures

Commission's Settlement Regulations, 18 CFR, Part 385, Section 601 & 602 & 603 & 604 & 605 & 606

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Fe...al Energy Regulatory Commission

Electric Gas Hydro Oil Intro to FERC Notices Meetings Orders Public Info & Admin Energy Info Online

Office Of The General Counsel

OUR MISSION: Provide legal services to the Commission. OGC represents the Commission before the courts and Congress and is responsible for the legal phases of the Commission's activities. Douglas W. Smith is the General Counsel, Cynthia A. Marlette is the Principal Deputy General Counsel and Marsha L. Gransee is the Deputy General Counsel for Teaming and Coordination.

Office of General Counsel Organization Chart, August 2000

Solicitor

General Counsel Opinion Letters

Updated August 3, 2000

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Fe[al] Energy Regulatory Commission

OFFICE OF THE SOLICITOR

The Office of the Solicitor has made available the Service List that it maintains in Transmission Access Policy Study Group, et al. v. FERC, No. 97-1715, et al. (D.C. Cir. April 30, 1998). This case is the appeal of Order Nos. 888 and 889, the Commission's landmark rulemakings to restructure its electric rate regulations. See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888 (RM95-8-000),, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), order on reh'g, Order No. 888-A (RM95-8-001) III FERC Stats. & Regs. ¶ 31,048 (1997) (Part I), (Part II), (Part III), and Appendix B, order on reh'g, Order No. 888-B (RM95-8-003), 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C (RM95-8-005), 82 FERC ¶ 61,046 (1998); Open Access Same-Time Information System and Standards of Conduct, Order No. 889 (RM95-9-000), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,035 (1996), Appendix A, Appendix B, and Attachment; Order No. 889-A, (RM95-9-001), order on rehearing, III FERC Stats. & Regs. ¶ 31,049 (1997); Order No. 889-B (RM95-9-002), rehearing denied, 81 FERC ¶ 61,253 (1997).

The Office of the Solicitor will periodically update the Service List. If you have any questions or comments about the Service List, please contact Sheila Bines at 202-208-0177 or at sheila.bines@ferc.fed.us. If you have any questions generally about the appeal of Order Nos. 888 and 889, please contact Dennis Lane, Solicitor, at 202-208-0600 or at dennis.lane@ferc.fed.us.

Updated November 22, 2000

1-25

Energy Information Online

Commission Issuance Posting System (CIPS) on the Web provides timely access to issuances of the FERC, such as orders, notices, and rulemakings, and to many other types of information. CIPS contains FERC issuances dating back to November 14, 1994. The documents can be read or downloaded in either ASCII or WordPerfect. Other types of information on CIPS on the Web include: the news releases; the Commission Agenda and Action Agenda; the Daily Filing List; the Formal Documents Issued List with the FERC Reports Citations; and the Daily Calendars of Hearings and Meetings.

The Records and Information Management System (RIMS) is a database containing the indexes and images of documents submitted to and issued by the Federal Energy Regulatory Commission (FERC) since November 16, 1981. Documents from 1981 until approximately 1994 are available on microform. Starting in July 1994, FERC began to enhance the system by scanning (rather than filming) images of selected documents, gradually phasing in additional documents. Since November 13, 1995, FERC has been scanning all RIMS documents (11" X 17" and smaller). These scanned images are available for viewing and printing.

Gas Pipeline Data - Electric Utility Data (Form1) UPDATED

Email Technical issues to WebMaster or all other toContentMaster
When sending E-Mail, please include a current mail address, telephone number, and an Internet address.

Updated May 5, 2000

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Federal Energy Regulatory Commission

How to Intervene in Commission Proceedings

There are two alternatives available to those wishing to participate in FERC proceedings involving the interstate sale and transportation of natural gas, hydroelectric dams, wholesale transactions of electric transmissions, and rates for the interstate transportation of petroleum products.

One alternative is to file a protest or letter of support with the Commission. While protests and letters of support are helpful in the Commission's deliberation of a case, these filings do not constitute part of the record upon which a decision is made if the case is set for hearing before the Commission's administrative law judges.

The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved.

The second approach is to file as an intervenor. An intervenor is an official party to a proceeding and enjoys distinct advantages over those who only file comments.

Intervenors have the right to participate in hearings before FERC's administrative law judges; file briefs; file for rehearing of a Commission decision; have legal standing to be heard by the Court of Appeals if they press their opposition to the Commission's final order; be placed on a service list to receive copies of case-related Commission documents and filings by other intervenors.

Filing for intervenor status is not complicated. There is no form to complete. Interested parties must file a motion requesting permission to intervene. The motion must identify the case by name and docket number and must clearly state your position and interest in the case.

For example, intervenors may demonstrate they are directly affected consumers, or they are elected representatives of affected parties, or that they own land near a proposed hydroelectric or pipeline site.

A motion to intervene must be served on the applicant and any other parties to the proceeding. An original and 14 copies are required to be filed with the Commission. The Commission's Secretary maintains the service list. Requests for service lists within the city of Washington, D.C. should be directed to the Public Reference Room, (202) 208-1371. Outside the city of Washington, D.C. requests should be directed to the Office of the Secretary, (202) 208-2020.

Notices of proposed rate changes, applications for hydro development, proposed natural gas pipelines, and other filings submitted to the Commission are printed daily in the ***Federal Register***.

The notices are also available for 30 days after issuance on the Commission's electronic bulletin board, called the **Commission Issuance Posting System (CIPS)**. **CIPS** is a 24-hour, free service which may be accessed through a personal computer with a modem. Also, CIPS can be reached through the FERC website. To reproduce the notices, call the **CIPS** number at (202) 208-1397.

Each notice includes a deadline for filing requests for intervention. If the request to intervene is filed on time and there is no opposition to the request within 15 days of filing, intervenor status is granted automatically.

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Disputed requests for intervenor status must be resolved by the Commission.

Anyone filing a motion to intervene out-of-time must show good cause why the motion should be accepted late.

If the intervention is filed after the matter has been set for hearing and is pending before an administrative law judge, the presiding judge has the authority to rule on contested motions to intervene.

Interventions, protests, or comments should be mailed to the Federal Energy Regulatory Commission, Office of the Secretary, 888 First St., N.E., Washington, DC 20426.

As noted, these filings must cite the case name and docket number.

Updated November 4, 1998

1-28

#2.

SENATE UTILITIES COMMITTEE

TESTIMONY OF

THE CITIZENS' UTILITY RATEPAYER BOARD

By Walker Hendrix

Consumer Counselor

January 11, 2001

The Citizens' Utility Ratepayer Board (CURB) represents residential and small commercial customers before the Kansas Corporation Commission. Originally, the agency functioned as a division of the Commission. To permit appeals to be prosecuted on behalf of consumers from public utility rate cases, CURB was made a separate agency. This eliminated any potential conflict which might have occurred when the Staff was split between defending a Commission decision and representing consumers. CURB is an advocacy agency and it is empowered to represent small customers. As Chair Wine has correctly indicated, the Commission's responsibilities are much broader and include the balancing of interest of both the utilities and consumers.

Our testimony is somewhat broad, pertaining too past, present and future utility issues. Should you have utility questions you want answered feel free to ask me any questions as we proceed with the testimony. I have practiced before the Corporation Commission for 25 years and have dealt with a number of utility issues over this time.

Commissioner Moline did an excellent job explaining the dichotomy between classical regulation of utilities as monopoly enterprises with substantial market power and certain aspects of utility operations which have recently be recognized to be subject to certain competitive pressures. In a number of cases, utilities have asked to be relieved of regulation in order to be able to "compete" even though their business for the most part are protected by monopoly privileges conferred on them by regulation. Because of this dichotomy, some intransigence on the part of the Commission has been seen to exist, because it is no always clear which direction is most desirable to fulfill the Commission's role of protecting the general public. For the most part, the utilities have been given considerable leeway in putting forth plans to relax regulation which govern their businesses.

In many instance, the lack of clear a direction and relaxed regulation have lead to higher rates for residential and small commercial customers. The utilities have been allowed to form marketing companies and to grant discounts to large customers. The shortfall in revenue from the pure utility part of the business which is associated with discounts is then made up by the captured customers on the system, which for the most part are residential and small commercial customers. The utility through its marketing affiliate is able to serve the large customer in an unregulated environment and is able to maintain the revenue stream from the large customer while charging more for the services provided by the regulated segment of the business to the captive customers. This improves the companies overall financial position, but at a cost which the captive customer has to bear.

The utilities have also capitalized from being able to sell energy off system. If they can cause the captured utility customers to finance the investment in utility assets, they are then free to sell off system to non utility customers at more favorable prices. Assuming the price of the off system sale covers the operating cost associated with the service, the utilities in effect are able to generate additional revenue which is typically not attributable to regulated retail utility operations. This creates business opportunities for the utilities at the expense of captive customers. The ability to sell off system energy may give rise to building additional generating capacity. And if the capacity can be assigned to utility customers based on single peak day requirement, the utility typically can assess those costs to the captured customers without recognizing operating efficiencies from expanding off system sales.

The dichotomy over whether to regulate or not has had repercussions in the area of natural gas. Natural gas prices have risen dramatically and have seriously affected the rate at which most Americans now purchase service to heat their homes and businesses. The commodity portion of the natural gas rate is deregulated. Because of perceived shortages, gas traded on commodity markets has risen and this volatile situation has caused a good deal of concern for most consumers. Our office receives daily calls from panicked customers wanting to know how they will pay their bill. The Commission has very little discretion over the cost of gas and what the utilities have to pay. The Commission has little ability to control a volatile free market. Hedging strategies have been designed, but there has not been a complete resolution over who should bear the responsibility for these programs and what standards should be put into place to protect the general public from imprudent investment strategies. Because the assessment over whether the utility has been prudent is after the fact, most utilities will not hedge unless assured of full recovery from the Commission.

Despite the limited control that the Commission has over natural gas prices, it does have the ability to question the purchasing practices of the distribution utilities. This is traditionally accomplished through some form of prudency review. The Commission under Docket No. 106,850 -U has an ability to audit, review contracts and request a statement of alternatives from the purchasing utility to determine the reasonableness of the price at which gas is purchased. In today's environment, this is extremely important, because there are situations where an affiliate of the utility is supplying the natural gas. Unfortunately, the Commission staff has been reluctant to review the contracts and the purchasing practices of the utilities. The Commission does review the prices at which gas is purchased and it does monitor the PGA's (COG's) to determine if the correct price is being calculated to determine the cost of gas. But, it does not insist that the utilities file a statement of alternatives to show that the price is the lowest which could have been obtained. The audit function of the Commission has become somewhat limited.

Recently, the Commission has considered whether the utilities should be rewarded for purchasing gas below the market index. The utilities have indicated that if they are given a financial incentive for purchasing natural gas, they would be inclined to find cheaper sources or to use financial instruments which would hedge the price to permit a lower price to be achieved. This process would be in lieu of the prudency reviews which are currently mandated but seldom if ever employed. CURB has taken the position that the utilities should not be rewarded for doing what the general public expects them to do for the monopoly status they are granted, and that is to find the cheapest source of gas for their customers. The Commission should commence a review of the utilities' purchasing practices and should demand that the companies put out for bid their gas purchases as well as submit to the Commission the alternatives they considered. This will alleviate any concern on the general public that they are being gouged.

In addition to natural gas prices, there are several major utility issues on the horizon. Western Resources has requested a rate increase in the amount of $151 million. This rate case was filed in response to a complaint that was filed by the Kansas Industrial Consumers (KIC) in March, 2000. The Commission set a hearing on the complaint and asked the parties to present evidence to show that Western Resources was overearning. The parties projected revenue reductions in the neighborhood of $100 million. The Commission staff however settled with the company and basically derailed the hearing in exchange for the rate case now being filed. This procedure delayed any decision on the issues raised by the complaint by over a year.

The rate case is extremely controversial and will result in some prolonged hearings in May, 2001. The Company in justifying its claim for $151 million has made accounting adjustment to create a fictional tax liability, has shortened the depreciation lives of its utility assets, has increased its return on equity, has chosen to attribute large amounts of overhead to utility operations as opposed to unregulated operations and has chosen to attribute all the capital costs associated with utility operations to their retail customers. The case will also raise issues concerning management compensation and stock option benefits which permit executives to expand their ownership in the Company. Obviously, CURB will oppose many of the accounting principles employed by the Company.

As you are aware, the company's electric operations have earned record amounts. The lagging financial position of the company is attributed to its unsuccessful unregulated operations such as its home security business, Protection One. The company has leveraged its rate base and has assumed large amounts of debt in trying to build its non utility business. This has placed tremendous financial pressure on the company, and we believe has placed pressure on the company to seek a rate increase. Moreover, because of Western's overall financial condition, it has sought a merger partner and has receive a proposal from Public Service Company of New Mexico to combine in the form of a holding company. Some have speculated that the merger is contingent on the rate case.

The merger proposal is extremely controversial because it causes the utility operation to assume large amounts of debt. The merger deal is structured to allow the current management to spin out the unregulated assets of the company and to allow those assets to be assigned to an independent company which will be run by some of the current officers of the company. This independent company, Westar Industries, will be allowed to back in for an ownership interest in the public utility holding company. Although assigning large amounts of debt to the utility operation will have a favorable effect on the unregulated operations, it will force ratepayers to assume extraordinarily high borrowing and debt costs. This will inevitably impact rates. The merger also will have a negative impact on employment levels in Kansas. As with most mergers, there will be questions concerning the severance compensation ("golden parachutes") which are awarded to departing executives.

As an alternative, CURB has suggested that the Company sell it unregulated assets and retire the debt of the Company. This would permit an electric operation to continue under more favorable financial conditions. This would help ratepayers by reducing the huge amount of debt which has been created. To date, the Company has apparently not considered this approach as a way to evolve out of its current situation.

Finally, there is an issue which is important to CURB. Over the last several years, the Commission staff has been inclined to settle utility rate cases before a full hearing has been conducted on the utility application. This leaves CURB in the precarious situation of often times having to prosecute a rate case based on a settlement of the staff and the company. Without the resources of the staff, this proves to be a significant challenge. CURB is a small agency without much in the way of financial resources. Although we endeavor to battle both the staff and the utility at times, this can prove to be a significant legal challenge, especially without adequate financing. We do not have the resources to do this on a regular basis. The Courts have been inclined to approve the settlements and CURB has had an almost impossible burden in trying to overcome this obstacle. We wish the Commission staff would take more cases to full hearing. Another problem which CURB has identified is the fact that the statutes governing the Commission have changed over the years. In 1997, the Commission was permitted to change the language in its governing statutes to give them discretion on whether to take up a complaint or not. This discretion caused the Commission to sit on the KIC complaint for months without taking any action. A complainant who has a meritorious claim should be able to proceed before the Commission. But under current law, the Commission has the prerogative to ignore a legitimate claim by an aggrieved party.

Alternatively, if a utility wants relief, the Commission is mandated to determine the action if it involves rates within 240 days. There should be a level playing field and a reasonable basis by which complainants can bring their concerns to hearing, and the Commission required to make some disposition concerning the action.

Thank you very much for your consideration.