

MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairperson Senator Stan Clark at 9:30 a.m. on February 8, 2001 in Room 231-N of the Capitol.

All members were present except: Senator Tyson, excused

Committee staff present: Raney Gilliland, Legislative Research
Tom Severn, Legislative Research
Bruce Kinzie, Revisor of Statutes
Lisa Montgomery, Revisor of Statutes
Ann McMorris, Secretary
Chris Crowder, Intern to Senator Clark

Conferees appearing before the committee:

Walker Hendrix, CURB
Jim Zakoura, Attorney, Kansas Industrial Consumers, Overland Park
Mike Taylor, City of Wichita
Susan Cunningham, KCC
Jim Ludwig, Western Resources
Earl Watkins, General Counsel, Sunflower Electric Power, Hays
Doug Lawrence, Southwestern Bell
Joe White, KCC

Others attending: See attached list

Chair opened hearing on:

S. B. 111 - State corporation commission, investigations initiated by complaint

Proponents:

Walker Hendrix, Consumer Counsel, Citizens' Utility Ratepayer Board (Attachment 1)
Jim Zahoura, legal counsel, Kansas Industrial Consumers (Attachment 2)
Mike Taylor, Government Relations Director, City of Wichita (Attachment 3)

Opponents:

Susan Cunningham, Acting General Counsel, Kansas Corporation Commission (Attachment 4)
Jim Ludwig, Western Resources (Attachment 5)
Earl Watkins, General Counsel, Sunflower Electric Power Corporation (Attachment 6)
Doug Lawrence, Southwestern Bell Telephone Company (Attachment 7)

Chair provided the committee with a list of KCC Customer Complain Contacts (Attachment 8)

Chair opened hearing on:

S.B. 112 - Corporation Commission, energy cost adjustment clauses

Proponents:

Walker Hendrix, Consumer Counsel, Citizens' Utility Ratepayer Board (Attachment 9)
Jim Zahoura, legal counsel, Kansas Industrial Consumers (Attachment 2)

Opponents:

Earl Watkins, General Counsel, Sunflower Electric Power Corporation (Attachment 10)
Joe White, Director, Utilities Division, Kansas Corporation Commission (Attachment 11)

Chair opened for questions from committee. Since there was not enough time for all questions to be asked, Chair extended the question period on **S.B. 111** and **S.B. 112** to Wednesday, February 14 after the hearing on **S.B. 190**.

The next meeting of the Utilities Committee will be on Monday, February 12, 2001.

Adjournment.

Respectfully submitted,
Ann McMorris, Secretary
Attachments - 11

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: February 8, 2001

Name	Representing
Dave Hultman	W.R.
John J. Rudnik	The Beirig Company
WALKER HENDRIX	CURB
James P. Zakowka	Ks. Industrial Consumers
James Ramsey	SPS
Raymond Johnson	KCC
Susan Cunningham	KCC
Earl Watkins	Sunflower Elec
Charles Cleck	SWBT
April Rodewald	SWBT
Mike Taylor	City of Wichita
John Crank	Sen. Stan Clark
Doug Lawrence	SWBT
Chris Wilson	KGC



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

GOVERNOR
CHAIR
VICE-CHAIR
MEMBER
MEMBER
MEMBER
CONSUMER COUNSEL

Citizens' Utility Ratepayer Board

1500 Southwest Arrowhead Road
TOPEKA, KANSAS 66604-4027
Phone: (785) 271-3200
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SENATE UTILITIES COMMITTEE

S.B. 111

CITIZENS' UTILITY RATEPAYER BOARD

Walker Hendrix, Consumer Counsel

February 8, 2001

S.B. 111 requires the Corporation Commission to investigate the rates and charges of public utilities and to investigate complaints. If you are like me, you probably already thought that the Commission had this authority. Not true. In 1997, the Commission proposed to the Legislature that its statutory authority be changed from "shall investigate" to "may investigate." This change was included in S.B. 333 and passed without much, if any, debate.

Although there may be legal arguments which might be advanced to have the Commission conduct an investigation under the current law (e.g., abuse of discretion), there is no practical requirement for the Commission to do anything. The current statutory language only states that the Commission "may" act.

This change in the statutory authority has worked and will continue to work hardships against consumers, because there have been situations where the Commission has argued that it did not have to conduct an investigation.

In March, 2000, the Kansas Industrial Companies filed a complaint asking the Commission to conduct an investigation of the rates and

charges of Western Resources. The Commission did not take immediate action on the complaint, but allowed discovery from Western Resources. Later, the Commission scheduled a hearing for August 16, 2000, to establish the basis for the complaint. Right before the hearing, the Commission staff and the company entered into a stipulation which suspended proceedings on the complaint and invited Western Resources to file a rate case. The preliminary analysis of the complaining parties showed that Western was overearning by \$100 million or more, but no action was taken as Western was given until November 27, 2000 to file its rate case. The timing for a rate case is 240 days and any challenge to the rates of Western Resources was delayed until July, 2001, over a year after the complaint was filed. In justifying its action for not acting directly on the complaint, the Commission cited K.S.A. 1999 Supp. 66-101e and stated the Commission “may proceed ... to make an investigation....”

The Court of Appeals in the case of *Citizens' Utility Ratepayer Board v. State Corporation Commission*, No. 85,757 (December 15, 2000) has recognized the lack of a statutory obligation to conduct an investigation by the Commission. The Court stated: “The plain language of the statute provides that the Commission may investigate. Thus, there is no statutory duty ... that would require the Commission to examine ... [the] contracts....” Consequently, the Commission does not have to take any action to protect ratepayers unless it chooses to do so.

This leaves the General Public unprotected and makes the administrative process unworkable for parties who choose to file complaints concerning the rates and charges of public utilities in the state. Would-be complainants have no assurance that the Commission will be compelled to take any action, and this leaves many with a cynical reaction to the process.

Prior to the 1997 change in the law, the Commission had an affirmative duty to protect consumers and investigate the complaints of

persons who believed they were wronged. CURB recommends that S.B. 111 be passed to restore the rights which were afforded to consumers for nearly a century. Without a change in the law, there is no assurance that due process will be accorded or that the Commission will take necessary action.

February 8, 2001

**STATEMENT OF THE KANSAS INDUSTRIAL CONSUMERS ("KIC")
IN SUPPORT OF SENATE BILL NO. 111 AND SENATE BILL NO. 112**

The Kansas Industrial Consumers ("KIC") appreciate the opportunity to provide this Statement to the Senate in support of Senate Bill No. 111 and Senate Bill 112. I am James P. Zakoura, legal counsel for KIC, and present this statement to the Kansas Senate on behalf of KIC.

KIC strongly supports the provision of Senate Bill No. 111 that states that the Kansas Corporation Commission **shall** investigate written complaints filed against any electric public utility (Sec. 2 of Senate Bill No. 111), as well as the requirement that the Kansas Corporation Commission **shall** investigate the rates and rules and regulations of electric public utilities. (Sec. 1 of Senate Bill No. 111).

KIC is an association of large volume electric consumers located in the State of Kansas. Companies participate in selected KIC projects, related to their particular business activities within the State of Kansas.

On March 17, 2000, KIC, on behalf of participating companies that included: (1) R.C. Cement Co., Inc.; (2) Raytheon Aircraft Company; (3) The Boeing Company; (4) Farmland Industries, Inc.; (5) Cooperative Refining, LLC; and (6) Delphi Automotive Systems, by and through General Motors Corporation; filed a written Complaint asking the Kansas Corporation Commission to review the Kansas retail electric rates of Western Resources, Inc. ("KPL Electric") and Kansas Gas and Electric Company ("KGE"). At the time of the filing of the Complaint (March 17, 2000), as well as at the current time, KPL

Electric and KGE had not received a formal review of their retail electric rates at the Kansas Corporation Commission ("KCC") for several years.

The costs that underlie the current rates of KPL Electric and KGE are for a twelve month test, cost review period ending January 31, 1995 -- a period of more than six years ago. KIC filed its written Complaint, only because it viewed the Complaint process to be "the last resort," to obtain rates for its participating companies and the approximately 640,000 Kansas retail customers of KPL Electric and KGE, that generally match the cost to provide retail electric service on a somewhat current basis by KPL Electric and KGE.

Under current Kansas law, formal rate reviews can commence in one of three ways. First, the affected company can file a request for either a rate increase or a rate decrease (a "Company Application"). A second manner in which a formal rate review of retail electric rates can be obtained is through a Complaint filed by the Staff of the Kansas Corporation Commission or by the Commission itself, upon its own initiative. The third manner in which a formal rate review can be obtained is through a written Complaint as filed by a consumer of retail electric service from the affected company, or by an interest group representing certain consumers.

This Statement of KIC is not meant in any manner to be critical of the KCC or its Staff. Instead, the KIC Statement points out what KIC believes to be deficiencies in existing Kansas law.

In fairness to the Kansas Corporation Commission, and KPL Electric and KGE, a significant intervening factor occurred in the six-year period that extended from the last formal rate review of these companies. Namely, Western Resources, Inc. and the Kansas

City Power & Light Company ("KCPL") sought to merge, and a major proceeding with regard to such proposed merger took place in the State of Kansas, as well as other jurisdictions. The position of the Kansas Corporation Commission was that it was not proper to combine a formal rate review with a merger application of Western Resources, Inc. and Kansas City Power & Light Company, and so a formal rate review that may otherwise have taken place did not go forward.

The proposed merger of Western Resources, Inc. and Kansas City Power & Light Company was terminated on January 1, 2000. It was only subsequent to the formal conclusion of the proposed merger, and after waiting for a period of approximately two and one-half months for either the Company or the Commission to initiate a formal rate review proceeding, that KIC filed its Complaint.

KIC reasonably expected that upon the filing of its Complaint on March 17, 2000, that an investigation that would consist of a formal rate review of the retail electric rates of KPL Electric and KGE would promptly occur. The Citizens Utility Ratepayers Board and the City of Wichita intervened in the Complaint, in support of the KIC Complaint for a formal rate review. The City of Topeka intervened in the Complaint proceeding to protect its rights in any manner that such rights might have been affected in the Complaint proceeding.

In the period March 17, 2000 through August 14, 2000 -- a period of five months -- the Kansas Corporation Commission did not order that an investigation of the Complaint take place.

KPL Electric and KGE filed a Motion to Dismiss the KIC Complaint on April 24, 2000. The KCC ruled that the Complaint should not be dismissed, but in its Order dated May 25, 2000, the KCC did not rule that it would investigate the Complaint, but instead ordered:

“The Pre-Hearing Conference [scheduled for August 16, 2000] is for the purpose of hearing comments and arguments on the question of whether the Commission should open an investigation into the rates and charges of KGE and WRI.”

In mid-August, 2000, the Staff of the KCC, KPL Electric, and KGE entered into an Agreement, wherein KPL Electric and KGE agreed to file “a traditional rate case” that would provide for a formal rate review of their Kansas retail electric rates. However, under the Agreement, such rate filing by KPL Electric and KGE, and the commencement of such formal rate review, would not take place until November 27, 2000. The Kansas Corporation Commission approved this Agreement, and the initial phase of the formal rate review of the retail electric rate of KPL Electric and KGE will not be completed until the 240-day statutory period to determine rate cases in Kansas has run, in this case, July 25, 2001. The KCC consolidated the KIC Complaint with the formal Application for rate review of KPL Electric and KGE, and the KIC Complaint case is suspended.

Simply stated, without a compulsory statutory mandate to investigate Complaints, the Complainant has neither the certainty that the KCC shall investigate the allegations of its Complaint, nor that such investigation will be completed within any reasonable period of time. KIC supports the mandatory language of Senate Bill No. 111 and presumes that included therein is the requirement that a written report or order related to the investigation will be completed and made public within a reasonable time.

It is clearly not consistent that the Kansas Legislature has required that formal rate review based on a Company Application be concluded within 240 days of a filing of an Application, but that a citizen, consumer Complaint requesting such formal rate review should have no reasonable time period for decision attached thereto.

Put simply, the KIC requested a formal rate review, seeking what it believed would result in a rate reduction for approximately 640,000 retail electric customers of KPL Electric and KGE. No investigation was ever ordered by the KCC with regard to the KIC Complaint, and no Kansas statute required that an Order be issued in a specified time. On the other hand, when KPL Electric and KGE filed their Application on November 27, 2000, for an annual combined rate increase of \$151 Million, the Kansas Corporation Commission, by statutory mandate, must rule on such Application for rate increase within 240 days of filing. This result is patently unfair.

KIC also strongly supports Senate Bill No. 112. The Kansas Legislature has required all Kansas retail electric customers to buy from a designated exclusive (sole) supplier of retail electric energy. It is the view of KIC that if there is a mandate to buy from a single supplier, that consistent therewith is a continuing obligation existing at all times on the part of the Kansas Corporation Commission to investigate the rates of electric public utilities to insure as far as possible, that they are consistently, each year, in compliance with Kansas statutes, rules and regulations with regard to fair, just and reasonable rates that may be charged by Kansas electric public utilities. **A statutory system that gives a legislative monopoly to the retail electric supplier, but does not carry with it the protection of consistent rate oversight by the Kansas Corporation Commission,**

is completely unfair to Kansas retail electric consumers that must pay the bills for retail electric energy.

Thank you for your consideration of these matters.



TESTIMONY

City of Wichita
 Mike Taylor, Government Relations Director
 455 N Main, Wichita, KS. 67202
 Phone: 316.268.4351 Fax: 316.268.4519
 Taylor_m@ci.wichita.ks.us

Senate Bill 111 KCC Investigations of Complaints

**Delivered February 8, 2001
 Senate Utilities Committee**

The City of Wichita strongly supports Senate Bill 111. The Kansas Corporation Commission should be a watchdog for Kansas consumers. From our experience in Wichita, that is not always the case.

Some of the largest industrial companies in Kansas, including Boeing, Raytheon, Vulcan Chemicals, Goodyear and Farmland Industries, recently filed a complaint asking the KCC to investigate over-earnings by Western Resources. The KCC choose not to investigate this very credible, serious complaint. Instead, it asked Western Resources to file a rate case. The result could be financially devastating to consumers. Instead of getting an investigation of evidence that Western Resources is over-earning by \$100-million or more, we will now have to defend against a \$150-million rate increase by Western Resources.

The KCC may well have a logical, administratively expedient explanation for its actions, but it shakes the confidence of consumers and leaves the public perception that the KCC is more interested in serving the utility than in regulating it.

Wichita Mayor Bob Knight has noted more than once that utilities like Western Resources have mastered the bureaucratic culture of Topeka and know how to manipulate the regulatory process. The recent handling of the complaint by the Kansas Industrial Customers group only reinforces that sentiment.

If the Kansas Corporation Commission won't investigate formal consumer complaints about the industry it is responsible for regulating, then the Kansas Legislature should step in. If the Kansas Corporation Commission won't be a vigilant and willing watchdog of the utility industry, then the Kansas Legislature has an obligation to step in and help assure that consumers at least have equal standing before the KCC.

Senate Utilities Committee
 February 8, , 2001
 Attachment 3-1

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**TESTIMONY ON SB 111 BEFORE
THE SENATE UTILITIES COMMITTEE
ON BEHALF OF THE
KANSAS CORPORATION COMMISSION
FEBRUARY 8, 2001**

Mr. Chairman and Members of the Committee:

I am Susan Cunningham, the Acting General Counsel of the Kansas Corporation Commission (Commission), and I come before you today to testify in opposition to Senate Bill 111.

Pursuant to K.S.A. 2000 Supp. 66-101d, K.S.A. 2000 Supp. 66-1,191, K.S.A. 2000 Supp. 66-1,204, K.S.A. 2000 Supp. 66-1,219 and K.S.A. 2000 Supp. 66-1,234, the Commission is authorized to investigate all public utilities at its own discretion (i.e., "the commission, *upon its own initiative* ..."). The proposed change from "may" to "shall" in amending those statutes appears to impose a mandatory duty or obligation ("*shall* investigate") on an otherwise discretionary function of the Commission. In addition to these conflicting directives, the language change appears to require the Commission at all times to initiate investigations into the rates, acts and practices of public utilities, without regard for cause or justification, in order to be in compliance with the statutes. I do not believe that is the intent of the proposed change, but that is certainly one way in which the proposed language could be interpreted.

This bill seeks to amend another group of statutes, those addressing investigations the Commission undertakes when written complaints are made against public utilities, in a like manner. (K.S.A. 2000 Supp. 66-101e, K.S.A. 2000 Supp. 66-1,192, K.S.A. 2000 Supp. 66-1,205, K.S.A. 2000 Supp. 66-1,220 and K.S.A. 2000 Supp. 66-1,235.) With regard to these referenced statutes, the effect of the change from "may" to "shall" is more subtle, but also troublesome. Under these statutes as they currently exist, the Commission has the discretion not to pursue complaints that are without merit or are frivolous. As a practical matter, however, the Commission investigates *all* complaints that are brought to its attention, whether in writing, by phone call, e-mail, in person or any other way in which communication may occur. The degree and manner of investigation is as varied as the types of complaints received.

At this time it might be beneficial to provide you a brief explanation of the Commission's formal and informal complaint procedures. The vast majority of complaints filed with the Commission are informal complaints. Informal complaints are investigated, mediated and resolved by the Commission's Public Affairs and Consumer Protection Division. These complaints are of an extremely diverse nature. They are made by consumers wanting to register their feelings, ask questions or complain about a utility rate, act or practice. The issues range from the cost of natural gas, to general inquiries about a utility company, to a billing dispute, to quality of service. Most complaints deal with billing, bill payment and service-related issues. Many times these complaints are addressed by simply educating the consumer. Complaints that require investigation are handled by obtaining specific information from both the consumer and company to assure the company is in compliance with its own tariffs and Commission rules and regulations. These consumers are seeking

information, an understanding of an issue or situation or, perhaps, require assistance in resolving a problem with the utility. Other complaints require investigation and/or mediation. Those types of consumer complaints are normally of an urgent nature and need immediate resolution, which the informal complaint process provides. This type of complaint usually pertains to a disconnection of service.

The Commission's Public Affairs and Consumer Protection Division receives informal complaints by phone call, letter, e-mail or walk-in. In calendar year 2000, the Commission received approximately 5797 informal complaints. I use the term approximately because many e-mail messages received and responded to with an e-mail reply do not get logged into the Commission's complaint records. According to the Commission's records, the profile of the informal complaints received by the Commission in calendar year 2000 is as follows:

Informal Complaints
Year: 2000

<u>Industry</u>	<u>Complaint</u>	<u>Inquiry</u>	<u>Total</u>
Electric	1131	7	1138
Gas	1363	5	1368
Local Telephone	2528	6	2534
Long Distance	748	3	751
Operator Services	1	0	1
Pipeline	1	0	1
Water	4	0	4
Grand Total:	5776	21	5797

Another type of complaint addressed by the Commission is formal complaints. These are the types of complaints which are formally filed with the Commission and to which the statutes in Sections 2, 4, 6, 8 and 10 of this bill apply. Formal complaints are docketed, and Staff is assigned to investigate and make recommendations for ultimate disposition of the issue. The Commission has procedures in place to handle formal complaints both by statute and by regulation. In calendar year 2000, 24 complaints were formally filed with the Commission.¹

As evidenced by the above statistics, it is clear that the Commission's current complaint procedures adequately address complaints made in writing or by any other means. And while the Commission investigates all complaints communicated to it, the existing statutes also give the Commission the discretion not to investigate in those instances when an investigation is deemed unnecessary. Discretion is the key.

For the above reasons, the Kansas Corporation Commission opposes Senate Bill 111.

¹The 24 formally filed complaints are broken down by industry as follows: 9 against telecommunications companies, 1 against a distribution rural electric cooperative, 6 against natural gas distribution companies, 6 against electric companies and 2 against all public utilities with facilities in Johnson County.

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Testimony
before the
Senate Utilities Committee
by
Jim Ludwig, Western Resources
February 8, 2001

Chair Clark and Members of the Committee:

Western Resources opposes SB 111. This bill would require the Kansas Corporation Commission (KCC) to investigate all rates of all utilities and to investigate every complaint filed by any party concerning any rate. Currently the KCC has discretion not to pursue complaints that are insufficient or specious. **The KCC staff does answer every inquiry it receives. To make the KCC conduct a formal investigation of every inquiry is excessive and inefficient.**

It is hard to describe the administrative burden and expense this bill would impose on the KCC, on utilities, and on any utility customer who simply wants to make an inquiry about his/her utility service. For example, in the year 2000, Western Resources and Kansas Gas Service dealt with over 1400 consumer complaints to the KCC. Of those complaints, only seven were determined to involve a violation of tariffs. Complaints generally concern high bills, disputed bills, responsibility for paying bills, and pay arrangements. Other complaints might involve service disconnection, meter reading, meter malfunction, or difficulty contacting the company during an outage or service interruption.

In 2000, we resolved 99% of consumer complaints on the same day the complaint was made. Each year we consistently resolve about 99% of complaints the same day. As a practical matter, customers want an answer, not a proceeding. They would rather know why one month's bill is higher compared to a previous month than hire a lawyer to represent them in a lengthy complaint proceeding before the KCC.

The fiscal impact of SB 111 on the KCC will be substantial. Unlike several other state utility commissions, the KCC has not employed hearing examiners. If the KCC is mandated to investigate all complaints, it will not be possible for the current staff to investigate them all or for the commissioners to conduct all the proceedings.

SB 111 is ambiguous. The bill removes KCC discretion by replacing "may" with "shall" in each section of statutes dealing with rate complaints and investigations. In many instances, however, the bill states the commission, "on its own initiative, shall investigate . . ." or the commission "shall proceed . . . as it deems necessary." Does the KCC have discretion in these instances, or not? Likewise, since Section 1 requires the KCC to investigate all utility rates on its own initiative, would the KCC be required to hold a constant investigation with a constant cycle of hearings and findings? As the law stands now, rates have the force of law once the KCC determines they are just and reasonable.

We urge the Committee to reject SB 111 and let the KCC continue its good record of quick dispute resolution with customers and the utilities it regulates.

Senate Utilities Committee
February 8, 2001
Attachment 5-1

**TESTIMONY SUBMITTED TO
THE SENATE UTILITIES COMMITTEE**

By

SUNFLOWER ELECTRIC POWER CORPORATION

February 8, 2001

COMMENTS ON SENATE BILL 111

Thank you, Mr. Chairman and members of the Committee, for providing Sunflower time to share our thoughts with you on this proposed legislation. My name is Earl Watkins. I serve as Sunflower's General Counsel.

Sunflower was organized in 1957 to provide reliable wholesale power to the six rural electric cooperatives (Members) that own Sunflower and serve approximately 150,000 consumers in 34 western Kansas counties.

Our Member Systems include: Lane-Scott Electric Cooperative in Dighton, Pioneer Electric Cooperative in Ulysses, Prairie Land Electric Cooperative in Norton, Victory Electric Cooperative Association in Dodge City, Western Cooperative Electric Association in WaKeeney and Wheatland Electric Cooperative which is headquartered in Scott City, Kansas. Both Prairie Land and Victory are also members of Kansas Electric Power Cooperative (KEPCo).

Mr. Chairman, we come before you today to testify in opposition to this bill.

As a public utility investigated in the past by the Kansas Corporation Commission (KCC), and without question one that will be investigated in the future, we are confident that the KCC initiates inquiries of Sunflower whenever it deems an investigation necessary. Those investigations have been undertaken by the KCC both on its own initiative and as a result of a consumer complaint. We believe the KCC initiates investigations whenever a complaint in any format is communicated to them. The only

exception to that might be when they can fully and completely answer the complaint from information of record.

Since all complaint investigation costs are paid directly or indirectly by utilities, we are uncomfortable with legislation that appears to mandate action by the KCC that it, in the exercise of its judgment, deems unnecessary. We believe that existing law gives the KCC discretion as to how a complaint should be handled after they hear from both the complainant and the utility.

Besides Sunflower, I want to you to know that both KEPCo, the generation and transmission cooperative headquartered here in Topeka, and the Kansas Electric Cooperatives (KEC), our statewide cooperative association, join with us in opposing this bill. Both Bruce Graham and Jon Miles are available should you have any questions for them on this legislation.

As I'm sure you know, as cooperatives, we all work to bring the lowest rates possible to our Members, the distribution cooperatives that own Sunflower, KEPCo, and KEC. Any cost placed upon us by the KCC that is mandated by the Legislature, is a cost that will ultimately be borne by those who live at the end of our Members' lines. We work hard to avoid any unnecessary additional charges that can be prudently avoided—and that's why we are here today. We urge that you reject Senate Bill 111.

Thank you Mr. Chairman for the time to share our views with the Committee. I would be happy to answer any questions.

Testimony
On Behalf of
Southwestern Bell Telephone Company
Presented by Doug Lawrence

On behalf of Southwestern Bell, I speak in opposition to SB 111, specifically in regards to Section 3 (on page 2) and Section 4 (on page 3). These provisions relate to telecommunications public utilities like Southwestern Bell.

In both cases the amendatory language changes a single word, "may" to "shall." On its surface the language appears to make certain investigations mandatory.

Section 3 deals with the Kansas Corporation Commission's authority to investigate rates, joint rates, tolls, charges etc.. "on its own initiative." The use of mandatory language in lines 26-29 is confusing in that it mandates that the commission do something that is, according to statute, "upon its own initiative." This section grants the KCC authority to initiate investigations without the trigger of a complaint. Such power should be discretionary.

Section 4 makes investigations into written complaints mandatory with the same change from "may" to "shall." Complaints come in many varieties. In most cases Southwestern Bell is able to resolve the issues with a customer without a need for KCC intervention, in a means that is beneficial to both the company and the customer. The requirement that every complaint receive a formal investigation immediately injects an adversarial atmosphere to the effort to resolve a customer problem. It increases costs, and unnecessarily involves a government action where none may be necessary. Also, this "mandate" is contradicted by the discretionary language "as it deems necessary". Once again, the proposed amendment is confusing and unnecessary.

In the telecommunications arena, the discretion offered under current law is logical and appropriate. Southwestern Bell Telephone opposes SB 111.

Senate Utilities Committee
February 8, 2001
Attachment 7-1

KCC CUSTOMER COMPLAINT CONTACTS
2000

Date/Time	KCC Contact	Customer/Issue	Area/Resolved By	Resolution	Category
N/A	N/A		PNG Liberal Deanna Burkhart		High Bill
N/A	N/A		PNG Liberal Deanna Burkhart		High Bill
N/A	N/A		KPS Lawrence Bill Parrish		Collections and Disconnections
N/A	N/A		KPS Lawrence Bill Parrish		Collections and Disconnections
N/A	N/A		KPS Lawrence Bill Parrish		Billing Errors/Issues
2/1 N/A			WPE Dodge City Linda Owens/CSA	Tom Lowery satisfied customer's concerns about WPE certification.	Other
3/1 N/A	785-271-	Customer wanted to know about our certification in Meade County.	WPE Meade Linda Owens/CSA		Other
4/4 5:00 PM	785-271-	- disconnected for non-apy (\$1649.76); customer paid by check. Customer had extensive NSF history; called bank to check on fund availability; funds not available.	WPE Great Bend Sheila Helm/COA	Extensive conversation w/customer, KCC, and local bank. Resulted in receiving a cashier's check, & reconnection was made. (Hard copy notes available.)	Collections and Disconnections
5/1 N/A	785-271-	- protested the PNG rate case increase.	PNG Dodge City Linda Owens/CSA	We referred the complaint to Larry Headley, and he contacted Laura to answer her questions about the rate case increase.	Rates
5/2 N/A	785-271-	- disconnect for non-pay (\$1500+). Account in and out of family member's names to avoid payment. Verbal threats to COA from husband.	WPE Schoenchen Sheila Helm/COA	Established account in husband name, he took responsibility for balance of account, and pay arrangements established. (Notes available on 'cc' on customer acct. in name of husband, account	Collections and Disconnections
7/28 9:49 AM	785-271-	- wanted both accounts to be billed at same time.	WPE Palco Sheila Helm/COA	One is residential; the other commercial. According to tariff, cannot comply w/request.	Other
8/30 8:55 AM	785-271-	- questioned meter reads & subsequent high bills for June-Aug.	WPE Concordia Sheila Helm/COA	This account fell within the meter reader/reading issues discovered in the Concordia region. Bill was recalculated as per established process, and communicated to customer.	Meter Reading & Estimates
8/30 8:55 AM	785-271-	- wants to know why his streamline went from \$36 to \$60, when the increase was stated to be only \$5 for a residence. Wanted to know if he was being penalized for protesting the rate increase.	PNG Dodge City Linda Owens/CSA	Forwarded rate question to Larry Headley. Explained to him how his streamline was calculated in detail and told him the increase was due to the increase in the price of gas and not the rate increase. Customer understands how his streamline was calculated but still doesn't like the high prices.	Rates/Other
9/5 1:45 PM	785-271-	- meter read/billing issue in the Concordia region.	WPE Concordia Sheila Helm/COA	Same as above.	Meter Reading & Estimates

9/11 2:30 PM	N/A	- comment that LCSC was not very helpful w/pay arrangements. His concern was for other local residents who may be hit w/a sizable bill in our meter read/billing issue.	WPE Munden Sheila Helm/COA	This was not a documented complaint by the KCC. I suggested to local office to make a courtesy call to customer to offer further assistance in pay arrangements.	Meter Reading & Estimates
9/22 9:00 AM	785-271-	- disconnect for non-pay; broke a 1/12th arrangement.	WPE Great Bend Sheila Helm/COA	Customer provided a medical document to allow 21-day extension for payment of account.	Collections and Disconnections
10/5 3:40 PM	F 785-271-	- wanting to establish service in the name of husband; Kim's accounts currently in arrears/disconnect status.	WPE Prairie View Fred Taylor	Per KCC, accounts for & husband cannot be combined. For each to establish service for the other, they must be listed as co-applicant or provide legal documentation of the right to do so (ex. Power of attorney).	Connections & Reconnections
10/9 2:00 PM	785-271-	- meter read/billing issue in the Concordia region.	WPE Narka Sheila Helm/COA	System estimated 2 months; verified read on the 3rd. Customer made pay arrangements, and copy of CIS+ system estimating procedure forwarded to KCC.	Meter Reading & Estimates
10/16 2:30 PM	785-271-	Customer trying 800# and is being asked for SS#; then kicked out of call system.	Division N/A Sheila Helm/COA	KCC going to tell customer Company is checking into problem. COA called the 800#, and had no problems with menu; called KCC to advise. (Don't believe this will be noted as a complaint.)	Other
10/16 N/A	785-271-	Outages and blinks. Feels that company needs to rebuild line feeding house.	WPE Rago Jerry Langer	Explained that the outages incurred had nothing to do with condition of line feeding house. Further investigation is occurring.	Other
10/00 N/A	N/A	Customer called because a leak on the meter was not repaired as fast as they wanted. It was a code 3.	KPS Lawrence Bill Parrish	The leak has been repaired; we did follow all rules.	Other
10/19 N/A	785-271-	high bill	PNG/WPE Liberal Deanna Burkhart	No action, KCC agreed read okay, customer paid bill 10/24.	Rates &/or High Bills
10/25 N/A	785-271-	- Conway Springs - Customer upset that PAL light had not been fixed. Had called several days in a row to report.	WPE Conway Springs Jerry Langer	Lineman had been gone at funeral for 3 days, and then had to read meters in order to catch up. New light will be installed as soon as weather permits.	Other
10/30 10:30 AM	785-271-	ated we had been overbilling him for several years and the rate was to high.	PNG Dodge City Derek Seacat	Derek Seacat is working on a resolution to this complaint.	Rates/Billing
11/02 4:30 PM	785-271-	- Customer has not received her final payment.	KPS Lawrence Bill Parrish	Check CIS+ and customer's check was mailed to wrong house, & check was sent back. Correct address was made & check mailed 10/31 for \$101.55. KCC said the customer said the check should be \$112.55. KCC said they would tell customer, & if they do not agree he would have me show the records. I said to call if we need to do anything else.	Other

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11/9 N/A	785-271-	- Customer says he was told at our call center that we would not turn him on unless he paid in full.	KPS Lawrence Bill Parrish	Told the KCC we would turn the customer on, & would set him up on the 1/12th. Also told Patrick that all the employees at the call center have been trained on the cold weather rules, & they have that information in front of them at all times. Customer came in, & has paid the 1/12th.	Connections & Reconnections
11/14 N/A	785-271-	- Wichita - Customer upset that usage was estimated. Appears that estimate was very low. Want to be rebilled.	PNG Wichita Jerry Langer	Meter was read and rebilled.	Meter Reading & Estimates
11/27 N/A	785-271-	- Wichita Customer had complaint that usage was too high, think that there may be a leak.	PNG Wichita Jerry Langer	Leak test found no leak. Have sent meter in for testing, should have results by mid-December.	High Bill
12/6 N/A	785-271-	- low BTU - customer having trouble cooking, always cooked on medium, now has to cook on high.	PNG Liberal Deanna Burkhart	BTU tests provided by Anadarko are good. We checked stove for customer. KCC closed file.	Other
12/15 N/A	785-271-	Customer did not leave name. Called KCC to report that WPE had outage last night for about 45 minutes, and now another is happening.	WPE Conway Springs Jerry Langer	Ice buildup on lines causing outages. Spoke to Patrick and explained.	Other
12/19 N/A	785-271-	called because we had turned the gas off. The service was disconnected in 6/2000 and the customer turned themselves on when it got cold.	PNG Dodge City Derek Seacat/Director	The KCC made us turn the customer on for the 1/12 rule and would not let us collect the diversion in advance, but include the usage in the 1/12 rule.	Collections and Disconnections
12/27 N/A	785-271-	- Customer thought they had paid off their deferred arrears amount, and wondered why they continued to be billed for it.	PNG Wichita Jerry Langer	Explained to Richard the deferred amount had not been completely paid. Customer had misunderstood bill.	Billing Errors/Issues
12/28 N/A	785-271-	Customer feels we have overcharged her for gas used. Does not believe they could have used so much gas	PNG Wichita Jerry Langer	Meter sent in to be tested; found to be operating within allowable range. Meter readings double checked and leak investigation completed. No leak or misread found. Usage was legitimate, higher because of colder temps.	High Bill
12/29 3:20 PM	785-271-	called about her high December bill.	PNG Dodge City Linda Owens/CSA	The account had been estimated in November and the account was trued-up in December. Ms. Forrester was going to call and explain to Mrs. Widhalm.	High Bill
12/29 4:15 PM	785-271-	called because he was making his payment in the Cimarron office, but was incurring late charges.	PNG Dodge City Linda Owens/CSA	I explained that the payments made in Cimarron had to be mailed to Dodge City to be posted. Ms Forrester was going to call Mr. Hanna and inform him that he had to allow additional time if payments were made in Cimarron.	Other



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SENATE UTILITIES COMMITTEE

S.B. 112

CITIZENS' UTILITY RATEPAYER BOARD

Walker Hendrix, Consumer Counsel

February 8, 2001

S.B. 112 requires the Corporation Commission to establish an effective monitoring system for the review of energy costs charged by a public utility. The scope of this bill is to cover natural gas cost as well as other energy costs incurred by a public utility to provide service to a customer.

The focus of this bill is to require the Commission to do a contract review to determine the prices that a public utility pays for natural gas or other energy are reasonable. Much if not all the information pertaining to a contract is required to be reported to the Commission currently under existing orders.

In conducting a contract review, the Commission would be required to determine if the public utility paid an appropriate cost for natural gas or other fuel. The public utility would need to provide information that it was obtaining natural gas or other fuel from the best alternative source.

CURB supports this bill, because the Commission does not routinely conduct reviews of the purchase contracts or the purchasing practices of the utilities. This appears to be contrary to the Commission's existing review procedures which were adopted in 1977 in Docket No. 106,850-U.

The existing Purchased Gas Adjustment (PGA) procedure requires the Commission to audit and monitor the pass through of natural gas charges. Although the Commission does analyze the numbers reported by the Companies to determine if the PGA accurately reflects those numbers, the Commission does not routinely ask the question: "Was the contract reasonable and prudent.?" The question of prudence has generally been left for utility rate cases. However, in recent times, the Commission has not conducted contract reviews in all of its rate case dockets.

As part of the audit procedure, Docket 106,850-U requires the natural gas public utilities to submit, within 15 days of signing, every gas purchase contract as well as a statement of other alternatives for obtaining the necessary purchased gas and the reasons for selecting the supplier which was chosen. It is my belief that the contracts and the statement of alternatives which form the basis for determining the reasonableness of the purchase are not being filed with the Commission. Consequently, the Commission does not have effective oversight over the natural gas and energy purchases made by the public utilities of this state.

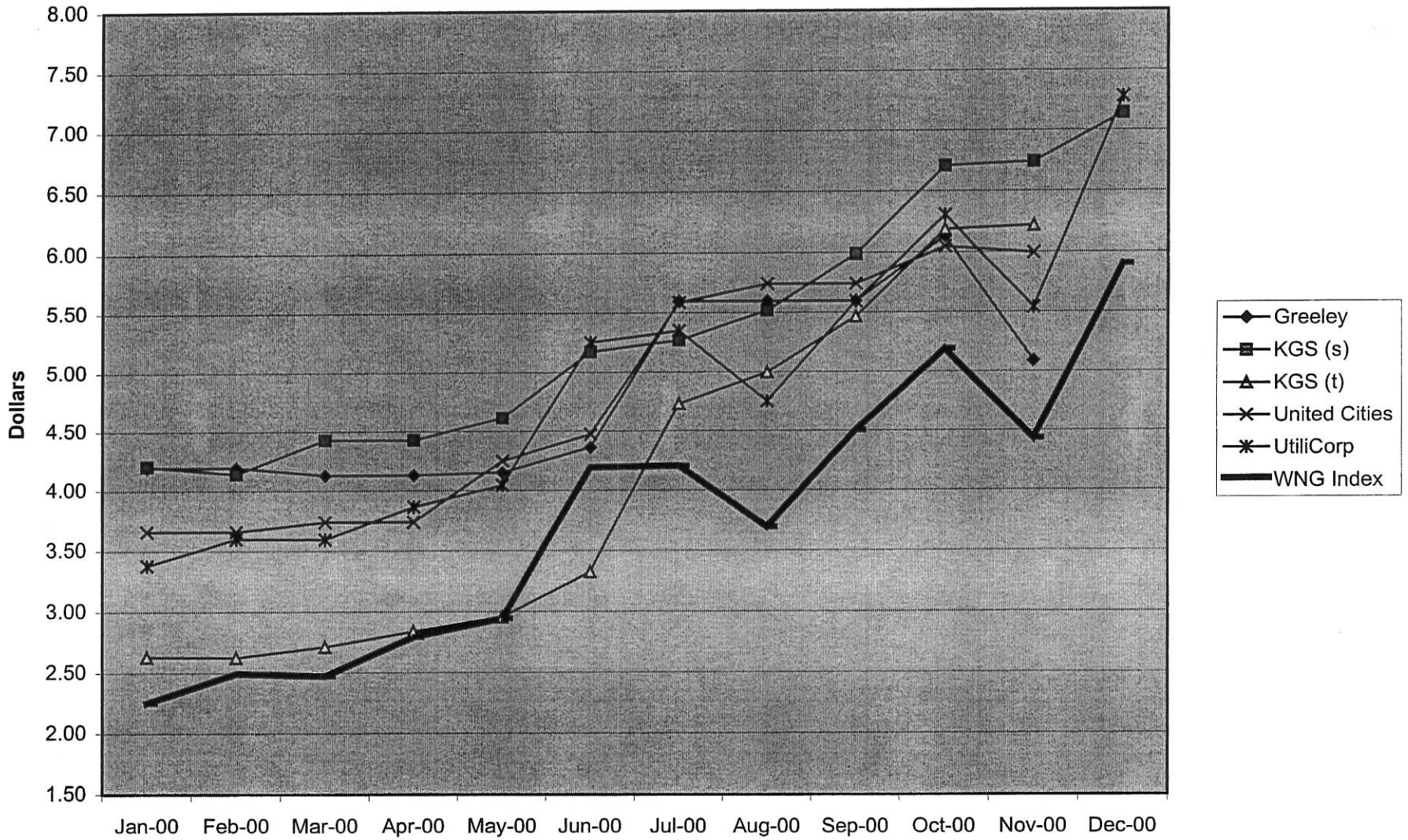
This bill would require the Commission to conform its audit and contract review procedures to the spirit of its own procedures in Docket 106,850-U. It would guarantee the oversight which should be provided to protect consumers.

To demonstrate the reason for this bill, please refer to CURB Exhibit No. 1, attached. This graph shows the variations in cost of gas charged by the different utilities in our state as contrasted by the Williams index price. The charges change to a considerable degree, giving rise to the basic question as to why the prices have dropped or increased, sometimes in the opposite direction of what the other companies are charging. These price changes may be adequately explained, but under current practices they are not even being

questioned. CURB supports this bill as a directive to the Commission to perform the regulatory review it is statutorily required to make to assure that rates are just and reasonable.

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LDC Cost of Gas 2000



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**TESTIMONY SUBMITTED TO
THE SENATE UTILITIES COMMITTEE**

By

SUNFLOWER ELECTRIC POWER CORPORATION

February 8, 2001

COMMENTS ON SENATE BILL 112

Thank you, Mr. Chairman and members of the Committee, for providing Sunflower time to share our thoughts with you on this proposed legislation. My name is Earl Watkins. I serve as Sunflower's General Counsel.

Sunflower comes before you today to testify in opposition to this bill.

As with Senate Bill 111, we are concerned with legislation that mandates additional regulatory review of "contracts" by the KCC that may not be necessary. The term "contracts" in the legislation is very broad. Those contracts that flow through our ECA include coal, rail and gas purchases as well as energy sales and purchases. Some are for very short terms, and others very long terms. For instance, our original coal contract for Holcomb was for twenty years, largely at the direction of the Kansas Corporation Commission (KCC). Once such a contract has been approved by the KCC, Sunflower ought not have to annually defend the contract.

Sunflower has had an ECA since the late 1970s. Sunflower was ordered by the KCC (Docket 106,850-U), in a manner similar to other utilities implementing an ECA at that time, to submit monthly reports in a manner as prescribed by the KCC. The order requires Sunflower to submit details of our fuel costs and a schedule of our purchases and sales of energy. The reports are due by the 15th calendar day of the month prior to the month for which the adjustment is to be billed. And, as you may already know, the KCC retains the right to disallow any imprudent costs incurred by Sunflower, and they have the legal right to suspend our ECA at any time. Monthly communications with the KCC on our ECA are common.

Furthermore, Sunflower enters into approximately 500 energy purchase and sales contracts per year. Some of these short-term contracts last for one hour, others for a day or for several days, and some for weeks at a time. All of these contracts are reported to the KCC through our ECA filings. These short-term contracts are in addition to longer-term contracts previously approved by the KCC.

Because we are a cooperative, any gains earned on these agreements are passed through to our Members as credits on their monthly bills. Naturally, since our Members pay the bills, they also review the ECA adjustments monthly and hold us accountable if they believe we have acted imprudently. In our view, our contracts need no further review by the Commission than that already provided by law.

To conclude, we would urge the Committee to reject Senate Bill 112. In our opinion, the KCC prudently and properly administers our ECA. Any additional burdens on the KCC, like those that would result from this legislation, will be passed along as a higher cost of operation to us, to our Members, and to the ultimate consumer.

Thank you Mr. Chairman for the time to share our views with the Committee. I would be happy to answer any questions.

**BEFORE THE SENATE UTILITIES COMMITTEE
PRESENTATION OF THE
KANSAS CORPORATION COMMISSION
FEBRUARY 8, 2001
REGARDING SB 112**

Thank you Chairman Clark and members of the committee. I am Joe White, Director of the Utilities Division of the Kansas Corporation Commission (KCC).

The KCC has several dockets before it concerning this very issue. For that reason, I am here today representing staff in opposition of SB 112. The subject issue of SB 112 has been a concern of the Commission for over a year and the Commission has addressed and continues to address the subjects of Purchased Natural Gas, Fuel for Electric Power Generation, and Purchased Electric Power.

To put the current KCC endeavors in better perspective, let me give a very short history of the current PGA mechanism.

On April 19, 1977, the Order of Docket No. 106,850-U was issued which established the automatic adjustment clauses currently being followed. This was followed in 1978 by the Natural Gas Policy Act (NGPA) which began the deregulation of wellhead prices. The Federal Energy Regulatory Commission (FERC) between 1978 and 1985 established a ceiling price for natural gas that gradually increased until 1985 at which time prices would be deregulated. These seven years were to be used by the Local Distribution Companies (LDC) to develop procedures to bid on gas supplies and enter into reliable long term contracts to ensure prices and supply after deregulation.

In 1985, the anticipated price spike after deregulation never happened and, because of the seven years of increased cap prices at the wellhead, more supplies were developed, reserves grew, and prices declined.

In the latter part of the '80s and early '90s, prices remained relatively low and, with the increase in proven reserves, natural gas returned as the fuel of choice. With increased demand for electricity to feed the new wave of technology, electric generation using natural gas as the fuel source became highly desirable because of the environmental and price advantages.

During this same period, open access to natural gas transmission created a new market for producers and many of the traditional customers of the LDCs left the systems and purchased their own supplies on the open market. This brings us to the present where we have a very competitive market with shrinking capacity and thus a completely different set of responsibilities and abilities to review and render decisions consistent with our overall regulatory objectives.

It is these drastically different, ever changing methods of operations that lead to the Order of Docket No. 99-GIMG-538-GIG (October 29, 1999, Paragraphs 12-13) which in summary says, the Commission found that the existing prudence review of the gas purchasing practices of natural gas LDCs had not kept pace with changes in the industry and that it would be appropriate to amend the existing PGA mechanism. Staff's research found many solutions and alternatives. Many of these alternatives are stand-alone solutions, some partial solutions and some combination solutions. Definitely a "one-size-fits-all" answer would not work in the current business format.

As a fallout of this research, the Commission established a pilot program for "Performance Based Rates" (PBR) in its final Order of Docket No. 00-GIMG-425-GIG in November 2000. SB 190 is redundant of the Commission's Order in this Docket except, unfortunately, SB 190 lacks many of the controls, reporting requirements and standards that the Commission requires and that are considered essential as part of the pilot program.

Also, in November 2000, the Commission reopened 106,850-U to further revise and amend general policies with regard to Purchased Natural Gas, Fuel for Electric Power Generation, and Purchased Electric Power. The Order in this Docket issued on February 2, 2001, called for a round table discussion with Staff, CURB, and the LDCs. Included in the Order are requests for information from the LDCs which will be used to determine what information or reporting forms can be created to best analyze the purchasing policies of the LDC and analyze the prudence of flow-through costs. Staff firmly believes this forum is the proper way to design procedures which will lead to rules and guidelines being established that will address the important and relevant information needed to perform PGA audits. This is the proper forum to establish benchmarks, penalties, and definitions. We must be careful not to establish requirements such as SB 112 which is very prescriptive and may create nonessential workload and unnecessary information. We have estimated a fiscal impact of three additional full time positions just to review contracts in accordance with SB 112 at an annual cost of \$196,395. This amount is the associated first year expenditures for these three FTEs: Senior Economist, Senior Accountant and Managing Financial Analyst.

The Natural Gas Industry has drastically changed in the last 25 years and we as regulators must adjust to these changes. These adjustments must come from a careful review and understanding of the system, the information available and the ever changing operations of the LDCs. The forum for this is at the KCC and the process has begun. It was actually summed up rather well by Walker Hendrix, whose comments I believe were the basis for this bill, when he wrote in his "Comments of the Citizens' Utility Ratepayers Board" on January 10, 2001, in response to Docket No. 106,850-U:

"The Commission in recent dockets, has consistently found that the Commission's Purchased Gas Adjustment (PGA) mechanism and contract review procedure had not kept pace with industry changes and is in need of modification. CURB agrees. However, CURB suggests that several small steps, required and enforced by the Commission, can move the process forward and set the stage for meaningful contract review."

We are already doing this now and in an arena where it can be accomplished. An arena that allows for proper investigation, greater understanding and focus of purpose in creating policies that will be fair and equitable to all Kansas customers.

Thank you.