

CONTINUATION SHEET

MINUTES OF THE SENATE UTILITIES COMMITTEE at 9:40 a.m. on March 21, 2001 in Room 231-N of the Capitol.

Approval of Minutes

Moved by Senator Barone, seconded by Senator Tyson, to approve the minutes of the Senate Utilities meeting held on March 20, 2001. Motion carried.

Next meeting of the Senate Utilities Committee will be held on March 22.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 2

Missouri Revised Statutes

Chapter 135 Tax Relief Section 135.215

August 28, 2000

Real property improvements exemption from assessment and ad valorem taxes--maximum period granted.

- 135.215. 1. Improvements made to "real property" as such term is defined in section 137.010, RSMo, which are made in an enterprise zone subsequent to the date such zone or expansion thereto was designated, may upon approval of an authorizing resolution by the governing authority having jurisdiction of the area in which the improvements are made, be exempt, in whole or in part, from assessment and payment of ad valorem taxes of one or more affected political subdivisions, provided that, except as to the exemption allowed under subsection 3 of this section, at least fifty new jobs that provide an average of at least thirty-five hours of employment per week per job are created and maintained at the new or expanded facility. Such authorizing resolution shall specify the percent of the exemption to be granted, the duration of the exemption to be granted, and the political subdivisions to which such exemption is to apply and any other terms, conditions or stipulations otherwise required. A copy of the resolution shall be provided the director within thirty calendar days following adoption of the resolution by the governing authority.
2. No exemption shall be granted until the governing authority holds a public hearing for the purpose of obtaining the opinions and suggestions of residents of political subdivisions to be affected by the exemption from property taxes. The governing authority shall send, by certified mail, a notice of such hearing to each political subdivision in the area to be affected and shall publish notice of such hearing in a newspaper of general circulation in the area to be affected by the exemption at least twenty days prior to the hearing but not more than thirty days prior to the hearing. Such notice shall state the time, location, date and purpose of the hearing.
3. Notwithstanding subsection 1 of this section, at least one-half of the ad valorem taxes otherwise imposed on subsequent improvements to real property located in an enterprise zone shall become and remain exempt from assessment and payment of ad valorem taxes of any political subdivision of this state or municipality thereof for a period of not less than ten years following the date such improvements were assessed, provided the improved properties are used for assembling, fabricating, processing, manufacturing, mining, warehousing or distributing properties.
4. No exemption shall be granted for a period more than twenty-five years following the date on which the original enterprise zone was designated by the department.
5. The provisions of subsection 1 of this section shall not apply to improvements made to real property which have been started prior to August 28, 1991.
6. The mandatory abatement referred to in this section shall not relieve the assessor or other responsible official from ascertaining the amount of the equalized assessed value of all taxable property annually as

Municipal housing

required by section 99.855, RSMo, and shall not have the effect of reducing the payments in lieu of taxes referred to in subdivision (2) of section 99.845, RSMo, unless such reduction is set forth in the plan approved by the governing body of the municipality pursuant to subdivision (1) of section 99.820, RSMo.

(L. 1982 H.B. 1713, et al. § 5, A.L. 1983 H.B. 559, A.L. 1986 S.B. 727, A.L. 1991 H.B. 294 & 405, A.L. 1992 S.B. 661 & 620, A.L. 1994 H.B. 1248 & 1048, A.L. 1995 H.B. 414)

Effective 1-1-96



Missouri General Assembly

1-2

Missouri Revised Statutes

Chapter 137 Assessment and Levy of Property Taxes Section 137.016

August 28, 2000

Real property, subclasses of, defined--political subdivision may adjust operating levy to recoup revenue, when--reclassification to apply, when--placement of certain property within proper subclass, factors considered.

137.016. 1. As used in section 4(b) of article X of the Missouri Constitution, the following terms mean:

(1) "Residential property", all real property improved by a structure which is used or intended to be used for residential living by human occupants, vacant land in connection with an airport, land used as a golf course, and manufactured home parks, but residential property shall not include other similar facilities used primarily for transient housing. For the purposes of this section, "transient housing" means all rooms available for rent or lease for which the receipts from the rent or lease of such rooms are subject to state sales tax pursuant to section 144.020.1(6), RSMo;

(2) "Agricultural and horticultural property", all real property used for agricultural purposes and devoted primarily to the raising and harvesting of crops; to the feeding, breeding and management of livestock which shall include breeding and boarding of horses; to dairying, or to any other combination thereof; and buildings and structures customarily associated with farming, agricultural, and horticultural uses. Agricultural and horticultural property shall also include land devoted to and qualifying for payments or other compensation under a soil conservation or agricultural assistance program under an agreement with an agency of the federal government. Agricultural and horticultural property shall further include land and improvements, exclusive of structures, on privately owned airports that qualify as reliever airports under the Nation Plan of Integrated Airports System, to receive federal airport improvement project funds through the Federal Aviation Administration. Real property classified as forest croplands shall not be agricultural or horticultural property so long as it is classified as forest croplands and shall be taxed in accordance with the laws enacted to implement section 7 of article X of the Missouri Constitution;

(3) "Utility, industrial, commercial, railroad and other real property", all real property used directly or indirectly, for any commercial, mining, industrial, manufacturing, trade, professional, business, or similar purpose, including all property centrally assessed by the state tax commission but shall not include floating docks, portions of which are separately owned and the remainder of which is designated for common ownership and in which no one person or business entity owns more than five individual units. All other real property not included in the property listed in subclasses (1) and (2) of section 4(b) of article X of the Missouri Constitution, as such property is defined in this section, shall be deemed to be included in the term "utility, industrial, commercial, railroad and other real property".

assessed at same rate

2. Pursuant to article X of the state constitution, any taxing district may adjust its operating levy to recoup any loss of property tax revenue, except revenues from the surtax imposed pursuant to article X, section 6.2 of the constitution, as the result of changing the classification of structures intended to be

Missouri Revised Statutes

Chapter 70

Powers of Political Subdivisions to Cooperate or Contract with Section 70.180

August 28, 2000

Amount of payments--how determined.

70.180. The amount of any payment of sums in lieu of taxes may be based on the estimated cost to each political subdivision, for and on whose behalf an agreement is entered into, of performing services for the benefit of a project during the period of an agreement, after taking into consideration the benefits to be derived by each political subdivision from such project, but shall not be in excess of the taxes which would result to each political subdivision for said period if the real property of the project within each political subdivision were taxable.

(L. 1941 p. 490 § 7)



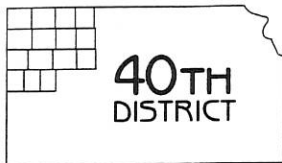
Missouri General Assembly

23-18-104. Construction of power-generating facilities outside the state. [Effective until January 1, 2002.]

- (a) No public utility subject to the jurisdiction of the Arkansas Public Service Commission shall commence construction of any power-generating facility to be located outside the boundaries of this state without the express written approval of the Arkansas Public Service Commission.
- (b) Any public utility proposing such construction shall render adequate written notice to the commission of its intent in order that the commission may conduct any germane inspection, investigation, public hearing, or take any other action deemed appropriate by the commission.
- (c) Failure on the part of any public utility to obtain prior approval of the commission, as established in this section, shall constitute grounds for disallowance, by the commission, of all costs and expenses associated with the construction and subsequent operation of the facility when computing the utility's cost of service for purposes of any rate-making proceedings.
- (d) Any electric utility which does not own in whole or part another electric utility and which is not owned in whole or part by a holding company and which derives less than twenty-five percent (25%) of its total revenues from Arkansas customers is exempt from the provisions of this section.

History. Acts 1985, No. 328, §§ 1-4; 1985, No. 918, §§ 1-4; A.S.A. 1947, §§ 73-279 - 73-279.3.

1-5



Stan Clark

COMMITTEE ASSIGNMENTS

CHAIR: UTILITIES
MEMBER: ASSESSMENT & TAXATION
ELECTIONS & LOCAL GOVERNMENT
ORGANIZATIONS, CALENDAR, & RULES
RULES & REGULATIONS

**Testimony before the House Utilities Committee
Senate Bill 177 - March 20, 2001**

Chairman Holmes and members of the committee:

House Bill 2266 and Senate Bill 177 both encourage independent power producers to construct electric generation facilities in Kansas. I refer to HB 2266 as a gourmet meal and SB 177 as a meat and potatoes bill.

Provisions in SB 177 include:

1. Silent on the source of coal (page 2, line 26). Therefore coal, natural gas, nuclear, hydrogen, Helium 3, and any other fuel source qualify.
2. New construction (page 2, Line 24) and new additions (page 2, line 23) can qualify as an independent power producer generator so long as the additional generation is not in the rate-base of an electric utility or cooperative.
3. Efficiency gains by refurbishing, remodeling or replacing existing equipment (page 2, lines 33-36) do not qualify as being exempt from the public utility definition (page 2, lines 20-32).
4. All or a portion of an electric generation plant (page 2, line 38) can be classified as a commercial and industrial property. This allows a public utility to build a large base-load plant, place a portion of the plant in rate-base for its customers in their certified franchise area and market the balance of the generation produced by the plant in the same competitive wholesale market as any other independent power producer. See pages 3 – 8 of this testimony to see the impact of overbuilding electric generation in the 1980's.
5. For property tax purposes we listed specific FERC accounts as tangible personal property (page 3, lines 3-8). See pages 9 to 20 of this testimony.
6. Since independent power producer property is classified as commercial and industrial property, it is eligible for property tax abatements and payment in lieu of tax agreements with local government officials if industrial revenue bonds are issued. There are no state-mandated

property tax abatements. See KSA 12-1740, KSA 79-201a, Kansas Constitution Article 11, Section 13, which are pages 21 to 23 of this testimony.

7. Personal property would be depreciated using the constitutionally prescribed 7-year straight-line depreciation schedule to 20 percent residual value rather than appraised fair market value under current law. See Kansas Constitution Article 11, Section 1, Class 2-5, which is, pages 24 & 25 of this testimony.
8. Manufacturers inventory is constitutionally exempt property while public utility property is taxed. See Kansas Constitution Article 11, section 1(b), which is page 25 of this testimony.
9. Personal property (equipment) would be eligible for the 15% income tax credit currently available to all commercial and industrial business in our state. See KSA 79-32,206, which is page 26 of this testimony.

An article in the February 11, 2001 issue of the *New York Times* stated: “most of the new power plants in the United States are being built not by regulated utilities but by independent and unregulated operators. Almost 20% of the electricity generated in the first 20 months of 2000 came from generators other than traditional utilities, twice the proportion in 1997. More than 100 companies have announced new plants.” I have attached a chart that identifies over 450 proposed new plants, none are in Kansas.

Mr. Chairman, I believe that explains the provisions of SB 177, which passed the Senate, last Wednesday on a vote of 38-2 and will stand for questions.

ECONOMIC DEVELOPMENT REVENUE BONDS

Cross References to Related Sections:

Industrial and economic development bonds, see 12-3801 et seq.

Law Review and Bar Journal References:

"Urban Revitalization: Planning for the Future in Our Cities," Lester D. Mardiks, 21 W.L.J. 116, 124 (1981).
 "Survey of Kansas Law: Taxation," Sandra Craig McKenzie and Virginia Ratzlaff, 33 K.L.R. 71, 81 (1984).
 "Spurring Economic Development in Kansas Through Property Tax Exemptions Are We Getting the Results We Want?", Laura Ellen Johnson, 30 W.L.J. 82, 84 (1990).

12-1740. Purpose of act; revenue bonds. It is the purpose of this act to promote, stimulate and develop the general welfare and economic prosperity of the state of Kansas through the promotion and advancement of physical and mental health, industrial, commercial, agricultural, natural resources and of recreational development in the state; to encourage and assist in the location of new business and industry in this state and the expansion, relocation or retention of existing business, industry and health development; and to promote the economic stability of the state by providing greater employment opportunities, diversification of industry and improved physical and mental health, thus promoting the general welfare of the citizens of this state by authorizing all cities and counties of the state to issue revenue bonds, the proceeds of which shall be used for the purpose of paying all or part of the cost of purchasing, acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling facilities for agricultural, commercial, hospital, industrial, natural resources, recreational development and manufacturing purposes and to enter into leases or lease-purchase agreements with any person, firm or corporation for such facilities. For the purpose of this act, the term facility shall include a site and the necessary site preparation, structures, easements, rights-of-way and appurtenances necessary and convenient to the particular type of facility being financed.

History: L. 1961, ch. 81, § 1; L. 1969, ch. 85, § 1; L. 1981, ch. 74, § 1; July 1.

Cross References to Related Sections:

Levy for securing industries, see 12-1617h, 12-1617l.
 Certain promotion funds, see 12-825d, 12-825g.

Law Review and Bar Journal References:

Survey of Kansas law, Edward Larson, 10 K.L.R. 158 (1961).
 "Municipal Borrowing in Kansas," Fred W. Rausch, Jr., 10 K.L.R. 520 (1962).
 Survey of constitutional and administrative law, Glenn E. Opte, 12 K.L.R. 146 (1963).

Survey of law of municipal corporations, Albert Martin, 12 K.L.R. 289 (1963).

"A Guide to Industrial Revenue Bond Financing," Donald A. Bell and Winton M. Hinke, 9 W.L.J. 372, 376 (1970).

Constitutionality of ten year industrial revenue bond property taxation provision of K.S.A. 79-201a, 24 K.L.R. 723, 724 (1976).

Attorney General's Opinions:

Cities and municipalities buildings, structures and grounds industrial revenue bonds. 81-4.

Investment of funds received from industrial revenue bonds. 81-117.

Tax exempt property; property constructed or purchased with industrial revenue bond proceeds. 82-234.

Buildings, structures and grounds; issuance of revenue bonds by counties. 85-28.

Cities and municipalities; powers and duties; conveying real property for use as federal prison site; home rule powers. 87-164.

County commissioners; general fund tax levies; limitations on use. 88-65.

Home rule powers of cities and counties; bond issuance. 88-92.

CASE ANNOTATIONS

1. Act does not contravene various provisions of Kansas constitution and bill of rights. State, ex rel., v. City of Pittsburg, 188 K. 612, 613, 614, 615, 619, 620, 621, 364 P.2d 71.

2. City ordinance to implement issuance of bonds administrative in character; not subject to initiative and referendum. Rauh v. City of Hutchinson, 223 K. 514, 515, 517, 520, 521, 575 P.2d 517.

3. Act constitutionally valid; any entity may become lessee of IRB property as long as purpose of act served. State ex rel. Tomasic v. City of Kansas City, 237 K. 572, 581, 701 P.2d 1314 (1985).

4. Lease-purchase agreement under act not complete sale; filing requirements of UCC (article 9) inapplicable. In re Petition of City of Moran, 238 K. 513, 520, 522, 713 P.2d 451 (1986).

5. Leases under act true leases, not mortgages, and therefore subject to assumption/rejection requirements of bankruptcy code. In re Petroleum Products, Inc., 72 B.R. 739, 740, 747 (1987).

6. Lease agreement entered into pursuant to act does not create a mortgage. Bank of Alton v. Tanaka, 247 K. 443, 449, 799 P.2d 1029 (1990).

12-1740a. Use of eminent domain power. No city or county shall exercise its power of eminent domain to acquire property as a site for a facility which is to be financed by revenue bonds issued pursuant to K.S.A. 12-1740 et seq., and amendments thereto. Nothing in this section shall be construed to prohibit a city from issuing revenue bonds for the purpose of paying all or a part of the cost of constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling facilities located on property acquired by the exercise of eminent domain under the provisions of K.S.A. 12-1770 et seq., and amendments thereto.

thereto, optometry services by a person licensed by the board of examiners in optometry pursuant to K.S.A. 65-1501 *et seq.*, and amendments thereto, or K.S.A. 74-1501 *et seq.*, and amendments thereto or podiatry services by a person licensed by the board of healing arts pursuant to K.S.A. 65-2001 *et seq.*, and amendments thereto, shall be construed to be a governmental function, and such property actually and regularly used for such purpose shall be deemed to be used exclusively for the purposes of this paragraph. The lease by a municipality or political subdivision of the state of any real property, or portion thereof, owned or being acquired pursuant to a lease-purchase agreement to any entity for the exclusive use by it for an exempt purpose, including the purpose of displaying or exhibiting personal property by a museum or historical society, if no portion of the lease payments include compensation for return on the investment in such leased property shall be deemed to be used exclusively for the purposes of this paragraph. All property leased, other than property being acquired pursuant to a lease-purchase agreement, to the state or any municipality or political subdivision of the state by any private entity shall not be considered to be used exclusively by the state or any municipality or political subdivision of the state for the purposes of this section except that the provisions of this sentence shall not apply to any such property subject to lease on the effective date of this act until the term of such lease expires but property taxes levied upon any such property prior to tax year 1989, shall not be abated or refunded. Any property constructed or purchased with the proceeds of industrial revenue bonds issued prior to July 1, 1963, as authorized by K.S.A. 12-1740 to 12-1749, or purchased with proceeds of improvement district bonds issued prior to July 1, 1963, as authorized by K.S.A. 19-2776, or with proceeds of bonds issued prior to July 1, 1963, as authorized by K.S.A. 19-3815a and 19-3815b, or any property improved, purchased, reconstructed, reconstructed or repaired with the proceeds of revenue bonds issued prior to July 1, 1963, as authorized by K.S.A. 13-1238 to 13-1245, inclusive, or any property improved, reimproved, reconstructed or repaired with the proceeds of revenue bonds issued after July 1, 1963, under the authority of K.S.A. 13-1238 to 13-1245, inclusive, which had previously been improved, reconstructed or repaired with the proceeds of revenue bonds issued under such act on or before July 1, 1963, shall be exempt

from taxation for so long as any of the revenue bonds issued to finance such construction, reconstruction, improvement, repair or purchase shall be outstanding and unpaid. Any property constructed or purchased with the proceeds of any revenue bonds authorized by K.S.A. 13-1238 to 13-1245, inclusive, 19-2776, 19-3815a and 19-3815b, and amendments thereto, issued on or after July 1, 1963, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Any property, all or any portion of which is constructed or purchased with the proceeds of revenue bonds authorized by K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, issued on or after July 1, 1963 and prior to July 1, 1981, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Except as hereinafter provided, any property constructed or purchased wholly with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, shall be exempt from taxation only for a period of 10 calendar years after the calendar year in which the bonds were issued. Except as hereinafter provided, any property constructed or purchased in part with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, shall be exempt from taxation to the extent of the value of that portion of the property financed by the revenue bonds and only for a period of 10 calendar years after the calendar year in which the bonds were issued. The exemption of that portion of the property constructed or purchased with the proceeds of revenue bonds shall terminate upon the failure to pay all taxes levied on that portion of the property which is not exempt and the entire property shall be subject to sale in the manner prescribed by K.S.A. 79-2301 *et seq.*, and amendments thereto. Property constructed or purchased in whole or in part with the proceeds of revenue bonds issued on or after January 1, 1995, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, and used in any retail enterprise identified under the standard industrial classification codes, major groups 52 through 59, inclusive, except facilities used exclusively to house the headquarters or back office operations of such retail enterprises identified thereunder, shall not be exempt from taxation. For the pur-

q. to be special taxes. *Southeast Kansas Landowners v. Kansas Turnpike Auth.*, 224 K. 357, 371, 582 1123.

§ 11. Taxation of incomes; adoption of general laws by reference. In enacting any law under section 2 of this article 11, the legislature may at any regular, budget or special session define income by reference to or otherwise adopt by reference all or any part of the laws of the United States as they then exist, and, prospectively, as they may thereafter be amended or enacted, with such exceptions, additions or modifications as the legislature may determine then or thereafter in any such legislative sessions.

History: L. 1966, ch. 14—Spec. Sess.; v. 8, 1966.

References to Related Sections:
Taxation of income, see § 2 of this article.

CASE ANNOTATIONS

Mentioned in holding that 79-3290 does not constitute an unlawful delegation of legislative power. *Missouri Pacific Railroad Co. v. McDonald*, 207 K. 744, 747, 486 and 1347. Affirmed: 208 K. 479, 483 P.2d 280.

§ 12. Assessment and taxation of land devoted to agricultural use. Land devoted to agricultural use may be defined by law and valued for ad valorem tax purposes upon the basis of its agricultural income or agricultural productivity, actual or potential, and when so valued such land shall be assessed at the same percent of value and taxed at the same rate as all property subject to the provisions of section 1 of this article. The legislature may, if land devoted to agricultural use changes from such use, provide for the recoupment of a part of all of the difference between the amount of ad valorem taxes levied upon such land during a part or all of the period in which it was valued in accordance with the provisions of this section and the amount of ad valorem taxes which would have been levied upon such land during such period had it not been in agricultural use and had it been valued, assessed and taxed in accordance with section 1 of this article.

History: L. 1975, ch. 516, § 1; Nov. 2, 1976.

Review and Bar Journal References:

"Differential Assessment of Agricultural Land in Kansas: A Discussion and Proposal," 25 K.L.R. 215, 230 (1977).
"Comprehensive Land Use Control Through Differential Assessment and Supplemental Regulation," Clarence J. Malone and Mark Ayesh, 18 W.L.J. 432, 445, 453 (1979).
"The Kansas Property Tax: Understanding and Surviving

Reappraisal," P. John Brady, Brian T. Howes and Greg L. Musil, 57(3) J.K.B.A. 23, 24 (1988).

Attorney General's Opinions:

Valuation based on agricultural income or productivity. 85-135.

§ 13. Exemption of property for economic development purposes; procedure; limitations.

(a) The board of county commissioners of any county or the governing body of any city may, by resolution or ordinance, as the case requires, exempt from all ad valorem taxation all or any portion of the appraised valuation of:

(1) All buildings, together with the land upon which such buildings are located, and all tangible personal property associated therewith used exclusively by a business for the purpose of: (A) Manufacturing articles of commerce; (B) conducting research and development; or (C) storing goods or commodities which are sold or traded in interstate commerce, which commences operations after the date on which this amendment is approved by the electors of this state; or (2) all buildings, or added improvements to buildings constructed after the date on which this amendment is approved by the electors of this state, together with the land upon which such buildings or added improvements are located, and all tangible personal property purchased after such date and associated therewith, used exclusively for the purpose of: (A) Manufacturing articles of commerce; (B) conducting research and development; or (C) storing goods or commodities which are sold or traded in interstate commerce, which is necessary to facilitate the expansion of any such existing business if, as a result of such expansion, new employment is created.

(b) Any ad valorem tax exemption granted pursuant to subsection (a) shall be in effect for not more than 10 calendar years after the calendar year in which the business commences its operations or the calendar year in which expansion of an existing business is completed, as the case requires.

(c) The legislature may limit or prohibit the application of this section by enactment uniformly applicable to all cities or counties.

(d) The provisions of this section shall not be construed to affect exemptions of property from ad valorem taxation granted by this constitution or by enactment of the legislature, or to affect the authority of the legislature to enact additional exemptions of property from ad va-

11. Vali bill reapportioning house and senate districts upheld; former opinion to follow. In re House Bill No. 3083, 251 K. 595, 833 P.2d 1017 (per curiam); 251 K. 597, 598, 836 P.2d 574 (1992).

Article 11.—FINANCE AND TAXATION

Law Review and Bar Journal References:

"Survey of Kansas Law: Taxation," Sandra Craig McKenzie and Eric B. Milstead, 37 K.L.R. 961, 964 (1989).

§ 1. System of taxation; classification; exemption (a) The provisions of this subsection shall govern the assessment and taxation of property on and after January 1, 1993, and each year thereafter. Except as otherwise hereinafter specifically provided, the legislature shall provide for a uniform and equal basis of valuation and rate of taxation of all property subject to taxation. The legislature may provide for the classification and the taxation uniformly as to class of recreational vehicles, as defined by the legislature, or may exempt such class from property taxation and impose taxes upon another basis in lieu thereof. The provisions of this subsection shall not be applicable to the taxation of motor vehicles, except as otherwise hereinafter specifically provided, mineral products, money, mortgages, notes and other evidence of debt and grain. Property shall be classified into the following classes for the purpose of assessment and assessed at the percentage of value prescribed therefor:

Class 1 shall consist of real property. Real property shall be further classified into seven subclasses. Such property shall be defined by law for the purpose of subclassification and assessed uniformly as to subclass at the following percentages of value:

- (1) Real property used for residential purposes including multi-family residential real property and real property necessary to accommodate a residential community of mobile or manufactured homes including the real property upon which such homes are located 11 1/2%
- (2) Land devoted to agricultural use which shall be valued upon the basis of its agricultural income or agricultural productivity pursuant to section 12 of article 11 of the constitution 30%
- (3) Vacant lots 12%

- (4) Real property which is owned and operated by a not-for-profit organization not subject to federal income taxation pursuant to section 501 of the federal internal revenue code, and which is included in this subclass by law 12%
- (5) Public utility real property, except railroad real property which shall be assessed at the average rate that all other commercial and industrial property is assessed 33%
- (6) Real property used for commercial and industrial purposes and buildings and other improvements located upon land devoted to agricultural use 25%
- (7) All other urban and rural real property not otherwise specifically subclassified 30%

Class 2 shall consist of tangible personal property. Such tangible personal property shall be further classified into six subclasses, shall be defined by law for the purpose of subclassification and assessed uniformly as to subclass at the following percentages of value:

- (1) Mobile homes used for residential purposes 11 1/2%
- (2) Mineral leasehold interests except oil leasehold interests the average daily production from which is five barrels or less, and natural gas leasehold interests the average daily production from which is 100 mcf or less, which shall be assessed at 25% 30%
- (3) Public utility tangible personal property including inventories thereof, except railroad personal property including inventories thereof, which shall be assessed at the average rate all other commercial and industrial property is assessed 33%
- (4) All categories of motor vehicles not defined and specifically valued and taxed pursuant to law enacted prior to January 1, 1985 30%
- (5) Commercial and industrial machinery and equipment which, if its economic life is seven years or more, shall be valued at its retail

cost when new less seven-year straight-line depreciation, or which, if its economic life is less than seven years, shall be valued at its retail cost when new less straight-line depreciation over its economic life, except that, the value so obtained for such property, notwithstanding its economic life and as long as such property is being used, shall not be less than 20% of the retail cost when new of such property

- (6) All other tangible personal property not otherwise specifically classified 25% 30%

(b) All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, farm machinery and equipment, merchants' and manufacturers' inventories, other than public utility inventories included in subclass (3) of class 2, livestock, and all household goods and personal effects not used for the production of income, shall be exempted from property taxation.

History: Adopted by Convention, July 29, 1859; ratified by electors, Oct. 4, 1859; L. 1861, p. 62; L. 1923, ch. 255, § 1; L. 1963, ch. 459, § 1; L. 1974, ch. 460, § 1; L. 1985, ch. 364, § 1; L. 1992, ch. 342, § 1; Nov. 3, 1992.

Law Review and Bar Journal References: "Reappraisal—How Long Will It Last." Bruce Landeck, 58 J.K.B.A. No. 1, 15, 18 (1989). "Liberalizing Kansas Real Property Tax Exemptions: The 1988 Legislation." Joan M. Bowen, 37 K.L.R. 597, 615, 639 (1989). "Kansas Property Classification and Reappraisal: The 1986 Constitutional Amendment and Statutory Modifications." Nancy Ogle, 29 W.L.J. 26 (1989). "Spurring Economic Development in Kansas Through Property Tax Exemptions—Are We Getting the Results We Want?" Laura Ellen Johnson, 30 W.L.J. 82, 83 (1990). "Survey of Kansas Law: Taxation," Sandra Craig McKenzie, 41 K.L.R. 727, 735 (1993). "Tax Law: Braum, a Valuable Tax Crop [Board of County Commissioners v. Smith, 857 P.2d 1386 (Kan. Ct. App. 1993)]," Nels P. Noel, 34 W.L.J. 381, 388 (1995).

Attorney General's Opinions: Exemption of property for economic development; exclusive use requirement. 88-123. Shawnee county fair association—tax levy, protest petition and election. 88-136. Statewide reappraisal of farm land; methods of establishing valuations. 88-144. Tax exempt property; machinery and equipment of electric utility company. 88-158.

Property valuation, county and district appraisers' duties, valuation methods; pasture and rangeland. 89-63. Coal and gas of public utility; system of taxation; classification; exemption. 89-85. Statewide reappraisal of real property; CRP land. 89-144. Taxation; classification. 89-145. Extending deadline for property tax payment; equal protection. 89-146. Property exempt from taxation; merchants' and manufacturers' inventory. 89-148. Classification; excise tax on inventories. 89-150. Classification of property; constitutionality. 90-10. County planning and zoning; agricultural purposes; greyhound operations. 90-68. Change in property valuation for tax purposes. 90-82. System of taxation; classification; exemptions; uniform and equal provisions of constitution. 91-71. Community colleges; boards of trustees; powers and duties; political campaign posters and signs on campus. 91-112. Taxation; classification; uniform and equal requirement on state assessed taxes. 91-147. Taxation; extent of classification for 501 organizations. 93-17. Water pollution act; stormwater utility fee; state-owned and operated facility. 93-32. Public utilities; definition; constitutionality of excluding certain telephone companies. 93-142. Contracts for assistance in collecting property taxes. 94-8. Property taxation; classification; commercial and industrial machinery and equipment not in use. 94-52. Property tax obligation release; escaped personal property; constitutionality. 94-79. Property tax accumulated interest amnesty program in Wyandotte county; uniform operation of law; constitutionality. 94-89. Taxation classification; recreational vehicles; application to houseboats. 95-18. Classification and valuation of machinery and equipment; "used factor"; ownership by not-for-profit organizations. 95-99. Beds, sheets and forks, valued and taxed as commercial and industrial machinery and equipment. 96-41. Constitutional exemption from property taxation for farm machinery and equipment does not require that property be exclusively used for farming. 97-11. Classification of property as commercial and industrial machinery and equipment; personal property in process of construction and installation. 97-97. "Public utility" defined for the purpose of property tax classification. 1999-21.

CASE ANNOTATIONS

- 197. Cited; allegations regarding illegal or void valuations or assessments of real property prohibited before exhausting administrative remedies examined. Board of Osage County Commr's v. Schmidt, 12 K.A.2d 812, 813, 758 P.2d 254 (1988). 198. Cited; tax exempt status of publicly owned property leased to private business and unavailable to general public examined. Salina Airport Authority v. Board of Tax Appeals, 13 K.A.2d 80, 83, 761 P.2d 1261 (1988). 199. County appraiser authorized (79-1461) to scrutinize and revalue taxpayer's filed inventory statement to fair market value. In re Tax Appeal of Wichita Bldg. Material Co., 14 K.A.2d 39, 779 P.2d 875 (1989).

amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the taxpayer may carry over the amount thereof that exceeds such tax liability for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the fourth taxable year succeeding the year in which the costs are incurred.

(c) The provisions of this section shall be applicable to all taxable years commencing after December 31, 1997.

(d) On or before the first day of the 1999, 2000 and 2001 regular legislative sessions, the secretary of revenue shall submit to the senate standing committee on energy and natural resources, the house standing committee on environment, the senate standing committee on assessment and taxation and the house standing committee on taxation a report of the number of taxpayers claiming the credit allowed by this section and the total amount of such credits claimed by all taxpayers.

History: L. 1998, ch. 143, § 28; May 7.

79-32,205. Earned income tax credit.

(a) There shall be allowed as a credit against the tax liability of a resident individual imposed under the Kansas income tax act an amount equal to 10% for tax year 1998, and all tax years thereafter, of the amount of the earned income credit allowed against such taxpayer's federal income tax liability pursuant to section 32 of the federal internal revenue code for the taxable year in which such credit was claimed against the taxpayer's federal income tax liability.

(b) If the amount of the credit allowed by subsection (a) exceeds the taxpayer's income tax liability imposed under the Kansas income tax act, such excess amount shall be refunded to the taxpayer.

(c) The provisions of this section shall be applicable to all taxable years commencing after December 31, 1997.

History: L. 1998, ch. 130, § 22; July 1.

79-32,206. Credit for property tax paid on commercial and industrial machinery and equipment. For all taxable years commencing after December 31, 1997, there shall be allowed as a credit against the tax liability of a taxpayer imposed under the Kansas income tax act, the premiums tax upon insurance companies imposed pursuant to K.S.A. 40-252, and amendments

thereto, and the privilege tax as measured by net income of financial institutions imposed pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, an amount equal to 15% of the property tax levied for property tax year 1998, and all such years thereafter, actually and timely paid during an income or privilege taxable year upon commercial and industrial machinery and equipment classified for property taxation purposes pursuant to section 1 of article 11 of the Kansas constitution in subclass (5) or (6) of class 2 and machinery and equipment classified for such purposes in subclass (2) of class 2. If the amount of such tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount thereof which exceeds such tax liability shall be refunded to the taxpayer. If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code, a partnership or a limited liability company, the credit provided by this section shall be claimed by the shareholders of such corporation, the partners of such partnership or the members of such limited liability company in the same manner as such shareholders, partners or members account for their proportionate shares of the income or loss of the corporation, partnership or limited liability company.

History: L. 1998, ch. 130, § 23; July 1.

79-32,207. Tax credit for plugging abandoned oil or gas well. (a) As used in this section, "abandoned oil or gas well" means an abandoned well, as defined by K.S.A. 2000 Supp. 55-191 and amendments thereto:

(1) The drilling of which was commenced before January 1, 1970; and

(2) which is located on land owned by the taxpayer claiming the tax credit allowed by this section.

(b) For any taxable year commencing after December 31, 1997, and before January 1, 2001, a credit shall be allowed against the tax imposed by the Kansas income tax act on the Kansas taxable income of a taxpayer for expenditures made for the purpose of plugging any abandoned oil or gas well in accordance with rules and regulations of the state corporation commission applicable thereto, in an amount equal to 50% of such expenditures made in the taxable year.

(c) If the amount of the tax credit allowed by this section exceeds the taxpayer's income tax liability for such taxable year, the amount thereof which exceeds such tax liability may be carried

PLAINS

NON PLAINS

DATE	KWH USAGE	TOTAL CHARGES	CENTS PER KWH	KWH USAGE	TOTAL CHARGES	CENTS PER KWH
Mar-88	443	\$ 59.46	\$ 0.1340720862	443	\$ 35.07	0.079166516
Apr-88	376	\$ 53.27	\$ 0.1416755319	376	\$ 30.34	0.080700766
May-88	400	\$ 54.23	\$ 0.1355150000	400	\$ 32.31	0.0807187
Jun-88	438	\$ 60.82	\$ 0.1388584475	438	\$ 34.51	0.078787301
Jul-88	502	\$ 70.14	\$ 0.1397211155	502	\$ 44.55	0.088746167
Aug-88	869	\$ 107.60	\$ 0.1238304833	869	\$ 71.49	0.082271427
Sep-88	827	\$ 103.60	\$ 0.1252720877	827	\$ 68.45	0.082767247
Oct-88	877	\$ 110.75	\$ 0.1262827822	877	\$ 63.69	0.071485317
Nov-88	695	\$ 79.44	\$ 0.1143021583	695	\$ 52.68	0.075803957
Dec-88	463	\$ 57.97	\$ 0.1252051836	463	\$ 36.32	0.078455093
1988 TOTALS	5890	\$ 757.48	\$ 0.1286044143	5890	\$ 468.43	0.079536039
Jan-89	483	\$ 50.32	\$ 0.1041821946	483	\$ 38.18	0.079056565
Feb-89	477	\$ 55.09	\$ 0.1154926625	477	\$ 37.20	0.077985789
Mar-89	538	\$ 64.10	\$ 0.1191449814	538	\$ 43.73	0.081273464
Apr-89	378	\$ 46.32	\$ 0.1222751323	378	\$ 30.98	0.081970889
May-89	410	\$ 48.67	\$ 0.1187073171	410	\$ 33.33	0.081296378
Jun-89	547	\$ 60.91	\$ 0.1113528336	547	\$ 43.05	0.078708806
Jul-89	764	\$ 77.79	\$ 0.1022207622	764	\$ 64.41	0.084642368
Aug-89	1000	\$ 115.41	\$ 0.1156100000	1000	\$ 87.38	0.087378555
Sep-89	1083	\$ 119.18	\$ 0.1100461681	1083	\$ 86.79	0.080133987
Oct-89	925	\$ 102.57	\$ 0.1108664865	925	\$ 84.45	0.073996430
Nov-89	613	\$ 98.51	\$ 0.1607014682	613	\$ 66.92	0.076534329
Dec-89	762	\$ 73.13	\$ 0.0959711286	762	\$ 58.50	0.076771118
1989 TOTALS	7977	\$ 912.10	\$ 0.1142412310	7977	\$ 638.92	0.080949472
Jan-90	470	\$ 57.22	\$ 0.1217446809	470	\$ 38.51	0.081945839
Feb-90	581	\$ 71.71	\$ 0.1234251291	581	\$ 52.17	0.089794699
Mar-90	330	\$ 43.55	\$ 0.1319699170	330	\$ 32.44	0.098294889
Apr-90	305	\$ 41.74	\$ 0.1368524590	305	\$ 30.63	0.100417472
May-90	519	\$ 65.94	\$ 0.1270520231	519	\$ 47.30	0.09113632
Jun-90	516	\$ 63.10	\$ 0.1222868217	516	\$ 47.83	0.092701997
Jul-90	783	\$ 102.27	\$ 0.1304076433	783	\$ 76.90	0.097962273
Aug-90	1043	\$ 137.14	\$ 0.1314860978	1043	\$ 96.70	0.092713312
Sep-90	910	\$ 114.06	\$ 0.1253406593	910	\$ 83.08	0.091298592
Oct-90	944	\$ 118.71	\$ 0.1257531186	944	\$ 77.39	0.081984540
Nov-90	757	\$ 103.10	\$ 0.1361955086	757	\$ 64.35	0.085013192
Dec-90	508	\$ 66.59	\$ 0.1308251473	508	\$ 46.94	0.092228094
1990 TOTALS	7649	\$ 985.23	\$ 0.1284691616	7649	\$ 694.26	0.090528016
Jan-91	473	\$ 59.52	\$ 0.1258350951	473	\$ 46.97	0.099295476
Feb-91	560	\$ 74.62	\$ 0.1332500000	560	\$ 48.98	0.087462843
Mar-91	415	\$ 51.84	\$ 0.1249156627	415	\$ 35.04	0.084422242
Apr-91	503	\$ 66.32	\$ 0.1318489066	503	\$ 49.15	0.097704642
May-91	460	\$ 60.70	\$ 0.1319565217	460	\$ 41.92	0.091121789
Jun-91	397	\$ 49.95	\$ 0.1258186398	397	\$ 40.89	0.103066041
Jul-91	564	\$ 77.45	\$ 0.1373268050	564	\$ 56.88	0.100855253
Aug-91	935	\$ 134.05	\$ 0.1433689840	935	\$ 79.41	0.084931234
Sep-91	869	\$ 116.92	\$ 0.1345454545	869	\$ 63.66	0.07325509
Oct-91	843	\$ 112.30	\$ 0.1332147094	843	\$ 61.03	0.072399889
Nov-91	741	\$ 98.28	\$ 0.1326315789	741	\$ 56.93	0.076823126
Dec-91	538	\$ 71.81	\$ 0.1326387543	538	\$ 52.90	0.091527622
1991 TOTALS	7338	\$ 972.76	\$ 0.1327810084	7338	\$ 633.75	0.086365469
Jan-92	682	\$ 84.88	\$ 0.1244574780	682	\$ 61.46	0.090423106
Feb-92	687	\$ 88.19	\$ 0.1283697234	687	\$ 60.72	0.088379375
Mar-92	600	\$ 87.90	\$ 0.1465013043	600	\$ 60.79	0.088100199
Apr-92	789	\$ 96.57	\$ 0.1223954373	789	\$ 69.10	0.087579472
May-92	843	\$ 108.25	\$ 0.1284104389	843	\$ 74.36	0.088203046
Jun-92	731	\$ 96.29	\$ 0.1317236662	731	\$ 66.65	0.09111831
Jul-92	956	\$ 130.69	\$ 0.1366447699	956	\$ 91.98	0.096212293
Aug-92	1326	\$ 203.58	\$ 0.1535294118	1326	\$ 128.36	0.096803973
Sep-92	1529	\$ 220.30	\$ 0.1440810988	1529	\$ 146.38	0.095737181
Oct-92	1366	\$ 182.28	\$ 0.1334407028	1366	\$ 108.77	0.07962942
Nov-92	953	\$ 123.87	\$ 0.1299790136	953	\$ 81.30	0.085314262
Dec-92	992	\$ 122.78	\$ 0.1237701413	992	\$ 83.97	0.086666812
1992 TOTALS	11544	\$ 1,355.58	\$ 0.1320197385	11544	\$ 1,035.85	0.089731821
Jan-93	916	\$ 108.30	\$ 0.1182314410	916	\$ 81.76	0.089325751
Feb-93	1141	\$ 130.97	\$ 0.1147852761	1141	\$ 94.43	0.082757852
Mar-93	995	\$ 112.66	\$ 0.1132261307	995	\$ 84.12	0.084545451
Apr-93	748	\$ 84.62	\$ 0.1138021390	748	\$ 66.48	0.088871752
May-93	1024	\$ 119.40	\$ 0.1153378378	1024	\$ 86.86	0.083843882
Jun-93	908	\$ 104.60	\$ 0.1150915072	908	\$ 79.54	0.087301104
Jul-93	978	\$ 120.34	\$ 0.1230470348	978	\$ 93.50	0.09559855
Aug-93	1767	\$ 240.83	\$ 0.1362031522	1767	\$ 161.68	0.091500231
Sep-93	1550	\$ 213.91	\$ 0.1380064516	1550	\$ 139.70	0.090127049
Oct-93	1378	\$ 181.71	\$ 0.13186560318	1378	\$ 105.79	0.076768001
Nov-93	821	\$ 107.50	\$ 0.13049378806	821	\$ 70.88	0.086324182
Dec-93	1008	\$ 125.95	\$ 0.1249503968	1008	\$ 85.26	0.084585524
1993 TOTALS	13247	\$ 1,622.88	\$ 0.1247739111	13247	\$ 1,149.99	0.084811058
Jan-94	933	\$ 111.69	\$ 0.1197106109	933	\$ 79.79	0.085520845
Feb-94	1150	\$ 129.47	\$ 0.1125826087	1150	\$ 96.63	0.084024283
Mar-94	1124	\$ 140.63	\$ 0.1251156584	1124	\$ 97.16	0.086440743
Apr-94	924	\$ 115.72	\$ 0.1252380952	924	\$ 82.65	0.089446855
May-94	902	\$ 110.57	\$ 0.1225831486	902	\$ 83.51	0.092579776
Jun-94	787	\$ 89.60	\$ 0.1138500635	787	\$ 76.89	0.097703596
Jul-94	1156	\$ 151.06	\$ 0.1306747405	1156	\$ 116.64	0.1008965
Aug-94	2213	\$ 295.56	\$ 0.1335562385	2213	\$ 201.60	0.091096912
Sep-94	1413	\$ 186.40	\$ 0.1319179052	1413	\$ 129.51	0.091658683
Oct-94	1526	\$ 186.32	\$ 0.1230969856	1526	\$ 118.93	0.077937029
Nov-94	961	\$ 125.63	\$ 0.1307284079	961	\$ 83.64	0.087037833
Dec-94	760	\$ 92.09	\$ 0.1211710536	760	\$ 69.23	0.091089606
1994 TOTALS	13849	\$ 1,734.74	\$ 0.1252618297	13849	\$ 1,236.18	0.089261156
Jan-95	930	\$ 116.74	\$ 0.1255268817	930	\$ 85.73	0.092187658
Feb-95	935	\$ 121.81	\$ 0.1302780749	935	\$ 84.62	0.090504745
Mar-95	964	\$ 131.67	\$ 0.1365871369	964	\$ 84.94	0.088113106
Apr-95	866	\$ 118.51	\$ 0.1368475751	866	\$ 78.69	0.090871102
May-95	585	\$ 78.03	\$ 0.1333846154	585	\$ 54.40	0.09298545
Jun-95	877	\$ 116.31	\$ 0.1326231770	877	\$ 80.66	0.091971192
Jul-95	539	\$ 81.25	\$ 0.1507431150	539	\$ 55.99	0.103872771
Aug-95	1519	\$ 239.01	\$ 0.1573469388	1519	\$ 146.41	0.096384813
Sep-95	1870	\$ 280.54	\$ 0.1500119904	1870	\$ 165.07	0.088271671
Oct-95	1947	\$ 240.94	\$ 0.1237493580	1947	\$ 139.86	0.071832329
Nov-95	776	\$ 107.22	\$ 0.1381701031	776	\$ 68.50	0.088269724
1995 TOTALS	11808	\$ 1,632.81	\$ 0.1382199228	11808	\$ 1,044.87	0.088487967
SUMMARY	5890	\$ 757.48	\$ 0.1286044143	5890	\$ 468.43	0.079536039
Jun-85	7977	\$ 912.10	\$ 0.1142412310	7977	\$ 638.92	0.080949472
Jun-89	7649	\$ 985.23	\$ 0.1284691616	7649	\$ 694.26	0.090528016
Jun-93	7338	\$ 972.76	\$ 0.1327810084	7338	\$ 633.75	0.086365469
Jun-95	11544	\$ 1,355.58	\$ 0.1320197385	11544	\$ 1,035.85	0.089731821
Jun-95	13247	\$ 1,622.88	\$ 0.1247739111	13247	\$ 1,149.99	0.084811058
Jun-95	13849	\$ 1,734.74	\$ 0.1252618297	13849	\$ 1,236.18	0.089261156
Jun-95	11808	\$ 1,632.81	\$ 0.1382199228	11808	\$ 1,044.87	0.088487967
TOTALS	79321	\$ 10,183.80	\$ 0.1284856477	79321	\$ 6,902.24	0.087015496

Stan Clark's Annual Electric Bill Comparison

Year	Plains Charges	Non-Plains Charges	Difference	% of Charges over Non-Plains
1988	\$ 757.48	\$ 468.43	\$289.05	61.71%
1989	\$ 912.10	\$ 638.92	\$273.18	42.76%
1990	\$ 985.23	\$ 694.26	\$290.97	41.91%
1991	\$ 973.76	\$ 633.75	\$340.01	53.65%
1992	\$1535.46	\$1035.85	\$499.61	48.24%
1993	\$1652.88	\$1149.99	\$502.89	43.73%
1994	\$1734.74	\$1236.18	\$498.56	40.33%
1995	\$1632.03	\$1044.87	\$587.16	56.19%
1999	\$1267.14	\$ 930.16	\$336.98	36.23%

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THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

BEFORE COMMISSIONERS: MICHAEL LENNEN, CHAIRMAN
RICHARD C. (PETE) LOUX
PHILLIP R. DICK

Sept 2, 1983

IN THE MATTER OF THE APPLICATION OF)
SUNFLOWER ELECTRIC COOPERATIVE, INC.,)
FOR APPROVAL OF THE STATE CORPORATION)
COMMISSION TO MAKE CERTAIN CHANGES IN)
ITS CHARGES FOR SALE OF ELECTRICITY)
TO ITS MEMBER COOPERATIVES.)

DOCKET NO. 137,068-U

ORDER

NOW, THIS MATTER COMES ON FOR CONSIDERATION AND DETERMINATION BY THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS UPON THE APPLICATION OF SUNFLOWER ELECTRIC COOPERATIVE, INC. FOR APPROVAL OF THE COMMISSION TO MAKE CERTAIN CHANGES IN ITS CHARGES FOR SALE OF ELECTRICITY TO ITS MEMBER COOPERATIVES.

APPEARANCES OF COUNSEL WERE AS FOLLOWS:

L. EARL WATKINS, JR., GREAT BEND, KANSAS, AND JACK GLAVES, WICHITA, KANSAS, FOR THE APPLICANT SUNFLOWER ELECTRIC COOPERATIVE, INC.;

GERARD LITTLE, GARDEN CITY, KANSAS, FOR INTERVENORS THE CITIES OF GARDEN CITY, LAKIN AND LEOTI, KANSAS;

SAM W. G. LOWE, COLBY, KANSAS, LESLIE R. KEHL, DENVER, COLORADO, AND ALVIN J. MEIKLEJOHN, DENVER, COLORADO FOR INTERVENOR GREAT PLAINS ELECTRIC COOPERATIVE, INC.;

JAMES M. MILLIKEN, ST. FRANCIS, KANSAS, FOR INTERVENOR NORTHWEST KANSAS ELECTRIC COOPERATIVE, INC.;

KEEN BRANTLEY, SCOTT CITY, KANSAS, FOR INTERVENOR WHEATLAND ELECTRIC COOPERATIVE, INC.;

WILLIAM J. RYAN, NORTON, KANSAS, FOR INTERVENOR NORTON-DECATUR COOPERATIVE ELECTRIC CO. INC.;

E. F. RUSSELL, ULYSSES, KANSAS, FOR INTERVENOR PIONEER ELECTRIC COOPERATIVE, INC.;

HARRY A. WAITE, DODGE CITY, KANSAS, AND LESLIE R. KEHL AND ALVIN J. MEIKLEJOHN, DENVER, COLORADO, FOR INTERVENOR VICTORY ELECTRIC COOPERATIVE ASSOCIATION, INC.;

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HOLCOMB WAS IN EXCESS OF CURRENT POWER REQUIREMENTS. MR. THOMPSON TESTIFIED THAT SUNFLOWER EXPECTED TO USE ONLY 50% OF HOLCOMB TO MEET ITS MEMBER REQUIREMENTS. HE STATED THAT LOAD DURATION CURVE AND REDISPATCH STUDIES INDICATED THAT 50% OF HOLCOMB WOULD MEET PRESENT BASE LOAD REQUIREMENTS. MR. SCHNOSE TESTIFIED THAT IF THE ENTIRE HOLCOMB PLANT WERE PLACED IN RATE BASE AT THIS TIME, RATE LEVELS WOULD DOUBLE FROM 1982 LEVELS. HE CALLED SUCH A RESULT "A GROSS INEQUITY ON TODAY'S MEMBERS" BECAUSE THEY WOULD BE PAYING FOR PLANT IN EXCESS OF CURRENT NEEDS.

7. THE EVIDENCE DEMONSTRATES THAT THE TOTAL CAPACITY RESOURCES AVAILABLE TO SUNFLOWER EQUALS 624MW, WHILE THE MAXIMUM MEMBER LOAD OVER THE LAST FIVE YEARS HAS BEEN 267MW IN 1981. THUS, SUNFLOWER HAS APPROXIMATELY TWICE ITS REQUIRED CAPACITY WITH HOLCOMB ON LINE. IT IS ESTIMATED THAT HOLCOMB'S CAPACITY FACTOR FOR ITS FIRST YEAR OF OPERATION WILL BE 42.5% AS COMPARED WITH A TYPICAL CAPACITY FACTOR OF APPROXIMATELY 65% FOR MOST COAL-FIRED PLANTS.

8. THE ONLY PARTY TO ACTIVELY OPPOSE THE PLACING OF 50% OF THE PLANT IN RATE BASE WAS GARDEN CITY, A CONTRACT CUSTOMER OF WHEATLAND ELECTRIC COOPERATIVE, INC. ITS WITNESSES, WHILE NOT OPPOSING THE DEFERRAL CONCEPT, CONTENDED THAT SUNFLOWER HAD NOT ADEQUATELY SUPPORTED THE PLACING OF 50% OF THE PLANT IN RATE BASE AT THIS TIME. GARDEN CITY ADVOCATED PLACING NONE OF HOLCOMB IN RATE BASE UNTIL SUNFLOWER COULD MORE ADEQUATELY QUANTIFY THE PERCENTAGE OF THE PLANT PRESENTLY NEEDED. DR. YOKELL FURTHER ASSERTED THAT AT MOST 35% RATHER THAN 50% OF HOLCOMB IS NEEDED BY CURRENT RATEPAYERS TO PROVIDE FOR LOWER FUEL COSTS, AND THEREFORE IF ANY OF HOLCOMB WERE TO BE PLACED IN RATE BASE IT SHOULD BE 35% RATHER THAN 50%. IT SHOULD BE NOTED THAT REPRESENTATIVES OF GARDEN CITY APPEARED AT THE SITING HEARINGS IN 1978, AND TESTIFIED STRONGLY IN FAVOR OF THE CONSTRUCTION OF THE HOLCOMB PLANT. EVEN IF THE ORIGINAL \$277 MILLION FIGURE WERE USED AS A BASIS OF COMPARISON, WHAT SUNFLOWER PROPOSES TO PLACE INTO RATE BASE AT THIS TIME IS AT LEAST \$80 MILLION LESS THAN WHAT GARDEN

DISSENT

LITTLE THOUGHT BY APPLICANT WAS EVER GIVEN TO THE ULTIMATE COST TO RATEPAYERS OR ITS NEGATIVE EFFECTS UPON THE SOUTHWEST KANSAS ECONOMY. IN MY OPINION, THE MAJOR FACTOR WAS INCREASING THE TAX BASE OF FINNEY COUNTY, NOT WHAT THE EFFECTS OF THE EXTREME COST OF ENERGY TO CUSTOMERS WITH RESIDENTIAL AND BUSINESS. NOW THE APPLICANT, WITH THE MAJORITY CONCURRENCE, HAS COMMENCED A NEW SCHEME TO HIDE THE TRUE COSTS TO ALL RATEPAYERS.

ADOPTION OF THE MAJORITY'S PLAN IS ESPECIALLY DECEIVING BECAUSE IT PROMISES A SOLUTION WHICH IS BOTH UNWORKABLE AND INEFFECTIVE. IT WILL CREATE A FALSE SENSE OF SECURITY FOR THE RATEPAYER WHERE NONE EXISTS.

TODAY'S DECISION BY THE MAJORITY REPRESENTS AN APPARENT ABANDONMENT BY THE COMMISSION OF ITS LEGAL RESPONSIBILITIES TO THIS APPLICANT'S MEMBER RATEPAYERS AND CUSTOMERS. ADOPTING APPLICANT'S PROPOSAL TO PLACE PART OF ITS NEWLY CONSTRUCTED BUT NOT YET FULLY OPERATIONAL HOLCOMB PLANT INTO ITS RATE BASE, THE COMMISSION HAS CHOSEN TO REWARD COLOSSAL MANAGEMENT BLUNDERS BY THE TRUSTEES OF SUNFLOWER AND PASS THE COSTS OF THE PATENTLY UNNECESSARY FACILITY TO APPLICANT'S COOPERATIVE MEMBERS AND CONTRACTUAL CUSTOMERS OF GARDEN CITY. AS I SEE NO COMPELLING REASON TO ABANDON SETTLED REGULATORY PRINCIPLES, PRIOR DECISIONS OF THIS COMMISSION, AND THE CLEAR PROVISIONS SET FORTH BY THE KANSAS LEGISLATURE AT K.S.A. 66-101 ET SEQ., I MUST VIGOROUSLY DISSENT.

IT IS NOW OBVIOUS THAT A GREAT MANY OF THE ASSUMPTIONS, PROJECTIONS, RATIONALES, AND ARGUMENTS PRESENTED THIS COMMISSION IN APPLICANT'S SITING PERMIT FOR THE HOLCOMB PLANT, DOCKET NO. 114,010-U, WERE ILL-CONCEIVED, FALSE, AND EVEN DUPLICITOUS. WHAT WAS ONCE REPRESENTED TO BE AN ECONOMIC BOON TO THE ECONOMY OF SOUTHWESTERN KANSAS HAS TRANSFORMED INTO A HUGE "WHITE ELEPHANT" WITH CRUSHING FINANCIAL IMPLICATIONS.

FROM THE EVIDENCE IT IS CLEAR THAT SUBSEQUENT TO OUR REFERENCED SITING PERMIT DECISION (FROM WHICH I DISSENTED) ON OCTOBER 23, 1978, APPLICANT'S MANAGEMENT BECAME AWARE ITS ORIGINAL LOAD GROWTH AND COST PROJECTIONS WERE IN ERROR. NONETHELESS, APPLICANT "...PLUNGED BLINDLY AHEAD...", AS THE MAJORITY NOTES, WITH A SEEMING INDIFFERENCE TO THE REAL CONSEQUENCES OF THEIR DECISION.

APPLICANT'S AVAILABLE TOTAL CAPACITY IS PRESENTLY 624 MW THOUGH THE MAXIMUM MEMBER LOAD OVER THE PAST FIVE YEARS HAS BEEN 267 MW IN 1981. THIS WOULD INDICATE EXCESS CAPACITY OF APPROXIMATELY ONE HUNDRED THIRTY-THREE PERCENT (133%). THAT IS, SIMPLY PUT, APPALLING.

APPLICANT'S PROPOSED "SOLUTION" IS TO DEFER FIFTY PER CENT OF THE PLANT OVER THE NEXT FIVE YEARS WHILE PLACING FIFTY PER CENT PRESENTLY IN RATE BASE. APPLICANT'S RATIONALE IS THAT THE ADDITION OF THE ENTIRE HOLCOMB PLANT WOULD CAUSE RATES TO DOUBLE, DEPRESS THE AGRICULTURAL ECONOMY, AND IMPOSE AN INEQUITY ON TODAY'S MEMBERS FORCING

THEM TO PAY FOR PLANT IN EXCESS OF CURRENT NEEDS. MORE PLAINLY PUT, APPLICANT SEEKS TO CHARGE ONLY WHAT THE TRAFFIC WILL BEAR.

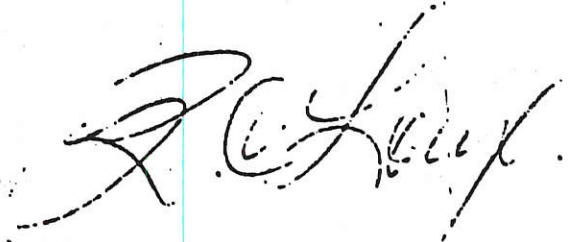
PERSUADED BY APPLICANT'S CASE, THE MAJORITY SEES NO SOLUTION OTHER THAN PLACING PART OF THE UNNEEDED PLANT IN RATE BASE. TO DO OTHERWISE, THE MAJORITY ASSERTS, WOULD BE IRRESPONSIBLE AND IN DERELICTION OF DUTY. FORECLOSING THE OBVIOUS OPTION AVAILABLE TO APPLICANT, THE MAJORITY FINDS "NO REASON" TO BELIEVE THE REA WOULD FINANCE THE PLANT AND STATES THE REA WOULD EVEN "INSIST" THAT 100% OF THE PLANT BE PLACED IN RATE BASE UPON DEFAULT.

THE MAJORITY HAS, BY THIS ORDER, THROWN ITS HANDS UP AND ANNOUNCED THERE'S NOTHING TO BE DONE. RATHER THAN HOLD APPLICANT TO THE STRICT STANDARD OF PROOF PREVIOUSLY REQUIRED BY THE COMMISSION IN RATE PROCEEDING SEE KG&E INTERIM DOCKET NO. 117,222-U AND SWB DOCKET NO. 117,220-U, THE MAJORITY INSTEAD PLACES 47% OF THE PLANT IN RATE BASE IN SPITE OF OVERWHELMING AND UNCONTROVERTED EVIDENCE THAT THE PLANT IS NOT NEEDED. PREVIOUSLY, THE COMMISSION REQUIRED A PREPONDERANCE OF EVIDENCE THAT PUBLIC UTILITY PROPERTY PROPOSED FOR RATE BASE INCLUSION BE "...USED OR REQUIRED TO BE USED..." K.S.A. 66-128. THE MAJORITY WOULD NOW CARVE AN EXCEPTION TO THAT STATUTE FOR APPLICANT. K.S.A. 66-128 IS IGNORED AND THE HOLCOMB ADDITION TO RATE BASE IS ACCEPTED FOR TO DO OTHERWISE WOULD BE "...IRRESPONSIBLE..."

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Rate base
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THE COMMISSION'S RESPONSIBILITY IS TO SUPERVISE AND CONTROL PUBLIC UTILITIES INCLUDING THIS APPLICANT, AND TO SET RATES THAT ARE JUST AND REASONABLE. SPECULATION AS TO THE CAUSE AND EFFECT OF A POSSIBLE DEFAULT DO NOT NEGATE THAT RESPONSIBILITY. THE REACTIONS OF THE REA TO A PROSPECTIVE DEFAULT BY SUNFLOWER IS IMPOSSIBLE TO DETERMINE. BUT THE DECISION OF THE MAJORITY TO PLACE 47% OF THE COST OF APPLICANT'S UNNEEDED PLANT IN THEIR RATE BASE WILL CREATE AN ONEROUS BURDEN FOR MANY RESIDENTIAL RATEPAYERS.

APPLICANT HAS NOT SHOWN SUBSTANTIAL REPORTS TO RESCHEDULE ITS DEBTS WITH REA WHICH PROMOTED THE HOLCOMB GENERATION FACILITY FROM ITS INCEPTION. APPLICANT SEEKS, AND THE MAJORITY AUTHORIZES BY ITS ORDER, A MORE EXPEDIENT SOLUTION: INTERIM RATE RELIEF FOR A PLANT THAT MAY NEVER BE NEEDED. RATHER THAN "BAIL OUT" APPLICANT'S GROSS MISCALCULATIONS AND FISCAL IRRESPONSIBILITY, I WOULD PERMIT APPLICANT'S MANAGEMENT FAILURES TO RUN THEIR NATURAL COURSE.



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