

Approved: April 2, 2002 *Carl Dean Holmes*
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:06 a.m. on February 20, 2002 in Room 526-S of the Capitol.

All members were present except: Representative Ward Loyd

Committee staff present: Robert Chapman, Legislative Research
Dennis Hodgins, Legislative Research
Mary Torrence, Revisor of Statutes
Jo Cook, Administrative Assistant

Conferees appearing before the committee: Stuart Lowery, Kansas Electric Cooperatives
Doug Lawrence, Westar Energy
Kim Gulley, League of Kansas Municipalities
Scott Keith, UtiliCorp United

Others attending: See Attached List

HB 2661 - Retail electric suppliers; service rights in area annexed by city; procedures; compensation when service rights terminated

Chairman Holmes opened the hearing on **HB 2661**. The committee's attention was directed to four pieces of written testimony submitted: Colin Hansen, Kansas Municipal Utilities, in support (Attachment 1); Leslie Kaufman, Kansas Farm Bureau, in support (Attachment 2); Joe Lieber, Kansas Cooperative Council, in support (Attachment 3); and Brett Myers, Kansas Agricultural Alliance, in support (Attachment 4).

Stuart Lowry, Corporate Counsel for Kansas Electric Cooperatives, appeared in support of **HB 2661** (Attachment 5). Mr. Lowry explained that this bill was a compromise fashioned by a working group representing utility and municipal interests. He stated that it benefits electric suppliers to be able to utilize known standards in negotiating municipal franchises and it benefits cities if multiple suppliers attempt to secure the ability to serve within a city.

Doug Lawrence, Vice President for Public Affairs for Westar Energy, testified in support of **HB 2661** (Attachment 6). Mr. Lawrence stated that, ultimately, the bill represents a fair solution to a nagging problem.

Kim Gulley, Director of Policy Development & Communications for the League of Kansas Municipalities, appeared as a proponent to **HB 2661** (Attachment 7). Ms. Gulley also outlined the activities that lead to the compromise legislation. She stated that the new administrative procedures outlined would serve as a road map for annexation and that all parties involved would be understanding and fair.

Mr. Lowry, Mr. Lawrence, and Ms. Gulley responded to questions from the committee. Additionally, Paula Lentz, Assistant General Counsel for the Kansas Corporation Commission, answered questions from the committee.

W. Scott Keith, Manager of Electric Tariffs in Kansas and Colorado for UtiliCorp United, addressed the committee in opposition to **HB 2661** (Attachment 8). Mr. Keith stated that they were opposed to several sections of the bill, including the amendments on rates of various suppliers, the economic impact on the suppliers, and the economic impact on the customers of suppliers. Mr. Keith included a copy of the testimony provided to the Senate Utilities Committee from Jim Flaherty. Mr. Keith responded to questions from the committee. Additionally, Tom Day, Legislative Liaison for the Kansas Corporation Commission, responded to questions.

Chairman Holmes closed the hearing on **HB 2661**.

HB 2746 - Station power exempted from retail electric suppliers act

Chairman Holmes opened the hearing on **HB 2746**.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 526-S Statehouse, at 9:06 a.m. on February 20, 2002.

Barry Hart, Executive Vice President of Kansas Electric Cooperatives, testified in support of **HB 2746** (Attachment 9). Mr. Hart provided background on the proposed legislation. The bill defines requirements and exclusions for those who provide station power to new generation plants.

David McCoy, on behalf of Great Plains Power, appeared in support of **HB 2746** (Attachment 10). Mr. McCoy stated that the bill removes a barrier to entry for wholesale electrical generating companies that may be considering doing business in the state. Mr. McCoy also suggestion clarifying language supported by other industry representatives.

Mark Schreiber, Senior Manager of Governmental Affairs for Westar Energy, addressed the committee in support of **HB 2746** (Attachment 11). Mr. Schreiber reiterated that the proposed generation provided incentives for the construction of new generation.

Mr. Hart, Mr. McCoy and Mr. Schreiber responded to questions from the committee.

Chairman Holmes opened the debate on **HB 2746**.

Representative Sloan moved to amend the bill as proposed by industry (See Attachment 9). Representative Kuether seconded the motion. The motion carried. Representative Dillmore moved that **HB 2746**, as amended, be reported favorable for passage. Representative Dreher seconded the motion. Motion carried. Representative Dillmore will carry the bill.

The meeting adjourned at 10:35.

The next meeting will be February 21, 2002

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 20, 2002

NAME	REPRESENTING
SMARE LOWRY	KEC
Kirk Thompson	CMS
Ben Wagmeyer	BLUESTEM
Cliff Fuen	CMS
Dan O'Brien	Kaw Valley Electric Cooperative
J.C. Long	UtiliCorp United
Jack Graves	Duke, P-H & W-M.
KARLA OLSEN	WESTAR ENERGY
MARK SCHREIBER	Westar Energy
DOUG LAWRENCE	Westar Energy
Scott Reith	UtiliCorp
Bruce Graham	KEPCO
Dave Holtman	Hein Law firm
BUD BURKE	KCP&L
Joe Dick	KCBPU
Cynthia Smith	Great Plains Power
Wendy McLoon	Great Plains Power
Barry Hart	Kansas Electric Co-ops
Don Hellwig	DSTO Rural Elect Coop
Joe Lieber	KS Co-op Council



kansas municipal utilities
Submitted Testimony Provided the

House Utilities Committee

February 20, 2002

*Colin Hansen, Executive Director
Kansas Municipal Utilities*

House Bill 2661 – Electric Service Territory

This past summer, representatives from Kansas Municipal Utilities (KMU) testified before the Interim Special Committee on Utilities that it would be a mistake to modify existing municipal annexation statutes. As we pointed out at the hearing on August 20th, current service territory provisions were developed through a consensus process whereby the only opportunity for the natural growth of municipal electric utilities is through the annexation process.

The KMU representatives also illustrated that these laws, enacted in 1976, have not harmed the rural electric cooperatives (RECs) or investor-owned utilities (IOUs). In fact, the total number of customers served by RECs grew by 26.0% between 1980 and 1999. The IOUs grew 29.1% during that same period. Meanwhile, municipal electric utilities grew at only a 4.1% rate.

During the August 20th interim session hearing, however, KMU agreed to meet with other stakeholders in the electric industry to discuss the concerns of the cooperatives and genuinely search for a compromise solution. After several meetings, the group settled upon legislation that each entity could take to its governing body. That compromise language is provided in HB 2661.

The governing body of Kansas Municipal Utilities is a board of directors made up of 26 city managers, utility superintendents, and elected officials from the association's 154 member communities. After lengthy deliberation – particularly concerning the bill's compensation language – the board agreed to the compromise language struck in the meetings. KMU supports HB 2661.

Municipal electric utilities are making a considerable sacrifice in their support of this bill. We consider the addition of both a notification provision and factors of consideration in selecting the supplier to a newly annexed area to be a just and reasonable response to valid REC concerns. The compensation provision, by which a municipal electric utility would now double its payment to the annexed supplier for the utility's existing customers, was more difficult to accept. However, the KMU board accepted the language and hopes this bill will solve for good the persistently thorny issue of electric service territory, so that we might move on in a spirit of cooperation with the other sectors of the electric industry.

KMU supports the negotiated agreement reflected in HB 2661. As a consensus process, we would oppose attempts to significantly modify the intent of the legislation as agreed to by the industry stakeholder group.

HOUSE UTILITIES



Kansas Farm Bureau

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800 S.W. Jackson, Suite 817, Topeka, Kansas 66612 • 785.234.4535 • Fax 785.234.0278

PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON UTILITIES

RE: HB 2661 – regarding the annexation of retail electric service territory by a municipality.

**February 20, 2002
Topeka, Kansas**

**Presented by:
Leslie Kaufman, Associate Director
Public Policy Division**

Chairman Holmes and members of the Committee, thank you for the opportunity to comment on HB 2661. I am Leslie Kaufman and I serve KFB as the Associate Director of Public Policy. We support the concept of establishing a mechanism to provide retail electric suppliers, particularly rural electric cooperatives, the opportunity to maintain service territory despite geographical annexation by a municipality.

The rural electric cooperative is an essential service provider to many areas of the state. Historically, the REC brought electric power to many areas where other providers were slow to enter the market. As such, the local REC has played an important role in rural Kansas.

The ability to maintain service territory is vitally important to the ongoing operation of cooperatives. When a service area is removed from the REC's territory, costs are spread over a smaller population.

American Farm Bureau Policy states, "*Public utilities and cooperatives should not be required to give up territories in established service areas when municipalities expand into those areas through annexation.*" As we understand it, HB 2661 replaces the current procedures related to annexation with a process that should help insure the current retail electric supplier (cooperative) has a greater opportunity to be retained as the service provider in an area that has been annexed by the municipality.

Although our policy would seek to prevent involuntary loss of service territory all together, the system proposed in HB 2661 is superior to the current one. As such, we encourage the Committee to act favorably on this measure. Thank you.

Kansas Farm Bureau represents grassroots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry

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ATTACHMENT 2

Testimony on HB 2661
House Utilities Committee
February 20, 2002
Prepared by Joe Lieber
Kansas Cooperative Council

Mr. Chairman and members of the committee, I'm Joe Lieber, President of the Kansas Cooperative Council. The Council has a membership of over 200 cooperative businesses, who have a combined membership of nearly 200,000 Kansans. Twenty one of our members are electric cooperatives.

The Council supports HB 2661

It is our understanding that the electric utilities met last fall and worked out a compromise to resolve the annexation and territory issue. The language in HB 2661 is a result of that compromise.

The Kansas Cooperative Council feels that is important, not only to Kansas Cooperatives, but to all rural Kansans that HB 2661 be passed as proposed.

Thank you.

HOUSE UTILITIES
DATE: 2-20-02
ATTACHMENT 3

Kansas Agricultural Alliance

Kansas Agribusiness Retailers Association

Kansas Agri-Women

Kansas Association of Conservation Districts

Kansas Cooperative Council

Kansas Crop Consultant Association

Kansas Electric Cooperatives

Kansas Farm Bureau

Kansas Grain Sorghum Producers Association

Kansas Livestock Association

Kansas Seed Industry Association

Kansas Veterinary Medical Association

Kansas Agricultural Aviation Association

Kansas Association of Ag Educators

Kansas Association of Wheat Growers

Kansas Corn Growers Association

Kansas Dairy Association

Kansas Ethanol Association

Kansas Grain and Feed Association

Kansas Nursery & Landscape Association

Kansas Pork Association

Kansas Soybean Association

Western Retail Implement and Hardware Association

February 20, 2002

Representative Carl Holmes
Chairman of the House Utilities Committee
115-S, Statehouse
Topeka, KS 66612

Dear Chairman Holmes and members of the Utilities Committee,

The Kansas Agricultural Alliance, representing the 22 above-named agricultural associations, would like to offer support for HB 2661 and its companion bill SB 480, concerning rural electric territories.

Kansas Ag Alliance members have voted unanimously to endorse and support this legislation.

Thank you for considering our support of this bill in your deliberations.

Sincerely,



Brett Myers
KAA President

HOUSE UTILITIES

DATE: 2-20-02

ATTACHMENT 4

Senate Utilities Committee

Testimony of Kansas Electric Cooperatives, Inc. House Bill 2661

Good morning, Mr. Chairman and members of the Committee. My name is Stuart Lowry and I am Corporate Counsel for Kansas Electric Cooperatives (KEC), the statewide association representing the interests of rural electric cooperatives in Kansas. I appear before you today to testify in support of House Bill 2661. Also appearing with today are Barry Hart, the Executive Vice President of Kansas Electric Cooperatives, Inc., and Jon Miles, Vice President of Governmental Affairs.

As some of you are aware, this bill is the House version of compromise legislation fashioned by a working group representing utility and municipal interests. An identical bill was introduced in the Senate as SB 480. SB 480 has been approved by the Senate Utilities Committee and is awaiting action on the floor of the Senate. HB 2661 amends certain provisions of the Retail Electric Suppliers Act, K.S.A. 66-1,170, et seq. The amendments contained in the bill are the product of negotiations by and among KEC (including KEPCo and Sunflower); Kansas Municipal Utilities; the League of Kansas Municipalities; Westar Energy; Kansas City, KS, Board of Public Utilities; Midwest Energy; Empire District Electric; Kansas City Power and Light; and UtiliCorp United. These utilities were directed to begin negotiations on changes to the Retail Electric Suppliers Act following a hearing of the Legislative Interim Utilities Committee on August 20, 2001. The utilities held four negotiating sessions and exchanged proposals via email between negotiating sessions. The end result of those negotiations is the bill you have before you today. This bill was recommended for favorable consideration in the report of the Interim Utilities Committee.

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ATTACHMENT 5

The bill addresses the question of who provides electric supply when a city annexes land. The bill establishes a procedure for the city and affected utilities to follow in determining who will provide electric service in the annexed area. Potentially, the service could be provided by either a utility holding a franchise in that city or by a utility holding a certificate of convenience issued by the Kansas Corporation Commission but no franchise at the time of the annexation. In choosing between the two electric suppliers, the city will use at least nine standards in its consideration, including but not limited to: 1) the public convenience and necessity; 2) the rates of the various suppliers; 3) the desire of the customers to be served; 4) the economic impact on the supplier; 5) the economic impact on the customers of the supplier; 6) the utility's operational ability to serve the annexed area; 7) avoiding the wasteful duplication of facilities; 8) avoiding unnecessary encumbrance on the landscape; and 9) preventing the waste of materials and natural resources. You will recognize some of these standards as being part of the original statement of purpose contained in the Retail Electric Suppliers Act. The bill also provides that a party aggrieved by any decision of the city in this process may appeal the decision to the district court in which the city is located.

The bill also modifies one provision of the compensation formula that is applied when an existing utility is displaced by a decision of the city following a municipal annexation. The compensation formula would be changed to provide for a payment of two times the gross revenues attributable to the customers in the terminated territory during the twelve months preceding the date of transfer of service. Similar changes in this compensation formula are included in K.S.A. 66-1176b, which addresses the termination of service rights by a city when a franchise is in effect.

KEC supports this bill. It benefits electric suppliers to be able to utilize known standards in negotiating municipal franchises and it benefits cities if multiple suppliers sharpen their

pencils to secure the ability to serve within a city. The judicial review procedure encourages all parties to act in good faith and to make reasonable decisions based on the proposals presented. The proposed amendments do not prohibit or even discourage municipal annexation.

The parties to the negotiation are in agreement with the bill presented to you with two exceptions: KCP&L remains neutral on the bill, and UtiliCorp opposed a few provisions. As with any negotiations, each party perhaps gave up something dear to them and perhaps gained something in return. But the parties have done as the Interim Utilities Committee directed and have fashioned a compromise. It is our hope that this committee will see fit to approve that compromise and will pass House Bill 2661 as presented. Despite the fact that they participated in the negotiations, UtiliCorp proposed several amendments in their presentation to the Senate Utilities Committee. The Committee did not adopt any amendments. I would appreciate the opportunity to speak to any amendments offered by UtiliCorp.

We urge you to support House Bill 2661 as presented.

I would be happy to stand for any questions that you may have.



**Testimony before the
House Utilities Committee
By
Doug Lawrence, Vice President, Public Affairs
Westar Energy
February 20, 2002**

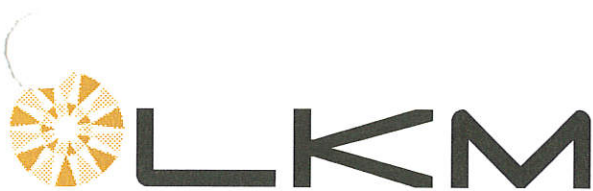
Chairman Holmes and members of the committee, I am Doug Lawrence, vice president, public affairs for Westar Energy.

Westar Energy supports House Bill 2661. As part of this summer's interim study of the territory issue involving annexations under the Retail Electric Supplier's Act, Westar Energy participated in a series of negotiations involving the Kansas Electric Cooperatives, the League of Municipalities, Kansas Municipal Utilities and many of the state's investor-owned utilities.

At the start of this process, there was a great deal of skepticism that a compromise could be worked out on this controversial subject. Indeed, previous legislative considerations of the territory issue RESA have been difficult at best.

All parties worked diligently on a compromise in an atmosphere of cooperation. Special credit for a successful compromise should be given to the League of Municipalities, the KEC and KMU.

As with any compromise, everyone has something to dislike in this legislative package. Ultimately the bill represents a fair solution to a nagging problem. In the spirit of the extraordinary effort necessary to bring you this legislation, Westar Energy brings its support and encourages you to approve this legislation.



League of Kansas Municipalities

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

To: House Utilities Committee
From: Kim Gulley, Director of Policy Development & Communications
Date: February 20, 2002
Re: Support for HB 2661

Thank you for allowing me to appear on behalf of the League of Kansas Municipalities and our member cities. We are happy to appear today in support of HB 2661.

This is a compromise piece of legislation introduced at the request of the rural electric cooperatives in Kansas. During the interim session, the coops expressed concern over city franchise issues as they related to certain annexations. We were given the opportunity by the interim committee Chairman Holmes to sit down and discuss these issues. Representatives of cities met with representatives from the coops and other members of the electric industry over several months to discuss these issues.

I believe that those discussions were very important in helping all of us who participated to better understand each other's concerns. As a direct result of those informal discussions, we were able to reach agreement on the compromise piece of legislation that you have before you today. I am also pleased to report that the League Governing Body considered this proposal on two separate occasions during our policy process last fall, and endorsed its provisions.

We believe that section 1 of the bill, which sets out a new administrative procedure when a city annexes land within the certified territory of a retail electric supplier, will serve as a road map for such annexation. It is our intent and hope that this process will prove to be both understandable and fair for all parties involved.

Section 2 of the bill does not have a direct effect on non-MEU cities. In the case of a city that does not own its own electric utility, the compensation due under this section would be paid by the electric utility which receives the franchise for the annexed area. The cities in Kansas that do own an electric utility would be affected by this portion of the bill. The League Governing Body deferred to the judgment of the member cities of Kansas Municipal Utilities in this area. It is our understanding that KMU has signed off on this portion of the bill.

The League appreciates the opportunity to sit down with the parties concerned in this area to work out a compromise. As with any compromise, there was a give and take. Therefore, any alterations to the compromise at this point could jeopardize the support of individual organizations or companies. We, therefore, urge your support and favorable action for HB 2661 as written and without amendment.

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ATTACHMENT 7

**TESTIMONY OF W. SCOTT KEITH
ON BEHALF OF UTILICORP UNITED INC.
BEFORE THE HOUSE UTILITIES COMMITTEE
IN OPPOSITION TO HOUSE BILL NO. 2661**

Introduction

My name is Scott Keith. I am employed by UtiliCorp United Inc (UtiliCorp) as manager of electric tariffs in Kansas and Colorado. In this capacity I manage the electric rates for WestPlains Energy in both states. Before my employment at UtiliCorp, I was an independent rate consultant, and in the past handled electric rate matters for several electric cooperatives in Kansas. Many of these electric cooperatives have subsequently been deregulated. I am appearing today on behalf of UtiliCorp United, Inc. in opposition to House Bill No. 2661.

Retail Electric Suppliers Act

This past fall and winter I participated in an industry task force that met to address proposed changes to the Retail Electric Suppliers Act (RESA) raised by the Rural Electric Cooperatives (REC). REC claimed RESA as it currently exists contained various deficiencies that hindered REC's ability to gain an electric franchise during the process of annexation. REC has proposed to amend RESA to include specific items a city must consider when determining which electric supplier will be granted a franchise in the newly annexed area. UtiliCorp is not opposed to the majority of the amendments contained in the REC proposal, including the increase in compensation to an existing electric service provider displaced by the annexation and franchise process. UtiliCorp is opposed to three (3) of the proposed factors a city must consider when determining which electric supplier will be granted a franchise in a newly annexed area, and UtiliCorp made

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this clear to the task force participants last fall and winter. First and foremost among the amendments, which UtiliCorp opposes, is *(2) rates of various suppliers*. UtiliCorp believes that this amendment has the effect of sanctioning unfair competition between the unregulated rural electric cooperatives and highly regulated investor owned utilities. In addition to the rate factor, UtiliCorp is opposed to REC factors *(4) economic impact on the suppliers and (5) economic impacts on the customers of suppliers*. Both of these factors clearly denote potential rate influences far beyond the boundaries of the individual cities and as such are within the purview of the Kansas Corporation Commission (KCC), not the individual city. In addition, UtiliCorp does not believe the individual cities in Kansas possess the technical wherewithal to make such a determination in the case of an unregulated cooperative and an investor owned utility. Certainly the lack of publicly available financial and rate information on the part of the unregulated RECs would make such an undertaking guesswork at best. UtiliCorp believes that taken together these three factors will result in discriminatory REC pricing that is not only unfair, but also illegal under Kansas and federal law. In have attached a copy of the testimony given by Mr. James G. Flaherty on behalf on UtiliCorp on Senate bill No. 480 to illustrate some of the legal problems associated with the proposed REC amendments. Mr. Flaherty is unable to attend today's committee meeting due to a scheduling conflict. I will address what UtiliCorp has seen with respect to REC discriminatory pricing in the past and suggest amendments to the RESA proposal that would enable UtiliCorp to support a change in RESA.

Discriminatory Pricing

WestPlains has been faced several instances of unregulated electric cooperatives offering electric rates well below those it charged in the surrounding area to cities in attempts to gain a franchise. In some cases these discounts were offered as the result of annexation, but in the most disturbing case CMS Electric Cooperative, Inc. (CMS) offered to electrically serve customers within the city limits of Coldwater, Kansas using rates that were well below what it charges its other owner members in a concerted effort to have WestPlains eliminated as an electric supplier. WestPlains had held the electric franchise in Coldwater for years and the KCC had granted WestPlains and its predecessor, Centel, the electric certificate. CMS decided it could “compete” for the franchise with WestPlains and use discriminatory rates to sway the Coldwater city management into granting it a franchise. When WestPlains asked for the CMS cost of service support for the electric rates it was offering in Coldwater, CMS declined to provide that information. Typically, the unregulated RECs often respond by indicating that all of the electric utilities in Kansas have urban and rural rates, and that the proposed REC urban tariffs reflect similar cost differentials. The cost differentials associated with other electric utilities in Kansas have nothing to do with CMS costs, and this is not a legitimate response to the question. Contrary, to REC statements, not all of the electric utilities in Kansas have urban and rural rates. WestPlains recently eliminated its urban and rural rates, and none of the investor owned electric utilities operating in Kansas offer urban and rural electric rates that differ to the degree to which those offered by CMS in Coldwater did. The residential rates offered by CMS in Coldwater were 27% percent lower than those offered to its long-time residential membership, and the small commercial rates offered in Coldwater were 46% lower than those offered to its regular

membership. At the same time CMS was offering substantially lower rates in Coldwater, it was selling electricity to customers within the City of Protection, Kansas at rates very close if not slightly higher than those it offers to its long-time membership. All of the CMS rate activity takes place under a veil of secrecy and several of the amendments being sponsored by REC seem to be an attempt to further leverage this ability and expand it even beyond what has already been attempted by cooperatives such as CMS.

UtiliCorp Amendments

UtiliCorp has offered amendments to the REC sponsored bill. These amendments are generally related to public disclosure of REC rate information so that the competing utilities are on more even ground concerning public access to rates. Specifically, UtiliCorp proposes that the bill be amended to reflect the following amendments:

1. The bill should include a provision that requires the publication of the electric supplier rates to be charged in both the annexed area and the areas adjacent to the annexed area by that supplier in the official county newspaper in which the annexed area is located.
2. The bill should include a provision that requires that the electric rates offered in the newly annexed service area cannot differ materially from the electric rates offered by the retail electric supplier to customers in adjacent areas for similar service.
3. A deregulated electric cooperatives seeking a franchise in any annexed territory should be required to publish all if its rates for electric service at least once every year, and whenever those rates are changed, in the official county newspaper in which the annexed area is located.

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If these provisions were included in the proposed RESA legislation, UtiliCorp would drop its opposition to the bill.

Conclusion

UtiliCorp is opposed to the changes being sponsored by REC. UtiliCorp's opposition is primarily related to what it sees as the sanctioning of unfair competition from the deregulated RECs. With a limited amount of public access to the REC's secret rate setting process, UtiliCorp would drop its opposition to the proposed legislation. I would be more than happy to address any questions concerning this testimony and UtiliCorp's position.

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**TESTIMONY OF JAMES G. FLAHERTY
ON BEHALF OF UTILICORP UNITED INC.
BEFORE THE SENATE UTILITIES COMMITTEE
IN OPPOSITION TO SENATE BILL 480**

I. INTRODUCTION

My name is Jim Flaherty. I am an attorney from Ottawa, Kansas. I represent UtiliCorp United, Inc., (UtiliCorp) before the Kansas Corporation Commission (Commission). I appear today on behalf of UtiliCorp in opposition to Senate Bill 480.

This past fall and winter an industry task force met to address concerns raised by the Rural Electric Cooperatives (REC) regarding the Retail Electric Suppliers Act (RESA). UtiliCorp fully participated in that task force. REC claimed that there were deficiencies in the process set forth in RESA relating to a city's selection of a retail electric supplier in an area annexed by the city. REC proposed several factors which it wanted the city to consider in its selection process. One of the factors was the "rates of the suppliers" which were requesting to serve the annexed area. Other factors included the "economic impact on the suppliers" and the "impact on the customers of the suppliers." UtiliCorp opposes the inclusion of these three factors because they will have the effect of sanctioning unfair competition between the unregulated electric cooperatives and the regulated investor owned electric utilities. The inclusion of these factors also results in the validation of discriminatory pricing practices by the unregulated electric cooperatives, which is contrary to Kansas and federal anti-trust and unfair competition laws. I would like to address each of these concerns in more detail. I would also like to suggest a modification to the bill, which would address these concerns.

II. UNFAIR COMPETITION

Under current law, the electric rates charged by rural electric cooperatives are not regulated

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by the Commission. This means that rural electric cooperatives in Kansas can change their rates at any time without the approval from the Commission. It also means that rural electric cooperatives do not have to charge similarly situated customers the same rate.

The electric rates charged by investor owned electric suppliers, on the other hand, are fully regulated by the Commission. This means that companies like UtiliCorp can only change their rates after receiving permission from the Commission. It also means that companies like UtiliCorp are prohibited from charging similarly situated customers different rates.

In most cases, the fact that electric cooperative rates are unregulated and investor owned utility rates are regulated is not a problem. This is because RESA has precluded competition for service territory between the unregulated cooperatives and the regulated investor owned utilities. However, from time to time cities and towns in Kansas, which are served by investor owned utilities like UtiliCorp will annex territory, which is certificated to a rural electric cooperative. This situation often results in a dispute as to whether the investor owned utility or the rural electric cooperative should be selected by the city or town to serve the customers in the annexed territory. Routinely, under the current law, the cities and towns have selected the investor owned utility, which is serving the other portions of the city or town, to serve the annexed territory. Typically, selection of the incumbent utility is done to promote consistent service and rates throughout the entire city, including the newly annexed areas of the city.

The proposed bill would require cities and towns to consider the electric rates of the rural electric cooperative and the investor owned utility in determining which company should serve the annexed area. Although the current law does not preclude the cities and towns from considering the rates of the electric suppliers in selecting a supplier to serve the annexed territory, the current law does



not require cities and towns to consider electric rates of the suppliers. UtiliCorp objects to the inclusion of this factor because it will result in the sanctioning of unfair competition between the electric cooperative and the investor owned utility.

Because a rural electric cooperative's rates are unregulated, and the cooperatives are not required by law to charge similarly situated customers the same rates, there is nothing to preclude the cooperative from reducing rates for customers in the annexed territory below what it charges its other customers in the surrounding area in order to successfully obtain the franchise from the city to serve the annexed territory.

Because the investor owned utility's rates are regulated by the Commission, and the investor owned utility is precluded by law from charging similarly situated customers different rates, it is unable to reduce rates for customers in the annexed territory below what it charges its other customers in the area in order to compete against the rural electric cooperative for the franchise in the annexed territory. This is what causes the unfair competition to occur in the annexed area.

Let me give an example. Let's assume the City of Liberal, Kansas desires to annex some land. UtiliCorp currently has a franchise to serve the City of Liberal. The annexed land is currently certificated to CMS rural electric cooperative. CMS serves in Seward County, but CMS does not have a franchise from Liberal, and therefore, under the current law, is required to obtain a franchise from Liberal in order to serve customers in the annexed territory. If both UtiliCorp and CMS had rates which were regulated by the Commission, and were both required by law to charge all similarly situated customers on their systems the same rates, which is the way it was when RESA was enacted, then there is a level playing field and no concern over unfair competition. However, because UtiliCorp's rates are regulated, and UtiliCorp is precluded by law from charging customers in one part

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of Liberal one rate and customers in the newly annexed areas of Liberal a reduced rate, it is unable to fairly compete with CMS because CMS' rates are unregulated, and CMS is not precluded by law from charging customers located immediately adjacent to Liberal one rate and customers in the newly annexed areas of Liberal a reduced rate.

By requiring a city or town to specifically consider the rates of electric suppliers, the proposed legislation is sanctioning use of discriminatory rates by rural electric cooperatives in annexed territories and is promoting unfair competition.

III. INCLUSION OF RATE FACTOR PERMITS DISCRIMINATORY PRICING WHICH IS INCONSISTENT WITH EXISTING KANSAS AND FEDERAL ANTI-TRUST AND UNFAIR COMPETITION LAWS

Under applicable Kansas and federal anti-trust and unfair competition laws, it is not permissible to offer a commodity, which would include the sale of electricity, for a lower price in one community than what is charged in another community for the purpose of limiting or destroying competition. K.S.A. 2001 Supp. 50-149 provides that any person engaged in the distribution or sale of a commodity that intentionally, for the purpose of destroying competition sells the commodity for a lower price in one Kansas community than another is guilty of unfair competition. K.S.A. 2001 Supp. 50-149 does not apply to companies that are regulated. If the rural electric cooperatives lowers or reduces electric rates in the annexed territory in an attempt to obtain monopoly service rights in a newly annexed service territory, whereby customers in the annexed area are charged a rate which is lower than the rate the cooperative is charging customers in the area adjacent to the annexed area, then the rural electric cooperative is in violation of Kansas discriminatory pricing laws.

Pricing discrimination and attempted monopolization are also prohibited under the federal

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Clayton and Sherman Acts. The Clayton Act generally prohibits price discrimination in the sale of a commodity that has the effect of substantially reducing competition. The Sherman Act prohibits predatory pricing.

Inclusion of the rate factor in the proposed bill will have the effect of sanctioning unfair competition and discriminatory pricing which is inconsistent with current state and federal anti-trust and unfair competition laws. For these reasons, UtiliCorp is opposed to the bill if those factors remain in the bill.

IV. ADDITIONAL LANGUAGE SHOULD BE INCLUDED IN BILL IF RATE FACTORS REMAIN IN THE BILL

Not only are the rural electric cooperatives' rates unregulated by the Commission, it has proven very difficult, if not impossible, even for a member of the cooperative, to obtain a publication of the rates charged by the cooperative. Access to the cooperatives' rates is restricted. Investor owned utilities' rates, on the other hand, are published and on file with the Commission. Access to those rates is universal. Obviously, the fact that the cooperatives' rates are not available to the public, while the investor owned utilities' rates are available to the public, also promotes unfair competition. It also makes it very difficult to determine if the cooperative is violating discriminatory pricing laws in order to obtain a monopoly in the annexed territory.

If the rate factors remain in the bill, UtiliCorp would respectfully request that the following provisions also be added to the bill to assure that discriminatory pricing laws are not violated:

- (1) The bill should include a provision which requires the electric rates proposed by an retail electric supplier to be charged in the annexed area and the electric rates currently charged by that supplier to customers in adjacent areas be published in the official county

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newspaper in which the annexed area is located at some point during the negotiation process with the city.

(2) The bill should include a provision that requires that the electric rates offered in the newly annexed service area cannot differ materially from the electric rates offered by the retail electric supplier to customers in adjacent areas for similar service.

(3) Rural electric cooperatives seeking a franchise in any annexed territory should be required to publish all of its rates for electric service at least once every year, and whenever those rates changed, in the official county newspaper in which the annexed area is located.

V. CONCLUSION

For the reasons which I have outlined in this testimony, UtiliCorp opposes this bill and would request that it not be passed by this Committee. I would be happy to address any questions concerning this testimony and UtiliCorp's opposition to this bill.

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ture whatever, each day of its continuance shall be deemed a separate offense.

History: L. 1887, ch. 175, § 1; R.S. 1923, 50-136; L. 2000, ch. 136, § 17; July 1.

50-137. Same; damages to persons injured by such actions. In case any grain dealer or dealers or any person or persons subject to the provisions of this act, shall do or cause to be done or permit to be done any act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done, such grain dealer or grain dealers or any other person or persons shall be liable to the person or persons injured thereby to the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with reasonable attorney fees, to be fixed by the court in every case of recovery, which attorney fees shall be taxed and collected as a part of the costs in the case.

History: L. 1887, ch. 175, § 2; R.S. 1923, 50-137; L. 2000, ch. 136, § 18; July 1.

50-138.

History: L. 1887, ch. 175, § 3; R.S. 1923, 50-138; Repealed, L. 2000, ch. 136, § 28; July 1.

50-139. Actions brought under act; brought pursuant to chapter 60. All actions pursuant to enforce this act shall be brought pursuant to chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

History: L. 1907, ch. 259, § 1; R.S. 1923, 50-139; L. 2000, ch. 136, § 19; July 1.

50-140 to 50-144.

History: L. 1907, ch. 259, §§ 2 to 6; R.S. 1923, §§ 50-140 to 50-144; Repealed, L. 2000, ch. 136, § 28; July 1.

50-145.

History: L. 1909, ch. 261, § 1; R.S. 1923, 50-145; Repealed, L. 2000, ch. 136, § 28; July 1.

50-146.

History: L. 1909, ch. 261, § 2; R.S. 1923, 50-146; Repealed, L. 2000, ch. 136, § 28; July 1.

50-148. Trade and person defined. As used in this act: (a) "Trade" means the business of buying or selling any commodity of general use within the state; and

(b) "person" or "persons" includes individuals, corporations, limited liability companies, general partnerships, limited partnerships, firms,

companies, voluntary associations and other associations or business entities, existing under or authorized by the state of Kansas, or the laws of any other state, territory, or foreign country. The provisions of this act shall not apply to persons whose business is under the supervision and control of the state corporation commission or the banking department.

History: L. 1915, ch. 368, § 1; R.S. 1923, 50-148; L. 2000, ch. 136, § 20; July 1.

50-149. Unfair discriminations. Any person, foreign or domestic, doing business in the state of Kansas, and engaged in the production, manufacture, distribution, sale or purchase of any commodity in general use, that shall intentionally for the purpose of destroying competition, discriminate between the different sections, communities, or cities of this state, by buying at a higher rate or selling at a lower rate, any such commodity, in one section, community or city, or any portion thereof, than is charged or paid for such commodity in other section, community, or city, after equalizing the distance from the point of production to the factory, for distribution, and freight rates therefrom, shall be in violation with the provisions of this act.

History: L. 1915, ch. 368, § 2; R.S. 1923, 50-149; L. 2000, ch. 136, § 21; July 1.

CASE ANNOTATIONS

2. Whether state law recognizes an implied private cause of action for unfair discrimination in trade discussed. *Cease v. Safelite Glass Corp.*, 911 F.Supp. 477, 479 (1995).

50-150 to 50-152.

History: L. 1915, ch. 368, §§ 3 to 5; R.S. 1923, 50-150 to 50-152; Repealed, L. 2000, ch. 136, § 28; July 1.

CASE ANNOTATIONS

1. Whether state law recognizes an implied private cause of action for unfair discrimination in trade discussed. *Cease v. Safelite Glass Corp.*, 911 F.Supp. 477, 480 (1995).

50-153. Attorney general powers and duties; enforcement of act. (a) Whenever the attorney general has reason to believe that any provision of this act has been violated or that any announced conduct of two or more business entities, announced by an authorized agent of one such business entity in which the combined annual gross sales of such business entities involved exceed \$500,000,000, will substantially lessen competition or tend to create a monopoly in violation of this act, the attorney general, or any dep-

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House Utilities Committee

Testimony of Kansas Electric Cooperatives, Inc. House Bill 2746

Good morning, Mr. Chairman and members of the Committee. My name is Barry Hart, and I am the Executive Vice President of Kansas Electric Cooperatives, Inc., the statewide association of rural electric cooperatives in Kansas. We are here today to testify in support of House Bill 2746.

As you all know, a Special Utilities Committee met several times this summer and fall to discuss, among other things, the territory and annexation issue which was resolved by compromise in HB 2661, which you considered today. During the course of the Special Utilities Committee meetings, Chairman Holmes raised a concern with the provision of station power to new generating units and expressed a desire to offer every incentive possible to promote the construction of new generation in the state. He believed one such incentive to be choice in who provides station power to new plants. The electric cooperatives in Kansas support location of new generation facilities in the state, and the resulting positive effects such investment has on job creation, local and state tax base, and economic development.

Prior to the session, we were asked to develop language that would give utilities options as to station power service and we have been involved in preparing the language contained in HB 2746. Within HB 2746, as written, station power is defined as the electric energy used for operating equipment necessary for the process of generating electricity at any generating plant owned by a utility and placed in use on or after January 1, 2002. Station power does not include electric energy used for heating, lighting, air conditioning and office needs of buildings at the generating plant site. We believe that this language will accomplish the purpose stated by the

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Chairman, that being to give utilities maximum options as to provision of station power at generating plants put into service after January 1 of this year.

Kansas City Power and Light recently requested changes to HB 2746. After speaking with the other industry participants, we are collectively recommending the following changes. In the definition of distribution line, add after the word energy on line 20 of page 1, "even if such energy is reduced in voltage and used as station power." In the definition of station power on page 1, line 41 after January 1, 2002, add the language "whether such electric energy is generated at such generating plant or provided through the adjacent transformation and transmission interconnect." We support these recommended changes.

We thank you, Mr. Chairman, for giving us the opportunity to testify in support of House Bill 2746. I would be happy to answer any questions that you may have.

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HOUSE BILL No. 2746

By Committee on Utilities

1-29

AN ACT concerning retail electric service; relating to station power; amending K.S.A. 66-1,170 and 66-1,173 and repealing the existing sections.

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

Section 1. K.S.A. 66-1,170 is hereby amended to read as follows: 66-1,170. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Distribution line" means an electric line used to furnish retail electric service, including any line from a distribution substation to an electric consuming facility; but such term does not include a transmission facility used for the bulk transfer of energy.

even if such energy is reduced in voltage and used as station power:

(b) "Electric consuming facility" means any entity which utilizes electric energy from a central station service.

(c) "Commission" means the state corporation commission of the state of Kansas.

(d) "Retail electric supplier" means any person, firm, corporation, municipality, association or cooperative corporation engaged in the furnishing of retail electric service.

(e) "Certified territory" means an electric service territory certified to a retail electric supplier pursuant to this act.

(f) "Existing distribution line" means a distribution line which is in existence on the effective date of this act, and which is being or has been used as such.

(g) "Single certified service territory" means that service area in which only one retail electric supplier has been granted a service certificate by the commission.

(h) "Dual certified service territory" means that service area where more than one retail electric supplier has been granted a service certificate by the commission.

(i) "Station power" means electric energy used for operating equipment necessary for the process of generating electricity at any generating plant owned by a utility and placed in use on or after January 1, 2002, but does not include electric energy used for heating, lighting, air conditioning and office needs of the buildings at a generating plant site.

whether such electrical energy is generated at such generating plant or provided through the adjacent transformation and transmission interconnect,

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1 Sec. 2. K.S.A. 66-1,173 is hereby amended to read as follows: 66-
2 1,173. Every retail electric supplier shall have the exclusive right and
3 responsibility to furnish retail electric service to all electric consuming
4 facilities located within its certified territory, and shall not furnish, make
5 available, render or extend its retail electric service to a consumer for use
6 in electric consuming facilities located within the certified territory of
7 another retail electric supplier: ~~Provided, That except that:~~

8 (a) Any retail electric supplier, with the approval of the commission,
9 may extend distribution or transmission facilities through the certified
10 territory of another retail electric supplier, if such extension is necessary
11 for such supplier to connect with any of its facilities or those of others to
12 serve consumers within its own certified territory; and

13 (b) *station power shall not be deemed to be retail electric service for*
14 *the purposes of this act.*

15 Sec. 3. K.S.A. 66-1,170 and 66-1,173 are hereby repealed.

16 Sec. 4. This act shall take effect and be in force from and after its
17 publication in the Kansas register.
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**Testimony on House Bill 2746
Kansas House Utilities Committee
February 20, 2002**

**David McCoy
Great Plains Power**

This bill removes a barrier to entry for wholesale electrical generating companies that are considering doing business in the state of Kansas. To produce and sell electricity, generators must establish a connection to the high voltage electrical grid through a transformer or set of transformers. This transformer connection point is ideally suited for supplying station power when the generator is off for maintenance or other reasons. When the generator is on line and operating it can provide its own power needs. Without the proposed legislation this usage would be prohibited.

Station power includes electric energy used by the equipment that is required to generate electricity. Under current law, station power has to be supplied by the local retail electric supplier that has the franchise for sale of electricity in the geographic area where the generator is located. This means that the wholesale power producer that is considering locating in Kansas will have to pay for construction of unnecessary electrical distribution lines from the local utility and pay retail rates, which are typically higher than its own wholesale rates for electrical station power.

Power is also needed to heat, cool and light the facilities. To the extent that the interconnection point can provide power for all of the generator's needs, this should be permitted. It is more efficient and redundant facilities are avoided. If distribution lines already supply or must be used to supply heating, cooling and lighting needs, then the local retail electric supplier should be utilized as provided for by this legislation.

For the bill to clearly accomplish its objectives, we suggest the following amendments:

Line 20, add after the word energy, "even if such energy is reduced in voltage and used as station power.

Line 41 add after 2002, "whether such electrical energy is generated at such generating plant or provided through the adjacent transformation and transmission interconnect,"

We also suggest the following amendment, which would allow generators to get all of their needs through the connection point if no distribution lines are built to the plant:

Line 42, add after the word energy, "provided by Distribution Lines and"

In conclusion, Great Plains Power encourages the passage of House Bill 2746, as amended. It will encourage the development of electrical generation in the state of Kansas by allowing generators to produce their own station power and buy it through their own connection point when their units are not on line and operating.

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**Testimony before the
House Utilities Committee**

**By
Doug Lawrence, Vice President, Public Affairs
Westar Energy
February 20, 2002**

Chairman Holmes and members of the committee, I am Doug Lawrence, vice president, public affairs for Westar Energy.

Westar Energy supports House Bill 2746.

Last year this committee and the Legislature worked hard to establish incentives for construction of new power plants in our state. Those incentives provide encouragement for construction of all types of new generation, including merchant plants.

HB 2746 was requested to eliminate another potential barrier, or complication, in building new generation capacity in our state. Because of the structure of the Retail Electric Supplier Act, owners of some generation facilities may be required to negotiate with electric suppliers that hold a certificate for the territory where a plant is proposed for construction. At issue is "station power" the electricity that is consumed when the plant is not operating. As it stands today, this power is considered a retail transaction that is subject to RESA, meaning that the supplier holding the certificate would have the right to supply the power at retail rates.

In Westar Energy's case, at least one merchant power plant is proposed in an area where, due to the site of the plant and the configuration of the system, interconnection must be with our system rather than the electric cooperative. The plant is located in the service territory of an electric cooperative. For many reasons, the cooperative cannot provide the retail electricity in a manner useful to the plant when it is off line. While the cooperative has been very cooperative in agreeing to a service territory change to facilitate our service of this plant, it still requires regulatory review and approval.

We believe it is appropriate to clearly define station power and make it clear that station power is not subject to the requirements of RESA. This bill achieves that outcome and as a result would eliminate a step in the planning, design and construction of new generation in our state.

We participated with the Kansas Electric Cooperatives in drafting the original legislation. We also understand that Kansas City Power and Light is proposing amendments to this legislation. We have reviewed those amendments and are pleased to say that those proposed changes are acceptable to us.