Approved: April 12, 2002 Carl Dean Holmes
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:11 a.m. on March 19, 2002 in Room 526-S of the Capitol.

All members were present except: Representative Annie Kuether
Representative Judy Showalter

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: Doug Lawrence, Westar Energy
Whitney Damron, Kansas Gas Service
Cynthia Smith, Kansas City Power & Light
Larry Holloway, Kansas Corporation Commission
Kim Gulley, League of Kansas Municipalities
Senator Jean Schodorf
Dave Springe, Citizen's Utility Ratepayer Board
Mike Taylor, City of Wichita
Joe Pajor, City of Wichita
Gail Murrow
Beth King
Stephen Lester

Others attending: See Attached List

HCR 5053 - Urging FTC to adopt and implement national "do not call" registry
HR 6010 - Urging FTC to adopt and implement national "do not call" registry

Chairman Holmes opened the hearing on **HCR 5053** and **HR 6010**. Written testimony in support of the resolutions was submitted by AARP (Attachment 1). Chairman Holmes closed the hearing on the resolutions.

Representative Sloan moved to recommend **HR 6010** favorable for passage. Representative Dahl seconded the motion. The motion carried. Representative Sloan will carry the resolution.

SB 545 - Public utilities, public right-of-way, fees

Chairman Holmes opened the hearing on **SB 545**.

Doug Lawrence, Vice President of Public Affairs for Westar Energy, testified in support of **SB 545** (Attachment 2). Mr. Lawrence provided a brief history of why this bill was requested and about franchise negotiations with the City of Wichita. Mr. Lawrence included with his testimony copies of 'door hangers' used to tell about tree pruning for overhead line clearance and proposed language for a substitute bill.

Whitney Damron, on behalf of Kansas Gas Service, appeared in support of **SB 545** (Attachment 3). Mr. Damron stated they believe it is a reasonable approach to resolving the issues raised by the natural gas and electric industry.

Cynthia Smith, Manager of Government Affairs - Kansas for Kansas City Power & Light, submitted testimony supporting **SB 545** (Attachment 4). Ms. Smith shared concerns about legislation that changes right of way negotiations and feels this bill would ease their concerns.

Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission, testified on **SB 545** (Attachment 5). Mr. Holloway stated the Commission does not believe the legislation is necessary, but provided modifications that would address their concerns.

Kim Gulley, Director of Policy Development & Communications for the League of Kansas Municipalities, addressed the committee on **SB 545** (Attachment 6). Ms. Gulley stated the issues could be divided into two categories: right-of–way management and franchise/business relationships. Ms. Gulley detailed each of these categories. She said the League does not oppose an expedited process so long as the Corporation Commission remains the entity responsible for determining which fees and how much are passed through to consumers.

Senator Jean Schodorf, 25th District Wichita, testified in opposition to **SB 545** (Attachment 7). Senator Schodorf explained that the tree trimming ordinance in Wichita was passed in response to public outcry and now the utility has pursued legislation to override the ordinance. She stated there should be a process for businesses to protest actions instead of making customers pay higher rates.

Dave Springe, appearing on behalf of the Citizens' Utility Ratepayer Board, spoke in opposition to **SB 545** Attachment 8). Mr. Springe stated that the legislation is unnecessary and may compromise the Commission's regulatory authority. Under current regulatory procedures, the Commission can approve a tariff for the purpose of assigning unusual costs to a community where unreasonable procedures are instituted.

Mike Taylor, Government Relations Director for the City of Wichita, addressed the committee as an opponent to **SB 545** (Attachment 9). Mr. Taylor provided a brief history of the bill, stating the current form was much different from the original and references to Wichita's tree trimming ordinance contained inaccurate information. Mr. Taylor stated the negotiating process should be allowed to work without the Legislature intervening on behalf on the utility.

Joseph T. Pajor, Natural Resources Director for the City of Wichita, appeared in opposition to **SB 545** (Attachment 10). Mr. Pajor stated the City had concerns with the inappropriate policy the bill would set and with difficulties and potential abuses by the utilities should it become law.

Ms. Gail Murrow, Wichita resident, addressed the committee in opposition to **SB 545** (Attachment 11). Ms. Murrow shared a brief video showing the kind of trimming conducted by the public utility prior to the passage of the city ordinance setting limitations.

Beth King, Wichita resident, spoke to the committee against **SB 545** (Attachment 12). Ms. King provided copies of pictures of trees that had been cut by the public utility.

Stephen Lester, Wichita resident, testified against **SB 545** (Attachment 13). Mr. Lester spoke to the committee about his concerns with the tree trimming practices by the public utility in Wichita.

The conferees responded to questions from the committee. Additionally, Larry McCullough, Senior Manager for Vegetation Management for Westar Energy, responded to questions.

Chairman Holmes closed the hearing on **SB 545**.

The meeting adjourned at 10:56 a.m.

The next meeting will be March 20, 2002.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 19, 2002

NAME	REPRESENTING
Joe Dick	BPUKCK
David Springe	Citizens' utility ratepayer Board
Mike Taylor	City of Wichita
Joseph T. Pajor	City of Wichita
Larry W. Holloway	KCC staff
Whitney Damron	KS Gas Service
[illegible]	KCPL
JC Long	AQUILA INC.
Mark Schreiber	Westar Energy
Doug Lawrence	Westar Energy
Larry McCullough	Westar Energy
Erik Sartorius	City of Overland Park
Lori Knadle	City of Overland Park
Bud Burke	KCP&L
KARLA OLSEN	Westar Energy
Jim Gartner	SWBT
Gail Morrow	myself-Wichita Resident
[illegible]	WICHITA RESIDENT
Beth King	Wichita resident
Cecelia M[illegible]	WICHITA resident

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 19, 2002

NAME	REPRESENTING
Matthew King	Wichita resident
Jourdan King	Wichita resident
Rachel King	Wichita resident
Ethan King	Wichita resident
Mary Myers	
John Frederick	The Boeing Company
Tiffany Hayes	Federico Consulting
Bruce Graham	ICEPG
Kim Gulley	LKM

AARP Kansas

555 S. Kansas Avenue
Suite 201
Topeka, KS 66603

(785) 232-4070
(785) 232-8259 Fax

March 19, 2002
Dr. Ernie Pogge
Capitol City Task Force Coordinator

Good morning Chairman Holmes and Members of the House Utilities Committee. AARP represents the views of our more than 350,000 members in the state of Kansas. AARP is the nation's leading organization for people age 50 and older. AARP serves members needs and interests through information and education, advocacy and community services provided by a network of local chapters and experienced volunteers throughout the state and country. Thank you for this opportunity to express our views on House Resolution 5053.

The Federal Trade Commission's (FTC) proposed revision of the Telemarketing Sales Rule (Rule) would create a nationwide "do not call" registry for consumers who do not want to receive telemarketing calls. The proposed revision to the Telemarketing Sales Rule (Rule) does not contain a preemption provision.

Under the Rule states are *explicitly* authorized to pass stronger laws regulating telemarketing, as it was recognized during the original rulemaking process that many states had stronger telemarketing fraud laws already in place.

State "do not call" laws are necessary to protect consumers against unwanted telemarketing calls, as the Rule does not cover intrastate calls. Further, the FTC does not have jurisdiction over common carriers, banks, or insurance companies, and therefore state "do not call" laws are needed to regulate these concerns. Finally the FTC has never brought an enforcement action for violation of the do not call provision of the Rule.

State do not call laws are more expansive than the proposed national do not call registry. At minimum, state laws including list management by the state agency whose charge it is to protect the citizens and bring enforcement actions are needed to close these gaps in protection. State "do not call" laws are necessary to provide enforcement and oversight at the state level.

AARP supports the creation of a federal list, however we strongly oppose any preemption provisions. We believe strong federal regulation is needed to provide *minimum* protection to consumers across the country. We also strongly believe that the Rule should be a floor, not a ceiling of protection for do not call regulation, as it is with telemarketing fraud regulation.

Thank you again for this opportunity to provide comments on House Resolution 5053.

601 E Street, NW Washington, DC 20049 (202) 434-2277
Esther "Tess" Canja, President William D. "Bill" Novelli

Westar Energy™

Testimony before the
House Utilities Committee
By
Doug Lawrence, Vice President, Public Affairs
Westar Energy
March 19, 2002

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

Westar Energy, along with other utilities, made the original request to introduce Senate Bill 545. I want to take a few moments to share some of our company's history with this issue and the concerns that led us to make the original request. I would also like to address the issues associated with the current language, which was developed as a compromise after extensive discussions with the League of Municipalities.

The history

Last year an extremely controversial battle ensued over right of way and franchise fee issues between telecommunications carriers and the League of Municipalities. The ultimate resolution of that legislative engagement was a late session moratorium on new franchise and right-of-way ordinances while a negotiated settlement was pursued. The result of that process was Senate Bill 397, which this committee considered and approved recently.

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ATTACHMENT 2

818 South Kansas Avenue / P.O. Box 889 / Topeka, Kansas
Office Telephone: (785) 575-6300

While the process of stand still and negotiate between the cities and telecommunications companies was in place, a number of cities continued to put in place new right-of-way ordinances that applied to everyone but telecommunications companies. Many of those ordinances continued to pursue provisions that were the center of controversy in the telecommunications fray.

Some cities agreed to hold off enforcement of these new ordinances while the negotiations continued with telecommunications companies. Others did not. When the Senate Commerce Committee heard SB 397, our company and others submitted written testimony pointing out the need for similar provisions to ensure that all companies that used the rights of way in a city were treated equally. We were encouraged to stay out of the telecommunications bill to avoid damaging the carefully crafted compromise. We did. We also thought it was possible to use SB 397 as a basis for a second bill, which could address most, if not all, of our concerns. We were told by a number of cities that they wanted to wait until the summer to engage in negotiations because there are significant differences between the telecommunications industry and electric industry and that the solutions would likely involve different language and approaches. We are more than willing to work with and negotiate with the cities, but we think such negotiations should be on the same terms and conditions under which the telecommunications compromise was negotiated. That led us to request the original version of SB 545, which was a moratorium bill similar to HB 2515, which passed last year.

At the time SB 545 was heard in the Senate, our company proposed new language based on discussions with the league and other utilities in an effort to compromise and resolve our problem. That language is before you in Substitute SB 545. Today, we are prepared to offer additional language, which further refines this legislation, incorporating additional suggestions by the League of Municipalities and the KCC. That language, in the form of a substitute bill, is provided with my testimony. The changes are intended to clarify the intent and scope of the bill.

The issues

Today, Westar Energy faces a number of significant issues involving franchise and right-of-way issues in a number of cities. We are negotiating a new franchise with Wichita. Those negotiations have exposed a series of issues that we think involve abuse of the authority granted by state franchise law and that would be prohibited by SB 397.

In the city of Wichita's most recent offer in our franchise negotiations, the city has taken a number of positions:

1. The city "retains" the right of purchase electric power for its own purposes, even though it does not have that right under current law.
2. Westar Energy would be required to give up any claims for compensation authorized by state and federal law in the event the franchise is terminated.
3. Despite a very short term (two years) the proposed franchise agreement has a blanket right to terminate the agreement at will and an ability to reopen the franchise agreement.

2-3

Beyond the current negotiations, the city of Wichita has suggested in a 50-page white paper it issued earlier this year that "In addition to other options, one approach may be, 'Franchise Alignment.' In Franchise Alignment, public officials would review municipal franchises with Western Resources in the exercise of public responsibility. As franchises expire, varying municipalities across the State may coordinate alignment of short-term renewable extensions of franchises until the company is able to address relevant concerns."

This suggests that cities use their franchise authority, to regulate all forms of our business beyond use of the right of way. SB 397 explicitly prohibited such regulation on the premise that the Kansas Corporation Commission has such regulatory authority.

Franchises require agreement between the city and the utility. Right-of-way ordinances do not. These can be imposed **unilaterally**, as we have seen in the course of the past several years. As such, these ordinances can impose significant new costs of doing business in a particular city.

One example of a potentially costly right-of-way ordinance can be found in Wichita. We are involved in a significant problem regarding tree trimming in Wichita. Tree trimming is an expensive but necessary process to assure electric system reliability. As many learned in the most recent ice storm, falling limbs are a major cause of electric outages. Westar Energy has been working to trim trees to improve system reliability. We are spending approximately $12 million per year. In Wichita, a right-of-way ordinance was adopted requiring permits and inspection and potentially placing extreme limits on the amount of trimming that can be done. Strict compliance with this ordinance, while maintaining our goals for system reliability could increase costs in the city of Wichita alone to $40 million per year.

2-4

We fully recognize that there is controversy about our estimate of the cost of the tree-trimming ordinance. First, we acknowledge that it is a worst case scenario and an estimate of the cost without any experience, because the ordinance — though passed in 2000 — has not been implemented in a manner that would allow us to know how it will be enforced and its associated costs. Based on some indications of what would be expected of us, in implementation, that expense could be as little as $8 million. Still, it would double our expenses.

You do need to know a few things about our company's tree trimming efforts. They have been extremely successful in improving system reliability. In Wichita, that effort has reduced customer outage time due to tree limbs by more than 86 percent since 1998. At the same time, our company has been named a National Arbor Day Foundation "Tree Line USA Utility" every year for the past three years. Only 67 of the more than 500 utilities nationwide have received similar recognition.

SB 545 is not about trees. Trees are only one example of the type of problems we face with right-of-way issues. Other examples could be mandates that require all electric service to be buried or implementation of extraordinary mapping and design expenses.

This legislation does not bar a city from exercising its powers, but it makes clear that extraordinary expenses that result from those requirements will be recovered from the locality where the mandate has occurred. This is a matter of fairness. Residents of one city should not carry the burden of extraordinary expenses that spawn from an ordinance in another.

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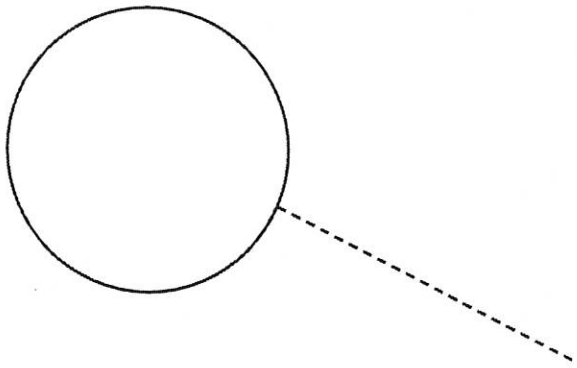

Tree Pruning For Overhead Line Clearance.

Line voltage and species of tree determine the amount of space required for adequate overhead electric line clearance.

When tree branches grow in and around overhead electrical lines, they can create a safety or reliability hazard and must be pruned. In some cases it is better to remove a tree than to prune it down severely.

If you have any questions or want more information about the best trees to plant near or under overhead lines in your area, please contact us at the phone number shown on the other side of this notice.

The National Arbor Day Foundation has named Westar Energy a Tree Line USA Utility every year since 1999 for its nationally recognized proper tree pruning practices.

Westar Energy™

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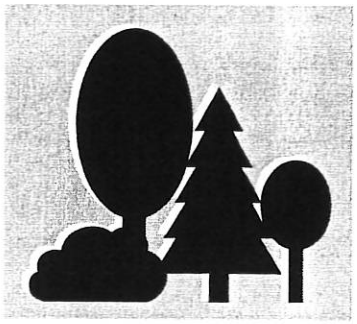
WES-0511

2b

Important Notice To Westar Energy Customers



To assure safe and reliable electric service to you and your neighbors, professional crews will work in your area during the next few weeks. They will prune trees, as necessary, to obtain adequate overhead electrical line clearances.

- All tree cuttings will be cleaned up and removed from your property.
- *You will not be charged for work done in accordance with normal utility operating practices.*
- Permission is not required for line clearance pruning, but to remove a tree we require written permission from the property owner.

If you have any questions, special circumstances or a tree that is near our utility lines that you would like removed, please contact:

TT-WE/03-02/1

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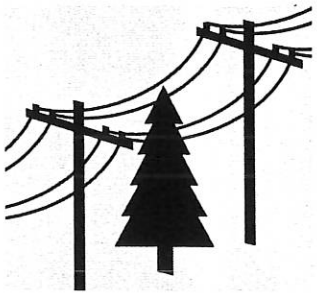
While You Were Away



Important Notice to Westar Energy Customers

While you were away, a professional line clearance crew pruned your trees to obtain adequate overhead electrical line clearance. This work was performed to help assure safe and reliable electric service to you and your neighbors.

- *You will not be charged for work done in accordance with normal utility operating practices.*
- *Any brush and prunings left on your property will be cleaned up within 24 hours.*

The National Arbor Day Foundation has named Westar Energy a Tree Line USA Utility every year since 1999 for its nationally recognized proper tree pruning practices.

If you have any questions, please contact:

Westar Energy™

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TT-WE/3-02/2

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Substitute for Senate Bill No. 545
Draft March 18, 2002

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

Section 1. As used in sections 1 and 2, and amendments thereto:

(a) "Public right-of-way" means only the area of real property in which the city has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the easements obtained by utilities, or private easements in platted subdivisions or tracts.

(b) "Public utility" shall mean all public utilities as defined in K.S.A. 66-104, and amendments thereto, except that it does not include any public utilities included in the definitions set forth in K.S.A. 66-1,187, and amendments thereto.

Section 2. (a) Without prejudice to a public utility's other rights and authorities, a public utility which is assessed by a city and collects and remits fees associated with the utility's use, occupancy or maintenance of such facilities in the public right-of-way may file a tariff with the state corporation commission to add to such utility's end-user customer's bill, statement or invoice a surcharge equal to the pro rata share of any such fees.

(b) Costs which are incurred by a public utility in excess of those normal and reasonable costs incurred by a public utility applying good utility practices due to actions of a city's governing body may file a tariff with the state corporation commission to add to the bill, statement or invoice of each end-use customer located within such city through a surcharge equal to a pro rata share of such costs.

(c) For purposes of this act costs shall not include expenses specifically covered by any other cost recovery mechanism in existence as of April 1, 2002, including but not limited to franchise fees and relocation expenses.

(d) The fees and costs incurred by the utility identified in subsections (a) and (b) in excess of the amount included in the utility's existing rates shall be subject to review by the state corporation commission upon filing for recovery of the costs a surcharge. Upon a showing that: (1) the fees included for recovery in such surcharge were required to be paid by the utility as the result of action of the governing body of a city, (2) the costs were incurred as a result of action of the governing body of such city, (3) such costs were reasonably incurred to meet the requirements imposed by the governing body of such city and (4) the surcharge is applied to bills in a reasonable manner and is calculated to substantially collect the increase in fees and costs charged on the books and records of the utility, or reduce any existing surcharge based upon a decrease in fees and costs incurred on the books and records of the utility, the commission shall approve such tariffs within 30 days of the filing. If the commission determines that the surcharge is not applied to bills in a reasonable manner, the costs or portions thereof do not meet the above requirements or that the calculation is not adequately supported by the

documentation provided in the filing, the commission may, at its option, either disapprove such tariff within 30 days of the filing and require resubmission by the utility, suspend the effective date of the tariff for an additional 60 days to receive appropriate documentation from the utility or modify such tariff in a manner that recovers in a reasonable manner the costs or portions thereof which meet the above requirements. Any over or under collection of the actual fees and costs charged to expense on the books of the utility shall be either credited or collected through the surcharge in subsequent periods. The establishment of a surcharge under this section shall not be deemed to be a rate increase for purposes of this act.

(e) Upon the filing of a tariff with the corporation commission pursuant to this act, the utility shall deliver to the affected city a complete copy of the filing. Such copy shall be delivered within 10 days of the filing with the corporation commission.

Section 3. This act shall affect only such costs and fees, which are incurred between April 1, 2002 and June 30, 2003. The provisions of this act shall take effect and be in force from its publication in the register and be in effect only through June 30, 2003.

WHITNEY B. DAMRON, P.A.
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TOPEKA, KANSAS 66612-2205
(785) 354-1354 ♦ 354-8092 (FAX)
E-MAIL: WBDAMRON@aol.com

TESTIMONY

TO: **The Honorable Carl Holmes, Chairman**
And Members Of The
House Utilities Committee

FROM: **Whitney Damron**
On Behalf Of
Kansas Gas Service

RE: **Substitute for SB 545 by Committee on Utilities**
Public Utilities; Public Right-of-Way; Fees.

DATE: **March 19, 2001**

Good Morning Chairman Holmes and Members of the House Utilities Committee. I am Whitney Damron and I appear before you today on behalf of Kansas Gas Service in support of Substitute for Senate Bill 545.

By way of information, Kansas Gas Service is a local natural gas distribution company headquartered in Overland Park. Kansas Gas Service (KGS) is a Kansas corporation and a wholly-owned subsidiary of ONEOK, Inc., a diversified energy company with headquarters in Tulsa, Oklahoma.

KGS serves over 640,000 customers in Kansas in nearly 350 cities. As a result of this service territory responsibility, the Company has well over 300 franchise agreements in Kansas, most all of which are unique to the city in which they apply. KGS believes it would make sense for the State to provide a framework for local franchise agreements, if such parameters could be drafted in a manner that is supported by both utilities and cities.

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The proponents of this bill had hoped to embark upon a course of action similar to the path taken by proponents of SB 306 from the 2001 session, which has resulted in the likely passage of SB 397 this year. Objections were raised to this legislation (SB 545) by the League of Kansas Municipalities, who felt it was premature given the fact SB 397 had yet to become law and when it did, many of the concerns expressed by the natural gas and electric utilities may resolve themselves upon enactment of new local ordinances that would most likely apply to all utilities operating in a city's right-of-way, and not just telecommunications companies. Perhaps the passage of SB 397 will accomplish that objective and all parties will have benefited from that process absent separate legislation for the natural gas and electric utility industries.

KGS has been an active participant in meetings with various utilities and the League of Kansas Municipalities regarding franchise issues and SB 545. We are respective of the position of the League that cities should be given an opportunity to implement the provisions of SB 397 so that we might see if ordinances promulgated under that legislation will address the concerns natural gas and electric utilities have with current law in the area of right-of-way management and franchise agreements. However, we are also aware that there are concerns with current law that give rise to our support for SB 545.

We believe SB 545 is a reasonable approach to resolving the issues raised by the natural gas and electric industry in light of similar issues raised during the hearing process on the telecommunications right-of-way legislation. Neither side of this issue can say any permanent harm will be caused by implementing SB 545, but it is quite possible the passage of SB 545 will allow interested parties the opportunity to fairly and appropriately address these franchise and right-of-way issues in a manner that provides for greater interaction by all parties concerned outside the pressure of legislative deadlines and what can become an adversarial process.

Finally, we are familiar with recent discussions on language in the bill that has been reworked by the Kansas Corporation Commission, the League and utilities and we are supportive of those proposed amendments to the bill as well.

On behalf of Kansas Gas Service, I thank you for your consideration of our thoughts on SB 545.

Kansas City Power & Light®

Testimony before the
Kansas House Utilities Committee
March 19, 2002

Substitute Senate Bill 545 - Right of Way Permit Fees & Costs

Cynthia Smith, JD
Manager, Government Affairs - Kansas

We appreciate the opportunity to submit this testimony on Substitute S 545 and the situation of Kansas City Power and Light in regard to franchise fees and use of the rights of way.

As you know, legislation is also moving this session that addresses use of the rights of way by telecommunications companies. That bill, S 397, would amend state statute on franchise fees. Some of the changes, such as the improved approval processes, would streamline our franchise fee negotiations, too.

Also, we believe S 397 does a good job of establishing appropriate parameters for the use of rights of way by the telecoms. What it does not do, however, is make clear that all utilities and cities would have these same rights and responsibilities.

Since last session, KCPL began to face issues similar to those the telecoms had been facing, particularly in regard to the use of rights of way.

Proposals for new fees and fee increases vary, and some are still in development. Some of the new fees we are seeing include new inspection fees, degradation fees, and lane closure fees. Early estimates were that fees in some areas would increase about 150 percent. Now we are learning that projects that once use to incur $25 in fees could now incur fees of up to $400 for each project. Several dozen construction projects may occur in a single community every year.

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KCPL explored seeking separate legislation similar to the telecoms' right of way bill. It was our view that the best result from the whole process of negotiating S 397 would be new law that addresses all utilities that are subject to franchise fees and rights of way permit fees.

Representatives of the Kansas League of Municipalities were adamant that they could not support such an effort this session, and asked us to trust that they would apply to us the same parameters on fees that will be mandated by the new law, should S 397 pass.

Westar decided to seek a new moratorium prohibiting new fees on utilities, which resulted in the original S 545. The KLM pointed out that the moratorium might actually interfere with the implementation of beneficial parts of S 397.

It was suggested in the Senate that we instead pursue legislation that would allow us to easily pass through the fees for the next year. Frankly, this approach would deter cities from adopting excessive right of way permit fees, because such fees would promptly appear as a line item on the electric bills of the cities' own residents. It would also allow the KLM and our companies time to work with cities to insure that all utilities are treated the same in regard to permit fees.

Hopefully the pass through will never need to be used. Without it, however, the utilities and our customers are vulnerable to the temptation to use the rights of way as a revenue-producing asset. **To set permit fees above actual costs simply uses the utilities as a tax collector.**

At KCPL, we pride ourselves in being responsible users of the rights of way. Most of the utility poles (approximately 60 percent) in the Kansas City area belong to Kansas City Power and Light, and we believe we have done a good job of managing that responsibility in our communities. We are uneasy about the changes we are seeing regarding franchise fees and rights of way. This compromise piece of legislation would ease our concerns.

We urge the passage of Substitute S 545.

We have also reviewed and support the amendments that will be offered by Westar, KLM, and the KCC.

4-2

BEFORE THE HOUSE UTILITIES COMMITTEE
PRESENTATION OF THE
KANSAS CORPORATION COMMISSION
March 19, 2002
Substitute for Senate Bill No. 545

Thank you Chairman and members of the Committee. I am Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission. I appreciate the opportunity to be here today to testify for the Commission on Substitute for Senate Bill No. 545.

The purpose of my testimony is to provide information and perspective on Sub SB 545. While the Commission does not support or oppose Sub SB 545, it does believe that such legislation is unnecessary. Sub SB 545 is intended to allow the utilities to collect certain fees or costs incurred beyond normal practice because of unique fees or requirements imposed by actions of a city.

The Commission has addressed similar concerns in the past and has already approved a "Relocation of Facilities Tariff" for several utilities including KGE and KPL. As shown on the attached copy of KGE's Relocations of Facilities Tariff, in May of 1993 the Commission approved a tariff providing a mechanism for KGE to recover costs incurred when specific actions by a governmental subdivision increased the normal costs of doing business within that governmental subdivision. In this case the tariff addressed any city ordinance that would have required KGE to either relocate or bury existing or new facilities at a cost in excess of the cost absent such an ordinance. For example, if the City of Lone Elm (my home town) required KGE to bury all of its overhead lines, KGE could recover the additional costs on a surcharge on the electric bills for all of the residents of the City of Lone Elm.

While the Commission believes that Sub SB 545 is not necessary, it does have a few comments on section 2(c) of the bill as written.

First, the Commission believes the bill currently may not allow the Commission adequate review time for the anticipated filing, particularly if the filing does not contain adequate

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ATTACHMENT 5

information or documentation to demonstrate the proposed surcharge is collected in a reasonable manner or that the surcharge has been reasonably calculated. For example the filing could contain inadequate information and the Commission would have no recourse under the language in section 2(c) except to reject the filing and wait for another filing that contained adequate information. Typically the Commission may request additional supporting information, analysis or documentation during its review process. To address this problem the Commission proposes language which would allow a sixty day extension if the Commission finds that additional discovery or information is required.

Second, the Commission is not given authority to modify the requested tariff filing under the current language in section 2(c). Typically, Staff investigates tariff filings and often modifications are needed to address concerns identified during the investigation. Often these suggested modifications represent discussions and agreements that the Staff has had with the Applicant and interveners. Without the ability to modify the tariff filing, the Commission would have no alternative other that to reject the filing. Furthermore, because the bill requires cost recovery in a "reasonable" manner, the Commission would be required to reject the filing if the recovery mechanism were found to be unreasonable, even if the need to recover the costs were not disputed.

Third, there is no provision to assure that the additional costs incurred by the utility were reasonable and necessary to implement the unique city fees or requirements. For example, if a city ordinance is passed that forbids a utility to use wooden poles inside city limits, and the utility responds by burying the electric lines instead of installing steel or concrete poles, the costs are likely in excess of that necessary to comply with the city's actions. The Commission should have the ability and authority to review the costs incurred and allow only those reasonable and necessary to address the city's actions.

While the Commission does not believe this legislation is necessary, it does believe modifications are needed if the Committee decides to pass Sub SB 545. Modifications to section 2 (c) that will address the Commission's concerns are attached to my testimony.

KCC Proposed revision to section 2 (c)

~~The~~ *Reasonable and necessary* fees and costs incurred by the utility identified in subsections (a) and (b) in excess of the amount included in the utility's existing rates shall be subject to review by the state corporation commission upon filing for recovery of the costs in *a tariff reflecting a surcharge on the utility's bill for utility service designed to collect the increase in expense charged on the utility's book and records.* ~~a surcharge~~. ~~Upon a showing~~ *Upon a finding by the commission* that the surcharge is applied to bills in a reasonable manner and is calculated to substantially collect the increase in expenses charged on the books and records of the utility, or reduce any existing surcharge based upon a decrease in ~~fees and added expense~~ *expenses* incurred on the books and records of the utility, the commission shall approve such tariffs within 30 days of the filing. *If the commission determines that the surcharge is not applied to bills in a reasonable manner, the fees and costs or portions thereof were not necessary or reasonably incurred, or that the calculation is not adequately supported by the documentation provided in the filing, the commission may, at its option, either disapprove such tariff within 30 days of the filing requiring resubmission by the utility, suspend the effective date of the tariff for an additional 60 days to receive appropriate documentation from the utility, or modify such tariff in a manner that recovers the reasonable and necessary portions of the incurred fees and costs in a reasonable manner.* Any over or under collection of the actual fees and costs charged to expense on the books of the utility shall be either credited or collected through the surcharge in subsequent periods. The establishment of a surcharge under this section shall not be deemed to be a rate increase for purposes of this act.

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THE STATE CORPORATION COMMISSION OF KANSAS

INDEX NO_____

KANSAS GAS AND ELECTRIC COMPANY
(Name of Issuing Utility)

SCHEDULE ROFT

ENTIRE SERVICE AREA
(Territory to which schedule is applicable)

Replacing Schedule INITIAL Sheet 1

which was filed_____

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 1 of 3 Sheets

RELOCATION OF FACILITIES TARIFF

If any governmental subdivision requires Company to construct, remove, or relocate ("change") Distribution or Transmission facilities ("required facilities") when Company, absent such requirement, would do otherwise, and where the recovery of the additional cost for such change is not otherwise provided for, the cost incurred by Company to make such change shall be assessed against the customers located within the governmental subdivision through a monthly surcharge ("Surcharge") as follows:

1. If the required facilities are in lieu of new facilities, Company shall estimate the cost of the required facilities and of the facilities which otherwise would have been installed ("planned facilities"). Any cost of the required facilities in excess of the planned facilities shall be the basis for the Surcharge.

2. If the required facilities replace existing facilities which Company would otherwise maintain or modify in place, Company shall estimate the cost of the required facilities and any planned modifications to existing facilities. Any cost of the required facilities in excess of the cost of any planned modifications to existing facilities plus the cost of removing existing facilities shall be the basis for the Surcharge.

3. If the required facilities replace existing facilities which Company would not otherwise maintain or modify, the cost of the required facilities plus the cost of removing the existing facilities less their salvage value shall be the basis for the Surcharge.

4. Company's costs of planned and required facilities shall be as follows:

   a. Costs of planned facilities shall include applicable material and labor costs, including allocation of indirect costs. Indirect costs are comprised of supervision, engineering, transportation, material handling, and administrative cost functions that support actual construction. The amount of the allocation of indirect costs is derived by application of unit costs or allocation percentages, determined from historical experience.

93KGE-419TAR

Commission File Number_____

Issued APR 21 1993
(Month) (Day) (Year)

Effective MAY 19 1993
(Month) (Day) (Year)

By James Haines
James Haines, Executive Vice President

NOTED FILED MAY 19 1993
THE STATE CORPORATION COMMISSION OF KANSAS

By Judith McConnell Secretary

THE STATE CORPORATION COMMISSION OF KANSAS

INDEX NO_____

KANSAS GAS AND ELECTRIC COMPANY
(Name of Issuing Utility)

SCHEDULE ROFT

ENTIRE SERVICE AREA
(Territory to which schedule is applicable)

Replacing Schedule INITIAL Sheet 2

which was filed_____

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 2 of 3 Sheets

RELOCATION OF FACILITIES TARIFF

b. Costs of required facilities shall include the cost items identified in subparagraph a. plus all costs of complying with the requirements of the governmental subdivision including any application process of the governmental subdivision, including the cost of preparing the application, costs of developing alternatives not already studied by Company, cost of estimating the cost of alternatives not already studied by Company, the production of data for consideration in any hearing, and any other direct cost of compliance including any hearing held.

5. The basis for the Surcharge, as determined under paragraphs 1, 2, or 3, and 4 above, shall be recovered from all customers within the governmental subdivision through the Surcharge. Said Surcharge shall be the amount necessary to recover the basis and Company's associated cost of capital and income taxes in a period of time approved by the Kansas Corporation Commission, not longer than seven years. Subject to review and approval by the Kansas Corporation Commission, the governmental subdivision may determine whether the Surcharge shall be calculated and billed on a per customer basis, energy usage basis or some combination thereof. Surcharge shall be shown as a separate line item on the customer's bill. In the absence of such governmental subdivision determination, the Surcharge shall be calculated and billed on a per customer basis.

6. Company shall file a notice of the Surcharge with the Kansas Corporation Commission and shall file a copy with the affected governmental subdivision and provide copies to customers who have requested that the notice be sent to them. The notice shall state the following:

   a. the reason for the Surcharge;

   b. the estimated amount of the Surcharge;

   c. the period of time over which the Surcharge shall be made;

   d. the number of electric customers within the governmental subdivision.

93KGE-419TAR

Commission File Number_____

Issued APR 21 1993 (Month / Day / Year)

Effective MAY 19 1993 (Month / Day / Year)

By James Haines
James Haines, Executive Vice President

NOTED

FILED MAY 19 1993

THE STATE CORPORATION COMMISSION OF KANSAS

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By Judith McConnell Secretary

THE STATE CORPORATION COMMISSION OF KANSAS

INDEX NO____

KANSAS GAS AND ELECTRIC COMPANY
(Name of Issuing Utility)

SCHEDULE ROFT

ENTIRE SERVICE AREA
(Territory to which schedule is applicable)

Replacing Schedule INITIAL Sheet 3

which was filed_____

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 3 of 3 Sheets

RELOCATION OF FACILITIES TARIFF

7. The Surcharge may be included in bills rendered in any governmental subdivision 30 days after placing the first required facility in service or the removal of a facility required to be removed or 60 days after filing notice of the terms of the Surcharge with the Kansas Corporation Commission, whichever occurs later, unless the Kansas Corporation Commission has, by order issued within 30 days of the filing, suspended the Surcharge for purposes of investigation.

8. At any time after the commencement of the Surcharge, the Surcharge may be reviewed and, if necessary, adjusted to reflect:

   a. the number of electric service customers then in the governmental subdivision, and/or;

   b. the amount of energy used by customers in the governmental subdivision, and/or;

   c. the actual cost of required facilities.

9. If the governmental subdivision rescinds its requirements concerning required facilities, the Surcharge shall continue until the end of term specified in Section 5, subject to review and adjustment as specified in Section 8.

10. Failure by any customer to pay the Surcharge shall be grounds for disconnection of service to such customer in accordance with Company's Service Regulations.

93KGE-419TAR

Commission File Number_____

Issued APR 21 1993
Month Day Year

Effective MAY 19 1993
Month Day Year

By James Haines
James Haines, Executive Vice President

NOTED FILED MAY 19 1993

THE STATE CORPORATION COMMISSION OF KANSAS

5-6

By Judith McConnell Secretary

LKM
League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
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To: House Utilities Committee
From: Kim Gulley, Director of Policy Development & Communications
Date: March 19, 2002
Re: Electric and Natural Gas Franchise Issues

Thank you for allowing me to appear today on behalf of the League of Kansas Municipalities and our member cities. The issue of franchise agreements and right-of-way management is a critical and very complicated issue. We appreciate the opportunity to discuss these issues with the committee. The issues of concern raised by electric and gas utilities can be divided into two separate categories: 1) right-of-way management; and, 2) franchise/business relationships.

1) Right-of-Way Management

- ***History***

While cities have been dealing with right-of-way management issues practically since their incorporation, recent events and trends have brought this issue to the forefront of municipal policy. Fueled in large part by the 1996 federal Telecommunications Act and the increasingly competitive telecommunications industry, cities are struggling to manage the growing number of facilities in their rights-of-way. At the same time, cities have educated themselves about the impact that these facilities have on the general public. Studies have been done and resources have been shared which outline the burden to the community that results when private companies use public property for business purposes. Cities have identified numerous fiscal, administrative, and safety burdens which are a direct result of utility companies utilizing the public rights-of-way.

In an attempt to address these very complex challenges, a number of cities have adopted right-of-way management ordinances. In some cases, cities have been forced to hire full time right-of-way managers in order to deal with these issues. The right-of-way management ordinances that have been adopted by most cities are designed to identify the users of the rights-of-way and establish rules and procedures for the use of this limited public resource. Most cities who have adopted such ordinances, applied them to all utilities in the right-of-way.

The negotiations with the telecommunications industry and the resulting legislation (SB 397) will force a review of all of these right-of-way ordinances. As part of the agreement between cities and the telecommunications industry, SB 397 contains language which indicates that existing franchises, with a couple of very specific exceptions, will not be invalidated by the new legislation. However, there is also language in SB 397 which makes it very clear that right-of-way management ordinances may not conflict with the new provisions which will go into effect July 1, 2002, if the bill is ultimately signed into law. This means that cities will have to review existing right-of-way ordinances and alter them if any of the provisions of the ordinance conflict with SB 397.

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DATE: 3-19-02
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For this reason, the moratorium which was proposed in the form of the original SB 545 presents some very practical difficulties. SB 397 represents a significant change from current law and it will take some time to educate cities on its implications. Cities need the opportunity to review their existing right-of-way ordinances and alter them as necessary as a result of SB 397. Another moratorium would make the implementation of the right-of-way portion of SB 397 virtually impossible.

We have discussed right-of-way management concerns with representatives of the electric and gas industry. Those representatives have indicated a willingness to work with the League to ensure effective implementation of SB 397.

- ***Implementation of SB 397***

The League is planning on providing education and assistance to cities over the next few months concerning SB 397. Because the representatives of the electric and gas industry have indicated concern that cities might treat them differently than the telecommunications companies under SB 397, we have committed to including these industries in our educational and informational efforts. Those efforts will include:

- Right-of-Way Management Summit;
- Workshops and roundtables during the LKM Annual Conference in October;
- Articles in the *Kansas Government Journal* to reach those unable to attend either session

In addition, the League has also committed to sit down with representatives of the electric and gas industry to discuss any issues of concern. It is our sincere hope and intention to keep an open line of communication between cities and these industries throughout the implementation of SB 397.

2) Franchise Issues

The second major area of concern are the franchise issues as they relate to the electric and gas industry. Cities are specifically authorized pursuant to K.S.A. 12-2001 *et seq.* to franchise utility companies (and other entities) that utilize the public rights-of-way. The franchise agreement between cities and providers is a contract which sets out the business relationship between the public entity and the utility company. SB 397 also amends the city franchise statute. While it is made very clear in the legislation that telecommunications local exchange providers will have to continue to maintain that contractual relationship with cities, a number of telecommunications-specific changes are made to K.S.A. 12-2001. Most of these changes are a result of the competitive nature of this industry and the requirements of the 1996 federal Telecommunications Act.

From a business standpoint, electric and gas utilities are situated quite differently than telecommunications providers. They are regulated companies with a grant of exclusive service territory and a guaranteed rate of return. Electric and gas providers have expressed an interest in reviewing the franchise relationship with cities and the League

is committed to discussing those issues. However, we believe that it is important to discuss those issues in the context of the nature of their specific industries and not in the context of SB 397 as it relates specifically to telecommunications providers.

Fee Pass Through

Representatives of the electric and gas industry have expressed concern that cities might impose unreasonable additional fees on them during this initial implementation period. Under current law, the Kansas Corporation Commission (KCC) makes the determination as to which costs are passed on to consumers. However, representatives of the industry have expressed concern that such costs cannot be considered until the next rate case.

To address this concern, a substitute for SB 545 was proposed and passed out of Senate Committee on the very same day. The League does not oppose an expedited process for the consideration of these fees so long as the KCC remains the entity responsible for determining which fees and how much are passed through to consumers. Because we are dealing with regulated utilities in this case, we believe that the KCC is the appropriate body to consider such issues. Most importantly, having the KCC make such determinations assures that any aggrieved party, including cities, would have the opportunity to be heard on the issue. The League and our member cities are opposed to mandating the pass through in statute and taking away this opportunity to be heard.

Because the Senate took such quick action on the substitute, there was not ample time to review the language of the bill before its passage. Since that time, we have reviewed the language and are in agreement that the suggested amendments are necessary in order to bring clarity to the bill. We therefore, urge the Committee to amend the bill as proposed.

Conclusion

Cities in Kansas worked in good faith with the telecommunications industry to find a reasonable solution to the conflicts which arose during the 2001 session. We now need the time to make sure that the result of that work, SB 397, can be implemented. This will require a great deal of education and information. Cities across the state will have to take the time to review their current ordinances and policies to ensure that they are in compliance with the new bill. It is too early to tell exactly what impact this new structure will have on the electric and gas industry. However, the League is committed to working with representatives of these industries throughout the implementation of SB 397 and beyond to resolve any conflicts that may arise.

Thank you for the opportunity to appear before you today to discuss these very important issues. I would be happy to stand for questions or to provide any further information for the committee.

STATE OF KANSAS

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SENATOR, 25TH DISTRICT
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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
VICE CHAIRMAN: ARTS AND CULTURAL RESOURCES (JOINT)
MEMBER: EDUCATION
TRANSPORTATION
WAYS AND MEANS

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Senator Jean Schodorf's
Testimony
House Utility Committee
March 19, 2002

I am presenting written testimony against Substitute for Senate Bill 545. I have heard from many constituents in opposition to this bill. The original Senate Bill 545 called for a moratorium so that Westar and the City of Wichita could work out a compromise concerning the increased costs due to the tree trimming ordinance.

I have a proposal which I believe better addresses the issue. Two examples were given where a city passed an ordinance that resulted in substantially higher costs to the business. One of these examples was the city of Wichita and a tree trimming ordinance, which they deny. However, if the governmental entity does pass an ordinance resulting in much higher costs, instead of requesting a tariff from the KCC and thus passing on the costs, there should be a protest process by which the business proves that the supposed ordinance does in fact create additional costs for the company. The city or governmental entity could also present justification for such actions.

In the case of Westar, the tree trimming ordinance was passed in response to public outcry from hundreds of citizens upset about the way Westar Energy had pruned their trees. The City of Wichita disputes accusations that the policy increases tree trimming costs inordinately. However, instead of working out the issue, Westar Energy pursued the Substitute bill to pass on costs, thus creating higher energy rates, but calling it a surcharge.

The point is that regardless of the company, such costs could affect customers across the state if the governmental entities pass ordinances with higher costs. There should be a process for businesses to protest these actions instead of making customers pay higher rates.

I urge you to vote NO on Substitute for Senate Bill 545.
Thank you for reading this testimony.

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Citizens' Utility Ratepayer Board

State of Kansas
Bill Graves: Governor

1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: (785) 271-3200
Fax: (785) 271-3116

March 19, 2002

S.B. 545

Testimony Presented By
Walker Hendrix, Consumer Counsel

S.B. 545 is an example of single issue ratemaking. CURB opposes legislative proposals to establish single issue surcharges. More specifically, S.B. 545 provides for the assessment of a surcharge to collect costs incurred for utilization of a city's right of way. Based on published reports, this bill is designed to assess the customers of a municipality for imposing costs higher than what would normally be expected by the utility for use of the city's right of way. It has been suggested the bill is being requested to impose higher charges on the citizens of Wichita, because the city has mandated tree trimming procedures to help preserve more of the trees as part of the utility's maintenance procedures along easements where trees exist. CURB's opposition to the bill is based on the limited review the Commission is afforded to determine the reasonableness of the costs to be incurred and the ambiguity found in the bill for establishing whether a surcharge should be applied. Moreover, CURB opposes the bill, because under existing regulatory procedures the Commission can approve a tariff for the purpose of assigning unusual costs to a community where unreasonable procedures are instituted.

S.B. 545 is unnecessary and may compromise the Commission's regulatory authority. CURB desires to demonstrate why this bill is unneeded. In Docket No. 95-WSRE-573-TAR, the Commission effectively dealt with a situation in Lawrence, Kansas, where the city wanted a transmission line removed in the area of Pickney Grade School. The Commission authorized a surcharge and worked closely with the City of Lawrence and Western Resources (now Westar Energy). The surcharge was established after a proceeding was instituted where the parties were given an opportunity to present their concerns over the relocation of the transmission lines. (See, Order Approving Surcharge and Memorandum, attached). S.B. 545 can be read to limit the Commission's authority to a determination of whether or not the surcharge is "applied to the bills in a reasonable manner." The Commission is given authority to review the fees and costs for right of way expense, but the procedure outlined in the bill may be read to restrict the Commission to a mechanical application of the surcharge under Section 1 (c). In any event, under existing regulatory procedures, it is clear the Commission has plenary authority to act, and this bill does nothing more than cloud the Commission's ability to determine the extent to which the costs are to be recovered by a surcharge.

S.B. 545 includes an ambiguous standard. A surcharge shall be imposed if the public utility incurs costs in excess of those, which would be absorbed, as a result of "applying good utility practices" and the costs are due to "actions of a city's governing body." The phrase "good utility practices" is obviously subject to some debate and may require a balance of the city's need

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to care for its citizens and the utility's incurrence of the costs. In a proceeding like the one which may involve Wichita, there is a need to balance both the utility's costs and the protection sought by the city. Under the bill, the balance is struck in favor of the utility under what the utility may consider to be a "good practice." Moreover, the procedure does not permit the Commission to take into account the revenues the utility is currently receiving for its services and whether their might be an over earnings situation.

The surcharge may penalize customers who have had little or no involvement in the city's decision to require a particular procedure. It may result in substantially varying rates in different cities. CURB supports the existing procedures the Commission has at its disposal. Why complicate the Commission's job with a statute dealing only with right of way expenses?

S.B. 545 is directed at the City of Wichita. Wichita has taken an aggressive position on the rates charged by Westar Energy. In this context, there should be some concern whether the legislation is sought to punish Wichita for its opposition to the rates established by Westar. Westar claims the tree trimming expenses will raise the costs of tree trimming from $4 million to $40 million. Although CURB has not reviewed the local ordinance passed by the city's governing board, it does seem like the estimate of $40 million is very high.

In closing, CURB would request the Committee to pay close attention to what is at issue. The Commission does have existing authority to specifically assess a city for unreasonable costs imposed by the actions of a wayward governing body. Don't complicate the existing regulatory process by introducing S.B. 545 as part of the State's Public Utility Act. Thank you for your consideration.

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Susan M. Seltsam, Chair
F.S. Jack Alexander
Timothy E. McKee

In the Matter of the Relocation of Facilities Tariff, Pinckney Surcharge, Lawrence, Kansas, filed by Western Resources Inc., dba KPL.	)))	Docket No. 95-WSRE-573-TAR

ORDER APPROVING SURCHARGE

COMES NOW, the above captioned matter for consideration and determination by the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

1. On February 19, 1992, Western Resources, Inc., (WRI) filed an application for Commission approval to upgrade a 69-kilovolt (kV) transmission line to 115 kV (EL Application No. 28276). The line was intended to transmit energy between KPL's Lawrence Hill substation near Lawrence, Kansas and its substation at or near the intersection of Sixth and Kentucky Streets, Lawrence, Kansas. The line upgrade was in part, near or upon property owned and occupied by members of the Pinckney Neighborhood Association (PNA). On September 8, 1992, the Commission approved EL Application No. 28276.

2. On September 8, 1992, a complaint was filed by PNA against the proposed electric supply line upgrade filed by WRI in EL Application No. 28276 (Docket No. 183,411-U). The complaint alleged that upgrading the transmission

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line, in the matter proposed by WRI, presents serious threats to the health, safety and aesthetic quality of PNA's neighborhood. PNA sought relief by requesting that the Commission order that no construction begin until the complaint is resolved, commence an investigation into the merits of the complaint, and order WRI to site the proposed line at a different location which presents less risk to the public health and safety and which will not result in detriment to PNA's residents and their property.

3. On February 1, 1993, the Commission ordered dismissal of the Pinckney complaint (Docket No. 183,411-U). The Commission found that "[t]he Kansas statutory scheme does not envision a role for the Commission in the upgrade or siting of power lines, except where specifically mandated by K.A.R. 82-8-100, *et seq.* . . . Moreover, the Commission strongly believes that it is the duty of local government to pursue avenues of settlement and compromise with the utility and affected neighborhood to the extent possible." (para. 36)

4. On April 14, 1993, Western Resources Inc. (WRI) received approval from the Commission to effectuate a Relocation of Facilities Tariff designed to allow cities the latitude to request that the company construct, remove, or relocate distribution or transmission facilities that the company would not otherwise construct in that fashion. The tariff provides that the cities' customers pay the incremental costs associated with such requested relocations.

5. On August 24, 1993, the Lawrence city commission approved a line siting ordinance requiring WRI to relocate the Commission-approved 115-kV line

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from its preferred route along Fifth Street to an alternate route along the railroad tracks adjacent to the Kansas River. On February 2, 1994, WRI submitted a preliminary proposal, in accordance with its Relocation of Facilities Tariff, to initiate a thirty-five cent, ($0.35), per month surcharge to its Lawrence customers. The surcharge was proposed to recover the costs associated with relocation of the 115-kilovolt transmission line ordered by the Lawrence City Commission.

6. On May 1, 1995, WRI filed a copy of its proposed notice of the surcharge to its Lawrence customers. The surcharge amount had been increased from thirty-five cents ($0.35), as in the preliminary proposal, to approximately forty cents ($0.40). The increase in the calculated surcharge was due to $62,241 anticipated in additional costs to be incurred in the relocation process. The majority of the additional costs are derived from the mitigation of a potential inductive interference problem with the Atchison Topeka & Santa Fe Railroad (AT&SF). This mitigation resulted in unresolved additional costs that were not anticipated at the time that the decision was made to relocate the line. The unresolved issue resulted in continued removal of the transmission line from service pending resolution of the railroad signal interference problem.

7. The Relocation of Facilities Tariff filed by WRI provides "The Surcharge may be included in bills rendered in any governmental subdivision 30 days after placing the first required facility in service or ... 60 days after filing notice of the terms of the Surcharge with the [Commission], whichever occurs later, unless

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the [Commission] has, by order issued within 30 days of the filing, suspended the Surcharge for purposes of investigation." (p. 3, item 7).

8. WRI has been involved in ongoing negotiation with AT&SF regarding a proposed solution to the interference problem. At the time the surcharge tariff was filed the issue was unresolved. The Commission, in an order dated May 30, 1995, suspended the Relocation of Facilities Tariff for a period of sixty (60) days commencing with the filing date of May 1, 1995, and running through June 30, 1995. By order dated June 30, 1995, the suspension was extended for 90 days, through September 28, 1995.

9. The ongoing negotiations between WRI and AT&SF have produced an interim resolution which allows WRI to utilize the transmission line during peak load demand, when the need for the line is the greatest. Staff has closely monitored the negotiations between WRI and the AT&SF. The working agreement between the parties will allow WRI to utilize the line on this basis until a final resolution is achieved.

10. Staff has determined that a surcharge of thirty-nine cents ($0.39), rather than forty cents ($0.40), reasonably reflects the incurred incremental costs for the relocation of the transmission line. Staff recommends that a monthly surcharge of thirty-nine cents ($0.39), per month assessed to the customers within the City of Lawrence, commence with the next billing and continue for a five (5) year period. Staff makes this recommendation with the knowledge that the ultimate resolution

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of the inductive interference problem will likely result in additional costs attributable to the line relocation.

IT IS THEREFORE, BY THE COMMISSION ORDERED THAT:

The Relocation of Facilities Tariff Surcharge filed by WRI in this matter be granted, assessing a monthly thirty-nine cent ($0.39) surcharge to customers in the City of Lawrence. This surcharge shall commence with the September, 1995 WRI billing and shall continue for a period of five (5) years. Any further costs directly attributable to relocation of the line shall require additional application for consideration.

The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary and proper.

A party may file a petition for reconsideration of this order within fifteen days of the date of this order is served. If service is by mail, service is complete upon mailing and three days may be added to the above time frame.

BY THE COMMISSION IT IS SO ORDERED.

Seltsam, Chr.; Alexander, Com.; McKee, Com.

Dated: AUG 2 3 1995

ORDER MAILED
AUG 24 1995
Executive Director

Judith McConnell
Executive Director

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MEMORANDUM
Utilities Division
August 16, 1995

To: Susan Seltsam, Chair
Jack Alexander, Commissioner
Timothy McKee, Commissioner

From: Mark Doljac
Gary Dawdy

In the Matter of the Relocation of Facilities Tariff, Pinckney Surcharge, Lawrence, Kansas, filed by Western Resources Inc., dba KPL) **Docket No. 95-WSRE-573-TAR**

EXECUTIVE SUMMARY

On May 1, Western Resources Inc. (WRI) filed an application to assess a forty-cent (40-cent) per customer per month surcharge to the bills of Lawrence customers, for five (5) years. The surcharge is designed to recover the costs associated with the relocation of the line that was originally planned to go through the Pinckney neighborhood. The relocation was ordered by the Lawrence city commission. A tariff approved by the Commission (i.e., KCC) allows WRI to collect the cost difference of the preferred and alternate routes over a five-year period. Here, the difference is roughly $465 thousand.

In its application, WRI informed that there was a problem remaining that involved inductive interference with the Atchison Topeka & Santa Fe Railroad (AT&SF or "the railroad"). The Company addressed this problem by presenting a proposal to the railroad for resolution, with an estimated cost of $54,500. This estimate was included in the $465 thousand figure to be recovered.

Upon review, Staff learned that the line was not in service. While it had begun serving customers earlier in the year, concerns over the line's impact on railroad operations and communications left WRI with no other choice but to take the line out of service. Staff recommended that it would be unjust to approve the surcharge while the line was out of service. Therefore, the Commission suspended the filing. Also, an error in the original surcharge calculation was corrected, to make the amount thirty-nine (39) cents per customer per month.

Meanwhile, there were many discussions between the company and the railroad about the appropriate methods of resolution. Progress was slow. WRI was proposing a solution with attention to economics, yet AT&SF placed emphasis on assuring safety and maintaining company standards.

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Eventually with the onset of summer and peak electric demands, WRI established with AT&SF a need to operate the line. As a result, an agreement was made by WRI and the railroad to place the line in service when needed. The agreement is understood to be effective until the final mitigation solution has been carried out. Now, under certain contingencies, WRI may place the line in service.

Recently, WRI and AT&SF have come to an agreement on the appropriate method of final resolution. Both parties are presently working on coming to terms on the cost estimate. WRI expects the line to be fully operational in a few months, and that there will be substantially more costs to be included for the resolution.

WRI now requests that recovery of the costs that appear in the May 1 surcharge application be commenced in its next billing cycle. The company makes the point that the line can, and has provided service when needed. Although the final total costs of the relocation are not yet known, this is not required under the tariff. Staff recommends that the Commission approve the proposed monthly surcharge, for thirty-nine (39) cents per month, to commence at the company's next billing, and to end five (5) years after it commences. The Staff also recommends that WRI provide to Staff a second application after the interference mitigation measures are completed, accompanied by a summary of the actual cost of the project upon completion.

BACKGROUND

On April 14, 1993, WRI received approval from the Commission to place into effect a Relocation of Facilities Tariff (ROFT, or "the tariff") designed to allow cities the latitude to request that the company construct, remove, or relocate distribution or transmission facilities that the company would not otherwise construct in that fashion. While that tariff provides flexibility for cities, it also provides a requirement that the cities' customers pay for the incremental costs associated with any requested relocations.

The tariff allows WRI to recover a surcharge that "shall be the amount necessary to recover the basis and the company's associated cost of capital and income taxes in a period of time approved by the [Commission], not longer than seven years. Subject to review and approval by the [Commission], the governmental subdivision may determine whether the Surcharge shall be calculated and billed on a per customer basis, energy usage basis or some combination thereof."

On February 2, WRI introduced preliminarily to Staff a proposal to place into effect a thirty-five-cent (35-cent) per month surcharge applicable to its Lawrence customers. WRI has proposed the surcharge to recover the additional costs for the relocation of

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the 115-kilovolt transmission line required by the Lawrence City Commission. Since then, WRI has increased its calculated surcharge five cents based on $62,241 in additional costs. A majority, or $54,500 of these costs are derived from the mitigation of a potential inductive interference problem with AT&SF.

On May 1, WRI filed a copy of its proposed notice to Lawrence customers. It explains that a surcharge of approximately 40 cents will appear on the monthly electric bills of customers within the city limits to pay for the relocation costs. The notice also advises that a tariff approved by the Commission allows WRI to collect the cost difference of the preferred and alternate routes over a five-year period.

WRI included documentation that provides the calculation of the surcharge. Staff investigated it for appropriateness. Upon review, WRI corrected its carrying charge rate, resulting in a monthly surcharge reduction to 39 cents. In it's review of the costs associated with mitigating the railroad interference problem, Staff found that the line was not in service at the time of filing.

Staff also investigated the interference problem. Generally, WRI has been accustomed to meeting railroad inductive interference criteria when constructing lines near railroad communications circuits. The purpose of these criteria is to maintain the integrity of communications for railroad operations and signaling. WRI's experience with building new electric lines near railroad rights-of-way is that the railroad requires WRI to determine the effects of a maximum power-line loading condition on the railroad communication circuits. This is because magnetic field effects and resulting induced interference increase as line current (i.e., load) increases, all else being equal. WRI had apparently calculated the effects for this condition when designing its relocated line. WRI stated that, at a point after construction had begun, AT&SF required consideration of the inductive interference on its communication lines resulting from a transmission line fault (i.e., short-circuit) condition. Fault conditions are physically more stringent, as the amount of current can be enormously greater than for maximum load. WRI maintains that this was the first time they have been asked by AT&SF to consider the effect of a power line fault condition when evaluating inductive interference. To accommodate AT&SF, WRI addressed the concerns by simulating the power line faults with computer modelling software from the Electric Power Research Institute (EPRI). From the simulation, the line fault condition on WRI's line passed AT&SF's system criteria. Eventually the new line was placed into service around the first of this year.

Shortly thereafter, tests were conducted to determine the voltage induced on the railroad's communication circuits by WRI's line under normal loads. The results of these tests did not match the

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results from the computer simulation. Eventually, this revealed errors in the EPRI software. After the program was corrected, new results were generated for normal loading, and for the fault condition. The normal load results were consistent with the induced voltage tests, thus, verifying the program. However, this time the fault scenario failed AT&SF's criteria. Thus, the railroad has been concerned about the consequences of a fault on the transmission line, and its potential for garbling railroad signals. Such an event might lead to disastrous misoperation of the rail system. Subsequently, WRI had taken the transmission line out of service until the problem could be resolved.

After reviewing these facts, Staff then reviewed the tariff to make a recommendation. In pertinent part, the tariff states "The Surcharge may be included in bills rendered in any governmental subdivision 30 days after placing the first required facility in service or ... 60 days after filing notice of the terms of the Surcharge with the [Commission], whichever occurs later, unless the [Commission] has, by order issued within 30 days of the filing, suspended the Surcharge for purposes of investigation." While the line was initially in service near the first of the year, Staff believes that the intent of the language is to not allow the utility to collect the line relocation surcharge until the line is in service. Staff believes that WRI acted prudently in taking the line out of service. However, Staff also believes that the ratepayers of Lawrence should not be assessed a surcharge until a time of thirty days after the line is (1) again in service, or (2) at least can provide service when the need arises. Staff believes that it is at this time when the Lawrence ratepayers would begin to derive the benefits of this line, and billing the surcharge would be justified. Staff concluded at the time of filing that it was inappropriate to approve the surcharge, and it would not recommend approval until thirty days after the line was in service. The filing was suspended for thirty (30) days, in anticipation that the mitigation efforts would be completed by then.

After the initial suspension, progress on resolving the problem was slow, as WRI and AT&SF did not agree on the appropriate methods. Particularly, AT&SF's proposed methods were more costly than those proposed by WRI. It was therefore necessary to again suspend the filing, this time for ninety (90) days.

Eventually with the onset of summer and peak electric demands, WRI established with AT&SF a need to operate the line. WRI then made an agreement with the railroad to place the line in service when needed. The agreement is understood to be effective until the mitigation solution has been carried out. It is documented in an operating directive provided in a letter from Thomas R. Stuchlik, Supervisor of Transmission Operations, WRI, to Mr. Richard P. Bowden, Assistant Director, Signals, Planning and Design, AT&SF, dated July 7, 1995. As described in the directive, under certain contingencies, WRI may place the line in service. Each time this

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occurs, the WRI transmission dispatcher is to notify the railroad dispatcher. This enables AT&SF to coordinate accordingly. Staff confirmed with Mr. Bowden in a phone conversation on July 20, that AT&SF agrees with the terms of the directive. Mr. Bowden said that the line had operated on three (3) occasions since the directive was issued, and WRI had been compliant.

WRI has proposed a solution that would involve the installation of buried, shielded communication cable along a portion of the route where its transmission line encounters AT&SF's communication line, and heavy-duty surge arresters, track filters, surge suppressors, and grounding mats along the other portion where interference is an issue. These are the least-cost alternatives considered by WRI. After lengthy review and several meetings, AT&SF has accepted the mitigation methods WRI has proposed. This is documented in a letter from Noel W. Salisbury to Larry Holloway, dated August 3, 1995. WRI and AT&SF are presently estimating the associated costs.

While the line is presently not used most of the time, the operating directive allows the line to operate when it is needed. AT&SF has made it apparent that the line has been, and can be used when needed until the final resolution is implemented. Once this resolution is carried out, the line will be fully operable, as it was originally intended.

Whereas the final mitigation costs are presently uncertain, the tariff allows adjustments to the surcharge. Once initiated, the surcharge may be reviewed and adjusted to reflect the number of electric service customers, the actual cost of required facilities, or both. Staff believes it is reasonable to approve a monthly surcharge designed to recover the presently-known costs associated with the line relocation. In a later application, the surcharge could then be adjusted to reflect the additional mitigation costs, pending further review and commission approval.

The application that WRI filed on May 1 was to recover the line relocation costs of $464,757, which included $54,500 of estimated mitigation costs. While Staff acknowledges that the $54,500 does not represent actual costs incurred at the time, apparently the solution will be considerably more costly. Staff presumes that a solution will be successful, and that the line will be fully operational soon. Staff believes that it is acceptable to include these costs in the initial surcharge. This is because costs have been incurred since May 1, and the final costs will unquestionably be greater. The initial calculated surcharge, then, is thirty-nine (39) cents per month, per customer.

STAFF RECOMMENDATION

Approve the proposed monthly surcharge to be assessed to customers within the City of Lawrence, for thirty-nine (39) cents per month, to commence at the company's next billing, and to end five (5) years after it commences. After the interference mitigation measures are completed, WRI may provide to Staff a second application to adjust this surcharge. The second application should be accompanied by a summary of the actual cost of the project upon completion.

cc: Larry Holloway
Don Low
Dan Riley
Dave Dittemore
Judith McConnell
Lori Fink
PIO
Stacey Boyles

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THE STATE CORPORATION COMMISSION OF KANSAS

INDEX NO_____

WESTERN RESOURCES, INC., dba KPL
(Name of Issuing Utility)

SCHEDULE ROFT

ENTIRE SERVICE AREA
(Territory to which schedule is applicable)

Replacing Schedule INITIAL Sheet 1

which was filed_____

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 1 of 3 Sheets

RELOCATION OF FACILITIES TARIFF

If any governmental subdivision requires Company to construct, remove, or relocate ("change") Distribution or Transmission facilities ("required facilities") when Company, absent such requirement, would do otherwise, and where the recovery of the additional cost for such change is not otherwise provided for, the cost incurred by Company to make such change shall be assessed against the customers located within the governmental subdivision through a monthly surcharge ("Surcharge") as follows:

1. If the required facilities are in lieu of new facilities, Company shall estimate the cost of the required facilities and of the facilities which otherwise would have been installed ("planned facilities"). Any cost of the required facilities in excess of the planned facilities shall be the basis for the Surcharge.

2. If the required facilities replace existing facilities which Company would otherwise maintain or modify in place, Company shall estimate the cost of the required facilities and any planned modifications to existing facilities. Any cost of the required facilities in excess of the cost of any planned modifications to existing facilities plus the cost of removing existing facilities shall be the basis for the Surcharge.

3. If the required facilities replace existing facilities which Company would not otherwise maintain or modify, the cost of the required facilities plus the cost of removing the existing facilities less their salvage value shall be the basis for the Surcharge.

4. Company's costs of planned and required facilities shall be as follows:

   a. Costs of planned facilities shall include applicable material and labor costs, including allocation of indirect costs. Indirect costs are comprised of supervision, engineering, transportation, material handling, and administrative cost functions that support actual construction. The amount of the allocation of indirect costs is derived by application of unit costs or allocation percentages, determined from historical experience.

93WSRE323TAR
Commission File Number_____

Issued _____ 3 1998
Month Day Year

Effective _____ 6 4 1998
Month Day Year

By James Haines
James Haines, Executive Vice President

VOID FILED APR 1 1998
THE STATE CORPORATION COMMISSION OF KANSAS

By _____ Secretary

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THE STATE CORPORATION COMMISSION OF KANSAS

INDEX NO_____

WESTERN RESOURCES, INC., dba KPL
(Name of Issuing Utility)

SCHEDULE ROFT

ENTIRE SERVICE AREA
(Territory to which schedule is applicable)

Replacing Schedule INITIAL Sheet 2

which was filed_____

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 2 of 3 Sheets

RELOCATION OF FACILITIES TARIFF

b. Costs of required facilities shall include the cost items identified in subparagraph a. plus all costs of complying with the requirements of the governmental subdivision including any application process of the governmental subdivision, including the cost of preparing the application, costs of developing alternatives not already studied by Company, cost of estimating the cost of alternatives not already studied by Company, the production of data for consideration in any hearing, and any other direct cost of compliance including any hearing held.

5. The basis for the Surcharge, as determined under paragraphs 1, 2, or 3, and 4 above, shall be recovered from all customers within the governmental subdivision through the Surcharge. Said Surcharge shall be the amount necessary to recover the basis and Company's associated cost of capital and income taxes in a period of time approved by the Kansas Corporation Commission, not longer than seven years. Subject to review and approval by the Kansas Corporation Commission, the governmental subdivision may determine whether the Surcharge shall be calculated and billed on a per customer basis, energy usage basis or some combination thereof. Surcharge shall be shown as a separate line item on the customer's bill. In the absence of such governmental subdivision determination, the Surcharge shall be calculated and billed on a per customer basis.

6. Company shall file a notice of the Surcharge with the Kansas Corporation Commission and shall file a copy with the affected governmental subdivision and provide copies to customers who have requested that the notice be sent to them. The notice shall state the following:

   a. the reason for the Surcharge;

   b. the estimated amount of the Surcharge;

   c. the period of time over which the Surcharge shall be made;

   d. the number of electric customers within the governmental subdivision.

93WSRE323TAR
Commission File Number_____

Issued SEP 3 1997
Month Day Year

Effective _____
Month Day Year 1997

By James Haines
James Haines, Executive Vice President

NOTED & FILED
THE STATE CORPORATION COMMISSION OF KANSAS

By _____ Secretary

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THE STATE CORPORATION COMMISSION OF KANSAS

INDEX NO_____

WESTERN RESOURCES, INC., dba KPL
(Name of Issuing Utility)

SCHEDULE ROFT

ENTIRE SERVICE AREA
(Territory to which schedule is applicable)

Replacing Schedule INITIAL Sheet 3

which was filed_____

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 3 of 3 Sheets

RELOCATION OF FACILITIES TARIFF

7. The Surcharge may be included in bills rendered in any governmental subdivision 30 days after placing the first required facility in service or the removal of a facility required to be removed or 60 days after filing notice of the terms of the Surcharge with the Kansas Corporation Commission, whichever occurs later, unless the Kansas Corporation Commission has, by order issued within 30 days of the filing, suspended the Surcharge for purposes of investigation.

8. At any time after the commencement of the Surcharge, the Surcharge may be reviewed and, if necessary, adjusted to reflect:

   a. the number of electric service customers then in the governmental subdivision, and/or;

   b. the amount of energy used by customers in the governmental subdivision, and/or;

   c. the actual cost of required facilities.

9. If the governmental subdivision rescinds its requirements concerning required facilities, the Surcharge shall continue until the end of term specified in Section 5, subject to review and adjustment as specified in Section 8.

10. Failure by any customer to pay the Surcharge shall be grounds for disconnection of service to such customer in accordance with Company's General Terms and Conditions for Electric Service.

93WSRE323TAR

Commission File Number_____

Issued APR 1 3 1999
Month Day Year

Effective APR 14 1999
Month Day Year

By James Haines
James Haines, Executive Vice President

NOTED & FILED APR 14 1999
THE STATE CORPORATION COMMISSION OF KANSAS

By _____ Secretary

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TESTIMONY

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

Substitute Senate Bill 545
Public Utility Fees and Public Right of Way

Delivered March 19, 2002
House Utilities Committee

Substitute Senate Bill 545 has raised many questions about City of Wichita tree trimming policies and how they effect Westar Energy. Unfortunately, the presentation and discussion of the bill in the Senate was riddled with misstatements and inaccurate information. Also, the full background and context of the bill was not explained.

The Wichita City Council passed the tree trimming ordinance in 2000 as the result of a public outcry from hundreds of citizens upset about the way Westar Energy (KGE) pruned their trees. Citizens demanded the City Council take action to stop Westar crews from "butchering" their trees. Efforts by City officials to negotiate more moderate tree trimming practices with Westar failed, so the ordinance was enacted.

Westar Energy (KGE) has historically used a three year pruning cycle, however for several years in the 1990's the company abandoned a routine and regularly scheduled tree trimming program. The company was forced to play catch-up, which resulted in the need for more severe pruning. Westar representatives make it sound as if the tree trimming ordinance was just arbitrarily imposed on them and the utility is a victim of an unreasonable City Council. The fact is, had Westar practiced responsible and reasonable tree trimming practices in the first place, there would have been no need for the ordinance. The tree trimming ordinance is not an act of aggression against Westar, it is an act of self defense on behalf of Wichita citizens. Despite the tree trimming ordinance, Westar crews have not changed their pruning practices.

During Senate debate, there were numerous inaccuracies stated about the Wichita tree trimming ordinance. I want to set the record straight:

The City of Wichita does not charge Westar Energy or anyone else fees for trimming trees. The City of Wichita does not require Westar Energy to trim trees every year. The City of Wichita does not require Westar Energy to go through a complicated, bureaucratic process before trimming trees. Westar Energy has not presented information which verifies or substantiates its claim that the tree trimming policy will increase the company's costs by 900% to $40-million a year. The City of Wichita disputes that claim. While those costs would certainly have to be verified and justified before the Kansas Corporation Commission would ever allow a surcharge, that $40-million figure was presented as fact to the Senate Utility Committee and the full Senate. One fact that was not mentioned, is that when a tree dies because of severe pruning by Westar Energy, Wichita taxpayers, not the utility, bear the cost of having the tree removed and replaced.

Finally, the original language and stated purpose of Senate Bill 545 is very different than the version passed by the Senate. The language in the Substitute Bill and the explanation for it, became public only after Westar Energy and the City of Wichita began negotiations on a new Franchise Agreement. The tree trimming policy is one of the many items being discussed in the negotiations. That negotiating process should be allowed to work without the Legislature intervening on behalf of Westar Energy.

HOUSE UTILITIES

DATE: 3-19-02

ATTACHMENT 9

Testimony
Joseph T. Pajor, Natural Resources Director, City of Wichita, Kansas
Substitute for Senate Bill 545
The House Utilities Committee
Tuesday March 19, 2002

Good morning, Chairman Holmes and members of the House Utilities Committee. My name is Joe Pajor. I am the Natural Resources Director for the City of Wichita and I appear before you today in opposition to the Substitute for Senate Bill 545.

The City of Wichita has concerns with the inappropriate policy this bill would set and with difficulties and potential abuses by public utilities should this bill become law.

City's, as stewards of the public rights-of-way, enter into franchise agreements with utilities to allow their commercial use of this public property for private gain. It is incumbent upon cities to manage this finite public resource to ensure that the public good is protected. When cities set requirements on the public utilities use of the rights-of-way it is to realize this objective.

This bill is unnecessary and inappropriate. All appropriate costs, of all KCC jurisdictional utilities, are subject to recovery from ratepayers. This method of regulation of these natural monopolies has served the public well for many decades and continues to do so today. Creating a new process for utilities to pass costs to customers is unnecessary and unwise.

The bill weakens the role of the KCC and gives new powers to the utilities to set charges with which customers could be burdened. Allowing utilities to determine what costs are "normal and reasonable" is any thing but "normal and reasonable". Reducing the role of the KCC to ensuring that the collection is done in a "reasonable manner" and calculated correctly, rather than looking at the claims for expenses themselves is simply wrong.

HOUSE UTILITIES
DATE: 3-19-02
ATTACHMENT 10

It is through the negotiation of a franchise agreement that the relationship between cities and utilities is determined. In this way, the governing body of a city effectively represents the public's interest. In Wichita, the City is just now in the early stages of negotiating a new franchise with the KGE portion of Westar Energy. This process should be allowed to continue without interference by the State.

The language of the bill is so broad and open that potentially many costs that should be assigned to the utilities as a cost of being in the public right-of-way could be rolled into this new process. An example of this is relocation of faculties for street widening and intersection improvements. The City of Wichita's franchise agreements with all of our utilities reflect that their use of the right-of-way is subordinate to the public's use of it for traffic purposes. As a result, when improvements are to be made to the streets, these utilities must relocate their facilities as necessary to avoid conflicts. These costs are not assigned to the project, but are included in the overall cost of doing business for each utility.

While other conferees may offer specific suggested changes to wording in the bill, the position of the City of Wichita is that this bill should simply not be considered further as it proposes changes to current law that are unneeded and unwise.

Thank you for the opportunity to present these remarks today. I would be happy to respond to any questions you might have at the appropriate time.

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Statement in opposition to SB 545 by: Gail Murrow 236 North Pershing, Wichita 67208, Phone (316) 683-8194

Chairman Holmes and Honorable Committee Members:

Good morning, I'm Gail Murrow, a resident of Wichita, appearing on my own behalf to respectfully voice opposition to pending Senate Bill 545. I appreciate the opportunity address you all today. My remarks will be brief and are primarily in preface to a short four-minute video I offer as an illustration of the pruning practices at issue in Wichita.

I live in central Wichita in an area called College Hill with my husband and daughters who are with me today. Like many historic areas in central Wichita, College Hill is distinguished by the decades-old treed that line her streets. We, along with many Wichita families, were deeply saddened when the local utility began to dramatically cut these old trees on our public boulevards. Along with an overwhelming number of Wichitans, from old to the very young, we appealed to the city to do something to protect our public trees. As you can see from the following film, we don't *have*, or *ask for*, manicured streets, but only basic fairness and respect by utilities in the treatment of public and private property.

The following film illustrates the kind of trimming conducted by the public utility prior to passage of the city ordinance seeking to set minimum limits on such trimming. The trees you are about to see, most of them decades old, and once full canopied, now stand in long spectral ranks along our city's major thoroughfares, or in legal terms, "right-of-ways." All the trees photographed appear on major avenues including, but not limited to, Central, Woodlawn, Hillside, Douglas, Pawnee, Hydraulic, and Oliver. The pictures speak for themselves, but I respectfully submit that, after you have seen them, you would agree that opposition to such *trimming* would reasonably arise in any city where it is conducted.

Thank you for you kind consideration.

HOUSE UTILITIES

DATE: 3-19-02

ATTACHMENT 11

TESTIMONY ON SB545
March 18, 2002

My name is Beth King, 4222 E. English, Wichita, Kansas. I am the Vice President of the College Hill Neighborhood Association but I am here as an individual citizen as this short time frame did not allow me to obtain authorization from my neighborhood group to represent them here.

My intent in being here is to show you some pictures of the tree-trimming that has occurred in Wichita, some of which you may have already seen in my colleagues' presentations.

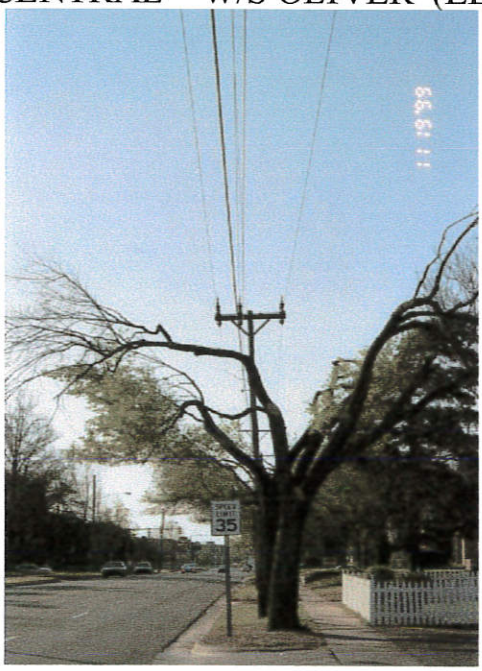
As you may be aware, this excessive trimming incurred citizen outrage in College Hill and in other neighborhoods around Wichita. We have NEVER seen trimming like this in College Hill. Our neighborhood association formed a task force to negotiate with KGE and the outrage in our area was so extensive that KGE agreed to pull out of our neighborhood until we could come to some new agreements.

Wichita's ordinance was passed in response to that citizen outrage. I would like to think that citizen outrage is as important to you as it is to elected officials in Wichita who were responding to our concerns.

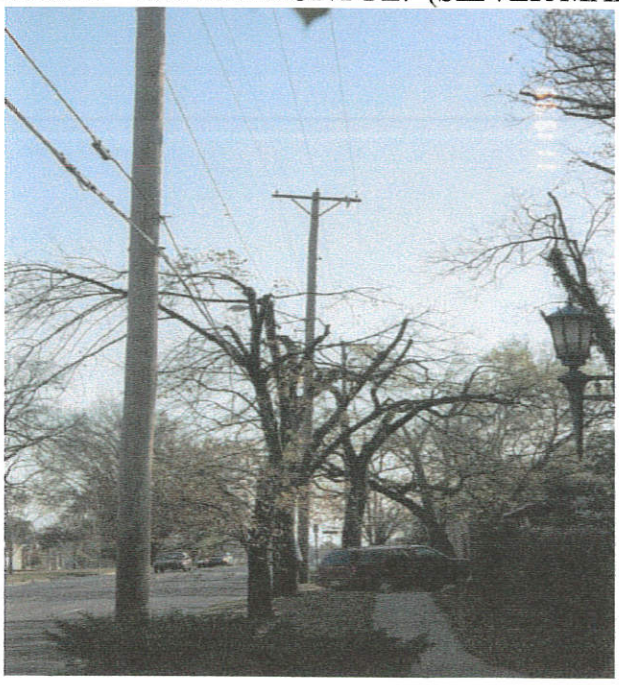
We would like to see reasonable behavior by the utility in terms of tree-trimming -- we are NOT asking that our trees be "manicured." I don't think any of you could look at these pictures and find this reasonable or responsible. That behavior on the part of the utility is certainly worthy -- MORE than worthy -- of consideration here, and I hope that issue does not get lost in this discussion.

I am asking you to help us address our concerns in a very realistic way. I do not think SB545 is the correct way to do it.

S/O CENTRAL – W/S OLIVER (ELM)

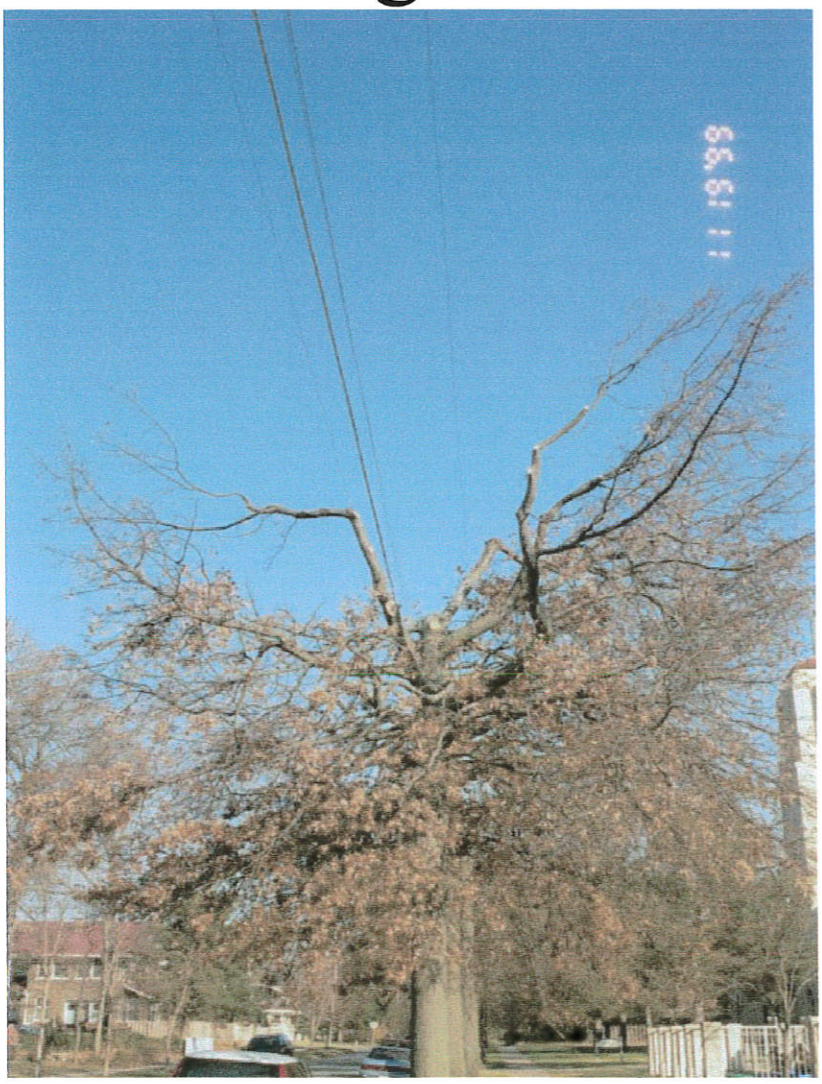


S/S CENTRAL – E/O BELMONT PL. (SILVER MAPLES)



12-2

South of Douglas on Crestway



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PAWNEE & GREENWOOD

PAWNEE & VICTORIA

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12-5

TESTIMONY OF STEPHEN LESTER IN
OPPOSITION TO SENATE BILL No 545

I am a resident of Wichita and I'm opposed to Westar's effort to impose a surcharge on its customers because the city has an ordinance regulating the trimming of trees in the public right of way.

KGE in 1998 began the mindless butchering of trees throughout Wichita. The tree cutters, working for Asplundh, are given instructions to cut back trees to certain distances from electric lines depending on the type of tree. Often times tree limbs are thus cut off outside the boundaries of the easement. The manner in which the trees have been cut has resulted in trees, throughout the city, not only grotesquely mangled but also vulnerable to disease and decay.

In 2000 the city passed an ordinance that requires any person, including a utility, to obtain a permit if they are going to prune trees in any street right of way, park or public property. The ordinance does not apply to trees growing on private property.

The ordinance is a reasonable one designed to protect the health and appearance of the trees; healthy limbs in excess of 6 inches in diameter are not to be cut without the permission of the City Arborist and, "Excessively deep flesh cuts, which produce large wounds or weaken the tree at the cut shall not be made," are two of the nine specific requirements pertaining to the pruning of trees.

It's ironic, however, that the City of Wichita does not have the where-with-all to enforce the ordinance. No permits have been applied for, issued, and KGE continues to butcher our trees.

Westar or Western Resources, in keeping with its Protection One accounting practices, its efforts to separate its utility and non utility companies and saddle the former with the debts of the later, now wants to use an ordinance passed to protect public property which has neither been followed or enforced as an excise to raise its rates. Such gamesmanship should be rejected. I would urge a vote against Senate Bill No 545.

HOUSE UTILITIES
DATE: 3-19-02
ATTACHMENT 13