

MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairperson Senator Stan Clark at 9:30 a.m. on January 31, 2002 in Room 231-N of the Capitol.

All members were present except: Senator Barone (excused)
Senator Tyson (excused)
Senator Taddikin (excused)

Committee staff present: Bruce Kinzie, Revisor of Statutes

Conferees appearing before the committee:

Others attending: No signup taken.

Introduction of Bills

Tom Day, legislative liaison, Kansas Corporation Commission, presented the request that the Senate Utilities Committee introduce legislation to amend Article 18, KSA chapter 66 (Kansas Underground Utility Damage Prevention Act). (Attachment 1)

Moved by Senator Brownlee, seconded by Senator Emler, request introduction of a bill to amend Article 18, KSA chapter 66 (Kansas Underground Utility Damage Prevention Act). Motion carried.

Moved by Senator Lyon, seconded by Senator Wagle, request introduction of bill concerning retail electric suppliers. Motion carried. (Attachment 2)

Moved by Senator Brownlee, seconded by Senator Wagle, request introduction of a resolution urging the Government of the United States to take action to enable prompt approval, construction and operation of a high level radioactive waste disposal facility at Yucca Mountain, Nevada. Motion carried. (Attachment 3)

Moved by Senator Brownlee, seconded by Senator Wagle, request introduction of a resolution urging the Congress of the United States to open certain areas of the Arctic National Wildlife Refuge to oil and gas production. Motion carried. (Attachment 4)

The next meeting of the Senate Utilities Committee will be on February 6, 2002.

Adjournment.

Respectfully submitted

Ann McMorris, Secretary

Attachments - 4



Kansas Corporation Commission

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

January 31, 2002

Honorable Stan Clark, Chairman
Senate Utilities Committee
Statehouse, Room 449-N
Topeka, Kansas 66612

Dear Senator Clark:

The Kansas Corporation Commission would request the Senate Utilities Committee to introduce the following legislation. The legislation proposed will explicitly allow the Commission the ability to promulgate rules and regulations for this program.

Attached please find the proposed statutory amendments to the Kansas underground utility damage prevention act.

1. Amend Article 18, KSA chapter 66. (Kansas Underground Utility Damage Prevention Act)

The Corporation Commission respectfully seeks introduction of the bills through the Senate Utilities Committee. Should you have questions, please feel free to call me at 271-3190.

Thank You,

A handwritten signature in blue ink, appearing to read "Tom Day", written over a horizontal line.

Thomas A. Day
Legislative Liaison

Senate Utilities Committee
January 31, 2002
Attachment 1-1

2002 PROPOSED STATUTE CHANGES

Chapter 66.--PUBLIC UTILITIES

Article 18.--UTILITY DAMAGE PREVENTION

Statute 66-1801.

Kansas underground utility damage prevention act.

This act shall be known and may be cited as the Kansas underground utility damage prevention act.

Statute 66-1802

Definitions. As used in this act:

(a) "Damage" means any impact or contact with an underground facility, its appurtenances or its protective coating, or any weakening of the support for the facility or protective housing which requires repair.

(b) "Emergency" means any condition constituting a clear and present danger to life, health or property, or a customer service outage.

(c) "Excavation" means any operation in which earth, rock or other material below the surface is moved or otherwise displaced by any means, except tilling the soil for normal agricultural purposes, or railroad or road and ditch maintenance that does not change the existing railroad grade, road grade and/or ditch flowline, or operations related to exploration and production of crude oil or natural gas, or both.

(d) "Excavator" means any person who engages directly in excavation activities within the state of Kansas, but shall not include any occupant of a dwelling who:

- (1) Uses such dwelling as a primary residence; and
- (2) excavates on the premises of such dwelling.

(e) "Facility" means any underground line, system or structure used for gathering, storing, conveying, transmitting or distributing gas, electricity, communication, crude oil, refined or processed petroleum, petroleum products or hazardous liquids; facility shall not include, any production petroleum lead lines, salt water disposal lines or injection lines, which are located on unplatted land or outside the corporate limits of any city.

(f) "Locatable facility" means facilities for which the tolerance zone can be determined by the operator using generally accepted practices such as as-built construction drawings, system maps, probes, locator devices or any other type of proven technology for locating.

(f g) "Marking" means the use of stakes, paint, flags or other clearly identifiable materials to show the field location of underground facilities, in accordance with the resolutions adopted August, 1984, by of the utility location coordination council of the American Public Works Association.

(gh) "Municipality" means any city, county, municipal corporation, public district or public authority located in whole or in part within this state which provides firefighting, law enforcement, ambulance, emergency medical or other emergency services.

(hi) "Notification center" means the statewide communication system operated by an organization which has as one of its purposes to receive and record notification of planned excavation in the state from excavators and to disseminate such notification of planned excavation to operators who are members and participants.

(ij) "Operator" means any person who owns or operates an underground facility, except for any person who is the owner of real property wherein is located underground facilities for the purpose of furnishing services or materials only to such person or occupants of such property.

(jk) "Preengineered project" means a public project or a project which is approved by a public agency wherein the public agency responsible for the project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and where the location of all known and underground facilities are duly located or noted on the engineering drawing as specifications for the project.

(kl) "Permitted project" means a project where a permit for the work to be performed must be issued by a city, county, state or federal agency and, as a prerequisite to receiving such permit, the applicant must locate all underground facilities in the area of the work and in the vicinity of the excavation and notify each owner of such underground facilities.

(lm) "Person" means any individual, partnership, corporation, association, franchise holder, state, city, county or any governmental subdivision or instrumentality of a state and its employees, agents or legal representatives.

(mn) "Tolerance zone" means the area within 24 inches of the outside dimensions in all horizontal directions of an underground facility.

(o) "Update" means an additional request from the excavator to extend the time period of the request for intent to excavate beyond the fifteen calendar day duration of the request.

(p) "Whitelineing" means the act of marking by the excavator the route or boundary of the proposed excavation site with white paint, white stakes, or white flags.

(n q) "Working day" means every day, except Saturday, Sunday, or a legally proclaimed local, state, or federal holiday. Monday through Friday beginning at 12:01 am, except for the following officially recognized holidays: News Years day, Memorial day, Independence day, Labor day, Thanksgiving day, Day after Thanksgiving, and Christmas day.

Statute 66-1803

Excavator's duty to ascertain location of facilities.

An excavator shall not engage in excavation near the location of any underground facility without first having ascertained, in the manner prescribed in this act, a location of all underground facilities in the proposed area of the excavation.

Statute 66-1804

Notice of intent of excavation.

(a) Except in the case of an emergency, An excavator shall serve notice of intent of excavation at least two full working days, but not more than 10 working 15 calendar days before commencing the excavation activity the scheduled excavation start date, on each operator having underground facilities located in the proposed area of excavation.

(b) The notice of intent to excavate or any subsequent updates shall be valid for fifteen (15) calendar days after the excavation start date, and such notice shall only describe an area in which the proposed excavation reasonably can be completed within the fifteen (15) calendar days.

(c) No person shall make repeated requests for remarking, unless the request is due to circumstances not reasonably within the control of such person.

(b d) The notice of intent of excavation shall contain the name, address and telephone number of the person filing the notice of intent, the name of the excavator, the date the excavation activity is to commence and the type of excavation being planned. The notice shall also contain the specific location of the excavation if it is to take place within the boundaries of a city or the specific quarter sections if outside the boundaries of any city.

(e) The person filing the notice of intent to excavate shall whieline the proposed excavation site when the description of the excavation location cannot be described with sufficient detail to enable the operator to ascertain the precise tract or parcel involved.

(ef) The provisions of this section shall not apply to a pre-engineered project or a permitted project, except that the excavators shall be required to give notification in accordance with this section prior to starting such project.

Statute 66-1805

Notification center.

- (a) This act recognizes ~~the value of and encourages and authorizes~~ the establishment of a single notification center for the state of Kansas. The notification center shall provide prompt notice to each affected member of any proposed excavation. Each operator who has an underground facility shall become a member of the notification center.
- (b) ~~Upon the establishment of a notification center in compliance with this act,~~ Notification, as required by K.S.A. 1997 Supp. 66-1804, to operators shall be given by notifying the notification center by telephone at the toll free number or by other communication methods approved by the notification center. The content of such notification shall be as required by K.S.A. 1997 Supp. 66-1804.
- (c) Each operator who has an underground facility within the state shall be afforded the opportunity to become a member of the notification center on the same terms as the original members.
- (d) A suitable record shall be maintained by the notification center to document the receipt of notices from excavators as required by this act.

Statute 66-1806

Identification of location of facilities; duties of operator; liability for damages.

- (a) ~~Within 2 working days, beginning on the first working day after the excavator has filed a notice of intent to excavate, An operator served with notice shall, in advance of the proposed excavation,~~ unless otherwise agreed between the parties, inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method. ~~no sooner than two working days prior to planned excavation.~~
- (b) If the operator has no underground facilities in the area of the proposed excavation, such operator, before the excavation start date, shall notify the excavator that it has no facilities in the area of proposed excavation by telephone, facsimile, marking the area all clear, or by other technology that may be developed for such purposes.
- (~~b~~c) If the excavator notifies the notification center, within two working days after the initial identification of the tolerance zone by the operator, that the identifiers have been improperly removed or altered, the operator shall make a reasonable effort to re-identify the tolerance zone within one working day after the operator receives actual notice from the notification center.
- (~~e~~d) If the operator notifies the excavator that it has no underground facilities in the area

of the planned excavation, fails to respond or improperly marks the tolerance zone for the facilities, the excavator may proceed and shall not be liable for any direct or indirect damages resulting from contact with the operator's facilities, except that nothing in this act shall be construed to hold any excavator harmless from liability in those cases of gross negligence or willful and wanton conduct.

(e) All facilities installed by an operator after January 1, 2003 shall be locatable.

Statute 66-1807

Emergency excavations.

(a) In the case of an emergency which involves danger to life, health or property or which requires immediate correction in order to continue the operation of an industrial plant or to assure the continuity of public utility service, excavation, maintenance or repairs may be made without using explosives, if notice and advice thereof, whether in writing or otherwise are given to the operator or notification center as soon as reasonably possible.

(b) If an operator receives a request to locate its facilities for an emergency condition such operator shall make a reasonable effort to identify the location of its facility within two hours of receiving notification or before excavation is scheduled to begin, whichever is later.

(c) Any person providing a misrepresentation of an emergency excavation may be subject to the penalties set out in K.S.A. 66-1812.

Statute 66-1808

Application of other laws.

This act shall not be construed to authorize, affect or impair local ordinances, resolutions or other provisions of law concerning excavating or tunneling in a public street or highway or private or public easement.

Statute 66-1809

Excavator's duty to exercise reasonable care.

(a) Upon receiving information as provided in K.S.A. 1997 Supp. 68-1806, an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility.

(b) An excavator using a trenchless excavation technique shall meet minimum operating guidelines as prescribed in regulations developed by the State Corporation Commission in support of the Act.

Statute 66-1810

Contact with or damage to facility; procedure.

When any contact with or damage to any underground facility occurs, the operator shall be informed immediately by the excavator. Upon receiving such notice, the operator immediately shall dispatch personnel to the location to provide necessary temporary or permanent repair of the damage. If the protective covering of an electrical line is penetrated or dangerous gases or fluids are escaping from a broken line, the excavator immediately shall inform emergency personnel of the municipality in which such electrical short or broken line is located, and take any other action as may be reasonably necessary to protect persons and property and to minimize hazards until arrival of the operator's personnel or emergency first responders.

Statute 66-1811

Effect of violation of act, liability for damages; application of other laws.

(a) In a civil action in a court of this state when it is shown by competent evidence that personal injury, death, or other damages, ~~including damage to any underground facilities,~~ occurred as a result of a violation of this act, there shall be a rebuttable presumption of negligence on the part of the violator.

(b) The provisions of subsection (a) shall not apply if the operator whose underground facilities are damaged fails to participate in the notification center.

(c) In no event shall the excavator be responsible for any damage to underground facilities if such damage was caused by the failure of the operator to correctly and properly mark the location of the tolerance zone of the damaged facility.

- (d) Nothing in this act is intended to limit or modify the provisions of:
- (1) K.S.A. 60-258a, and amendments thereto; or
 - (2) the national electrical safety code, which would otherwise be applicable.

Statute 66-1812

Violation of act, civil penalties and injunctive relief.

Any person to whom this act applies, who violates any of the provisions contained in this act, shall be subject to civil penalties and injunctive relief as set out in K.S.A. 66-1,151, and amendments thereto, and any remedies established in regulations promulgated by the State Corporation Commission in support of this act.

Statute 66-1813

Administration and enforcement by corporation commission.

This act shall be administered and enforced by the state corporation commission of the state of Kansas.

Statute 66-1814

Severability.

If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

Name and Address of Applicant	Legal Description	Receiving Water
Laryl Seth 1805 K Ave. White City, KS 66872	NE4 of Section 17, T15S, R7E, Morris County	Neosho River Basin

Kansas Permit No. A-NEMR-S015

This is a permit renewal for an existing facility for 28 head of swine weighing more than 55 pounds (11.2 animal units) and 520 head of swine weighing less than 55 pounds (52 animal units), for a total of 548 head (63.2 animal units) of swine.

Wastewater will be impounded for subsequent application to agricultural land for beneficial use. Wastewater storage capacity is provided that meets or exceeds KDHE minimum requirements.

Compliance Schedule: The manure/waste management plan developed by the designer and approved by the department shall be adhered to as a condition of the permit.

Name and Address of Applicant	Legal Description	Receiving Water
Lakin Feed Yard, Inc. P.O. Box 1026 Lakin, KS 67860	S/2 of Section 29, T25S, R36W, Kearny County	Upper Arkansas River Basin

Kansas Permit No. A-UAKE-C003 Federal Permit No. KS0039365

This is an expansion permit for an existing facility from 12,000 head (12,000 animal units) of cattle to 15,000 head (15,000 animal units) of cattle.

Wastewater will be impounded for subsequent application to agricultural land for beneficial use. Wastewater storage capacity is provided that meets or exceeds KDHE minimum requirements.

Compliance Schedule: Permeability tests shall be conducted on the earthen wastewater retention structure(s). Should any structure not meet the permeability requirements, additional sealing will be required. Dewatering equipment shall be obtained within six months after issuance of the permit. The manure/waste management plan developed by the designer and approved by the department shall be adhered to as a condition of the permit.

Public Notice No. KS-02-022/026

Name and Address of Applicant	Waterway	Type of Discharge
Lawrence, City of City Hall, Box 708 Lawrence, KS 66044	Kansas River	Treated Domestic Wastewater

Kansas Permit No. M-KS31-IO01 Federal Permit No. KS0038644

Legal: NW1/4, S32, T12S, R20E, Douglas County

Facility Description: The proposed action is to modify and reissue an existing permit for operation of an existing wastewater treatment facility treating primarily domestic wastewater. The permit's modification is the addition of lime slurry treatment in an existing lagoon. The lime slurry is pumped from the city's water treatment plant. The proposed additional limits for the lime slurry treatment lagoon discharge includes total suspended solids and pH, and monitoring for total residual chlorine. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Name and Address of Applicant	Waterway	Type of Discharge
Duke Energy Leavenworth, LLC P.O. Box 1642 Houston, T 77251	Missouri River and Kansas River via Various Tributaries	Process Wastewater & Stormwater Runoff

Facility Name: Leavenworth Energy Facility

Kansas Permit No. I-MO12-PO09 Federal Permit No. KS0096504

Legal: SW1/4, S13, T9S, R21E, Leavenworth County

Facility Description: The proposed action is to issue a new permit for the discharge of process wastewater and stormwater runoff. Using natural gas as fuel, the facility has two combustion turbine generators (CTG) and one steam turbine generator (STG) to generate a total nominal capacity of 640 MW. The proposed permit includes limits

for free available chlorine, total suspended solids, oil and grease, whole effluent toxicity and pH. Monitoring for sulfate, chloride, total residual chlorine, heavy metals, temperature, ammonia and effluent flow also will be required. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Name and Address of Applicant	Waterway	Type of Discharge
El Paso Merchant Energy - Petroleum Company 1100 E. 21st St. Wichita, KS 67214	Arkansas River via Chisholm Creek via Storm Sewer	Stormwater Runoff & Treated Groundwater

Facility Name: El Paso Merchant Energy-Petroleum Wichita Terminal
Kansas Permit No. I-AR94-PO78 Federal Permit No. KS0092118

Legal: SE1/4, S4, T27S, R1E, Sedgwick County

Facility Description: The proposed action is to reissue a permit for the discharge of treated groundwater and stormwater runoff. This facility is a bulk distribution terminal, a petroleum product storage facility, and an asphalt blending operation at a former petroleum refinery. Refinery operations at the site were discontinued in July 1993. The facility now discharges stormwater runoff from the site and treated groundwater from a groundwater remediation system. The proposed permit includes limits for arsenic, benzene, cis-1,2 dichloroethene, dichloromethane, ethylbenzene, toluene, total xylene, trichloroethylene, total lead, oil and grease, vinyl chloride and pH. Monitoring for effluent flow also will be required. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Name and Address of Applicant	Waterway	Type of Discharge
Lawrence, City of Director of Utilities P.O. Box 708 Lawrence, KS 66044	Kansas River	Process Wastewater

Facility Name: Kaw River Water Treatment Plant

Kansas Permit No. I-KS31-PO16 Federal Permit No. KS0088234

Legal: NE1/4, S25, T12S, R19E and SE, S30, T12S, R20E, Douglas County

Facility Description: The proposed action is to reissue a permit for the discharge of process wastewater. This facility is a water treatment plant with a design capacity of 17.5 MGD. Wastewater and residuals generated from the treatment processes consist of presedimentation and presettling basins underflows, lime treatment sedimentation basins discharges, filter backwash water and filter-to-waste water. The lime slurry is pumped to the Lawrence Municipal Treatment Plant for treatment prior to disposal. The proposed permit includes limits for total residual chlorine. Monitoring for pH also will be required. Included in this permit is a schedule of compliance requiring the permittee to make necessary improvements to achieve compliance with their NPDES permit. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Name and Address of Applicant	Waterway	Type of Discharge
N. R. Hamm Quarry, Inc. P.O. Box 17 Perry, KS 66073	Kansas River via Mud Creek	Treated Washwater, Pit Dewatering & Stormwater Runoff

Facility Name: Ousdahl Quarry #70

Kansas Permit No. I-KS89-PO01 Federal Permit No. KS0096326

Legal: SW1/4, S36, T11S, R19E, Jefferson County

Facility Description: The proposed action is to reissue an existing permit for the discharge of wastewater during quarry operation. This facility is a limestone quarrying and crushing operation with washing. The proposed permit includes limits for total suspended solids and pH. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

By Committee on Utilities

AN ACT concerning retail electric suppliers; amending K.S.A. 66-1,176 and 66-1,176b and repealing the existing sections.

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

Section 1. K.S.A. 66-1,176 is hereby amended to read as follows: 66-1,176. (a) Whenever a city proposes to annex land that is located within the certified territory of a retail electric supplier, the city shall provide notice to the retail electric supplier in the manner prescribed by K.S.A. 12-520a, and amendments thereto. All rights of a retail electric supplier to provide electric service in an area annexed by a city shall terminate 180 days from the date of annexation, unless such electric supplier is then holding a valid franchise for service in the area granted by the annexing city. Such period of 180 days shall be extended to 210 days from the date of annexation if a franchise is granted to the retail electric supplier pursuant to referendum conducted according to applicable franchise laws of the state of Kansas within such period of 210 days. Whenever the city annexes land that is located within the certified territory of a retail electric supplier, the city shall negotiate for the issuance of a franchise agreement pursuant to K.S.A. 12-2001, et seq., and amendments thereto, with a retail electric supplier holding a certificate within the annexed area. Nothing herein shall be construed to require a supplier holding both a certificate of convenience and a franchise for the area annexed to obtain a new franchise. The city shall have the final selection of which supplier receives a franchise to operate within the annexed area. When making such selection, the city shall consider certain factors including, but not limited to: (1) The public convenience and necessity; (2) rates of various suppliers; (3) desires of the customer or customers to be served; (4) economic impact on the suppliers; (5) economic impact on the customers of the suppliers; (6) the utility's operational ability to serve the annexed area; (7) avoiding the wasteful duplication

of facilities; (8) avoiding unnecessary encumbrance on the landscape; and (9) preventing the waste of materials and natural resources. Within 30 days after the final decision of the city, any supplier aggrieved thereby may file an appeal in the district court of the county in which the annexed area is located to determine the reasonableness of the final decision. In the event that an appeal of the decision is filed in the district court, the retail electric supplier providing service at the time of annexation shall continue to provide service until such time as the appeal has been concluded. In the event service rights are terminated pursuant to this section, the commission shall certify such annexed area as a single certified territory to the supplier holding a franchise for or then providing retail electric service in the city immediately prior to the annexation.

(b) In the event the supplier holding a franchise or then providing retail electric service does not effect the assumption of electric service to the annexed area at the termination of the applicable 180-day or 210-day period as provided in subsection (a), then the originally certified supplier shall have the right to continue service to the annexed area and charge its ordinary rates therefor until such supplier does assume service to the annexed area. Such service shall be free of any franchise fee or other compensation to the city or the electric supplier holding the franchise. If the supplier holding a franchise has not assumed service to the annexed area within 180 days following the applicable 180-day or 210-day period provided in subsection (a), the city may require the originally certified supplier to obtain a franchise in order to continue service to the annexed area. Unless otherwise mutually agreed upon by the affected suppliers, no assumption of electric service shall occur within 15 days following notice to the originally certified supplier of the intended changeover time.

(c) Whenever the service rights of a retail electric supplier are terminated pursuant to subsection (a), fair and

reasonable compensation shall be paid to such retail electric supplier by the supplier subsequently authorized to provide electric service. Such compensation shall be an amount mutually agreed upon by the affected suppliers or the sum of the following:

(1) The depreciated replacement cost for the electric utility facilities in the territory in which the service rights have been terminated pursuant to subsection (a). As used in this paragraph, "depreciated replacement cost" shall mean the original installed cost of the facilities, adjusted to present value by utilizing a nationally recognized index of utility construction costs, less accumulated depreciation based on the book depreciation rates of the selling utility as filed with and approved by the state corporation commission, which are in effect at the time of acquisition;

(2) all reasonable and prudent costs of detaching the electric system facilities to be sold and all reasonable and prudent costs of reintegrating the remaining electric system facilities of the retail electric supplier whose service rights are terminated pursuant to subsection (a);

(3) an amount equal to two times the gross revenues attributable to the customers in the terminated territory during the 12 months next preceding the date of ~~termination~~ transfer of the service rights pursuant to subsection (a); and

(4) an amount equal to the state and federal tax liability created by the taxable income pursuant to the provisions of this paragraph and paragraphs (1), (2) and (3) by the retail electric supplier whose service rights are terminated pursuant to subsection (a), calculated without regard to any tax deductions or benefits not related to the sale of assets covered herein.

(d) In the event that the parties are unable to agree upon an amount of compensation to be paid pursuant to subsection (c), after 60 days following the date of termination of service rights either party may apply to the district court having jurisdiction

where any portion of the facilities are located, for determination of compensation. Such determination shall be made by the court sitting without a jury.

Sec. 2. K.S.A. 66-1,176b is hereby amended to read as follows: 66-1,176b. (a) When the service rights of a retail electric supplier are terminated by a city during the period in which a valid franchise is in effect and the service rights are assumed by the terminating city, the governing body of the city shall acquire from the terminated supplier the parts of the local electric distribution system necessary to serve all customers within the previously franchised area and the terminated supplier shall sell the system to the governing body of such city for which it shall be fairly compensated. Such compensation shall be an amount mutually agreed upon by the affected parties or an amount determined by the following formula:

(1) The depreciated replacement cost for the electric utility facilities in the territory in which the service rights have been terminated. As used in this paragraph, "depreciated replacement cost" means the original installed cost of the facilities, adjusted to present value by utilizing a nationally recognized index of utility construction costs, less accumulated depreciation based on the book depreciation rates of the selling utility, as filed with and approved by the state corporation commission, which are in effect at the time of acquisition;

(2) the depreciated replacement costs of the remaining proportion of any take or pay power contracts or participation power agreements;

(3) the depreciated replacement cost for the electric utility facilities outside the affected territory used in providing service to the formerly franchised area. Such facilities shall include all generation facilities and all transmission facilities throughout the terminated utility's integrated system, the value of which shall be determined by the depreciated replacement cost formula in paragraph (1) multiplied

by the percentage of the terminated utility's total retail kilowatt-hour sales to customers in the affected area during the 12 months next preceding the effective date of the sale;

(4) all reasonable and prudent costs of detaching the electric system facilities to be sold, including the reasonable costs of studies and inventories made to determine the facility's value and all reasonable and prudent costs of reintegrating the remaining electric system facilities of the retail electric supplier whose service rights are terminated;

(5) an amount equal to two times the net revenues received during the 12 months next preceding the date of termination of the service rights from the customers within the affected area of the retail electric supplier whose service rights are terminated. As used in this paragraph, "net revenues" means the total revenues received by the terminated utility for electric service within the affected area less franchise and sales taxes collected; the cost of fuel or purchased power recovered in the revenues; and labor, maintenance, administration and insurance. This number shall be multiplied by the number of years remaining in any franchise contract; and

(6) an amount equal to the state and federal tax liability created by the taxable income pursuant to the provisions of this paragraph and paragraphs (1), (2), (3), (4) and (5) by the retail electric supplier whose service rights are terminated, calculated without regard to any tax deductions or benefits not related to the sale of assets covered herein.

(b) If the parties are unable to agree upon the amount of compensation to be paid pursuant to this act after 60 days following the date of termination of service rights, either party may apply to the district court having jurisdiction where any portion of the facilities is located for determination of compensation. Such determination shall be made by the court sitting without a jury.

Sec. 3. K.S.A. 66-1,176 and 66-1,176b are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

By Committee on Utilities

A CONCURRENT RESOLUTION urging the Government of the United States to take action to enable prompt approval, construction and operation of a high level radioactive waste disposal facility at Yucca Mountain, Nevada.

WHEREAS, The Nuclear Waste Policy Act of 1982 directs the United States Department of Energy (DOE) to find a suitable site for a high level radioactive waste disposal facility and to construct and operate such facility upon licensure by the United States Nuclear Regulatory Commission; and

WHEREAS, In 1987 Congress directed DOE to study Yucca Mountain, Nevada, to determine whether it is a suitable site for the location of a high level radioactive waste repository; and

WHEREAS, The geological and hydrological characteristics of the Yucca Mountain site make it suitable for a nuclear waste repository that will keep waste isolated for thousands of years, posing no more risk of health effects to the public than unmined uranium ore; and

WHEREAS, Failure to approve and construct a central repository for high level radioactive waste has required continued storage of the waste onsite at nuclear reactors, creating vulnerability to terrorism and a risk to national security; Now, therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That the Legislature of the State of Kansas urges the Government of the United States to take action to enable prompt approval, construction and operation of a high level radioactive waste disposal facility at Yucca Mountain, Nevada; and

Be it further resolved: That the Secretary of State is directed to send enrolled copies of this resolution to the President of the United States, George W. Bush; Spencer Abraham, Secretary, U.S. Department of Energy, 1000 Independence Ave., S.W., Washington, D.C., 20585; Richard A. Meserve, Chairperson,

U.S. Nuclear Regulatory Commission, Washington, D.C., 20555-0001; Senator Tom Daschle, Majority Leader, U.S. Senate, Washington, D.C., 20510; Senator Trent Lott, Minority Leader, U.S. Senate, Washington, D.C., 20510; Representative J. Dennis Hastert, Speaker, U.S. House of Representatives, Washington, D.C., 20515; Representative Richard A. Gephardt, Minority Leader, U.S. House of Representatives, Washington, D.C., 20515; Senator Jeff Bingaman, Chairperson, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C., 20510; Representative W.J. Tauzin, Chairperson, Committee on Energy and Commerce, U.S. House of Representatives, Washington, D.C., 20515; and each member of the Kansas Congressional Delegation.

By Committee on Utilities

A CONCURRENT RESOLUTION urging the Congress of the United States to open certain areas of the Arctic National Wildlife Refuge to oil and gas production.

WHEREAS, The Alaska National Interest Lands Conservation Act of 1980 established the Arctic National Wildlife Refuge (ANWR) and prohibited oil and gas exploration and production in the Arctic Coastal Plain area of ANWR until authorized by Congress; and

WHEREAS, In 1987 the United States Department of the Interior, after five years of biological and geological studies, recommended that Congress authorize the leasing of the Arctic Coastal Plain area of ANWR for oil and gas exploration and production and Congress in 1995 passed authorizing legislation which was vetoed; and

WHEREAS, The United States Geological Survey estimates the total technically recoverable oil resources of the Arctic Coastal Plain area of ANWR to be between 4.3 and 11.8 billion barrels, with a mean value of 7.7 billion barrels, and the total in-place oil resources of the area to be 11.6 to 31.5 billion barrels, with a mean value of 20.7 billion barrels; and

WHEREAS, The security of the United States requires less dependence on foreign oil, the importance of which is underscored by the events of September 11, 2001, and development of the oil and gas resources of the Arctic Coastal Plain area of ANWR would substantially reduce that dependence; and

WHEREAS, The President's National Energy Policy calls for opening the Arctic Coastal Plain area of ANWR to oil and gas exploration and production in a manner that will result in no significant adverse environmental impact: Now, therefore,

Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein: That the Legislature of the State of Kansas urges the Congress of the United States to authorize exploration and development of the

Arctic Coastal Plain area of ANWR, requiring the use of best available technology in a manner that safeguards the environment; and

Be it further resolved: That the Secretary of State is directed to send enrolled copies of this resolution to the President of the United States, George W. Bush; Gale A. Norton, Secretary, U.S. Department of the Interior, 1849 C. Street, N.W., Washington, D.C., 20240; Senator Tom Daschle, Majority Leader, U.S. Senate, Washington, D.C., 20510; Senator Trent Lott, Minority Leader, U.S. Senate, Washington, D.C., 20510; Representative J. Dennis Hastert, Speaker, U.S. House of Representatives, Washington, D.C., 20515; Representative Richard A. Gephardt, Minority Leader, U.S. House of Representatives, Washington, D.C., 20515; Senator Jeff Bingaman, Chairperson, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C., 20510; Representative Don Young, Chairperson, Committee on Resources, U.S. House of Representatives, Washington, D.C., 20515; and each member of the Kansas Congressional Delegation.