

MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairman Senator Stan Clark at 9:30 a.m. on March 20, 2002 in Room 231-N of the Capitol.

All members were present except: Sen. Wagle (excused)
Sen. Brownlee (excused)
Sen. Barone (excused)

Committee staff present: Raney Gilliland, Legislative Research
Emalene Correll, Legislative Research
Bruce Kinzie, Revisor of Statutes
Ann McMorris, Secretary

Conferees appearing before the committee: none

Others attending: See attached list

The Chair called attention to an email message from Colin Hansen entitled Iola Water Plant Applicants under Investigation. Mr. Hansen thought it might shed some light on their utility security concerns and their desire to add water utilities to the legislation. (Attachment 1)

Chair opened discussion on:

HB 2959 - Open Records Act exception for records related to security of utilities.

The Chair asked Bruce Kinze from the Revisor's office to respond to two questions from the previous hearing on **HB 2959**.

Q.1 How would this legislation affect One Call?

(A) This would not affect One Call because it is not a public agency. He noted subsection (a) of the bill reads "except to the extent of the disclosures otherwise required by law" so if there is an exception someplace else it wouldn't apply.

Q.2 Concerned the provision on page 2 - #12, as to why that section wasn't incorporated in new #45?

(A) #12 relates to security information required of a public agency which has facilities. This could be the local municipal facility or jail, as it relates to the building they own. The idea of combining #12 and #45 was discussed and KCC felt for clarity purposes it would be best to keep them separated. This was confirmed by Tom Day.

Bud Burke provided an update from Larry Dolci, Kansas City Power & Light Company, which elaborated on K.S.A. sections of particular relevance to KCPL that would limit disclosure of utility information. (Attachment 2)

The Chairman noted there are two main discussion points: (1) do we want to add water and sewer; and (2) the new language for #45. The Chair requested the Revisor to come up with the suggested language to include water and sewer language in the appropriate sections.

The committee next reviewed the language provided by Rich Thames of the Kansas Press Association in his previous testimony on page 2 in bold letters for section #45. (Attachment 3)

Ron Gaches was asked if the language in the new proposed section #45 would allow companies to withhold financial information that otherwise they would be required to divulge. He had asked three of the companies this would involve and the answer is "the Federal SEC requirements would force disclosure of financial information and nothing the State would do would make that information privileged".

Further consideration will be given to **HB 2959** upon receipt of the revised draft from the Revisor.

CONTINUATION SHEET

MINUTES OF THE SENATE UTILITIES COMMITTEE at on March 20, 2002 in Room 231-N of the Capitol.

Review of Bills in Committee:

The Chairman announced that if any of the five committee members wanted to work any of these three bills to contact him.

HB 2999 - no committee action was taken when the bill was brought up on Monday, March 18, 2002.

HB 2661 - same as **SB 480** and the House is working that bill.

HB 2644 - consensus of the committee this authority is already available at KCC.

The next meeting of the Senate Utilities Committee will be held on March 21, 2002.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 3

Subject: FW: Rev#1 Utilities agenda

-----Original Message-----

From: Colin Hansen [mailto:chansen@kmunet.org]
Sent: Tuesday, March 19, 2002 7:26 AM
To: sclark@ink.org
Subject: RE: Rev#1 Utilities agenda

Senator Clark:

Unfortunately, I will be unable to attend the continued hearings on HB 2959 Wednesday and Thursday due to another conflict. However, please do not hesitate to contact me if I might provide any additional information in support of KMU's position.

Along those lines, I have attached below a story off the AP line concerning the municipal water plant in Iola. I found it interesting and thought it might shed some light on our utility security concerns and our desire to add water utilities to the legislation.

Thanks--

Colin

Iola Water Plant Applicants under Investigation

IOLA (AP) - A terrorism task force is looking into the circumstances surrounding two unsolicited job applications sent to the Iola water treatment plant just weeks before the Sept. 11 terrorist attacks. No one took much notice when the e-mail applications from two Muslim men were sent to the plant in late July.

"There was no reason for anyone to think anything about the applications at that time," City Administrator Doug Colvin said. Since the attack, national and state leaders have expressed concern about the vulnerability of rural water systems.

Allen Keller, the city's new human resources director, recently became concerned when he noticed the applications from a Saudi Arabian living in the United States and from a man living in Pakistan. "They just jumped out at me," Keller said, "particularly since they both were for water treatment jobs."

One of the applications showed up on a city computer July 21, the other July 23. "It may be just a coincidence that they applied two days apart and that both were unsolicited applications," Colvin said. "We did fill a job at the water plant in August, but it never was advertised on our Internet site." Tom Williams, special agent for the Kansas Bureau of Investigation, was told about the applications. He said he found them peculiar, particularly since they were made within two days of each other.

Williams turned the information over to the task force in Kansas City, which includes federal agents. The task force is "looking into it to determine if it is a benign coincidence or something more sinister," FBI spokesman Jeff Lanza said Friday.

The Saudi national, who said he lived in Palatine, Ill., said in his application that he had 16 years experience in various water treatment procedures, with the Royal Saudi Air Force, in India and Toronto, Canada. More recently, the man said he had worked with a security firm in Illinois.

The Pakistani, in his mid-20s, said he had worked the past five years in a fertilizer plant in Punjab, Pakistan. After the Sept. 11 attacks, cities throughout the nation were told to enhance security at utility plants and distribution systems, including those

ha , to do with water.

Iola put a gate at the entrance to the complex that holds the city's water and power plants, in an effort to better control who visits the plant. Construction will start later this year on a new \$8 million water plant to replace the one that has been used by the city since the 1930s. A chain link fence will be put around the structure.

Colin Hansen
Executive Director
Kansas Municipal Utilities
421 North Main, Ste. 3
McPherson, Kansas 67460
ph 620/241-1423
fx 620/241-7829
cell 785/231-4868
email chansen@kmunet.org
web www.kmunet.org

Testimony in Support of Kansas House Bill 2959

Larry Dolci, Director of Resource Protection
Kansas City Power & Light Company

Senate Utilities Committee
March 18, 2002

Kansas City Power & Light Company, KCPL, supports the passage of House Bill 2959, particularly the sections that prohibit the disclosure of certain information that could be used to target utility facilities for sabotage or other attack. The sections of particular relevance to KCPL that would limit disclosure of utility information are existing K.S.A. 2001 Supp. 45-221(a)(12), and proposed K.S.A. 45-221(a)(45), which reads:

(45) Records the disclosure of which may jeopardize the security of systems, facilities or equipment used in the production, transmission or distribution of energy or communications services.

Utilities in the United States have been concerned for some time about the ready availability of records describing their operations and facilities in great detail. Much of this information is available from government agencies at the local, state and federal level. Among the information that could be found were detailed site plans, photos and maps, lists of hazardous substances on the utility properties and the consequences of the release of those substances on surrounding populations. Also available were locations by latitude and longitude of the critical facilities of the electrical grid and which facilities were the most congested when power was being moved from one location to another.

After the events of September 11, 2001, a number of local, state and federal agencies used their administrative powers to remove this information from public access. For example, on October 11, 2001, the Federal Energy Regulatory Commission issued the following order stating in part:

"The September 11, 2001 terrorist attacks on America have prompted the Commission to reconsider its treatment of certain documents that have previously been made available to the public through the Commission's Internet site..."

Among the items removed were maps of electric utility facilities and related documents. These moves have been followed by legislative proposals at the local, state and federal level to make the administrative actions permanent. House Bill No. 2959 is consistent with this effort to limit the availability of data that could be used to target utility facilities.

Passage of H 2959 will not in itself ensure the security of Kansas utilities, however, it will make those who seek to harm utilities work harder to gather targeting information.

KCPL supports this bill and urges its passage.

To: Kansas Senate Utilities Committee
From: Rick Thames, representing the Wichita Eagle and the Kansas Press Association
Subj: HB 2959 (Open Records Act exception for records related to security of utilities)
Date: March 13, 2002

Thank you for this opportunity to discuss House Bill 2959. I am the editor of The Wichita Eagle. I am also speaking to you today on behalf of the more than 200 newspapers that comprise the Kansas Press Association, as I am a member of its board of directors and chair of its legislative committee.

We're not here today to discourage you from taking some action on this issue. Having talked to the chair of the House Utilities Committee, Carl Holmes, I recognize that you have some legitimate concerns regarding security.

What we are asking is that you adopt language that appropriately addresses those concerns, while preserving the public's right to monitor the operation of these vital utilities.

As this proposal is now worded, we believe that KDHE, the KCC and other state agencies could be inclined to withhold many, many records that should remain open in the best interest of the public. It is simply too broad in its scope. And unnecessarily broad for its intended purpose.

To explain what I mean by that, I'll first review the wording of HB 2959:

“Records the disclosure of which may jeopardize the security of systems, facilities or equipment used in the production, transmission or distribution of energy or communications services.”

Here are some examples of the unintended harm possible under this wording.

The Hutchinson gas explosion.

Under this law, Kansas Natural Gas conceivably could have declined to explain:

- Locations of underground pipelines
- The amount and type of gas stored in the salt caverns
- The pressure at which the gas was stored
- What safeguards were established to find leaks in the gas system
- What measures were being put into place to prevent this from ever happening again

All of this data was obtained from the KCC and other public agencies as city officials and journalists simultaneously worked to determine exactly what happening between Yaggy Field and Hutchinson. All were working in the public's interest. People had been killed and thousands of residents were justifiably panicked. What they needed was information.

Jim Bloom, the publisher of the Hutchinson News, told me yesterday that this exemption, as worded, could have significantly hampered that effort to inform the public. And he asked me, on his behalf, to register his opposition to it.

Other potential environmental hazards.

Pipeline safety inspection reports could fall under this exemption. So could environmental reports that explain what caused leaks and accidents.

Will farmers and other property owners be informed about the location of utility lines that could affect their safety and property values? This exemption may well prevent that.

Suppose the nuclear industry begins trucking power plant waste across the state to disposal sites. Could it claim a security risk in disclosing its route to the public that is endangered by this operation? It appears entirely possible.

Lack of important public notice.

Where are cell phone and microwave towers planned for your community? Will they be located disproportionately on a particular side of town? You could be told that disclosure is a security risk.

Where are the gas and electric substations? Can't tell you. Can we see the permits for them? No. How many state inspectors oversee them and what do their checks show? It's a matter of security.

Are the power company's generating facilities adequately staffed to provide power and be run safely? Staffing could also be termed a matter of security.

There are dozens more examples, but we hope we've raised enough here to demonstrate that a narrower focus clearly is in the public's best interest. We propose more specific language that focuses squarely on security issues. It reads as follows:



"Records the disclosure of which would pose a substantial likelihood of revealing security measures that protect systems, facilities or equipment used in the production, transmission or distribution of energy or communications services. For purposes of this provision, security means measures that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion or to affect the operation of government by disruption of public services, mass destruction, assassination, or kidnapping."

We believe this language actually reflects the intentions of the House bill. It's also more rational, more logical.

As an analogy, consider the federal government's efforts to make airline flights more secure. If those efforts followed the broad-brush approach of HB 2959, airlines might avoid telling you in advance your departure and arrival times. They might delay your luggage by a day. Deliberately, I mean.

Instead, they only keep secret their actual security *measures*, such as how they profile passengers, or specifically how their metal detectors and other screening procedures work.

To best protect the public's interest all around, we urge that the Legislature also focus on actual security measures. That is the spirit of the new language proposed here.

Thank you for your time and your consideration.

Sincerely,

A handwritten signature in black ink that reads "Rick Thames". The signature is written in a cursive, flowing style.

Rick Thames