

Approved: April 2, 2003 *Carl Dean Holmes*
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:06 a.m. on February 18, 2003 in Room 526-S of the Capitol.

All members were present.

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

Conferees appearing before the committee:

Representative Larry Powell
Scott Schnieder, Renewable Energy Systems North America
Charles Benjamin
Scott Roe, Aquila
Richard Good, Westar Energy
Tom Day, Kansas Corporation Commission
David Springe, Citizens' Utility Ratepayer Board

Others attending: See Attached List

HB 2280 - Requiring the recording of leases related to wind resources and technologies

Chairman Holmes opened the hearing on **HB 2280**.

Representative Larry Powell, 117th District and sponsor of the bill, testified in support of **HB 2280** (Attachment 1). Representative Powell told the committee that the bill would make it possible for land owners to access information on the leases to help them make decisions on leasing their land for wind generation.

Scott Schneider, appearing on behalf of Renewable Energy Systems North America, provided testimony in opposition to **HB 2280** (Attachment 2). Mr. Schneider stated they opposed the bill for three reasons; first they currently file a memorandum of lease with every county; second the bill would increase the cost of doing business; and third it departs with current public policy allowing private contracts to remain private.

Charles Benjamin, appearing on behalf of both landowners and wind energy developers, addressed the committee as a proponent of **HB 2280** (Attachment 3). Mr. Benjamin stated that the bill is a good idea because it will require public notice that there are leases for wind energy resources encumbering the property.

The conferees responded to questions from the committee.

Chairman Holmes closed the hearing on **HB 2280**.

HB 2374 - Procedures for recovery of public utilities' security costs

Chairman Holmes opened the hearing on **HB 2374**.

Scott Roe, Senior Security Consultant for Aquila, appeared in support of **HB 2374** (Attachment 4). Mr. Roe told the committee that the bill will further aid in the protection of the critical infrastructures within Kansas for several reasons. They include setting forth mandates about sufficient information to be presented to the Corporation Commission for its decision; specifically addressing the release of information; identifies the periods, amounts and locations of security enhancements that can be protected; and addressing the 'usable' life of the item. Included with Mr. Roe's testimony was a copy of the Petition for Reconsideration of Aquila, Inc. and the Empire District Electric Company filed with the Corporation Commission in response to Docket No. 03-GIMX-431-GIV.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 526-S Statehouse, at 9:06 a.m. on February 18, 2003.

Richard Good, Senior Manager for Disaster Recovery and Infrastructure Security for Westar Energy, testified in support of **HB 2374** (Attachment 5). Mr. Good stated that the bill maintains and improves upon two safeguards approved last year, namely, confidentiality and oversight. Mr. Good included with his testimony, a copy of the Petition for Reconsideration of Westar Energy filed with the Corporation Commission in response to Docket No. 03-GIMX-431-GIV.

Tom Day, Legislative Liaison for the Kansas Corporation Commission, provided testimony in opposition to **HB 2374** (Attachment 6). Mr. Day told the committee that the Commission did not support the bill for several reasons. Those reasons include: 1) it represents abrupt and sudden change in public policy relating to the confidential treatment of documents filed with state agencies; 2) a concern about fundamental due process issues; 3) customer knowledge of an increase in their bill; and 4) concerns about the recovery period of the security-related capital expenditures.

David Springe, Consumer Counsel for the Citizens' Utility Ratepayer Board, appeared as an opponent to **HB 2174** (Attachment 7). Mr. Springe explained that there were three areas of concerns: the level of secrecy, hiding the rate increase on bills, and the expedited recovery of capital expenditures. Additionally, he suggested possible changes to the legislation.

Mr. Roe, Mr. Good, Mr. Day, and Mr. Springe responded to questions from the committee.

Chairman Holmes closed the hearing on **HB 2374**.

The meeting adjourned at 10:25 a.m.

The next meeting will be Wednesday, February 19, 2003 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 18, 2003

NAME	REPRESENTING
Joe Dick	KCBPU
SCOTT SCHNEIDER	RES-NA
Dan J Springs	Curb.
MARK SCHREIBER	Wester Energy
LES EVANS	WINDPOWER, Inc.
Doug LAWRENCE	Capitol Country
JO Long	Agriula
Scott Roe	Agriula
Deek Kohlfelt	Wester Energy
TOM DAY	KCC
Whitney Damon	KS Gas Service
Richard Good	Wester Energy
Steve Johnson	Ks. Gas Service
Susan Mahoney	SBC
Bob Jayroe	SBC
Cyrus Smar	GRE
Dave Helbing	KEC
Andy Shaw	ALLTEL

STATE OF KANSAS

LARRY POWELL
REPRESENTATIVE, 117TH DISTRICT
9555 N DEWEY RD
KALVESTA, KS 67835
ROOM 182-W STATEHOUSE
TOPEKA, KANSAS 66612-1504
(785) 296-7695



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: TAXATION
TRANSPORTATION
SOCIAL SERVICES BUDGET

To: House Utilities Committee Representative Carl Holmes, Chairman.

From: Representative Larry Powell

Subject: HB 2280—An act concerning wind resources and technologies, requiring the recording of leases related thereto.

Date: February 17, 2003

I would like to thank Chairman Holmes and the committee for allowing me to testify today on bill 2280.

I believe this bill would make it possible for land owners to access information on the leases to help them make decisions on leasing their land for wind generation.

It is not meant to be a replacement for negotiations between the lessee and lessor, but an attempt to make public information that comes from out-of-state companies doing business in Kansas.

I thank the committee for their time and I will stand for questions.

Rep. Larry Powell
117th District

HOUSE UTILITIES

DATE: 2-18-03

ATTACHMENT 1



Gaches, Braden, Barbee & Associates

Governmental Affairs & Association Management

300 SW EIGHTH • THIRD FLOOR • TOPEKA, KANSAS 66603-3912 • 785-233-4512 • FAX 785-233-2206

February 18, 2003
Testimony before the House Utilities Committee
Regarding HB 2280
Presented by Scott J. Schneider, of Gaches, Braden, Barbee & Associates
On behalf of RES-NA

Mr. Chairman and members of the committee, my name is Scott Schneider. I am representing Renewable Energy Systems North America, (RES –NA). RES North America, LLC is a member of the Renewable Energy Systems group of companies, one of the world's leading wind energy developers. To date, RES-NA has built over 540MW of wind power capacity in the United States.

RES-NA was recruited by the Wichita County Economic Development group. They were seeking to have a wind farm placed in Wichita County. A few weeks ago, we were pleased to announce the development of the Sunflower Electric Wind Farm in Wichita County and look forward to doing business in Kansas.

We oppose HB 2280 for three reasons. First, we currently file with every county a memorandum of lease. This document puts the public on notice that the land is encumbered by possible wind development activity. Second, this bill would increase our cost of doing business. With projects involving multiple landowners, filing fees can add up to thousands of dollars per project. Third, HB 2280 departs with current public policy of allowing private contracts to remain private. We believe contracts between an individual landowner and our company contains proprietary trade secrets and should not be public record.

To conclude, it is our opinion that the public safety interest of the State, balanced against our right to contract, does not rise to such a level that should require the divulgence of private contract information through county disclosure.

Thank you for the opportunity to present our concerns, I will stand for questions.

HOUSE UTILITIES

DATE: 2-18-03

ATTACHMENT 2

Charles M. Benjamin
Attorney at Law
P.O. Box 1642
Lawrence, Kansas 66044-8642
(785) 841-5902
(785) 841-5922 facsimile

Testimony to House Utilities Committee
Re: HB 2280

Mr. Chairman, members of the Committee, thank you for the opportunity to testify on a bill that would require the recording, in the county register of deeds office in which the land is located, any lease involving wind resources and technologies to produce and generate electricity.

I wear several different hats with regard to wind energy development in Kansas. I represent the Kansas Chapter of the Sierra Club that is generally trying to promote renewable energy and energy conservation in Kansas. I also have been working with Prairie Wind Power, LLC on developing several wind farm sites in Kansas. That work includes negotiating wind farm leases and easements. Finally, I have been advising a landowner who is negotiating a lease agreement on a wind farm with a wind farm development company.

I think HB 2280 is a good idea since it would require public notice that there are leases for wind energy resources encumbering the property. This requires potential buyers of such property to undertake due diligence and make sure he or she is aware of any leases that exist on property that he or she is considering purchasing. I notice that the draft legislation is silent on who would be required to record such notice. You might want to be explicit and require the landowner to record such notice. I would also respectfully suggest that if you are considering passing such legislation that it also include notices of easements on land used for wind resources and technologies. Not all companies use leases. For example, Florida Power and Light used easement agreements for properties for their Gray County Wind Farm. In this way all prospective buyers of property on which there are wind farm resources will be notified of easements and/or leases for wind resources encumbering the land.

Thank you for your time and attention.

HOUSE UTILITIES

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ATTACHMENT 3



Aquila

Scott R. Roe, CPP
Senior Security Consultant

Aquila Corporate Security Department
20 West 9th Street
MSC 1-401
Kansas City, Missouri 64105
(816) 467-3570 Direct
(816) 467-9570 Fax
scott.roe@aquila.com

Testimony of
Scott Roe, Senior Security Consultant
Aquila, Inc.
In Support of HB 2374

Mr. Chairman and Members of the Committee:

My name is Scott Roe and I am the Senior Security Consultant for Aquila, Inc. formerly UtiliCorp United, Inc., WestPlains Energy, Peoples Natural Gas and Kansas Public Service. Aquila serves over 180,000 natural gas and electric customers in 178 cities and towns in central and western Kansas. We appear today in support of House Bill 2374 that would further aid in the protection of the critical infrastructures within Kansas for the following reasons:

1. House Bill No. 2374 does not ask the State Corporation Commission of the State of Kansas ("KCC" or "Commission") to forego its responsibilities to the citizens of Kansas, nor does it prohibit the Commission from meeting that responsibility. Rather, House Bill No. 2374, sets forth clear mandates that sufficient information be presented to the Commission for its decision. It simply goes the extra step of protecting that information against unwarranted release. It has been a proven fact that enemies and terrorists against the U.S. routinely use open source information and the Freedom of Information Act to obtain large quantities of published government documents and information that can and has been damaging to the U.S.
2. In its recent January 31, 2003 order, the Commission created several instances where information can be released to the general public. Specifically, the release of information to the Citizens' Utility Ratepayer Board ("CURB"), without a protective order, creates an immediate opportunity for release of information already recognized by both the Commission and this legislature, as being confidential and potentially harmful to the security of the Kansas infrastructure.
3. Similarly, the identification of the periods, amounts and locations of security enhancements approved by the Commission provides information, when used with other data, that can potentially identify those facilities deemed critical, and those companies activity protecting the reliability and support of the Kansas taxpayers. Such information, when used with other data, can provide valuable information in identifying weaknesses.
4. The Commission has stated that there is no prudent reason for expedited recovery of these security enhancements, as the present system of recovery adequately addresses the recovery process. Aquila feels that the Commission has missed the fact that most of the routine capital costs relating to the operation of utilities deal in "usable" lifetimes varying from 9 years to several decades, and are for more permanent structures and equipment. Unfortunately, the usable lifetime for security components are measured from a few days or weeks even (such as with cyber security processes relating to patches, virus protection, intrusion protection and detection systems) to no more than a few years such as digital video recording and card access systems and badges that normally last no more than 3 to 5 years.

The reasons for this relatively short usable lifetime are simple. These systems are not designed, nor built to withstand environmental and industrial applications normally found at utility sites. Perhaps more importantly is the fact that once security systems are established, these systems are then probed and examined by the enemies of the U.S. or persons with criminal intent, actively seeking and identifying methods to neutralize the security systems. Once a weakness or vulnerability is identified, the security system must then be enhanced and/or new countermeasures developed/deployed to further

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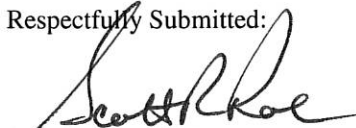
ATTACHMENT 4

protect the facility. It is this on-going “protect-probe-penetrate-protect” cycle that creates such short usable lifetimes.

When considering the industrial nature of utility facilities, the vulnerability probing and corrective actions needed, the potential for losses stemming from deliberate attacks on these security systems, and needed technical advances/changes, delaying recovery of costs for these systems, especially during the present time, is not prudent, as it negatively financially impacts the utility companies and places a long-term burden on the Kansas consumers who will eventually be paying for multiple systems from which they may not derive the benefit.

In consideration of the information provided above, Aquila requests that the Kansas Legislature adopt House Bill 2374.

Respectfully Submitted:



Scott R. Roe, CPP
Senior Security Consultant
Aquila Inc.

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of a Generic Investigation to)
Establish Criteria and Procedures for Recovery of)
Security Expenditures for Which Utilities may)
Seek Recovery Under Sub SB 545 Section 4)

Docket No. 03-GIMX-431-GIV

**PETITION FOR RECONSIDERATION OF AQUILA, INC.
AND THE EMPIRE DISTRICT ELECTRIC COMPANY**

COME NOW Aquila, Inc. and The Empire District Electric Company, and pursuant to K.A.R. 82-1-235(c)(2), K.S.A. 66-118b and K.S.A. 77-529, respectfully petition the State Corporation Commission of the State of Kansas ("KCC" or "Commission") for specific reconsideration of the Commission's January 31, 2003 Order. In support of this Petition, Aquila and Empire state:

INTRODUCTION

1. During the 2002 legislative session, the legislature passed Sub SB 545. Section 4 of Sub SB 545 requires the Commission, upon receipt of an application and request from a natural gas or electric public utility, to authorize that utility to recover its prudent expenditures for security measures reasonably required to protect the utility's electric generation and transmission assets or natural gas production and transportation assets. Such requests are to be considered by the Commission on an expedited basis. The application and request is to be treated as confidential by the Commission. The criteria and procedures contained in the Commission's January 31, 2003 Order are inconsistent and contrary to the legislature's intent in enacting Sub SB 545. Accordingly, Aquila and Empire request that the Commission reconsider its Order in regards to the following matters.

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CONFIDENTIALITY OF FILINGS

2. Paragraph 4 of the Commission's Order states as follows: "At the time of the filing...the Commission will release the name of the utility, the amount of recovery requested for security-related expenditures, and the method of cost recovery requested by the utility. When a final ruling is made, the total dollar amount of expenditures allowed will be made public with details of how the amount will be recovered." This is contrary to the legislature's intent in enacting Sub SB 545. Sub SB 545 requires that all the data submitted by the utility as part of its application, including the amount expended by the utility, be maintained as confidential information.

3. Paragraph 12 of the Commission's Order states: "Amounts approved for recovery through a surcharge will be identified as line items on customer bills." This provision is also contrary to that portion of Sub SB 545 which requires that all data be maintained as confidential.

4. Paragraph 5 of the Commission's Order states: "The Commission directs that at the time an application is filed, a copy also be provided to CURB." K.S.A. 66-1220a requires the Staff to maintain items as confidential if so marked by the utility. There is no such statutory requirement imposed on CURB. The Commission must not require the automatic submission of confidential data to any party, including CURB, without first issuing a protective order. Sub SB 545 requires that the Commission only release such information pursuant to a protective order. The legislature has determined that the interests of public safety far outweigh the interests of utility consumers in full disclosure. Accordingly, the above-mentioned provisions in the Commission's Order are contrary to the law, and therefore, should be reconsidered by the Commission.

TIMING AND METHOD OF RECOVERY

5. Paragraph 9 of the Commission's Order states: "There is no requirement that recovery

of capital costs be expedited or completed in one year." The legislative intent of Sub SB 545 contemplates that utilities should be allowed to recover extraordinary expenditures for security measures on an expedited basis and without having to file a rate case to increase their base rates. The Commission's rejection of the recovery method proposed by the utilities to recover capital costs associated with homeland security measures is contrary to Sub SB 545. The Commission's Order, in essence, provides for recovery of capital expenditures only in base rates, and only after the filing of a rate case. Most of the extraordinary homeland security expenditures are capital cost and under the Commission's January 31, 2003 Order, would not be eligible for treatment under Sub SB 545. This is contrary to law. In fact, of all of the provisions contained in the Commission's Order, this is the most egregious violation of the law and must be reconsidered by the Commission.

6. Paragraph 8 of the Commission's Order states: "The Commission finds that if an application includes expenditures for personnel, the utility should provide information as to the level of employees covered in the last rate order, the current level of employees, and the specific basis for requesting recovery of the costs of the new personnel pursuant to this legislation." This provision of the Commission's Order is also contrary to the law. The Commission should only consider security-related personnel in determining if any costs for additional security staff are incremental to the number of security staff included in existing rates. Otherwise, the Commission has effectively said these costs, which are clearly contemplated to be recoverable under Sub SB 545, are not eligible for recovery under that law.

7. Paragraph 6 of the Commission's Order states: "The Commission agrees that 60 days is a reasonable target if the initial filing contains documentation and information necessary to establish the prudence and reasonableness of the expenditures." "[t]he Commission will summarily dismiss

applications that are not fully supported, and will plan to rule on properly supported applications within 60 days." Aquila and Empire request that the Commission clarify that if the utility makes a portion of the documentation available for review on site, as opposed to including such information in the application, that such will not be grounds for dismissing the application.

WHEREFORE, Aquila and Empire respectfully request specific reconsideration of the Commission's January 31, 2003 Order as discussed herein.

James G. Flaherty, #11177
ANDERSON, BYRD, RICHESON, FLAHERTY & HENRICHS
216 S. Hickory, P. O. Box 17
Ottawa, Kansas 66067
(785) 242-1234
Attorneys for Aquila, Inc. and The Empire District
Electric Company

VERIFICATION

STATE OF KANSAS, FRANKLIN COUNTY, ss:

James G. Flaherty, of lawful age, being first duly sworn on oath, states: That he is an attorney for Aquila, Inc. and The Empire District Electric Company; that he has read the above and foregoing Petition for Reconsideration of Aquila, Inc. and The Empire District Electric Company, knows the contents thereof; and that the statements contained therein are true.

James G. Flaherty

SUBSCRIBED AND SWORN to before me this _____ day of February, 2003.

My Commission Expires:

Notary Public

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was mailed, postage prepaid, this _____ day of February, 2003, addressed to:

Susan Cunningham
General Counsel
Kansas Corporation Commission
1500 S. W. Arrowhead Road
Topeka, Kansas 66604

Stephen E. Parr, President
Kansas Electric Power
Cooperative, Inc.
P. O. Box 4877
Topeka, Kansas 66604

Neil K. Norman, Manager
Wheatland Electric Cooperative,
Inc.
101 Main, P. O. Box 130
Scott City, Kansas 67871

Larry Holloway
Utilities Division
Kansas Corporation Commission
1500 S. W. Arrowhead Road
Topeka, Kansas 66604

Daniel O'Brien, Manager
Kaw Valley Electric Coop Co.,
Inc.
P. O. Box 750640
Topeka, Kansas 66675-0640

David Hudson
Southwestern Public Service
Company
Box 1261
Amarillo, Texas 79170

Bryan O'Neill, President
Williams Natural Gas Company
P. O. Box 2400
Tulsa, Oklahoma 74102-2400

Larry Willer, Dir., Rates & Reg.
Kansas Gas Service
7421 West 129th Street, P. O.
Box 25957
Shawnee Mission, Kansas 66225

Kelly Harrison
Western Resources, Inc.
818 Kansas Avenue
P. O. Box 889
Topeka, Kansas 66601

John Welch, Dir. of Services
Kansas Electric Cooperatives,
Inc.
7332 SW 21st, P. O. Box 4267
Topeka, Kansas 66604

Bob Williams
Kansas City Power & Light
Company
1201 Walnut, P. O. Box 418679
Kansas City, Missouri 64106

L. Christian Hauck,
President/CEO
Sunflower Electric Power
Corporation
301 West 13th, P. O. Box 9980
Hays, Kansas 67601

James R. Widener, Manager
Kansas Municipal Energy Agency
6330 Lamar Avenue, #110
Overland Park, Kansas 66202-
4247

David L. Jesse, CEO
Pioneer Electric Coop. Assn., Inc.
P. O. Box 368
1850 West Oklahoma
Ulysses, Kansas 67880-0368

W. Scott Keith, Manager
Aquila, Inc.
10700 East 350 Highway
P. O. Box 11739
Kansas City, MO 64138

Gene Argo, Gen. Mgr.
Midwest Energy, Inc.
P. O. Box 898
Hays, Kansas 67601

Terry Janson, Gen. Mgr.
Victory Electric Cooperative
Assn., Inc.
3230 North 14th Street, P.O. Box
1335
Dodge City, Kansas 67801

Martin J. Bregman
Larry M. Cowger
Western Resources, Inc.
818 Kansas Avenue
P. O. Box 889
Topeka, Kansas 66601

James G. Flaherty

**Testimony before the
House Utilities Committee**

By

**Richard Good, Senior Manager, Disaster Recovery and Infrastructure Security
Westar Energy
February 18, 2003**

Chairman Holmes and members of the committee, I am Richard Good, senior manager, disaster recovery and infrastructure security for Westar Energy.

Westar Energy supports House Bill 2374. Last year the Legislature saw and acted on the need for utilities to increase security and be able to recover related costs in a timely fashion. While a year and a half has passed since the tragic attacks of September 11, 2001, it remains clear that complacency has no place in protecting our state's infrastructure. Westar Energy, like other utilities, must maintain and improve the security of our infrastructure to ensure reliable electric energy for Kansans.

H.B. 2374 maintains and improves upon two important safeguards that the Legislature approved last year. The first is confidentiality. Any security steps we take will be less effective if the cost or other information about the improved security measures is released. Potential attackers could analyze information filed with the Kansas Corporation Commission to exploit weaknesses if that information is made public. The second is oversight. H.B. 2374 assures that any filing will be for enhanced security measures and the costs are reasonable, prudent and/or required by regulatory agencies.

H.B. 2374 does more than protect utilities. It protects Kansans. I encourage you to support H.B. 2374.

HOUSE UTILITIES

DATE: 2-18-03

ATTACHMENT 5

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

FEB 17 2003

In the Matter of a Generic Investigation to)
Establish Criteria and Procedures for)
Recovery of Security Expenditures for which)
Utilities may seek Recovery under Sub SB)
545 Section 4.)

 Docket Room
Docket No. 03-GIMX-431-GIV

PETITION FOR RECONSIDERATION OF WESTAR ENERGY, INC.

COMES NOW Westar Energy, Inc. (“Westar Energy” or “Company”) and pursuant to K.A.R. 82-1-235(c)(1), K.S.A. 66-118b and K.S.A. 77-529, respectfully petitions the State Corporation Commission of the State of Kansas (“KCC” or “Commission”) for general reconsideration of the Commission’s January 31, 2003 Order. In support of its Petition, Westar Energy states:

I. INTRODUCTION

1. Westar Energy appreciates the time and effort the Commission, its Staff and other interested parties have committed to establish fair and reasonable criteria and procedures related to security cost recovery. The 2002 session of the Kansas Legislature passed Substitute SB 545 and it was signed into law. In considering this legislation, the Legislature was convinced threats against utility infrastructure were real and likely. The Legislature desired to encourage utilities to enhance security, protect the utility infrastructure necessary for the Kansas economy, and provide for reasonable criteria and procedures to recover enhanced security measures. Westar Energy, however, believes that the criteria and procedures contained in the Commission’s January 31, 2003 Order do not follow the intent of the Legislature. Moreover, the Commission’s provisions regarding filing requirements may inadvertently lead to release of confidential material.

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II. CONFIDENTIALITY OF FILINGS

2. Westar Energy requests that the Commission reconsider its Order of January 31, 2003 in several aspects related to the confidentiality of applications to recover incremental security expenses. Specifically, at Paragraph 4 of its Order the Commission stated, "At the time of the filing . . . the Commission will release the name of the utility, the amount of recovery requested for security-related expenditures, and the method of cost recovery requested by the utility. When a final ruling is made, the total dollar amount of expenditures allowed will be made public with details of how the amount will be recovered." This is not the intent of the legislature. Sub SB 545 is very clear and requires that all the data, which would include the amount expended by the utility, be maintained as confidential information.

3. At Paragraph 12 of its Order the Commission stated, "Amounts approved for recovery through a surcharge will be identified as line items on customer bills." Again, Sub SB 545 requires that all the data is to be maintained as confidential information.

4. At Paragraph 5 of its Order the Commission stated, "The Commission directs that at the time an application is filed, a copy also be provided to CURB." KCC Staff by statute must maintain items as confidential if so designated by an applicant utility, K.S.A. 66-1220a. There is no such statutory requirement imposed on CURB. The Commission must not by rule require the automatic submittal of confidential data to any party, including CURB, without a protective order. In fact, the Commission should impose the most rigid restrictions on the disclosure of security-related expenditures, as the interests of public safety far outweigh the interests of utility consumers in full disclosure. Westar Energy, therefore, requests that the Commission reconsider its Order on the release of information as discussed above.

III. TIMING AND METHOD OF RECOVERY

5. At Paragraph 6 of its Order the Commission stated, "The Commission agrees that 60 days is a reasonable target if the initial filing contains documentation and information necessary to establish the prudence and reasonableness of the expenditures." It further stated, "[t]he Commission will summarily dismiss applications that are not fully supported, and will plan to rule on properly supported applications within 60 days." The Commission should recognize that certain data will not and cannot be submitted pursuant to regulatory requirements from other regulatory bodies. The Nuclear Regulatory Commission (NRC) requires certain data to be classified as "safeguards information." The Commission's Staff will be required to make field visits and pass a FBI background investigation prior to even seeing the documentation. The Commission should clarify its Order that meeting the requirements of the NRC or other regulatory bodies pertaining to release of information will not provide a basis for the Commission to "summarily dismiss applications."

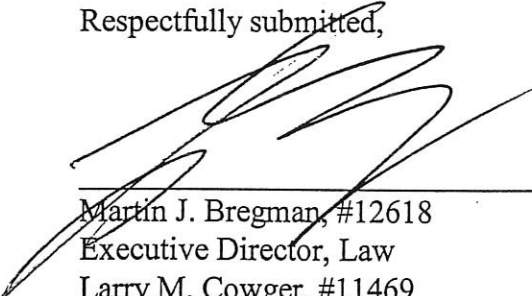
6. At Paragraph 9 of its Order the Commission stated, "There is no requirement that recovery of capital costs be expedited or completed in one year." Westar Energy has never stated that it was a requirement. The Company is aware that certain costs must be capitalized pursuant to the FERC Uniform System of Accounts that this Commission has adopted, and that some of these costs will be "temporary" (i.e., the item capitalized will be replaced with a more permanent installation). Moreover, the capitalized temporary item likely will be recorded in a plant account with a depreciable rate equal to 40 to 50 years in estimated useful life. The temporary item will then be retired. Westar Energy requests that the Commission consider the **useful life** of the installed asset, either temporary or permanent, and permit recovery accordingly. *See also*, Comments of Westar Energy, Paragraph 11, filed January 17, 2003.

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7. At Paragraph 8 of its Order the Commission stated, "The Commission finds that if an application includes expenditures for personnel, the utility should provide information as to the level of employees covered in the last rate order, the current level of employees, and the specific basis for requesting recovery of the costs of the new personnel pursuant to this legislation." This is not the intent of the legislature. Only security-related personnel should be considered by the Commission in determining if any costs for additional security staff are incremental to the number of security staff imbedded in existing rates. Therefore, Westar Energy requests that the Commission reconsider its criteria for review and filing procedures related to incremental security personnel.

WHEREFORE, Westar Energy respectfully requests general reconsideration of the Commission's January 31, 2003 Order as discussed herein.

Respectfully submitted,



Martin J. Bregman, #12618

Executive Director, Law

Larry M. Cowger, #11469

Director, Law

818 S. Kansas Avenue

Topeka, KS 66612

(785) 575-8344; Telephone

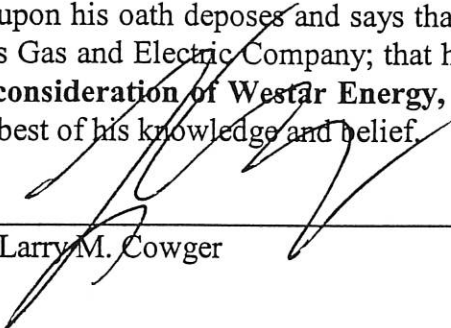
(785) 575-8136; Fax

ATTORNEYS FOR
WESTAR ENERGY, INC. AND
KANSAS GAS AND ELECTRIC COMPANY

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

Larry M. Cowger, being duly sworn upon his oath deposes and says that he is one of the attorneys for Westar Energy, Inc. and Kansas Gas and Electric Company; that he has read and is familiar with the foregoing **Petition for Reconsideration of Westar Energy, Inc.** and that the statements therein are true and correct to the best of his knowledge and belief.



Larry M. Cowger

SUBSCRIBED AND SWORN to before me this 17th day of February, 2003.



Notary Public

My Appointment Expires:

4-11-2005



5-6

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of February, 2003, the original and seven copies of the foregoing **Petition for Reconsideration of Westar Energy, Inc.** were hand delivered to:

Susan K. Duffy
Executive Director
KANSAS CORPORATION COMMISSION
1500 SW Arrowhead Road
Topeka, Kansas 66604

and that one copy was sent via U. S. Mail, postage prepaid to:

Susan Cunningham
General Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604

Steve Dalhoff
Mgr. Regulatory Affairs
Tekas Pipeline, LLC
1000 Louisiana #5800
Houston, TX 77002

Joe White, Director
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604

Bryan O'Neill, President
Williams Natural Gas Company
P.O. Box 2400
Tulsa, OK 74102-2400

George Rohrer
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604

John Welch, Dir. of Services
Kansas Electric Cooperatives, Inc.
7332 SW 21st St.
P.O. Box 4267
Topeka, KS 66604

Mark Thessin, VP Affairs
Greeley Gas Company
P.O. Box 650205
Dallas, TX 75265-0205

James R. Widener, Manager
Kansas Municipal Energy Agency
6330 Lamar Ave. #110
Overland Park, KS 66202-4247

Roger A. Schulz, President
Mac County Gas, Inc.
P.O. Box 515
Canton, KS 67428

Michael Rose
Anadarko Gathering Co.
701 S. Taylor St. #400
Amarillo, TX 79101-2424

John L. Sommer, President
MidContinent Market Transportation
100 W. 5th Street
Tulsa, OK 74103-4298

Larry D. Hall, President & CEO
K-N Energy, Inc.
P.O. Box 281304
Lakewood, CO 80228-8304

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Steve Cottrell
Miami Pipe Line Company
31395 Old KC Road
Paola, KS 66071

Gene Argo, President & Gen. Mgr.
Midwest Energy, Inc.
P.O. Box 898
Hays, KS 67601-0898

United Cities Gas Co.
381 Riverside Drive #440
Franklin, TN 37064

Myron W. McKinney, Pres./CEO
Empire District Electric Company
P.O. Box 127
Joplin, MO 64802

Stephen E. Parr, President
Kansas Electric Power Cooperative, Inc.
P.O. Box 4877
Topeka, KS 66604

Daniel O'Brien, Manager
Kaw Valley Electric Coop. Co, Inc.
P.O. Box 750640
Topeka, KS 66675-0640

G. B. (Jerry) Smith
Div. Operations Mgr.
Anadarko Gathering Co.
701 S. Taylor #400
Amarillo, TX 79101

Larry Willer, Dir., Rates & Reg.
Kansas Gas Service
7421 West 129th St.
P.O. Box 25957
Shawnee Mission, KS 66225

Richard J. Haubensak
VP, Reg. Affairs
Peoples Natural Gas/Div. of UtiliCorp
1815 Capitol Ave.
Omaha, NE 68102

Bob Williams
Kansas City Power & Light Company
1201 Walnut
P.O. Box 418679
Kansas City, MO 64106

David L. Jesse, CEO
Pioneer Electric Coop. Assn., Inc.
1850 West Oklahoma
P.O. Box 368
Ulysses, KS 67880-0368

Terry Janson, Gen. Mgr.
Victory Electric Cooperative Assn., Inc.
3230 North 14th Street
P.O. Box 1335
Dodge City, KS 67801


Neil K. Norman, Manager
Wheatland Electric Cooperative, Inc.
101 Main
P.O. Box 130
Scott City, KS 67871

David Hudson
Southwestern Public Service Company
Box 1261
Amarillo, TX 79170

L. Christian Hauck, President/CEO
Sunflower Electric Power Corporation
301 West 13th
P.O. Box 980
Hays, KS 67601

W. Scott Keith, Manager, Elec. Serv.
WestPlains Energy
c/o UtiliCorp United Inc.
10700 E. 350 Highway
P.O. Box 11739
Kansas City, MO 64138

David Springe
Citizen's Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604



Larry M. Cowger, #11469

**BEFORE THE HOUSE UTILITIES COMMITTEE
PRESENTATION OF THE
KANSAS CORPORATION COMMISSION
ON HB 2374**

February 18, 2003

Thank you, Chairman, and members of the Committee. I am Tom Day, legislative liaison for the Kansas Corporation Commission. I appreciate the opportunity to be here today to testify on behalf of the Commission on HB 2374.

The purpose of my testimony is to provide information and perspective on HB 2374. This legislation proposes to expand upon the security measures passed in last year's legislative session by prescribing practices and procedures by which the Commission is required to review expenses sought to be collected under K.S.A. 66-1233. In short, this legislation: (1) seeks to expand on the confidentiality of requests for recovery of security-related expenses under K.S.A. 66-1233 to include not merely the application and request, but also the amount of recovery requested, the amount of recovery allowed, the method of cost recovery and the method of cost recovery allowed; (2) once a request has been reviewed, passes the allowed cost onto ratepayers' bills in an unidentifiable manner; (3) sets out the time period over which the cost may be recovered; and (4) indicates that the Commission should ignore standard regulatory principles in carrying out the intent of this legislation. For the below reasons, the Commission does not support HB 2374.

First, the Commission believes this legislation represents abrupt and sudden change in Kansas public policy relating to the confidential treatment of documents filed with state agencies. The avowed intent of the Kansas Open Records Act is to ensure that all documents which legitimately can be open to public inspection, should be open to public inspection. The Commission has consistently followed the philosophy that its regulatory function should be conducted in the open. However, the Commission is mindful that at times, utilities, the Commission's Staff and interveners might need the protection afforded by confidential treatment of certain documents. In those legitimate instances, the Commission has well-established policies and procedures in place to protect confidential information consistent with the overall Kansas policy of openness.

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Second, the Commission is concerned about fundamental due process issues by specifically allowing the Citizens' Utility Ratepayer Board (CURB) the right to participate, without provision for participation by other legitimate interveners. The Commission suggests that either CURB be carved out of the express provisions of this legislation or provide that all legitimate interveners be allowed to participate, subject, of course, to the provisions of the Commission's standard Protective Order and non-disclosure agreements. This is current practice and has worked well on many occasions.

Third, the Commission believes that certain customers will be able to calculate the incremental increase related to the recovery of security costs regardless of whether specifically identified on the bill. A customer need only compare his monthly billing statements to detect a difference in his charge per kilowatt hour or question an unidentified line item imposing a surcharge.

Fourth, with regard to the recovery period of the security-related capital expenditures contemplated in this legislation, the Commission suggests that it be allowed to use its discretion, recognizing that like expenses might be recovered over a different time period than "1/3 of the usable lifetime of the capital investment" or that it might be appropriate to allow recovery of these critical, extraordinary costs over even a shorter time period depending on relevant facts and circumstances.

Finally, the Commission acknowledges that this legislation represents a policy decision of the Legislature in reaction to the extraordinary events of September 11, 2001, and, as such, defines the process on all such rate increases requested under this legislation. However, the Commission believes that there are practical implications that make carrying out the mandates of this legislation difficult and inconsistent with existing policy and law.

Thank you for the opportunity to express the Commission's position on House Bill 2374.

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Citizens' Utility Ratepayer Board

Board Members:

Gene Merry, Chair
A. W. Dirks, Vice-Chair
Frank Weimer, Member
Francis X. Thorne, Member
Nancy Wilkens, Member
David Springe, Consumer Counsel



State of Kansas
Kathleen Sebelius, Governor

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

HOUSE UTILITIES COMMITTEE H.B. 2374

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
February 18, 2003

Chairman Holmes and members of the committee:

Thank you for this opportunity to appear before you today and offer testimony on H.B. 2374. The Citizens' Utility Ratepayer Board is opposed to this bill for the following reasons:

First, CURB does want to make clear to the Committee its position, as filed at the Kansas Corporation Commission, as related to recovery of security costs.

- CURB does believe that residential and small commercial ratepayers are concerned about the safety and security of the utility infrastructure in the state.
- Residential and small commercial customers are likely willing to pay some fee for prudently incurred necessary security expenditures.
- CURB strongly believes that residential and small commercial customers expect that any security fee or charge placed on a utility bill has been thoroughly reviewed by the Commission and found to be prudently incurred.
- CURB strongly believes that residential and small commercial customers expect that any security fee or charge placed in a utility bill will not be duplicative of charges that are already contained in base rates.
- CURB strongly believes that residential and small commercial customers expect that any security fee or charge that they are expected to pay is also being shared with all other utility system customers in the most equitable manner possible.

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Where CURB's position differs from that expressed in H.B. 2374 is in the following three areas:

- The level of secrecy contained in Section 3 (a)(1). CURB does acknowledge that many elements of a utility's security plan are sensitive and should rightly be accorded confidential protections. CURB has no desire to advertise each and every aspect of a utility's plan to deal with security or how security measures are being implemented. However, secrecy must also be balanced against a consumers right to know why, and by how much utility rates are increasing. CURB does not believe that disclosing the name of the utility, the total amount of money the utility is requesting as a rate increase and the proposed method of recovery the utility is proposing represents information containing the type of specificity that warrants being withheld from the public. CURB believes that these three elements are the minimum information necessary to meet notice and due process requirements.
- Hiding the rate increase on consumer bills as required by Section 3 (a)(4). If it is the public policy of the State of Kansas that security costs are to be accorded extraordinary rate treatment, including expedited review and expedited recovery of capital expenditures, then this fact should be apparent to consumers when they view their utility bills.
- Expedited recovery of capital expenditures as required by Section 3 (a)(7). CURB believes that capital equipment expenditures for security should be recovered over a time period consistent with the recovery period of like capital equipment in normal rates. CURB understands that new security requirements force a utility to expend money that was not anticipated in the utility's last rate case. CURB also understands that a utility may not want to file a general rate case to get recovery of these security expenditures. The security surcharge in K.S.A. 66-1233 and in this bill allows a utility to begin recovery of, and begin receiving a return on, the expenditures made for security purposes. At the time of the utility's next rate case, the security related capital expenditures can be placed in base rates and the capital recovery will be consistent with other like capital equipment. This method of recovery is consistent with good ratemaking practices, will eliminate confusion over time as to the accounting accorded similar capital assets, will provide the utility with a return of and a return on its expenditures, and will protect consumers from the potential large rate increases caused by expedited recovery of capital expenditures.

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If this bill does progress, CURB would offer the following suggestions:

- Add to Sec. 3(a)(4), “*and shall be added to all wholesale and retail rates and contracts.*” CURB is concerned that as written, this bill will result in only tariff customers paying the security costs envisioned by K.S.A 66-1233 and this bill. If extraordinary circumstances dictate that security costs shall be recovered in a manner different than ordinarily applied in rate proceedings, it is not equitable that wholesale and retail customers that purchase utility service under a contract are able to escape these security charges. If it is the public policy of the State of Kansas to authorize extraordinary recovery of security costs, it must also be the public policy of the State of Kansas that all users of the utility system that benefit from the enhanced security pay an equitable portion of the costs, whether service is taken by tariff, or by contract and whether at the wholesale or retail level.
- Language on “Prudent expenditures” is inconsistent and vague. In Section 3 (a)(6), the Commission shall deny and expenditure that the Commission determines “is not prudent or is not for security measures”. This language seems clear. However, Section 3(b) states that “a determination by the Commission of the prudence of an expenditure for security measures *shall* not be based on standard regulatory principles of methods of recovery and shall take fully into account the findings as intent of the legislature as states in Section 2”. The language in Section 3 (b) makes it virtually impossible to argue that any expenditure is not prudent if it is related to security. Further definition, or examples of what is envisioned by the new prudence standard pursuant to Section 3 (b) would remove some of the uncertainty this language presents.
- Section 3 (a)(2). While CURB appreciates the Committee’s acknowledgement that CURB should be part of this process, and should have a standard protective order issued, CURB does not believe that it is necessary to put this language in statute. The Commission routinely issues protective orders in cases, and CURB certainly anticipates it will do so in security cost case. This language likely stems from the utilities concern about providing CURB security information without the restrictions of a protective order. While this concern is valid, and CURB certainly does not want this information in its possession without a protective order, this can be dealt with in a routine manner by the Commission by making the issuance of a protective order a standard procedure in security dockets. This language can be left in the statute, but CURB does not believe it is necessary.
- It appears from previous discussions at the Committee and Sub-Committee level that one intent of the legislature is to have each utility stockpile a level of spare parts such that the parts would be available on short notice if needed. CURB would suggest for inclusion in this bill a requirement that utilities explore methods of pooling these stockpiles with other local or regional utilities. It would be more efficient to pool resources such that each utility is not spending money to create its own separate stockpile of parts and would save ratepayers money.