

Approved: May 2, 2003
Date

Carl D. Holmes

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:11 a.m. on March 24, 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: None

Others attending: See Attached List

Chairman Holmes announced that the Conference Committee would be meeting next week. Additionally, since this was our last scheduled committee meeting, the members should take their committee folders.

Sub SB 104 - Prior determination of rate-making principles and treatment

Chairman Holmes opened the debate on **Sub SB 104**. Representative Sloan distributed a balloon amendment (Attachment 1). Representative Sloan moved to adopt the balloon amendment. Representative Neighbor seconded the motion. Motion carried. Representative Dillmore moved to amend page 2, line 19 to include the words 'have implemented.' Representative Ward seconded the motion. Motion failed. Representative Krehbiel moved to reinstate language stricken from page 1, line 43 and page 2, line 39, restoring the 180 day deadline. Representative Dreher seconded the motion. Motion carried. Representative Sloan moved to recommend Sub SB 104, as amended, favorable for passage. Representative Reitz seconded the motion. The motion carried. Representative Neighbor will carry the bill.

SB 51 - Prohibiting the exclusion of excessive employee compensation ("golden parachutes") in public utility rates

Chairman Holmes opened the debate on **SB 51**. Representative Sloan distributed a balloon amendment (Attachment 2). Representative Sloan moved to adopt the balloon amendment. Representative Ward seconded the motion. Motion carried. Representative Krehbiel moved to reinstate the words 'publicly traded' on page 3, line 8. Representative P. Long seconded the motion. The motion failed. Representative Sloan moved to recommend SB 51, as amended, favorable for passage. Representative Reitz seconded the motion. The motion failed.

Chairman Holmes thanked the committee for their work this session.

The meeting adjourned at 10:24 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 24, 2003

NAME	REPRESENTING
Diane Holtkamp	KEC
Barry Hart	KEC
Nikki CHRISTOPHER	CURB
Cynthia Simon	GPE
Tim Rush	GPE
Steve Miller	Sudlow
Larry Hollaway	KCC
MARK SCHREIBER	Westar Energy
Bob Simpson	SBC
Anne Spiess	KHA
Steve Johnson	Kansas Gas Service
BRUCE GRAHAM	KEPCO
Tom Day	KCC

Shan
Balloon
3/24

Substitute for SENATE BILL No. 104

By Committee on Utilities

2-21

HOUSE UTILITIES
DATE: 3-24-03
ATTACHMENT 1

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AN ACT relating to public utilities; concerning prior determination of rate-making principles and treatment by the corporation commission.

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

Section 1. (a) As used in this section:

(1) "Commission" means the state corporation commission;

(2) "contract" means a public utility's contract for the purchase of electric power in the amount of at least \$5,000,000;

(3) "generating facility" means any electric generating plant or improvement to existing generation ~~or transmission~~ facilities;

~~(4) "transmission facility" means any electric transmission system addition involving equipment of at least 115 kilovolts or improvement to existing transmission facilities.~~ (4)

~~(5) "stake" means a public utility's whole or fractional ownership share or leasehold or other proprietary interest in a generating facility or transmission facility; and~~ (5)

~~(6) "public utility" has the meaning provided by K.S.A. 66-104, and amendments thereto~~; and

(b) (1) Prior to undertaking the construction of, or participation in, a ~~new~~ transmission facility, a public utility may file with the commission a petition for a determination of the rate-making principles and treatment, as proposed by the public utility, that will apply to the recovery in wholesale or retail rates of the cost to be incurred by the public utility to acquire such public utility's stake in the transmission facility during the expected useful life of the transmission facility.

(2) The commission shall issue an order setting forth the rate-making principles and treatment that will be applicable to the public utility's stake in the transmission facility in all rate-making proceedings on and after such time as the transmission facility is placed in service or the term of the contract commences.

(3) The commission in all proceedings in which the cost of the public utility's stake in the transmission facility is considered shall utilize the rate-making principles and treatment applicable to the transmission facility.

~~(4) If the commission fails to issue a determination within 180 days~~

(6) "transmission facility" means: (A) Any existing line, and supporting structures and equipment, being upgraded for the transfer of 115 kilovolts or more of electricity; or (B) any new line, and supporting structures and equipment, and appurtenances being constructed for the transfer 230 kilovolts or more of electricity

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1 of the date a petition for a determination of rate-making principles and
2 treatment is filed, the rate-making principles and treatment proposed by
3 the petitioning public utility will be deemed to have been approved by
4 the commission and shall be binding for rate-making purposes during the
5 useful life of the transmission facility.

6 (5) If the commission does not have jurisdiction to set wholesale rates
7 for use of the transmission facility the commission need not consider rate-
8 making principles and treatment for wholesale rates for the transmission
9 facility.

10 (c) (1) Prior to undertaking the construction of, or participation in,
11 a ~~new~~ generating facility or prior to entering into a new contract, a public
12 utility may file with the commission a petition for a determination of the
13 rate-making principles and treatment, as proposed by the public utility,
14 that will apply to recovery in wholesale or retail rates of the cost to be
15 incurred by the public utility to acquire such public utility's stake in the
16 generating facility during the expected useful life of the generating facility
17 or the recovery in rates of the contract during the term thereof.

18 (2) Any utility seeking a determination of rate-making principles and
19 treatment under subsection (c)(1) shall as a part of its filing submit the
20 following information: (A) A description of the public utility's ~~conserva-~~
21 ~~tion measures; (B) a description of the public utility's demand side man-~~
22 ~~agement efforts; (C) the public utility's ten-year generation and load fore-~~
23 ~~casts; and (D) a description of all power supply alternatives considered~~
24 to meet the public utility's load requirements.

25 (3) In considering the public utility's supply plan, the commission
26 may consider if the public utility issued a request for proposal from a
27 wide audience of participants willing and able to meet the needs identi-
28 fied under the public utility's generating supply plan, and if the plan
29 selected by the public utility is reasonable, reliable and efficient.

30 (4) The commission shall issue an order setting forth the rate-making
31 principles and treatment that will be applicable to the public utility's stake
32 in the generating facility or to the contract in all rate-making proceedings
33 on and after such time as the generating facility is placed in service or
34 the term of the contract commences.

35 (5) The commission in all proceedings in which the cost of the public
36 utility's stake in the generating facility or the cost of the purchased power
37 under the contract is considered shall utilize the rate-making principles
38 and treatment applicable to the generating facility or contract.

39 ~~(6) If the commission fails to issue a determination within 180 days~~
40 ~~of the date a petition for a determination of rate-making principles and~~
41 ~~treatment is filed, the rate-making principles and treatment proposed by~~
42 ~~the petitioning public utility will be deemed to have been approved by~~
43 ~~the commission and shall be binding for rate-making purposes during the~~

(4) The commission's decision on the petition shall apply to only the issues and estimated expenditures specifically contained in the petition. Any additional issues and expenditures that are identified subsequently shall be considered by the commission in separate proceedings.

demand side management and conservation programs on which the public utility and its customers receive a return over the life of the program that is greater than the program's implementation and administrative costs; (B)

(C)

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1 ~~useful life of the generating facility or during the term of the contract.~~

2 (d) The public utility shall have one year from the effective date of
3 the determination of the commission to notify the commission whether
4 it will construct or participate in the construction of the generating or
5 transmission facility or whether it will perform under terms of the
6 contract.

7 (e) If the public utility notifies the commission within the one-year
8 period that the public utility will not construct or participate in the con-
9 struction of the generating or transmission facility or that it will not per-
10 form under the terms of the contract, then the determination of rate-
11 making principles pursuant to subsection (b) or (c) shall be of no further
12 force or effect, shall have no precedential value in any subsequent pro-
13 ceeding, and there shall be no adverse presumption applied in any future
14 proceeding as a result of such notification.

15 (f) If the public utility notifies the commission under subsection (d)
16 that it will construct or participate in a generating facility or purchase
17 power contract and subsequently does not, it will be required to notify
18 the commission immediately and file an alternative supply plan with the
19 commission per subsection (c) within 90 days.

20 Sec. 2. This act shall take effect and be in force from and after its
21 publication in the statute book.
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(6) The commission's decision on the petition shall apply to only the issues and estimated expenditures specifically contained in the petition. Any additional issues and expenditures that are identified subsequently shall be considered by the commission in separate proceedings.

SENATE BILL No. 51

By Senators Bunten and Clark

1-22

AN ACT concerning public utilities; relating to certain employee compensation; prohibiting inclusion in rates.

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

Section 1. (a) As used in this section:

(1) ~~“Excessive compensation” means any one or more of the following:~~

~~(A) The value of pension benefits, insurance policies, stock, stock options, annuities or deferred compensation plans that exceeds the value of similar benefits, policies, stock, stock options, annuities or other compensation plans routinely offered to all the utility’s fulltime employees, or to its employees generally;~~

~~(B) the value of severance payments in excess of those routinely offered to all the utility’s fulltime employees, or to its employees generally, when they terminate employment with the utility;~~

~~(C) the value of compensation for time spent on unregulated activities;~~

~~(D) the value of compensation for time spent solely on behalf of shareholders;~~

~~(E) the value of compensation that conceals profits;~~

~~(F) the value of management incentive or bonus payments which are not in accordance with management’s proportion of the payroll;~~

~~(G) the value of merit increases for executives or senior management which are not supported by evidence of increased productivity, increased cost savings, improved quality of service or improved financial stability and performance of the utility;~~

~~(H) the value of compensation which is not proportionate to the compensation of persons holding similar positions with other utilities in Kansas and the surrounding four states;~~

~~(I) the value of compensation of any kind made during a test period to any employee who was not employed by the utility during the test period;~~

~~(J) the value of nonmonetary benefits paid for by the utility, or provided by the utility to executives, managers or their spouses or families;~~

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HOUSE UTILITIES

DATE: 3-24-03

ATTACHMENT 2

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1 ~~which are not routinely provided to all the utility's fulltime employees, to~~
 2 ~~the utility's employees generally or to employees' spouses and families~~
 3 ~~generally, such as, but not limited to: Vehicles; club memberships; en-~~
 4 ~~hanced or luxury travel arrangements or accommodations; enhanced or~~
 5 ~~luxury living quarters, or any other such nonmonetary benefits that are~~
 6 ~~not essential for conducting business activities on behalf of ratepayers, or~~
 7 ~~(K) the value of any expenditure made by the utility for any insurance~~
 8 ~~policy in the name of a current, former or departing employee, if the~~
 9 ~~utility is a beneficiary of the policy, including any expenditures resulting~~
 10 ~~from any loan taken out on such a policy and any payments made by the~~
 11 ~~utility from the proceeds of such loans.~~

12 ~~(1) "Excessive compensation" shall have the meaning ascribed~~
 13 ~~to such term as provided in rules and regulations adopted by the~~
 14 ~~state corporation commission.~~

15 (2) "Public utility" has the meaning provided by K.S.A. 66-104, and
 16 amendments thereto.

17 (3) ~~"Compensation" has the same meaning as provided by 17~~
 18 ~~CFR 229.402, as in effect on July 1, 2003, or any later version as~~
 19 ~~established in rules and regulations adopted by the state corpora-~~
 20 ~~tion commission.~~

21 (b) No public utility providing excessive compensation to any em-
 22 ployee shall recover the value of the excess from the utility's ratepayers.

23 (c) The state corporation commission shall allow a public utility to
 24 recover from ratepayers only that employee compensation, including
 25 compensation of executives and senior management employees, which
 26 the commission finds ~~is~~

27 ~~(1) Benefits ratepayers;~~

28 ~~(2) is justified by the productivity, cost savings, quality of service,~~
 29 ~~overall performance and financial condition of the utility;~~

30 ~~(3) is reasonable compensation in comparison to regional norms in~~
 31 ~~the utility industry;~~

32 ~~(4) was paid within any test period, for work performed during the~~
 33 ~~test period;~~

34 ~~(5) will not result in unjust or unreasonable rates; and~~

35 ~~(6) is otherwise not excessive compensation;~~

36 (d) The state corporation commission shall review compensation of a
 37 public utility's employees as a part of any proceeding before the com-
 38 mission which may result in ~~an increase~~ a change of the utility's rates.
 39 The commission shall deny recovery from ratepayers that amount of the
 40 value of any compensation which the commission finds is excessive com-
 41 pensation or does not meet the conditions stated in subsection (c), by
 42 excluding that amount from the utility's cost of service, or otherwise ex-
 43 cluding it from rates. Whether shareholders have approved the compen-

- (1) "Affiliate" means any of a utility's affiliated interests, as defined in K.S.A. 66-1401, and amendments thereto.
- (2) "Compensation" has the meaning provided by 17 C.F.R. 229.402, as in effect July 1, 2003, or any successor to regulation which the commission adopts by rules and regulations upon a determination that such successor regulation accurately reflects actual compensation.
- (3) "Excessive compensation" means compensation which cannot reasonably be included in a utility's rates, as provided by rules and regulations adopted by the commission.
- (4) "Executive officer" means any person whose compensation is required to be disclosed pursuant to 17 C.F.R. 229.402, as in effect July 1, 2003.
- (5) "Public utility" has the meaning provided by K.S.A. 66-104, and amendments thereto.

and by such other factors as the commission deems appropriate

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1 sation in question shall not be considered by the commission in deter-
2 mining whether compensation is excessive compensation. A public utility
3 shall have the burden of proving that compensation of current, former
4 and departing employees, including compensation of executives and sen-
5 ior management employees, is not excessive compensation and that such
6 compensation meets the conditions stated in subsection (c) before recov-
7 ery of such compensation shall be allowed in rates.

8 (e) A ~~publicly traded~~ public utility shall file a clear, concise and
9 understandable disclosure statement on or before April 1 of each
10 year with the state corporation commission disclosing ~~the compen-~~
11 ~~sation ranges of the officers of the public utility~~ for the preceding
12 calendar year. ~~The disclosure statement required to be filed under~~
13 ~~this subsection shall be open for inspection by any person in ac-~~
14 ~~cordance with K.S.A. 45-218, and amendments thereto.~~

: (1) The compensation of each executive officer of the utility, each executive officer of each affiliate, each member of the board of directors of the utility and each member of the board of directors of each affiliate; and (2) the percentage of such compensation included in the utility's rates

15 (f) Any federal or state tax liabilities of any employee or public
16 utility for compensation considered excessive under this section shall not
17 reduce the amount that is to be excluded from the utility's cost of service
18 or otherwise excluded from rates.

19 (g) The provisions of this section shall apply to any proceedings
20 pending before the state corporation commission on the effective date of
21 this act and to all proceedings filed with the commission on or after that
22 date.

23 (h) The state corporation commission may adopt ~~reasonable~~
24 rules and regulations to implement the provisions of this section.

25 Sec. 2. This act shall take effect and be in force from and after its
26 publication in the statute book.

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