

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: FEBRUARY 12, 2003

Name	Representing
PAUL M. LING	KCPK
Bruce May	Southwestern Bell
Amy Conpholl (Shell, Stay)	Midwest Energy
Jack Glaves	Rube, P & KM
Dave Hotchous	KEC
LARRY IRICK	Westar Energy
James Ludwig	Westar Energy
MARK SCHREIBER	WESTAR ENERGY
Cynthia Smith	GPE
Jim Rush	KCPK
Anne Spiess	KITA - Telecom Ind. Assn
Denny Kowal	SBC
SCOTT SCHNEIDER	GRBA
STEVE JOHNSON	KANSAS GAS SERVICE

SENATE UTILITIES COMMITTEE GUEST LIST

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Name	Representing
Jim BARTLING	Atmos Energy
James P. Zakowia	Smithyman & Zakowia, Chd.
David Sprunze	Curb
Anne BOE	KCC
Lezette Digg	Leadership Lawrence
Chyll Shurt	Readership Mitchell County
Bruce Graham	KEPL
Debbi Root	Aquila
Kevin Baran	then law firm
Tom LOWRAX	AQUILA
GARY RATT	AQUILA
Jerry Shaffer	Aquila
JC Long	Aquila, Inc
Sara L. Bliaferko	Leadership Lawrence
Mandy Greedy	Readership Lawrence
Paul Johnson	PACK

February 10, 2003

DIRECT TESTIMONY

OF

JAMES P. ZAKOURA

Re: Senate Bill No. 51 and Senate Bill No. 80

Honorable Members of the Kansas Senate Utilities Committee:

1 I am James P. Zakoura. I am a Kansas licensed attorney, with a specialty in the areas
2 of energy and public utilities. I have practiced public utility and energy law before the Kansas
3 Corporation Commission for more than 25 years. I offer this testimony in my individual
4 capacity, and not on behalf of any current or former clients. However, I believe my experience
5 in working in the public utility area at the Kansas Corporation Commission, has allowed me
6 to gain certain insights that could be helpful to the Committee in its consideration of this
7 legislation.

8 It is my opinion that legislation in the area of Kansas ratepayer payment of excess
9 executive compensation, is both needed and helpful to Kansas ratepayers. In my opinion,
10 the Kansas Corporation Commission ("KCC") has, at present, the lawful right through its
11 broad, statutory mandate to set just and reasonable rates, to deny the inclusion of excess
12 management compensation, in the rates of Kansas retail electric, natural gas and telephone
13 ratepayers.¹ Therefore, it would be my position, that Senate Bill No. 51 make clear that the

¹ KCC authority would exist in all instances where the KCC establishes just and reasonable rates that reflect the cost of service of public utilities.

1 prohibition of excess compensation in retail rates that are enumerated in Senate Bill No. 51,
2 is non-exhaustive, and the KCC retains the right to further limit the pass through of excess
3 compensation in retail electric, natural gas and telephone rates.

4 As an overall beginning point, my experience is that the most difficult task in this area,
5 is to clearly identify the amount of compensation that is paid to specific management
6 personnel. Indeed, I have been attempting to ascertain, in KCC Docket No.
7 01-WSRE-949-GIE, for approximately 1-1/2 years, the total amount of compensation paid
8 during the last 4 years, to management personnel of Westar Energy, Inc.²

9 As a starting point, I would propose that Senate Bill No. 51 be expanded, to require
10 each public utility in the State of Kansas, to publicly file at the KCC, on or before April 1 of
11 each year, compensation paid to the 12 most highly compensated individuals that were
12 employees of the public utility at December 31 of the previous calendar year. In addition, I
13 would propose that if an individual was on the list of 12 most highly compensated employees
14 in a previous calendar year, but is not an employee of the utility at December 31 of the
15 immediately preceding calendar year, that such individual's compensation that is paid during
16 the year of his/her retirement or severance from the company, also be included as a public
17 filing requirement. It is my firm belief that public disclosure of this information is critical. Once

² In KCC Docket No. 01-WSRE-949-GIE, the KCC specifically ordered that management compensation was properly within the scope of the KCC Investigation Docket of Westar Energy, Inc.:

"Whether and how management is compensated, and for what events, is relevant to determine whether the actions management is proposing are in the public interest. Moreover, the magnitude of such compensation can affect the financial health of the regulated utility. As such, the requested information is relevant to the costs of WRI's restructuring plan as potential effects on the public, which is the critical subject matter of the June 26, 2001, hearing. (Second Discovery Order of the KCC, June 21, 2001, at p. 4)."

1 publicly disclosed, the various important constituents -- whether they be ratepayers, the KCC,
2 shareholders, or the Kansas Legislature -- can make the appropriate "informed" decisions.

3 Let me share with you an example of why I believe that "public disclosure" is critically
4 needed. Westar Energy, Inc., established in 1998 a "Split Dollar Life Insurance Program" for
5 its Senior executives, and recorded a \$58 Million liability in 1998 to cover such Program. The
6 public disclosures to the U.S. Securities & Exchange Commission ("SEC") of Westar Energy,
7 Inc., only disclosed specific payments made to one Executive Officer in January, 1999, and
8 to a second Executive Officer in January, 2002. Specific payments made, or to be made, to
9 four additional Executive Officers, were not publicly made until ordered (in the case of one
10 Executive) by the Kansas Corporation Commission in mid-2002, and as finally publicly
11 disclosed in the case of the remaining three Executive Officers of Westar Energy, Inc., in late
12 January, 2003 (in response to a demand for public disclosure).

13 The stated reasons for not publicly disclosing most of the payments under this
14 extremely large Insurance Program, was that four of the employees were not employed at
15 year end by Westar Energy, Inc. during the year of payment of such Insurance Amounts, and
16 thus under applicable SEC rules, disclosure was not required.

17 The KCC, and the public, is entitled to receive such compensation information, not only
18 because it can affect retail rates, but because it can also affect the overall financial health of
19 public utility companies (a fact noted by the KCC in the Westar Energy Investigation).

20 Turning to SEC regulations in the area of executive compensation, the SEC requires
21 that all companies (including public utilities) disclose the compensation of the six most highly
22 compensated employees, in a company's Proxy Statement, that is typically filed in April or
23 May of each year for a public company. However, the SEC apparently permits reporting of

1 some types of compensation on a "formula" basis that makes it extremely difficult to determine
2 the amount of executive compensation that has been or will be paid to Executive Officers of
3 public utility companies.

4 For example, to calculate payments that would have been made to certain Executive
5 Officers of Westar Energy, I had to review and make estimates based on dozens of SEC
6 documents filed for many years by Westar Energy at the SEC. To even come close to the
7 amount that might be payable, I had to review three years of SEC proxy statements, the
8 various pension and retirement plans, as well as Executive Salary Continuation Plans, and
9 make projections as to health, dental, accounting, and other various forms of compensation
10 and their future costs. After all of that research and future projections, analysis of various
11 provisions of the Internal Revenue Service Code was required, to come up with a realistic
12 estimation of payment amounts that could be made to Executive Officers of Westar Energy,
13 Inc.

14 Must this calculation be so complex and must it be done with no help from the
15 Company? Of course not. The legislation in this area, quite simply, should require the
16 Company to conduct the analysis that I discussed above, and to report in a simple, clear and
17 straight forward manner to the public, the amount of compensation that may be payable. In
18 fact, many companies provide such simplified and straight forward reporting to the public.

19 In summary, I would suggest that the proposed legislation be expanded, to provide
20 clear and straight forward annual reporting of compensation payable by public utility
21 companies to their 12 most highly compensated. Loop holes related to employee departures
22 from the company, that effectively circumvent SEC reporting of Executive Compensation,
23 should be firmly and finally closed by this legislation.

1 Turning to the specific language of Senate Bill No. 51, I would suggest as an inclusion,
2 a definition of "compensation." The definition of "compensation" could simply be the identical
3 definition of "compensation" that is used by the SEC for defining "compensation" for reporting
4 in SEC Forms, including the Proxy Statement. The SEC definition of "compensation" would
5 include salary, bonus, other types of annual compensation, restricted stock awards, securities
6 underlying options, and all other compensation. The SEC definition of "compensation"
7 includes both the category of annual compensation, and long-term compensation awards.

8 Again, turning to specific language of Senate Bill No. 51, it appears that Section 1(A)
9 through 1(K) expresses the concern that public utilities not include in their retail rates in
10 Kansas, Executive Officer compensation that is inordinately "top-heavy" to Executive Officers,
11 as compared to other utility employees. Perhaps a more direct and simpler substitution in the
12 Bill language could be that only compensation that is not "discriminatory" under the applicable
13 provisions of the United States Tax Code could be used. Title 26, Section 401(4) of the Tax
14 Code provides that a compensation plan is "qualified for purposes of a stock bonus, pension
15 or profit-sharing plan '(4) if the contributions or benefits provided under the plan do not
16 discriminate in favor of highly compensated employees (within the meaning of section
17 414(Q).'" The Tax Code, at Section 401 contains special rules relating to non-discrimination
18 requirements. In effect, adoption of such language as proposed in Senate Bill No. 51 would
19 generally require that only "qualified" plan payments could be included in Kansas retail rates.
20 Amounts above "qualified" plan payments would be at the sole expense of shareholders, if
21 they were paid by a public utility company.

1 With regard to Senate Bill No. 51, Section (1)(E), I am not clear as to the meaning of
2 such Section, and I would need additional clarity from the Committee before I could offer any
3 comment on such Section.

4 In summary, I would suggest to the Committee that it make the public disclosure
5 requirements of compensation for the 12 most highly compensated employees of public
6 utilities in the State of Kansas, to be an annual filing requirement, and not considered only at
7 those times where a rate application is under consideration by the KCC. I would further
8 propose to the Committee that any statutory language adopted make clear that all filing of
9 compensation reports would be completely open to the public, and that the presentation of
10 such compensation reports be in clear and concise language. Rather than implement new
11 definitions of "compensation" and "discriminatory compensation," I would suggest that the
12 Committee consider the definition of compensation as utilized by the SEC, and the "non-
13 discrimination" language used in the IRS Code.

14 Concerning Senate Bill No. 80, I am of the opinion that the proposed additional
15 language to K.S.A. 66-136 is very appropriate. I would, in addition, add a Section 66-136(c)
16 that simply states that no public utility assets may be assigned, leased, mortgaged, or pledged
17 for any purpose other than for public utility operations.

18 The recent history in Kansas in this area clearly demonstrates the need for the
19 proposed changes contained in Senate Bill No. 80. In KCC Docket No. 01-WSRE-949-GIE,
20 the Staff of the KCC has determined through its investigation that only approximately one-half
21 of the approximately \$3.2 Billion of debt of Westar Energy, Inc., is related to its public utility
22 operations. However, Westar Energy, Inc., has testified that public utility assets secure and
23 collateralize approximately \$2.9 Billion of such \$3.2 Billion of debt. Effectively, to continue to

1 utilize the public utility assets for the benefit of Kansas retail electric ratepayers, the debt for
2 the non-regulated business activities of Westar Energy, Inc., must be timely paid. In my
3 opinion, Kansas retail electric ratepayers are subsidizing through collateral and securitization,
4 the non-utility business debt of Westar Energy, Inc.

5 I thank you for the opportunity to present this testimony to the Senate Utilities
6 Committee, and for your consideration of these matters.

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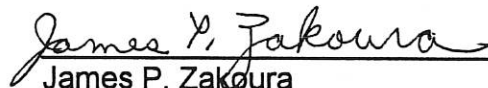
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**BEFORE THE SENATE UTILITIES COMMITTEE
PRESENTATION OF THE KANSAS CORPORATION COMMISSION
FEBRUARY 12, 2003**

SENATE BILL 51

Thank you, Chairman and members of the Committee. My name is Anne Bos, Assistant General Counsel for the Kansas Corporation Commission. I appreciate the opportunity to testify for the Commission today on Senate Bill 51.

From a policy perspective, the Commission has several concerns with the bill. Section 1 of the bill specifically and comprehensively defines excessive compensation with respect to public utility employees, executives, or senior management. Section 2 states that no public utility providing excessive compensation to any employee shall recover the value of the excess from the utility's ratepayers. In addition, the bill outlines under what circumstances the Corporation Commission may allow a public utility to recover employee compensation from Kansas ratepayers. Further, the bill requires the Commission to review compensation of public utility employees as a part of any proceeding that may result in an increase in rates.

The Commission believes that the policy directives outlined in SB 51 are already considered and applied by the Commission. The Commission consistently reviews expenditures by public utilities, whether related to compensation or otherwise, to ensure that ratepayers are not held responsible for excessive costs unrelated to providing efficient and sufficient service. It is explicitly stated in the current statutory scheme that the Commission has the duty to require that each public utility furnish sufficient and efficient service at just and reasonable rates. Implicit in the setting of just and reasonable rates is whether each expenditure claimed by the public utility whose rates are under review is in fact necessary and reasonable. Absent the passage of SB 51, the Commission and its Staff will continue to analyze and review, and disallow if necessary, any public utility employee compensation that appears to be excessive and not in proportion to the employee's duties or responsibilities.

Unless there are questions from the Committee, I have no further comments on Senate Bill 51. Thank you for the opportunity to appear before you this morning.

Senate Utilities
February 12, 2003
Attachment 2-1

Testimony before the Senate Committee on Utilities
In Opposition to Senate Bill No. 80

Tim M. Rush
Director, Regulatory Affairs
Kansas City Power & Light Company
February 12, 2003

Summary

The SB 80 provides for amending K.S.A. 66-136 to state that the assets of a utility may be sold, assigned, leased, transferred, mortgaged, pledged, or otherwise disposed of or encumbered upon authorization and conditions of the Commission.

As part of Docket No. 01-KCPE-708-MIS (In the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing Its Plan to Reorganize Itself Into a Holding Company Structure.), the Kansas Corporation Commission's Order establish certain financing conditions that require Commission approval. These conditions make Senate Bill No. 80 unnecessary.

Also, in Docket No. 01-WSRE-949-GIE (In the Matter of the Investigation of Actions of Western Resources, Inc. to Separate its Jurisdictional Electric Public Utility Business from its Unregulated Businesses.), the Commission essentially said that it has the authority to review and implement such actions as necessary

In addition, SB 80 could potentially interfere with basic transactions of the utility that currently do not receive Commission authorization. The breadth of the SB 80 could be construed to prevent the sale, assignment, lease or other disposition by a utility of an asset which is not necessary or useful in the performance of its duties to the public. This would burden the utility and Commission with unnecessary authorization requirements

KCPL respectfully requests that SB 80 not be made law.

Senate Utilities
February 12, 2003
Attachment 3-1

Testimony before the Senate Committee on Utilities
In Opposition to Senate Bill No. 80

Tim M. Rush
Director, Regulatory Affairs
Kansas City Power & Light Company
February 12, 2003

Thank you Chairman and members of the Committee for this opportunity to appear before you today and offer testimony on SB 80. Kansas City Power & Light ("KCPL") is opposed to this bill.

The SB 80 provides for amending K.S.A. 66-136 to state that the assets of a utility may be sold, assigned, leased, transferred, mortgaged, pledged, or otherwise disposed of or encumbered upon authorization and conditions of the Commission.

As part of Docket No. 01-KCPE-708-MIS (In the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing Its Plan to Reorganize Itself Into a Holding Company Structure.), the Kansas Corporation Commission's Order establish certain financing conditions that require Commission approval.

In the Order's Stipulation and Agreement Section II(F), KCPL agrees to the following financing conditions:

2. KCPL's common stock shall not be pledged as collateral or security for the debt of the Holding Company or a subsidiary without Commission approval.
3. KCPL will not guarantee the notes, debentures, debt obligations or other securities of any of the Holding Company or any of its subsidiaries, or enter into any "make-well" agreements without prior Commission approval.
12. GPE shall not, directly or indirectly, acquire or merge with a public utility or public utility holding company, nor will it allow itself to be acquired by a public utility or public utility holding company unless GPE has requested prior approval for such a transaction from the Commission.

Therefore, KCPL already will seek Commission approval to (1) pledge common stock as collateral or security for the debt of Great Plains Energy ("GPE") - the holding company of KCPL - or a subsidiary, (2) guarantee the notes, debentures, debt obligations or other securities of GPE or any of its subsidiaries, (3) enter any "make-well" agreements, or (4) acquire or merge with a public utility or public utility holding company. These approvals will occur without amending K.S.A. 66-136 as proposed in SB 80.

As can be seen in the Commission's actions with KCPL's Holding Company Authorization, the Commission already has taken action to put financing conditions on utilities.

Also, in Docket No. 01-WSRE-949-GIE (In the Matter of the Investigation of Actions of Western Resources, Inc. to Separate its Jurisdictional Electric Public Utility Business from its Unregulated Businesses.), the Commission stated:

The Commission has plenary authority under K.S.A. 66-101 to "supervise and control" the electric utilities doing business in Kansas and "is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction." The Commission has clear authority under K.S.A. 66-101h to "examine and inspect the condition of each electric public utility" and the "manner of its conduct and its management with reference to the public safety and convenience." Further, the Commission has the jurisdiction and authority to investigate, on its own initiative, any act or practice of an electric public utility that affects its ability to provide efficient and sufficient service at just and reasonable rates and to substitute such act or practice after investigation and hearing under K.S.A.2000 Supp. 66-1 01d. These provisions, by themselves, create sufficient authority for the Commission to carry out this investigation, since the actions, events and relationships described above may affect the utilities' ability to provide efficient and sufficient service at just and reasonable rates.

Any transaction that constitutes a "contract or agreement with reference to or affecting" the certificate of convenience is not valid until it is approved by the Commission pursuant to K.S.A. 2000 Supp. 66-136. One or more of the agreements which are a part of, or relate to, the actions, events and relationships described in Part I above may affect the utilities' ability to carry out the public utility responsibilities associated with their certificates of convenience. Consequently, the Commission has jurisdiction to investigate such agreements, declare them subject to K.S.A. 2000 Supp. 66-136, and require that they be brought to the Commission for approval.

From this it can be seen that the Commission has authority to investigate and require agreements to be approved. Therefore, SB 80 is unnecessary.

In addition, SB 80 could potentially interfere with basic transactions of the utility that currently do not receive Commission authorization. The breadth of the SB 80 could be construed to prevent the sale, assignment, lease or other disposition by a utility of an asset which is not necessary or useful in the performance of its duties to the public. This would burden the utility and Commission with unnecessary authorization requirements.

KCPL respectfully requests that SB 80 not be made law.



**TESTIMONY OF
JAMES W. BARTLING, MANAGER PUBLIC AFFAIRS
ATMOS ENERGY
BEFORE THE SENATE COMMITTEE ON UTILITIES
FEBRUARY 12, 2003**

Chairman Clark and Members of the Senate Committee on Utilities:

I appreciate the opportunity to speak before the Senate Committee on Utilities in opposition to SB 80. My name is Jim Bartling and I am Manager of Public Affairs for the Kansas portion of the Colorado-Kansas division of Atmos Energy Corporation. In Kansas we serve approximately 120,000 customers located in 107 communities within 39 counties. Atmos Energy serves approximately 1.7 million customers in 12 states.

As it is currently written, SB 80 would prohibit a utility from selling, assigning, mortgaging, pledging, etc. assets of more than \$500,000 without Kansas Corporation Commission (KCC) approval. We feel that not only is this requirement unnecessary, it would unduly delay the utility's financing process, thereby increasing the cost of operation for the utility and adversely affecting its customers.

If you look at the legislative history, you will see that this requirement had previously been law in Kansas. However, approximately five years ago the legislature removed this requirement from K.S.A. 66-125. Atmos Energy feels that there is no justification for reinstating this requirement and that the KCC currently has adequate oversight for utilities and adequate protection for customers.

When utility companies go out to issue debt or equity it is often done "at the moment" when market conditions are right. Requiring additional regulation would not only increase the cost associated with the financing, but it could also delay the financing to the extent that the favorable market conditions are no longer available. Additional costs associated with the financing could ultimately become increased rates for the customer.

This concludes my testimony, and I will be happy to answer questions at the appropriate time.

Senate Utilities
February 12, 2003
Attachment 4-1