

MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairperson Senator Stan Clark at 9:30 a.m. on February 13, 2003 in Room 231-N of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

 David Springe, Citizens' Utility Ratepayer Board
 Anne Bos, Staff Attorney, Kansas Corporation Commission
 Anne Spiess, Kansas Telecommunications Industry Assn.
 Larry Irick, Westar

Others attending: See attached list

In response to a request on February 6 when Jim Haines, President, Westar appeared before the joint committees on Utilities, Jim Ludwig provided information on shareholder demographics and compensation and length of term for Westar Energy's Board of Directors. (Attachment 1)

Senator Clark introduced the four pages serving in the Senate today from his district.

The Chair continued the hearing on

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

Proponents

David Springe, consumer counsel, Citizens' Utility Ratepayer Board stated that CURB is a proponent because it believes **SB 51** does the following three things that are important to the process of determining just and reasonable rates for public utilities and, therefore provides a benefit to consumers. (1) **SB 51** provides a specific definition of what is "excessive" when evaluating the appropriate level of executive compensation to place in consumer rates. (2) **SB 51** requires the Commission to make specific findings of fact before allowing the public utility to recover executive compensation in consumer rates. (3) **SB 51** places the burden of proof squarely on the utility. (Attachment 2)

Chair closed the hearing on **SB 51**.

The Chair continued the hearing on

SB 80 - Public Utilities, Commission approval for selling, assigning or leasing certain assets

Proponents

David Springe, consumer counsel, Citizens' Utility Ratepayer Board stated that CURB supports SB 80 as a reasonable protection for Kansas consumers against the harm of unregulated utility activities. (Attachment 3)

Neutral

Anne Bos, Assistant General Counsel, Kansas Corporation Commission, noted there is a perceived need by the KCC for this proposed legislation. The Commission's concern is that by specifying a dollar amount for public utility asset value, this would restrict the Commission's oversight over transactions involving less than that dollar amount. The Commission proposed an amendment and provided the language. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE SENATE UTILITIES COMMITTEE at on February 13, 2003 in Room 231-N of the Capitol.

Opponents

Anne Spiess, president, Kansas Telecommunications Industry Association, speaking in behalf of the incumbent local exchange carriers operating in Kansas as well as SBC and Sprint, felt **SB 80** would add another layer of unnecessary regulation to local company operations. (Attachment 5)

Larry Irick, vice president and corporate secretary of Westar Energy, Inc., voiced opposition to **SB 80** as being inconsistent with the rationale of the current statute KSA 66-136 which applies to the transfer of a franchise or certificate of convenience. Westar Energy objected to the amendment as overly broad in various respects and believes the current regulatory framework adequately protects ratepayers. (Attachment 6)

Chair closed the hearing on **SB 80**.

Approval of Minutes

Moved by Senator Tyson, seconded by Senator Emler, the minutes of the meetings of the Senate Utilities Committee held on January 27, 2003, January 28, 2003, January 29, 2003, January 30, 2003, February 3, 2003 and February 6, 2003, be approved. Motion carried.

The next meeting of the Senate Utilities Committee will be held on February 17, 2003.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 6

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: FEBRUARY 13, 2003

Name	Representing
David Spryng	Curb
Anne Spiess	KTIA - ks Telecom Ind. Assn.
Rebecca Lapide	Federico Consulting
Bruce Graham	KEPCo
Gay H. Burton	Kansas FB
Connie Burton	Morris Co. Farm Bureau
Stacy Sky	Melrose Energy
Fran Force	Coffey Co. Farm Bureau
JC Long	Aoule, Inc.
Linda Franklin	JKFB
Dusty Buell	Rottenberg + assoc.
Ralph A Claassen	Butler Co. FB
WILLIAM BAKER	FORD Co. F.B.
Lynda Foster	BB Co Farm Bureau
Donna Simpson	BB Co Farm Bureau
LARRY IRICK	Westar Energy



February 12, 2003

To: Members of the House and Senate Utilities Committees
From: Jim Ludwig
Subject: Inquiries pending from Jim Haines' Feb. 6 presentation

Rep. Sloan inquired about Westar Energy shareholder demographics, particularly about shareholders who formerly resided in Kansas but have relocated. Although we cannot track shareholders' past addresses, the attached information shows where most of our shareholders reside and how many are in neighboring states. The demographics are broken out between institutional investors and 'retail' owners. Retail owners fall into two categories: (1) those who have their shares registered in their own names; and (2) those who have their shares "beneficially" registered, typically under a brokerage or trust.

Another inquiry was made regarding compensation and length of term for members of Westar Energy's Board of Directors. Directors serve staggered three-year terms. Below is a summary of their compensation:

\$20,000 per year cash retainer, paid in \$5000 quarterly installments
\$18,500 per year in stock
\$19,000 per year in restricted share units, vesting ratably over three years

Directors who are not employees are also paid \$1000 for each committee meeting they attend (\$500 if they participate by telephone). Directors who chair Board committees receive an annual cash fee of \$4000. Directors are reimbursed for expenses incurred which are incidental to attending meetings.

Westar Energy Ownership Analysis

Outstanding Shares a/o 1/8/03	72,544,541				
Institutional ownership as obtained from NYSEnet	40,145,358	55.34%	Registered	14,081	5,455,300
Retail Ownership	32,399,183	44.66%	Beneficial	6,569	4,118,362
				20,650	9,573,662
Registered shareholders	13,494,220	18.60%			
Beneficial ownership	18,904,963	26.06%			
Average shares per account	68,217	475			

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Westar Energy Geographical Analysis

RES CD	RESIDENCE CODE DESCRIPTION	ACCOUNTS	SHARES	AVE/ACCT
KS	KANSAS	20,650	28.59%	9,573,662
MO	MISSOURI	5,885	8.83%	1,870,033
CA	CALIFORNIA	4,810	7.22%	2,086,850
FL	FLORIDA	3,220	4.83%	1,538,487
NY	NEW YORK	3,035	4.58%	1,649,631
IL	ILLINOIS	2,845	4.27%	1,185,064
TX	TEXAS	2,373	3.56%	1,016,891
OH	OHIO	1,668	2.50%	838,857
NJ	NEW JERSEY	1,520	2.28%	965,276
MI	MICHIGAN	1,462	2.19%	669,736
CO	COLORADO	1,243	1.87%	465,327
PA	PENNSYLVANIA	1,241	1.86%	1,579,393
OK	OKLAHOMA	1,204	1.81%	582,571

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

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SENATE UTILITIES COMMITTEE S.B 51

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
February 12, 2003

Chairman Clark and members of the committee:

Thank you for this opportunity to appear before you today and offer testimony on S.B 51. The Citizens' Utility Ratepayer Board is a proponent of this bill for the following reasons:

I will preface this testimony by noting three things. First, executive compensation is an issue that CURB, and other parties can and do review in every utility rate case. Second, the Kansas Corporation Commission has the discretion to deny any level of compensation it deems excessive and therefore not prudent. Third, it is possible that a utility, at the time of a rate case, may ask for less than the total compensation it pays its executives to be placed into consumer rates. Based on these three comments, it can be expected that some parties may suggest to the Committee that this bill is simply unnecessary. CURB would disagree with that assessment and suggests that the bill is necessary and provides a level of specific guidance that will benefit consumers.

S.B 51 does three things that CURB believes are important to the process of determining just and reasonable rates for public utilities, and therefore provide a benefit to consumers.

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1) S.B 51 provides a specific definition of what is “excessive” when evaluating the appropriate level of executive compensation to place in consumer rates. Without a specific definition, the determination of whether executive compensation levels are excessive is solely within discretion of the Commission. Legally, it is virtually impossible for a party, like CURB, who disagrees with the Commission’s determination in a case, to overturn that determination in court.¹ While S.B. 51 reduces the Commission’s discretionary powers by providing a specific definition to follow, the proposed language is not so strict as to eliminate the Commission’s discretion entirely. S.B 51 provides an appropriate balance between restricting the level of executive compensation allowed in consumer rates while allowing the Commission the flexibility to address the specific facts of each case.

2) S.B. 51, at Section (c) requires the Commission to make specific findings of fact as set forth in (c)(1) – (c)(6) before allowing the public utility to recover executive compensation in consumer rates. CURB believes that requiring these affirmative findings of fact by the Commission, when combined with the specific definition of what is considered “excessive” in Section (a) will provide a level of consistent review that is beneficial to consumers. The bill provides a specific template that must be followed in terms of findings of fact by the Commission. As such, this language provides a template for the utility to follow in making its request, a template for CURB or other parties to follow in reviewing the utilities request and a template for the Commission to follow in making its findings of fact in an order. CURB believes the template created in S.B. 51

¹ “Hence a court may not set aside an order of the commission merely on the ground that it would have arrived as a different conclusion had it been the trier of fact. It is only when the commission’s determination is so wide of the mark as to be outside the realm of fair debate that the court may nullify it” *Midwest Gas Users Association v. Kansas Corporation Commission*, 3 Kan. App. 2d. 376, 595 P.2d 735, review denied 226 Kan. 792 (1979)

will be beneficial to all parties by providing some level of certainty about how the review of compensation will be conducted, and by providing specific guidance as to what evidence will be necessary to support the specific findings of fact that must be made by the Commission.

3) S.B. 51, at Section (d) places the burden of proof squarely on the utility. Legally the burden of proof is always on the utility if the utility is seeking to change its approved tariff rates. However, in practice, the burden of proof often subtly shifts to the party arguing that certain costs should be disallowed. It becomes incumbent upon the party seeking to disallow certain costs to meet a high evidentiary burden, to convince the Commission to deny some level of what is contained in the utility's application. It often appears that there is a presumption that what the utility originally files is reasonable and prudent. By placing the burden squarely on the utility, providing a specific definition of what is to be considered "excessive" and requiring specific findings of fact by the Commission, this subtle shifting of the burden of proof should be minimized. By keeping the burden of proof squarely on the utility, consumers should benefit by preventing the Commission from being able to shift the evidentiary burden onto the parties opposing the utility rate increase.

In summary, when read together, these three components of S.B. 51 provide a specific structure with respect to the review of executive compensation that if followed will be beneficial to the utilities that come before the Commission, the parties, like CURB, that participate in the review of utility applications, and ultimately to the consumers who will pay in rates and cost of executive compensation allowed by the Commission.

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
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SENATE UTILITIES COMMITTEE S.B 80

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
February 12, 2003

Chairman Clark and members of the committee:

Thank you for this opportunity to appear before you today and offer testimony on S.B. 80. The Citizens' Utility Ratepayer Board is a proponent of this bill for the following reasons:

CURB was certainly disturbed to hear the recent public announcements by Aquila that it intended to issue debt on its utility properties to help pay for financial losses in its unregulated activities. What was more distressing was that Aquila also announced that it did not have to seek approval from the Kansas Corporation Commission to issue this debt. While the Commission does have plenary jurisdiction over Aquila's utility properties in Kansas, and could certainly initiate an investigation of its own accord, Aquila's announcement pointed out a large problem with the Kansas statutory framework that S.B. 80 will address. For that reason, CURB supports the language contained in the bill.

It is CURB's belief that regulated utility properties in Kansas, and the rates consumers pay for utility service, should not be used to fund unregulated activities by utilities. CURB has spent the last two years fighting Westar Energy over this very issue.

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Ultimately, increasing the debt on utility properties, and at the company level in general, may impair the Kansas utilities ability to provide sufficient and efficient service at just and reasonable rates in the future. This is certainly a situation CURB, and the consumers it represents, would hope to avoid.

S.B. 80 will require public utilities to seek approval of the Commission before selling, assigning, leasing, transferring, mortgaging, pledging or otherwise disposing of or encumbering the utility's assets with a book value greater than \$500,000. CURB believes that it is imperative that the Commission have this review authority so that public utilities in Kansas are not able to mortgage their utility assets to the detriment of Kansas utility customers.

I would note that there may be a potential conflict with the statutory language in K.S.A. 66-125. While the language in S.B 80 would apply to all utilities with a certificate to operate in Kansas, K.S.A 66-125 does provide an exemption for investor owned electric public utilities *incorporated* in Kansas, allowing these specific utilities to avoid filing for approval at the Commission before issuing debt if "the issuance requires a registration statement to be filed with the securities and exchange commission or such utility obtains an authorization or approval of such issuance from another state or federal agency". If the utilities addressed in K.S.A. 66-125 receive approval from any other agency, they merely have to file the information with the Commission, without seeking specific approval from the Commission. This exemption for certain utilities may run counter to what appears to be the intent of S.B. 80.

In summary, CURB supports S.B. 80 as a reasonable protection for Kansas consumers against the harm of unregulated utility activities.

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

SENATE BILL 80

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 80.

At the outset, the Commission would like to note its belief that it currently possesses the authority to regulate the sale, encumbrance or other disposition of public utility assets.

However, the Commission is also mindful of the perceived need for the proposed legislation. There have been numerous recent business transactions, both within Kansas and elsewhere, that indicate the need for legislative or Commission oversight over transactions involving the encumbrance, pledge, sale or other disposal of public utility assets, especially when those transactions involve public utility affiliates.

The Commission has consistently and over time interpreted the language of existing K.S.A. 66-136 to require Commission approval of transactions that attempt to secure debt that may not be used and useful for public utility operations with utility assets. Specifically, with respect to “contracts or agreements which may affect the franchise or certificate of the public utility”, the Commission has interpreted this language to include contracts with affiliates and has so ordered in several cases.

Originally, K.S.A. 66-1213 addressed the loan of funds or pledge of credit of a Kansas public utility to an affiliate and indicates in what circumstances the Commission may approve such an application. This section was repealed during the 2000 Legislative session and the current K.S.A. 66-1213a only provides for after the fact notice to the Commission of a loan of funds or pledge of credit. Further, K.S.A. 66-125 governs the issuance of stocks, certificates, bonds or other instruments of indebtedness by a public utility, but is limited to those public utilities that are incorporated within the State of Kansas.¹

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¹ Empire District Electric Company and Westar Energy are the only two public utilities governed by the Commission that are incorporated in Kansas.

The Commission is concerned that by specifying a dollar amount of \$500,000 for public utility as value, the Legislature intends to restrict the Commission's oversight over transactions involving less than \$500,000. On a cumulative basis, transactions not meeting the threshold may have a substantial impact, particularly if such transactions are part of a pattern. Such transactions are particularly detrimental to a public utility when such transactions involve affiliates. The Commission recommends that the legislation focus on the affiliate relations issue.

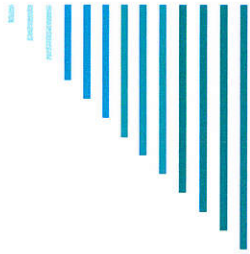
The Commission has conducted research to review how other states govern the pledge, sale, encumbrance or other disposition of public utility assets and believes that Colorado has effective legislation² in this regard. Therefore, as an alternative to SB 80, the Commission proposes the adoption of the following language:

No public utility governed by the Corporation Commission of the State of Kansas shall use ratepayer funds or public utility assets to subsidize unregulated, non-jurisdictional activities.

Adoption of this or similar language would address the Commission's concerns relating to affiliate transactions. If the Legislature considers this language to be a viable alternative to SB 80, the Commission also proposes that the Commission be permitted to adopt reasonable rules and regulations in order to effectuate the intent of the statute.

Unless there are questions from the Committee, I have no further comments on Senate Bill 80. Thank you for the opportunity to appear before you this morning.

² See, Colorado Revised Statutes, C.R.S. 40-3-114.



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Testimony of
Anne Spiess, President
Kansas Telecommunications Industry Association

Before the Senate Utilities Committee
Regarding SB 80
February 12, 2003

Chairman Clark and Members of the Committee:

Good morning, my name is Anne Spiess and I am President of the Kansas Telecommunications Industry Association or KTIA. Thank you for allowing me to appear before you this morning. KTIA's membership is made up of local telephone companies, wireless, long distance companies, and firms and individuals that provide service to and support for the telecommunications industry in Kansas.

KTIA is testifying today on behalf of the incumbent local exchange carriers operating in Kansas as well as SBC and Sprint. KTIA's membership understands that recent developments in the electric industry may warrant additional oversight by the Kansas Corporation Commission (KCC). However, SB 80, as written, will have unintended consequences on Kansas' local telephone companies requiring KCC approval of some normal business activities such as financing issues or switch retirement.

Telecommunications companies are already regulated by the KCC. Rural independent companies are subject to extensive KCC rate-of-return regulation, and the KCC is authorized to review investments and expenditures of the companies in audits. Other larger incumbent carriers, such as Sprint and SBC, are price cap regulated. In other words, their prices are "capped", protecting those customers from rate increases while the management is required to operate the business efficiently in the current competitive marketplace. As it now stands, SB 80 would add another layer of unnecessary regulation to local company operations.

In addition, some years ago the KCC agreed to elimination of its authority over telephone companies' transactions involving the issuance of securities and the granting of security interests. Re-institution and expansion of regulatory control

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over telecommunications transactions would reverse this trend, with a resulting increase in regulatory costs passed on to customers.

S.B. 80 provides no guidance to appointed regulators by elected representatives. The granting of such broad and undefined authority risks arbitrary administration in an increasingly competitive industry. This is not to suggest improper application by the present Commission or its staff, but no one can assure the future fair application of such broad authority once it is on the books.

Investment in basic and advanced telecommunications requires a degree of regulatory predictability. S.B. 80 would provide exactly the opposite, resulting in less investment and fewer opportunities for advanced communications for Kansans. Without evidence of a broad need for increased regulatory authority, such a broad delegation is unnecessary and unwise.

Therefore, to the extent the Committee presses forward on SB 80, KTIA proposes the following amendment at the end of new subsection (b) of Section 1:

> "The requirements of this subsection shall not apply to telecommunications public utilities."

With this amendment, KTIA would take a neutral position on the bill. Thank you for your consideration of our views regarding SB 80 and for the opportunity to introduce myself to you in my new capacity with KTIA. I look forward to working with all of you on this bill and other telecommunications issues.

**Testimony before the
Senate Utilities Committee
By
Larry Irick, Vice President and Corporate Secretary
Westar Energy, Inc.
February 12, 2003**

Chairman Clark and members of the committee, I am Larry Irick, Vice President and Corporate Secretary of Westar Energy.

I am here this morning to present Westar Energy's opposition to Senate Bill No. 80. This bill amends K.S.A. 66-136 so that the statute requires a public utility to obtain advance authorization from the Kansas Corporation Commission to sell, lease, mortgage, pledge or otherwise dispose of assets having a book value of greater than \$500,000.

Westar Energy raises the following objections to the amendment:

We believe the amendment is overly broad in various respects:

- It applies to all assets of a public utility rather than utility assets.
- It applies to ordinary course of business transactions, most of which have no special characteristic other than size suggesting a need for further scrutiny.

We believe the current regulatory framework adequately protects ratepayers.

- The prudence of all such transactions is currently reviewed in rate proceedings and reflected in rates.
- Many sale transactions involving utility assets are already subject to KCC or FERC approval.
- Borrowings by public utilities incorporated in Kansas already require KCC approval, with limited exceptions. The mortgage or pledge of assets is intrinsically related to these transactions.

We believe the amendment is inconsistent with the underlying rationale of the current statute. The current statute applies to the transfer of a franchise or certificate of convenience--rights created by statute. Since the rights are created by statute, it is appropriate for the statute to regulate the means for their assignment or transfer. This rationale is not present when other kinds of assets are being sold, transferred or leased.

Westar Energy requests that you oppose Senate Bill No. 80.

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