Approved: 2-21-03
Date

MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairperson Senator Stan Clark at 9:30 a.m. on February 17, 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:
Earl Watkins, Sunflower Electric, Hays
Mike Palmer, Empire District Electric Company
Bruce Graham, KEPCO
Tim Rush, Great Plains Energy
Steve Ferry, VP, Electric Operations Aquila/Kansas
Terry Leatherman, KCCI
Larry Holloway, KCC
David Springe, CURB

Others attending: See attached list

Chair opened the hearing on:
SB 104 - Prior authorization of ratemaking principles and treatment, KDFA issuance of bonds

Proponents

L. Earl Watkins, Executive Vice President and General Counsel, Sunflower Electric Power Corporation, explained the development steps for the Sand Sage Project - a new coal-fired power plant in southwest Kansas. They have worked with International Energy Partners and DTE Energy Services to form a partnership in the development. There are four steps to be completed - (1) necessary permits; (2) identification of investors; (3) construction phase and (4) long-term off-take customers. Problems facing this project are the turbulent financial marketplace and the inadequacies of the existing regional transmission system. This proposed legislation would provide a level of comfort to the credit ratings agencies, the capital markets and the utility. Sunflower has met with KCC regarding **SB 104** but no agreement was reached. They are asking that the language give lenders and credit rating agencies some comfort about ratemaking principles that will be utilized in new generation and/or transmission projects to determine the financial fate of sponsoring utilities and utilizes any tool at their disposal that will encourage the expansion of needed transmission facilities in Kansas. (Attachment 1)

Mike Palmer, Vice President, Commercial Operations, the Empire District Electric Company, stated that **SB 104** would give them the needed assistance to make the best decisions for Kansas ratepayers. This bill would allow the utility to present their plans to the KCC for determination of ratemaking principles for the construction costs of new generation. **SB 104** is crucial for long-term energy cost stability for Kansas ratepayers. (Attachment 2)

Bruce Graham, Vice President of Member Services and External Affairs, Kansas Electric Power Cooperative, Inc. (KEPCO) supports the concept outlined in **SB 104** that would permit utilities to request that the KCC review a construction project or contract and issue ratemaking principles in advance. (Attachment 3)

Tim Rush, Director, Regulatory Affairs, Kansas City Power & Light Company, is in support of this bill and has some concerns with part of this bill. KCPL supports Section 1. KCPL suggests that in Section 1(c)& (d) the 90-day period be revised to twelve months. KCPL is generally opposed to Section 2. (Attachment 4)

MINUTES OF THE SENATE UTILITIES COMMITTEE at on February 17, 2003 in Room 231-N of the Capitol.

Steve Ferry, Operating Vice President, Kansas Electric, Aquila, Inc., on behalf of Aquila, supports **SB 104.** He suggests that Section 2 be stricken from the bill. (Attachment 5)

Terry Leatherman, Vice President, Legislative Affairs, Kansas Chamber of Commerce & Industry, noted KCCI supports state and federal legislation and regulation that will result in a predictable process, which creates investment certainty for regulated utilities. KCCI views this bill as an economic development measure. (Attachment 6)

Opponents

Larry Holloway, Chief of Energy Operations, Kansas Corporation Commission, stated the Commission does not support the provisions of Section 1 and 2 of **SB 104.** The reasons for not supporting this bill are set forth in detail in his written testimony. He provided a markup of **SB 104** that attempts to allow additional public input to compensate for this assumption of risk. (Attachment 7)

David Springe, Consumer Counsel, Citizens' Utility Ratepayer Board, opposed the bill because CURB believes the language in Section 1 of **SB 104** is extremely vague and the bill in its current form should not be adopted. (Attachment 8)

Due to the lack of time for questions, the Chair appointed a subcommittee consisting of Vice Chair Emler, Ranking Minority Barone and Sen. Taddiken to conduct further study on **SB 104** and report back to the Senate Utilities Committee. The subcommittee will continue the hearing on **SB 104** on Wednesday, February 19 at 9:30 a.m. in Room 231-N.

The next meeting of the Senate Utilities Committee will be on February 18.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 8

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: **FEBRUARY 17, 2003**

Name	Representing
Earl Watkins	Sunflower
Steve Miller	"
JC Tong	AQUILA
Tom Day	KCC
Whitney Damron	Empire
Mike Palmer	Empire
Steve Johnson	Kansas Gas Service
Bruce Graham	KEPCo
David Springe	Curb
Mark Schreiber	Westar Energy
Larry Holloway	KCC
Cynthia Suson	OPE
Tom Rusk	Kansas City Power & Light
Kevin Bakewe	Hein law firm
Shelly Stoup Amy Campbell	Midwest Energy
Doug Smith	Pinegar, Smith & Assoc.

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: **FEBRUARY 17, 2003**

Name	Representing
Paul Johnson	PACE

TESTIMONY SUBMITTED TO THE
SENATE UTILITIES COMMITTEE
By
L. Earl Watkins, Executive Vice President and General Counsel
SUNFLOWER ELECTRIC POWER CORPORATION

February 17, 2003

Thank you, Mr. Chairman and members of the Committee for providing Sunflower time to speak today on Senate Bill 104, a proposal we believe will improve the electric power supply and delivery systems in Kansas.

It is my hope that I can show you this morning that the power industry has, and continues to evolve as a result of:

- Efforts to implement retail wheeling across the country,
- Failures endured by states that prematurely enacted retail choice legislation,
- Bankruptcies of large companies like Enron,
- Continuing efforts at the federal level to transform the nation's power delivery systems from a model of local service to an interstate system that provides for power deliveries across our country, and
- Uncertainties in capital markets due to all of the above.

These events, and many others not listed above, have caused changes, nationwide, that affect the willingness and ability of all utilities to invest in the infrastructure needed so we can, as a nation, continue to meet the demands of consumers at the lowest long-term cost.

Sand Sage Project—

As many of you know, Sunflower has been actively working to develop a new coal-fired power plant in southwest Kansas that would adjoin our existing facilities. That 600 MW facility is expected to cost approximately $800 million and is forecast, in a study prepared, at our request, by Dr. Ralph Gamble of Fort Hays State University to result in a $2.5 billion positive impact on the economy, much of that to the Kansas economy.

Dr. Gamble's report shows that 1,117 jobs per year will be created with annual earnings of $35,468,178 during the 41-month construction period.

The report concludes that 149 permanent jobs would be created in Kansas by this project and 127 would exist outside our borders with a combined annual income of more that $10,650,000.

It is important to understand that Sunflower will not own this new plant. Investors, most of whom will be regional utilities, will use the plant for their native loads, or will sell the plant's output to other regional load-serving utilities. The benefits to Sunflower from this project are development fees, lease income, reduced operating costs, and fees we will receive for the operation and maintenance of the new facility. It will also provide us with another source of power when our units are not capable of serving our Member's load.

Development Partners—

Sunflower has worked to develop this project with International Energy Partners, a developer of independent power plant projects headquartered in Bethesda, Maryland, since August 2001. We recently entered into an additional agreement with our newest joint development partner, DTE Energy Services, an operating company owned by DTE Energy.

Based in Ann Arbor, Michigan, DTE Energy Services develops, builds, owns and operates energy projects for industrial, institutional and commercial customers and for the merchant electricity market. DTE Energy Services has more than 25 projects in operation, construction and development in North America.

Development Process—

We talk frequently about this project being similar to a four-legged milking stool. The first leg is comprised of necessary permits, the second is the identification of investors, the third is contracting for the construction phase (or EPC process) on a fixed-price

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turnkey basis, and finally, the fourth is identifying long-term off-take customers. These four legs are the keys that help keep this project moving forward.

For the most part, we have completed the development of three of these legs; only one needs to be completed. That leg is the off-take customer leg. We currently are working with 14 regional utilities who we believe are viable candidates for ownership or power purchase agreements (PPAs) from the new plant. While the majority of these candidates are from outside our state, we continue to have interest from several Kansas utilities.

One of the problems facing Kansas utilities, and consequently the Sand Sage project, is the turbulent financial marketplace any utility must face when considering a long-term investment in a power plant or a long-term PPA. The second problem is the inadequacies of our existing regional transmission system. These two problems are the reason we're here today and why we believe you should support this legislation.

It is our considered opinion that without this legislation, the probabilities of our project becoming a reality are "wounded." We also believe that without this legislation, the prospects for any Kansas utility participating in this project or any other baseload unit in the near future are nil.

Volatility in Credit Markets—

Our experience in marketing the Sand Sage project is showing us that without some certainty as to the expected return and cost recovery, utilities are increasingly hesitant to make investments in or purchases from baseload generating facilities. That signal is coming primarily from lenders and from credit ratings agencies that have altered their financial analytical methodology significantly as uncertainty continues to reverberate through the industry. Lenders simply are unwilling to finance investments without an understanding of what the risks they assume may be.

To summarize the issue, a utility that agrees to invest directly in a power plant must raise the capital for the investment, which usually increases debt load and can adversely impact its credit ratings.

Recently, credit rating analysts have begun to impute debt obligations to utilities that sign long-term PPAs, because the ironclad payment obligations to the power seller are not matched by a reliable stream of payments from the buyer's customers due to regulatory uncertainty. The result can be a credit rating downgrade that can make the needed financing either impossible or more expensive.

Our proposed legislation would provide a level of comfort to the credit ratings agencies, the capital markets, and the utility, all before a firm commitment is made by a utility to a project. We believe the Commission can fashion orders that would protect ratepayers. If costs rise during construction, the utility is at risk.

The net effect of the proposal is lower capital costs to the utility which obviously will benefit the ultimate consumer.

Transmission System Inadequacies—

As all of you know, concerns about the regional transmission system are widespread. I don't know of anyone involved with the power industry that isn't aware of the problems related to available transmission capacity and the ability of utilities to import and export power. The efforts by the Congress, FERC, and the developing regional transmission organizations (RTOs) have resulted in many operational difficulties for every utility in the country. While many say the problems will ultimately be resolved by the RTOs, our experience is that our potential customers for the Sand Sage project are having difficulty committing to this supply because of intolerable delays by the power pools as they get further and further behind in processing myriad requests for transmission service.

Section 2 of the SB 104 would require the KCC to annually provide an evaluation of the condition of the Kansas transmission system to the Legislature. I must admit that we are

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in a very small minority of people who think this is a good idea. As a matter of fact, we may be the only ones testifying today that support this idea.

We still believe it is a good idea for you to have that evaluation so that sensible policy making can occur in this body with regard to our transmission system. Most will suggest that it is preferable to let this work be accomplished by regional organizations. I want to emphasize that we still believe you need this information, but I want to be the first today to suggest that an amendment be considered to strike the language in Section 2. The inaugural report of our State Energy Resource Council indicates they are going to study the system in the coming year. We're satisfied with that goal, but we hope this issue will remain a priority for the Legislature.

No utility is going to make a significant transmission investment unless regulators agree the investment is needed to relieve constraints and no one knows, with certainty, what the constraints are without a regional study. Thus, we all just wave at the air and say there are problems. We need meaningful action.

KDFA Financing—

We've included the long-suffering KDFA language in this bill for one simple reason. Anyone who may be interested in building a transmission facility should have access to the financing available through KDFA. While we don't have anything specifically in mind, we continue to believe it is a no cost, no risk way for the State to encourage to construction of transmission facilities.

We are in negotiations with Xcel Energy to relocate their planned AC-DC-AC converter station from Lamar, Colorado to Holcomb Station. There is a good possibility that Sunflower will become a 50% participant in that project. We would ask that if this language prohibits the financing of that facility, that it be amended to include this unique project.

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Kansas Corporation Commission meeting—

In preparation for this hearing, Sunflower met recently with all three KCC Commissioners, their General Counsel Susan Cunningham, and Larry Holloway, Chief of Energy Operations. Our purpose was to discuss the concepts contained in this bill with the idea that we could achieve a consensus prior to this hearing.

One of the many subjects we discussed in that meeting was the recent repeal of Kansas' siting act. If that law were still in place, it would have provided some indication of the regulatory comfort with a proposed project. Sunflower went through the Siting Act with its Holcomb 1 facility. The Commission approved the siting and necessity of the plant, but did not make a determination of how the plant would be treated in setting rates. We believe that law would not be helpful in today's environment. It simply would not provide the comfort lenders and credit rating agencies require before committing to power plant or transmission projects because it did not include the approval of a cost recovery mechanism.

Another issue we discussed was the use of an integrated resource planning (IRP) process to ensure that the public has an opportunity to have input in any large decision they may later be required to pay for. It is our opinion that process results in a significant bias toward short-term decisions that generally favor natural gas. The reason this occurs is simple: gas-fired units have a significantly lower capital cost. Unfortunately, we believe that with the volatility of the natural gas market, a diminishing supply and a growing concern that gas be preserved for residential purposes, these low-cost investments will suffer from wild swings in fuel costs which end up costing the consumers more than would be experienced with coal-base plants that typically have a much higher capital cost but much lower fuel cost and contracts for fuel that are of much longer duration.

Naturally, a primary concern discussed with the Commission was "shifting" risk from utilities to ratepayers. In Iowa, which we will discuss soon, the Iowa Commission reduces the utility's rate of return to reflect the lowering of risk. The utility still has certainty; the ratepayers enjoy lower costs.

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Our meeting lasted for nearly two hours and many good ideas were exchanged among us. While we didn't achieve the consensus we hoped for, we did agree to continue our communications and information sharing with one another. We look forward today to their ideas about our proposal and hope that in some way we can arrive at a "win-win" solution for the utilities and the ratepayers as well as for those who must oversee our operations.

We agree that if anyone, including the Commission, has another idea that addresses these real problems, we will support it. Doing nothing is not a solution.

Legislation in Other States—

After meeting with the Commission, we learned that a law very similar to the one we're proposing this morning has already been enacted in Iowa and their Utilities Board has acted on at least one proposal submitted to them by MidAmerican Energy Co. We've attached their 2001 Session Law and Iowa Utilities Board (IUB) order, in the MidAmerican case, to this testimony to help demonstrate what is beginning to occur in our region.

We are also aware of similar legislation that is currently under consideration in the Missouri legislature. It, too, is attached for your review.

State Energy Resources Coordination Council

Recognition that Kansas has become a net importer of energy highlighted the recent, inaugural report of the State Energy Resources Coordination Council (SERCC). Their report stated,

> "Until the energy price collapse in mid-1980's, Kansas was a net exporter of energy (Figure 1). Without a significant increase in primary energy supply, Kansas has become a significant net importer of energy. Kansas will need to sell more products to pay for our growing energy demands. Innovative methods to

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increase the production of clean, copious, and low-cost energy will be required to avoid shrinking the Kansas economy," (State Energy Plan, page 22).

In the years 2001 through 2007, the SERCC predicts that electric energy production will increase in Kansas by 18% while consumption will increase by 22%. While Sunflower's plant at Holcomb is one of the newer plants in the state, by 2007 it will have been in service for 24 years.

As I said earlier, the SERCC reports they will study Kansas' electrical transmission network, and it will look at energy programs in other states. That satisfies our basic concerns about the transmission network for now, but I certainly hope it will remain as a high priority for all policymakers. We simply feel that all of us must keep "Kansas First" when considering the transmission challenges we face.

Summary—

Mr. Chairman, and members of the Committee, I want to thank you for the endurance it took for you to hear this testimony. We also want to thank you for repealing the Siting Act and for enacting the recent property tax incentives for power plants. Without those past efforts, Sunflower would probably not be here today.

While this proposal will certainly help Sunflower achieve its goals with regard to the Sand Sage project, we believe this is good policy for the State if we are to continue to encourage the development of baseload power plants in Kansas.

Sunflower has tried, with this proposal, to propose legislative solutions to significant, real-time problems being experienced by our industry. We are willing to compromise this language so long as we come away with language that:

- Gives lenders and credit rating agencies some comfort about ratemaking principles that will be utilized in new generation and/or transmission projects to determine the financial fate of sponsoring utilities;

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- Utilizes any tool at our disposal that will encourage the expansion of needed transmission facilities in Kansas.

What we're asking for is perhaps "outside the box." But it takes leadership to do that and we think this Committee, the KCC, and the State's public utilities can work together to achieve these principles.

Thank you for your time. I'd be happy to answer your questions.

Testimony of Mike Palmer
Vice President – Commercial Operations
The Empire District Electric Company
Before the Senate Committee on Utilities
February 17, 2003

In Support of Senate Bill 104

I would like to thank the Committee Chair, Senator Clark, and members of the Committee on Utilities for this opportunity to address the committee.

I am Mike Palmer, Vice President of Commercial Operations with The Empire District Electric Company, located in Joplin, Missouri. Empire is an investor owned electric utility serving a 10,000 square mile area in Kansas, Oklahoma, Arkansas, and Missouri.

Our company, as well as other companies in the state of Kansas, is facing increased generation requirements due to new load, growth of existing load, and the possible retirement of aging power plants. As we approach these decisions to provide for new generation, we have hit a roadblock that may not allow us to choose the long-term lowest rate solution. I believe SB 104 will give us the needed assistance to make the best decisions for Kansas ratepayers.

This bill would allow us to present our plans to the Kansas Corporation Commission for determination of ratemaking principals for the construction costs of new generation. This would allow us to go to Wall Street with the approval from the KCC showing how the financing would be recovered. We believe this would provide some certainty to Wall Street. In turn, an investment with a lower level of risk would translate into lower interest rates and then lower electric rates for our customers.

We know that coal generation is currently the best option for base load power. A 600 MW coal plant can cost around 1 billion dollars and take 7 to 8 years to plan and build. The same size of natural gas power plant would cost around 325 million and take half the time to build. Without certainty to take to the financial markets, the gas plant may be the only option we have. We all know the problem with gas plants, the fuel cost is currently 3 to 5 times higher than coal and extremely volatile, resulting in a long-term higher cost for electricity for the customers.

We believe Senate Bill 104 is crucial for long-term energy cost stability for Kansas ratepayers.

I would be glad to answer any questions from the committee.

Senate Utilities
February 17, 2003
Attachment 2-1

KEPCo

Kansas Electric Power Cooperative, Inc.

Testimony on Senate Bill 104
Senate Utilities Committee -- February 17, 2003

Bruce Graham, Vice President of Member Services and External Affairs
Kansas Electric Power Cooperative, Inc. (KEPCo)

Kansas Electric Power Cooperative, Inc. (KEPCo) supports the concept outlined in SB 104 that would permit utilities to request that the KCC review a construction project or contract and issue ratemaking principles in advance.

The power supply market is changing very quickly and dramatically. Companies that just one year ago were considered blue chip investments are gone or are treading water. The credit markets are skittish about utility loans and, as a result, have downgraded the ratings of numerous companies.

During the 2000 Session of the Kansas Legislature, the Electric Generation Siting Act was repealed. KEPCo supported the siting act repeal and it was a proper decision in order to streamline the construction process. As part of that previous siting act requirement, KCC review and approval implied that the project was necessary. However, that "pre-approval" prelude certainly did not bind the KCC to a ratemaking decision once the utility completed construction and filed an application to include it in rates.

Electric utilities accept KCC authority to determine the need for a project and permit appropriate recovery in rates. The process serves to protect consumers from costs deemed excessive or imprudent. That authority will not be altered through action on SB 104.

SB 104 simply recognizes that times have changed. No utility will build unnecessary generation or enter into frivolous contracts. The credit markets will not support such activities and the KCC has the authority at any time to investigate and disallow such costs. This bill simply sends a message to the markets that the project is necessary and asks the KCC to state what they will expect from the utility in order to recover the cost of the project from ratepayers. If a utility acts outside of those parameters, then they will have to justify the action or face disallowance. This will likely improve the rating of the utility's debt for the project, lower the interest rate, and save money for the customer. It will force the utility to very carefully evaluate the project or contract and live within the means of the filing throughout the construction term in order to receive

Phone: 785.273.7010
Fax: 785.271.4888
www.kepco.org

P.O. Box 4877
Topeka, KS 66604-0877

600 Corporate View
Topeka, KS 66615

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adequate recovery. Therefore, SB 104 seems to be helpful to the utility and is customer friendly as well.

KEPCo is not taking a position on New Section 2 which would require the KCC to conduct an annual review of the state's transmission facilities and identify constraints and necessary improvements. Utilities are already aware of constraints and the necessary solutions. Much of the delay in new construction can simply be attributed to uncertainty. Between possible action by the U.S. Congress on an electricity bill that would impact transmission, FERC action on Standard Market Design, the formation of Regional Transmission Organizations, possible federal takeover of existing transmission facilities, and other mandates, companies have been reluctant to invest in new transmission. There is merit to action by the State of Kansas to work with the utilities to maintain adequate transmission service across the state as well as import and export energy as needed. However, the action as outlined in Section 2 is probably already within the KCC's scope of authority.

On a related note, when decisions are made to upgrade transmission facilities, access to KDFA financing as outlined in New Sec. 3 would be helpful. This language was approved by the House last year and again this session as a component of HB 2018. The House did make an amendment to this language permitting KDFA financing for the construction, upgrading and acquisition of transmission lines with a capacity of at least 69kv.

Thank you for your consideration of this testimony.

KEPCo is a generation and transmission utility that provides wholesale electricity and other services to 19 rural distribution cooperatives with member/consumers across two-thirds of rural Kansas.

Testimony before the Senate Committee on Utilities
In General Support of Senate Bill No. 104

Tim M. Rush
Director, Regulatory Affairs
Kansas City Power & Light Company
February 17, 2003

Thank you Chairman and members of the Committee for this opportunity to appear before you today and offer testimony on SB 104. Kansas City Power & Light ("KCPL") is in support of part of this bill, and has some concerns with part of this bill.

In the pertinent parts, SB 104 provides for adding new sections to K.S.A 74-8905. New Section 1, allow public utilities to request prior determination of ratemaking principles and treatment by the Commission for utility construction or purchase power contracts. New Section 2, requires the Commission to conduct an annual evaluation of the state's transmission facilities. New Section 3, addresses the issuance of certain bonds by the Kansas development authority. I do not have formal comments on New Section 3.

SB 104 Section 1:

KCPL supports Section 1. This Section is about ensuring electric utilities can get the lowest possible interest rates on the financing required to construct or improve utility generation or transmission facilities.

The passage of SB 104 Section 1 would achieve four important goals:

1. This legislature will be implementing a long-term policy decision to assist the electric utilities and the Commission strategically plan for future rate-based asset investment and ensure in the long-term, that adequate capacity is available for Kansans.
2. The investment community, the utility and others will receive the indication of stability from the pre-approval of the rate-based asset investment.
3. Construction of large investment, long-term projects such as coal-fired generation units will become more feasible.
4. Consumers and the utility will benefit from lower financing costs of future construction and improvements of rate-based assets.

I will briefly explain each of these four important goals.

1. SB 104 Section 1 will allow utilities and the Commission to strategically plan for long-term future rate-based investment to meet the future energy needs of

Kansans. By having both parties aware of the plan, long-term future load growth requirements can be met with rate-based facilities when needed.

2. With the investment community concern over financial risk issues in the energy sector, SB 104 Section 1 will provide an indication of stability for rate-based asset construction or improvements made by electric utilities. This has become very important as lowered financial ratings are causing utility's access to capital to be more difficult and expensive. By securing pre-approval, electric utilities can take this determination to the investment community as part of a financing package. In this fashion, consumers, the Commission, investors and the utility understand how this facility or contract will be implemented, its costs and the expected advantages. Uncertainty is reduced and access to lower-cost capital will be more available.

3. Large investments, like coal-fired generation facilities, often require long lead times of typically five to eight years, or even longer. SB 104 Section 1 will encourage utilities to consider large, cost efficient construction projects necessary to meet future energy needs.

4. Consumers benefit from SB 104 Section 1. Customers save through lower interest costs to the utility and ultimately lower rates to the customer. This savings in interest rates could amounts to millions of dollars.

KCPL would suggest that in SB 104 Section 1(c) & (d) that the 90-day period be revised to twelve months. Because of the complex financing package required for a large project, the 90-day period would likely be inadequate for the coordination and negotiations necessary for success.

SB 104 Section 2:

KCPL is generally opposed to Section 2. This Section requires the Commission to conduct an annual evaluation of the transmission facilities. Several modifications to this section would make this provision less onerous.

As a member of Southwest Power Pool (SPP), KCPL is required to comply with certain planning requirements of the North American Electric Reliability Counsel (NERC). With this requirement, extensive studies of the transmission network are already being performed today by both KCPL and SPP. Some of these studies are done twice per year, once prior to the summer period and once prior to the winter period. These studies are typically out in May and December. The study process at SPP is open to the public so the Staff could get directly involved.

If it is the intent of this legislation to simply use the Commission as the conduit for reporting to the Legislature, then KCPL does not oppose this provision. KCPL would not

want the KCC to undergo their own transmission studies as this would unnecessarily duplicate efforts for which KCPL and ultimately consumers of Kansas would have to pay for.

Thank you for your time and I would be glad to answer any questions from the Committee.

Senate Utilities Committee

Testimony in Favor of SB No. 104
by
Steve Ferry, Operating Vice President - Kansas Electric
Aquila, Inc.

Mr. Chairman and members of the Committee:

My name is Steve Ferry and I am the Operating Vice President for the Kansas Electric division of Aquila, Inc. Aquila - Kansas Electric, formerly WestPlains Energy, provides reliable and economic electric service to 68,500 retail and 23 wholesale customers in central and western Kansas. Within Kansas, Aquila owns and operates 385 megawatts of generation located in four power stations, is an 8% participant (178 megawatts) in the Jeffrey Energy Center, and purchases the entire 110 megawatt output of the Gray County Wind Farm. In addition to generation, Aquila owns and operates 1,083 miles of 115,000 and 230,000 volt high voltage transmission line.

On behalf of Aquila, I support the passage of Senate Bill No. 104.

The Bill provides for the regulatory pre-approval for ratemaking purposes of power supply purchases and additions and transmission facilities. The Bill also provides for the issuance of revenue bonds for the financing of transmission facilities.

Section 1. In previous testimony before this Committee, I summarized Aquila's future needs in Kansas for generation and transmission. While adequate for now, Aquila's power supply resources by 2005 are forecast to be insufficient to serve the needs of its Kansas customers. Several options, including power supply purchases and generating additions, are being investigated to supply the shortfall. Regardless of which option(s) are determined to be best, the Company will need to raise capital to fund the resource additions.

Aquila, and presumably other utilities, will need to attract capital to permit construction of generation and transmission facilities. These facilities are absolutely essential for utilities to provide safe, reliable and economic electric service to their customers. In order to attract that capital, Aquila must demonstrate to prospective investors and lenders that it can earn an adequate return on their investment.

Regulatory pre-approval of the ratemaking treatment for the assets, in advance of actual commitment and financing, provides assurance to prospective investors and lenders that the utility will be able to earn an adequate return on their investment.

Section 2. I support the need to provide assurance that Kansans have and will have a reliable transmission system. However, the annual analysis of the State's transmission system proposed by this section is redundant to other analyses already being prepared by

Regional Reliability Organizations (i.e., Southwest Power Pool) and will be prepared by Regional Transmission Organizations (i.e., Midwest Independent System Operator.) Aquila therefore suggests that this section be stricken from the bill.

Section 3. Also in previous testimony before this Committee, I discussed how Aquila's transmission system was adequate to serve current customer needs, but is limited on import and export capability. Going forward, I see the need for significant transmission reinforcement to integrate new wind and traditional generation additions in Kansas. The revenue bonds proposed by SB 104 will provide additional financing alternatives for transmission facilities. The availability of these bonds, together with the surcharge provisions contained in proposed House Bill 2130, which passed the House last Thursday on a vote 122-0, will simplify transmission construction financing.

Thank you Mr. Chairman for the opportunity to appear before you today in support of SB 104. I would be pleased to try and answer any questions you may have.

LEGISLATIVE TESTIMONY

the Kansas Chamber of Commerce and Industry
The Unified Voice of Business

835 SW Topeka Blvd. • Topeka, KS 66612-1671 • 785-357-6321 • Fax: 785-357-4732 • E-mail: kcci@kansaschamber.org • www.kansaschamber.org

SB 104

February 17, 2003

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony before the Senate Committee on Utilities
By Terry Leatherman, Vice President – Legislative Affairs

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to present testimony this morning in support of SB 104.

KCCI supports state and federal legislation and regulation that will result in a predictable process, which creates investment certainty for regulated utilities. Further, KCCI supports a regulatory process that will enhance, encourage and expand energy production, transmission and distribution. SB 104 appears to embody both concepts. By providing a utility with a clear understanding of how it will recoup expansion costs, it will encourage utility investment in new and expanded electric generation and transmission.

The availability of affordable electricity is an important component in the state's infrastructure that will encourage business growth. To the extent SB 104 promotes investment in our state's electric generating and transmission capacity, KCCI would view this bill as an economic development measure.

Thank you for the opportunity to provide brief comments in support of SB 104.

About the Kansas Chamber of Commerce and Industry
The Kansas Chamber of Commerce and Industry (KCCI) is the leading broad-based business organization in Kansas. KCCI is dedicated to the promotion of economic growth and job creation and to the protection and support of the private competitive enterprise system.

KCCI is comprised of nearly 2,000 businesses, which includes 200 local and regional chambers of commerce and trade organizations that represent more than 161,000 business men and women. The organization represents both large and small employers in Kansas. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

BEFORE THE SENATE UTILITIES COMMITTEE
PRESENTATION OF THE
KANSAS CORPORATION COMMISSION
February 17, 2003
SB 104

Thank you Chairman and members of the Committee. I am Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission. I appreciate the opportunity to be here today to testify for the Commission on SB 104.

The purpose of my testimony is to provide information and perspective on SB 104. This legislation consists of two major provisions. The first provision is contained in sections 1 and 2 and involves Commission pre-approval of ratemaking principles before a public utility commits to construction, participation or contractual obligations involving new electric transmission or generation facilities. The second provision, contained in the remainder of the bill involves financing such projects by bond issuance. The Commission's comments will be directed toward section 1 and 2 of the bill.

The Commission does not support the provisions of section 1 and 2 of SB 104. To explain the Commission's position I will address each section separately, beginning with section 2.

Section 2 of SB 104 requires the Commission to conduct an annual evaluation of the state's transmission facilities in cooperation with jurisdictional Kansas public utilities and present an annual study to the legislature.

First, these provisions are unnecessary because the Commission already has the broad authority it needs to conduct such an investigation with jurisdictional utilities. Unlike K.S.A. 66-1,169a, which allows the Commission to obtain information regarding generation capacity from otherwise non-jurisdictional municipal utilities, this bill only addresses jurisdictional utilities. This adds nothing to the Commission's authority or powers needed to conduct such an investigation for all of Kansas because, as written, it only addresses jurisdictional utilities.

Second, the apparent objective of this section of SB 104, to obtain an annual assessment of transmission facilities, is being performed now. The relevant regional reliability councils identify transmission constraints annually. It is important to understand that not only do these organizations have the unique technical expertise to analyze the transmission system, they also have the necessary information. A study put together based solely on the input of Kansas utilities, even if it included all utilities and not just those jurisdictional to the KCC, would not have the necessary information to identify load flows in and out of Kansas from nearby states. To illustrate how important this out of state information is, a newly constructed power plant on the Texas Oklahoma border was identified by the Southwest Power Pool as causing transmission constraints on KCPL's Kansas Stillwell to LaCygne 345 KV line. A Kansas-only study would never have identified this problem and would not identify problems affecting Kansas electric utilities and their customers caused by line constraints in other states. Without appropriate information from the surround ding states, the value of a Kansas-only study is in question.

Third, a Kansas-only transmission study would also require much time and effort, from both the jurisdictional utilities and the Commission. Given the limited technical value of such a Kansas-only study, the Commission respectfully suggests its limited resources might be better utilized on other activities. The legislature would get better information at less cost, by requesting a report from the regional reliability council at the beginning of each session. The legislature has made numerous such requests of both the Southwest Power Pool and the Midwest ISO in the past and these organizations have always responded to such requests.

Section 1 of SB 104 presents a different set of issues. Section 1 of SB 104 allows a KCC jurisdictional electric utility to request pre-approval of ratemaking principles and treatment before it enters into an agreement to contract with, or otherwise participate in, the construction of generation or certain transmission facilities. This has the effect of shifting the risk of any bad decisions to the electric utility's customer, while the bill as drafted allows no compensating ability for customer input into this decision making process.

The bill also contains language that would limit the Commission's ability to reconsider its decision later. However, it does not place this same burden on the utility. The utility has 90 days to decide whether or not it will go forward with a project, once it has obtained pre-approval from the Commission. However, if the utility decides unilaterally to not participate, it is merely required to notify the Commission. In other words, after spending the time and effort to convince the Commission and the public that the proposed endeavor is reasonable and necessary, the utility may decide, with no justification or explanation, that it is no longer interested in the project.

In discussions with Sunflower, the Commission has been made aware of a similar law in Iowa and related decisions. This law has been provided for your review. However, when considering this bill, the committee should also consider other provisions, not only of the particular Iowa law, but also of other aspects of Iowa law and public utility regulation. First, the Iowa law that adopted similar pre-approval requirements required the Commission to assure the public that various public interest needs were preserved in the Commission's review. You have a copy of the Iowa bill. As stated in section 3 of the Iowa bill:

> "The construction, maintenance, and operation of the facility will be consistent with reasonable land use, and environmental policies and consonant with reasonable utilization of air, land, and water resources, considering available technology and the economics of available alternatives."

Additionally the same section of the bill requires the public utility to have selected its proposal through a competitive bid process and that the facility must be in Iowa. There are no similar provisions to require a competitive bid process and construction in Kansas in SB 104.

Not only does section 1 of SB 104 not contain public protection provisions equal to that of the Iowa bill, it also does not contain other provisions of the Iowa bill that were added to protect the public interest of the citizens of Iowa. Section 10 of the bill establishes elaborate emissions reporting requirements for Iowa coal power plants. Additionally, Section 11 of the bill

requires each electric utility, even those not regulated by the Iowa Utilities Board, to file plans for alternative energy purchase programs. SB 104 addresses neither of these sections.

Iowa law and regulation requires many measures beyond that mentioned by anyone promoting this bill. As shown on the handout from the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy (DOE EERE) Iowa also requires the following:

- Net metering (passed by the Iowa Senate in 1998) for customer generation from renewable resources;
- Integrated Resources Planning, whereby each public utility must file a twenty year resource plan with the Iowa Utilities Board every two years;
- Public funding of the Iowa Energy Center through a kilowatthour surcharge on all electric customers' bills;
- and a mandated 105 megawatts of electricity generated through renewable resources.

Furthermore, as shown in the handout containing Iowa statutes, Code 2001: Section 476.6 contains numerous additional requirements for electric public utilities, including:

- Electric and gas energy efficiency programs and plans that must meet, among other criteria, a "societal test" (476.6.17);
- Electric energy supply and cost review hearings (476.6.16);
- and electric and gas utilities must file an energy efficiency implementation plan which must contain programs for low-income persons and investment in customer energy conservation devices, among other requirements, and be subjected to "contested case proceedings" conducted by the Iowa Utilities Board (476.6.19).

Finally there is the "economic development" aspect of the overall proposal. You may hear that this has the potential for economic development by encouraging construction of one or more proposed generating plants. However, the bill as drafted does not require that the facilities are to be constructed in Kansas. I would also remind you that many people said that Holcomb 1 would bring tremendous economic benefits to Western Kansas when it was built in the early

1980s. If you are not aware of the impact the subsequent electric rate hikes had on the western Kansas economy throughout the 1980s and early 1990s, please ask your colleagues.

While the Commission opposes the first two sections of SB 104, it also recognizes that today's financial markets may require some assurance. It should be noted that the Commission is currently authorized to respond to requests for preapproval of the transactions envisioned here. The difference of course is that this bill would make those decisions irrevocable.

Nonetheless, the Commission recognizes the potential this bill has in encouraging transmission development in the state. Furthermore, unlike generation, there are few competitive choices available as a reasonable substitute for needed electric transmission. Additionally, electric transmission is clearly a natural monopoly and will likely be a regulated utility service for the foreseeable future. For these reasons, the Commission believes there may be some justification for a simpler preapproval process for regulatory treatment of transmission projects.

While the Commission does not support section 1 or 2 of this bill, it does believe that if the Committee wishes to adopt this legislation the Committee should also address the monumental shift in risk from the utility to the public. Attached is a markup of SB 104 that attempts to allow additional public input to compensate for this assumption of risk. While this additional language does not address all of the Commission's concerns, it does at least assure that the public has the opportunity for additional input into the decision making process regarding generating plant choices before the public is asked to assume the risk for the utility's decisions. In addition, the language in the attached markup would assure that outside entities that may otherwise be precluded from a utility's generation supply procurement process have an equal opportunity to present options to the utility and the public. Furthermore, the revised language recognizes the unique characteristics of electric transmission and the need for additional transmission capacity.

SENATE BILL No. 104

By Committee on Utilities

AN ACT relating to public utilities; concerning prior determination of ratemaking principles and treatment by the corporation commission; authorizing the issuance of certain bonds by the Kansas development finance authority; amending K.S.A. 74-8905 and repealing the existing section.

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

New Section 1. (a) As used in sections 1 and 2, and amendments thereto:

(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) ''cost'' means the total installed cost of the facility;

(4) ''generating facility'' means any electric generating plant, ~~transmission system addition involving equipment of at least 115 kilovolts~~ or improvement to existing generation ~~or transmission~~ facilities located in Kansas;

(5) "transmission facility" means any electric transmission system addition involving equipment of at least 115 kilovolts or improvement to existing transmission facilities constructed in Kansas;

(~~5~~6) ''stake'' means a public utility's whole or fractional ownership share or leasehold or other proprietary interest in a generating facility or a transmission facility; and

(~~6~~7) ''public utility'' has the meaning provided by K.S.A. 66-104, and amendments thereto.

(b) (1) Prior to undertaking the construction of, or participation in, a new transmission facility ~~or prior to entering into a new contract~~, a public utility may file with the commission a petition for a determination of the ratemaking principles and treatment 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 ~~or the recovery in rates of the contract during the term thereof~~.

(2) The commission shall issue an order setting forth the ratemaking principles and treatment that will be applicable to the public utility's stake in the transmission facility ~~or to the contract~~ in all ratemaking 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 ~~or the cost of purchased power under the contract~~ is considered shall utilize the ratemaking principles and treatment applicable to the transmission facility ~~or contract~~.

(4) If the commission fails to issue a determination within 180 days of the date a petition for a determination of ratemaking principles and treatment is filed, the ratemaking principles and treatment proposed by the petitioning public utility will be deemed to have been approved by the commission and shall be binding for ratemaking purposes during the useful life of the transmission facility ~~or during the term of the contract~~.

(5) If the commission does not have jurisdiction to set wholesale rates for use of the facility the commission need not consider ratemaking principles and treatment for wholesale rates for the transmission facility.

(c) (1) Prior to undertaking the construction of, or participation in, a new generating facility or prior to entering into a new contract, a public utility may file with the commission a petition for a determination of the ratemaking principles and treatment 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 generating facility during the expected useful life of the generating facility or the recovery in rates of the contract during the term thereof.

(2) Prior to seeking a commission determination under (1) the public utility shall have received commission approval of its generation supply plan. This approval shall include a commission review of: (A) The public utility's energy conservation measures, including, but not limited to tariffs and rates to encourage conservation and peak shaving; (BThe public utility's other demand side management efforts; (C) The public utility's generation and load forecasts for the period of the contract or commitment or a minimum of ten years; and (D) Any and all requests for proposal issued by the public utility to procure the necessary generating facility or purchase power agreement being submitted for commission determination.

(3) In considering the public utility's supply plant the commission may consider if the public utility issued a request for proposal for a wide audience of participants willing and able to meet the needs identified under the public utility's generating supply plan, and if the public utility selected among the most reasonable, reliable and efficient alternatives.

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

(5) The commission in all proceedings in which the cost of the public utility's stake in the facility or the cost of purchased power under the contract is considered shall utilize the ratemaking principles and treatment applicable to the facility or contract.

(6) If the commission fails to issue a determination within 180 days of the date a petition for a determination of ratemaking principles and treatment is filed, the ratemaking principles and treatment proposed by the petitioning public utility will be deemed to have been approved by the commission and shall be binding for ratemaking purposes during the useful life of the facility or during the term of the contract.

(~~c~~d) The public utility shall have 90 days from the effective date of the determination of the commission to notify the commission whether it will construct or participate in the construction of the generating or transmission facility or whether it will perform under terms of the contract.

(~~d~~e) If the public utility notifies the commission within the 90-day period that the public utility will not construct or participate in the construction of the facility or that it will not perform under the terms of the contract, then the determination of ratemaking principles pursuant to subsection (b) shall be of no further force or effect, shall have no precedential value in any subsequent proceeding, and there shall be no adverse presumption applied in any future proceeding as a result of such notification.

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

New Sec. 2. (a) In order to help ensure the highly reliable delivery of electric power to citizens of Kansas, responsible transmission reliability organizations and transmission operators will be required to annually submit a report to the commission and the legislature. This report shall: ~~the commission shall conduct an annual evaluation of the state's transmission facilities in cooperation with jurisdictional Kansas public utilities. The study shall:~~

(1) Identify transmission system constraints; and

(2) Identify the specific improvements necessary to eliminate the constraints.

(b) ~~After such determination, a public utility may file with the commission to undertake construction of such facilities as described in subsection~~

~~(b) of section 1, and amendments thereto.~~

~~(c) The costs of the annual evaluation will be allocated through existing commission policies.~~

~~(d) Annually,~~ For purposed of this report, annually shall mean prior to the 10th day of each regular session of the legislature~~, the commission shall submit a written report of the evaluation to the governor and the legislature~~.

LAWS OF THE 2001 REGULAR SESSION OF THE SEVENTY-NINTH GENERAL ASSEMBLY OF THE STATE OF IOWA

CHAPTER 4 (2001 Extraordinary Session)

ELECTRIC POWER GENERATION AND TRANSMISSION — MISCELLANEOUS PROVISIONS

H.F. 577 Bill History

AN ACT relating to electric power generation and transmission, by addressing the criteria for construction or lease of an electric generating facility, and for the development of ratemaking principles to apply to certain electric generating facilities; waivers; providing for the development of a state electric energy policy; providing for alternate energy purchase programs; approval of plans and budgets for regulating emissions from coal-fired plants; providing for joint agreements for acquisition of ownership of a joint facility for electric power generation and transmission, and for the planning, financing, operation, and maintenance of the joint facility; providing for the bonding authority of electric power agencies; and making certain other changes and requirements related to electric generation and transmission; and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 12C.1, subsection 1, Code 2001, as amended by 2001 Iowa Acts, House File 637,[1] section 4, is amended to read as follows:

1. All funds held by the following officers or institutions shall be deposited in one or more depositories first approved by the appropriate governing body as indicated:for the treasurer of state, by the executive council; for judicial officers and court employees, by the supreme court; for the county treasurer, recorder, auditor, and sheriff, by the board of supervisors; for the city treasurer or other designated financial officer of a city, by the city council; for the county public hospital or merged area hospital, by the board of hospital trustees; for a memorial hospital, by the memorial hospital commission; for a school corporation, by the board of school directors; for a city utility or combined utility system established under chapter 388, by the utility board; for a library service area established under chapter 256, by the library service area board of trustees; and for an electric power agency as defined in section 28F.2 or 476A.20, by the governing body of the electric power agency. However, the treasurer of state and the treasurer of each political subdivision or the designated financial officer of a city shall invest all funds not needed for current operating expenses in time certificates of deposit in approved depositories pursuant to this chapter or in investments permitted by section 12B.10. The list of public depositories and the amounts severally deposited in the depositories are matters of public record. This subsection does not limit the definition of "public funds" contained in subsection 2. Notwithstanding provisions of this section to the contrary, public funds of a state government deferred compensation plan established by the executive council may also be invested in the investment products authorized under section 509A.12.

Sec. 2. Section 12C.1, subsection 2, paragraph b, Code 2001, is amended to read as follows:

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b. "Public funds" and "public deposits" mean the moneys of the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision; any court or public body noted in subsection 1; a legal or administrative entity created pursuant to chapter 28E; an electric power agency as defined in section 28F.2 or 476A.20; and federal and state grant moneys of a quasi-public state entity that are placed in a depository pursuant to this chapter.

Sec. 3. Section 28F.2, Code 2001, is amended to read as follows:

28F.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. ~~The terms "public~~ "Public agency", "state", and "private agency" shall have the meanings prescribed by section 28E.2.

2. ~~The term "project"~~ "Project" or "projects" ~~shall mean~~ means any works or facilities referred to in section 28F.1 and shall include all property real and personal, pertinent thereto or connected with such project or projects, and the existing works or facilities, if any, to which such project or projects are an extension, addition, betterment or improvement.

3. "Electric power agency" means an entity financing or acquiring electric power facilities pursuant to this chapter or chapter 28E or 476A.

Sec. 4. Section 427.1, subsection 2, Code 2001, is amended to read as follows:

2. MUNICIPAL AND MILITARY PROPERTY. The property of a county, township, city, school corporation, levee district, drainage district, or the Iowa national guard, when devoted to public use and not held for pecuniary profit, except property of a municipally owned electric utility held under joint ownership and property of an electric power facility financed under chapter 28F ~~which~~ or 476A that shall be subject to taxation under chapter 437A and facilities of a municipal utility that are used for the provision of local exchange services pursuant to chapter 476, but only to the extent such facilities are used to provide such services, which shall be subject to taxation under chapter 433, except that section 433.11 shall not apply. The exemption for property owned by a city or county also applies to property which is operated by a city or county as a library, art gallery or museum, conservatory, botanical garden or display, observatory or science museum, or as a location for holding athletic contests, sports or entertainment events, expositions, meetings or conventions, or leased from the city or county for any such purposes, or leased from the city or county by the Iowa national guard or by a federal agency for the benefit of the Iowa national guard when devoted for public use and not for pecuniary profit. Food and beverages may be served at the events or locations without affecting the exemptions, provided the city has approved the serving of food and beverages on the property if the property is owned by the city or the county has approved the serving of food and beverages on the property if the property is owned by the county.

Sec. 5. Section 437A.3, subsection 17, paragraph b, Code 2001, is amended to read as follows:

b. An electric power generating plant where the acquisition cost of all interests acquired exceeds ten million dollars. For purposes of this paragraph, "electric power generating plant" means each nameplate rated electric power generating plant owned solely or jointly by any person or electric power facility

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financed under the provisions of chapter 28F or 476A in which electrical energy is produced from other forms of energy, including all equipment used in the production of such energy through its step-up transformer.

Sec. 6. Section 437A.6, subsection 1, paragraph b, Code 2001, is amended to read as follows:

b. Facilities owned by or leased to a municipal utility when devoted to public use and not held for pecuniary profit, except facilities of a municipally owned electric utility held under joint ownership or lease and facilities of an electric power facility financed under chapter 28F or 476A.

Sec. 7. Section 437A.7, subsection 2, paragraph a, Code 2001, is amended to read as follows:

a. Transmission lines owned by or leased to a municipal utility when devoted to public use and not for pecuniary profit, except transmission lines of a municipally owned electric utility held under joint ownership and transmission lines of an electric power facility financed under chapter 28F or 476A.

Sec. 8. Section 476.1A, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. Filing alternate energy purchase program plans with the board, and offering such programs to customers, pursuant to section 476.47.

Sec. 9. Section 476.1B, subsection 1, Code 2001, is amended by adding the following new paragraphs:

NEW PARAGRAPH. m. An electric power agency as defined in chapters 28F and 476A that includes as a member a city or municipally owned utility that builds transmission facilities after July 1, 2001, is subject to applicable transmission reliability rules or standards adopted by the board for those facilities.

n. Filing alternate energy purchase program plans with the board, and offering such programs to customers, pursuant to section 476.47.

Sec. 10. Section 476.6, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 16B. ELECTRIC POWER GENERATING FACILITY EMISSIONS.

a. It is the intent of the general assembly that the state, through a collaborative effort involving state agencies and affected generation owners, provide for compatible statewide environmental and electric energy policies with respect to regulated emissions from rate-regulated electric power generating facilities in the state that are fueled by coal. Each rate-regulated public utility that is an owner of one or more electric power generating facilities fueled by coal and located in this state on July 1, 2001, shall develop a multiyear plan and budget for managing regulated emissions from its facilities in a cost-effective manner.

(1) The initial multiyear plan and budget shall be filed with the board by April 1, 2002. Updates to the plan and budget shall be filed at least every twenty-four months.

(2) Copies of the initial plan and budget, as well as any subsequent updates, shall be served on the environmental protection division of the department of natural resources.

(3) The initial multiyear plan and budget and any subsequent updates shall be considered in a contested case proceeding pursuant to chapter 17A. The environmental protection division of the department of

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natural resources and the consumer advocate shall participate as parties to the proceeding.

(4) The department of natural resources shall state whether the plan or update meets applicable state environmental requirements for regulated emissions. If the plan does not meet these requirements, the department shall recommend amendments that outline actions necessary to bring the plan or update into compliance with the environmental requirements.

b. The board shall not approve a plan or update that does not meet applicable state environmental requirements and federal ambient air quality standards for regulated emissions from electric power generating facilities located in the state.

c. The board shall review the plan or update and the associated budget, and shall approve the plan or update and the associated budget if the plan or update and the associated budget are reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards. In reaching its decision, the board shall consider whether the plan or update and the associated budget reasonably balance costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system.

d. The board shall issue an order approving or rejecting a plan, update, or budget within one hundred eighty days after the public utility's filing is deemed complete; however, upon good cause shown, the board may extend the time for issuing the order as follows:

(1) The board may grant an extension of thirty days.

(2) The board may grant more than one extension, but each extension must rely upon a separate showing of good cause.

(3) A subsequent extension must not be granted any earlier than five days prior to the expiration of the original one-hundred-eighty-day period, or the current extension.

e. The reasonable costs incurred by a rate-regulated public utility in preparing and filing the plan, update, or budget and in participating in the proceedings before the board and the reasonable costs associated with implementing the plan, update, or budget shall be included in its regulated retail rates.

f. It is the intent of the general assembly that the board, in an environmental plan, update, or associated budget filed under this section by a rate-regulated public utility, may limit investments or expenditures that are proposed to be undertaken prior to the time that the environmental benefit to be produced by the investment or expenditure would be required by state or federal law.

g. The board shall report to the general assembly by January 21, 2003, on the appropriateness and desirability of requiring the municipal utilities and the rural electric cooperatives to file multiyear plans and budgets for managing regulated emissions from their electric power generating facilities fueled by coal and located in this state, similar to the process required for rate-regulated public utilities under this subsection.

Sec. 11. NEW SECTION. 476.47 ALTERNATE ENERGY PURCHASE PROGRAMS.

1. Beginning January 1, 2004, an electric utility, whether or not rate-regulated under this chapter, shall offer an alternate energy purchase program to customers, based on energy produced by alternate energy production facilities in Iowa.

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2. The board shall require electric utilities to file plans for alternate energy purchase programs offered pursuant to this section.

a. Rate-regulated electric utilities shall file plans for alternate energy purchase programs that allow customers to contribute voluntarily to the development of alternate energy in Iowa, and shall file tariffs as required by the board by rule.

b. Electric utilities that are not rate-regulated shall offer alternate energy purchase programs at rates determined by their governing authority, and shall file tariffs with the board for informational purposes only.

3. The electric utility shall notify consumers of its alternate energy purchase program and any proposed modifications to such program at least sixty days prior to implementation of the program or any modification.

4. For purposes of this section, an electric utility may base its program on energy produced by alternate energy production facilities located outside of Iowa under any of the following circumstances:

a. The energy is purchased by the electric utility pursuant to a contract in effect prior to July 1, 2001, and continues until the expiration of the contract, including any options to renew that are exercised by the electric utility.

b. The electric utility has a financial interest, as of July 1, 2001, in the alternate energy production facility that is located outside of Iowa, or in an entity that has a financial interest in an alternate energy production facility located outside of Iowa.

c. The energy is purchased by an electric utility that is not rate-regulated and that is required to purchase all of its electric power requirements from a single supplier that is physically located outside of Iowa.

5. This section shall not apply to non-rate-regulated electric utilities physically located outside of Iowa that serve Iowa customers.

6. Any consumer-owned utility may apply to the board for a waiver under this section, and the board, for good cause, may grant the waiver.

Sec. 12. Section 476.53, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

476.53 ELECTRIC GENERATING AND TRANSMISSION FACILITIES.

1. It is the intent of the general assembly to attract the development of electric power generating and transmission facilities within the state in sufficient quantity to ensure reliable electric service to Iowa consumers and provide economic benefits to the state.

2. The general assembly's intent with regard to the development of electric power generating and transmission facilities, as provided in subsection 1, shall be implemented in a manner that is cost-effective and compatible with the environmental policies of the state, as expressed in Title XI.

3. a. If a rate-regulated public utility files an application pursuant to section 476A.3 to construct in Iowa a baseload electric power generating facility with a nameplate generating capacity equal to or greater

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than three hundred megawatts or a combined-cycle electric power generating facility, or an alternate energy production facility as defined in section 476.42, or if a rate-regulated public utility leases or owns in Iowa, in whole or in part, a new baseload electric power generating facility with a nameplate generating capacity equal to or greater than three hundred megawatts or a combined-cycle electric power generating facility, or a new alternate energy production facility as defined in section 476.42, the board shall specify in advance, by order issued after a contested case proceeding, the ratemaking principles that will apply when the costs of the facility are included in regulated electric rates.

b. In determining the applicable ratemaking principles, the board shall not be limited to traditional ratemaking principles or traditional cost recovery mechanisms.

c. In determining the applicable ratemaking principles, the board shall make the following findings:

(1) The rate-regulated public utility has in effect a board-approved energy efficiency plan as required under section 476.6, subsection 19.

(2) The rate-regulated public utility has demonstrated to the board that the public utility has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply. The rate-regulated public utility may satisfy the requirements of this subparagraph through a competitive bidding process, under rules adopted by the board, that demonstrate the facility or lease is a reasonable alternative to meet its electric supply needs.

d. The applicable ratemaking principles shall be determined in a contested case proceeding, which proceeding may be combined with the proceeding for issuance of a certificate conducted pursuant to chapter 476A.

e. The order setting forth the applicable ratemaking principles shall be issued prior to the commencement of construction or lease of the facility.

f. Following issuance of the order, the rate-regulated public utility shall have the option of proceeding with construction or lease of the facility in Iowa, or withdrawing its application for a certificate under chapter 476A.

g. Notwithstanding any provision of this chapter to the contrary, the ratemaking principles established by the order issued pursuant to paragraph "e" shall be binding with regard to the specific electric power generating facility in any subsequent rate proceeding.

Sec. 13. Section 476A.4, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 5. A proceeding for the issuance of a certificate under section 476A.5 may be consolidated with a contested case proceeding for determination of applicable ratemaking principles under section 476.53.

Sec. 14. Section 476A.6, Code 2001, is amended to read as follows:

476A.6 DECISION — CRITERIA.

The board shall render a decision on the application in an expeditious manner. A certificate shall be issued to the applicant if the board finds all of the following:

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1. The services and operations resulting from the construction of the facility are ~~required by the present or future public convenience, use and necessity~~ consistent with legislative intent as expressed in section 476.53 and the economic development policy of the state as expressed in Title I, subtitle 5, and will not be detrimental to the provision of adequate and reliable electric service.

2. The applicant is willing to ~~perform such services and~~ construct, maintain, and operate the facility pursuant to the provisions of the certificate and this chapter.

3. The construction, maintenance, and operation of the facility will ~~cause minimum adverse~~ be consistent with reasonable land use~~;~~ and environmental~~, and aesthetic impact~~ policies and ~~are~~ consonant with reasonable utilization of air, land, and water resources, ~~for beneficial purposes~~ considering available technology and the economics of available alternatives.

~~4. The applicant, if a public utility as defined in section 476.1, has in effect a comprehensive energy management program designed to reduce peak loads and to increase efficiency of use of energy by all classes of customers of the utility, and the facility in the application is necessary notwithstanding the existence of the comprehensive energy management program. As used in this subsection, a "comprehensive energy management program" includes at a minimum the following.~~

~~a. Establishment of load management and interruptible service programs, where cost effective.~~

~~b. Development of wheeling agreements and other energy sharing agreements, where cost effective with utilities that have available capacity.~~

~~c. Establishment of cost effective energy efficiency and renewable energy services and programs.~~

~~d. Compliance with board rules on energy management procedures.~~

~~5. The applicant, if a public utility as defined in section 476.1, shall demonstrate to the board that the utility has considered sources for long term electric supply from either purchase of electricity or investment in facilities owned by other persons.~~

~~6. The applicant, if a public utility as defined in section 476.1, has considered all feasible alternatives to the proposed facility including nongeneration alternatives; has ranked those alternatives by cost; has implemented the least cost alternatives first; and the facility in the application is necessary notwithstanding the implementation of these alternatives.~~

Sec. 15. Section 476A.7, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 3. Pursuant to the provisions of section 476.53, a rate-regulated public utility shall have the option of withdrawing its application for issuance of a certificate at any time prior to the issuance of the certificate, or after the certificate has been issued.

Sec. 16. Section 476A.15, Code 2001, is amended to read as follows:

476A.15 WAIVER.

The board, if it determines that the public interest would not be adversely affected, may waive any of the requirements of this chapter ~~for facilities with a capacity of one hundred or fewer megawatts~~.

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Sec. 17. NEW SECTION. 476A.20 DEFINITIONS.

For purposes of this subchapter, unless the context otherwise requires:

1. "Electric power agency" means an entity as defined in section 28F.2.

2. "Facility" means an electric power generating plant, or transmission line or system, as defined in section 476A.1.

3. "Public bond or obligation" means an obligation as defined in section 76.14.

Sec. 18. NEW SECTION. 476A.21 ELECTRIC POWER AGENCY — GENERAL AUTHORITY.

In addition to other powers conferred upon an electric power agency by chapter 28F or other applicable law, an electric power agency may enter into and carry out joint agreements with other participants for the acquisition of ownership of a joint facility and for the planning, financing, operation, and maintenance of the joint facility, as provided in this subchapter.

Sec. 19. NEW SECTION. 476A.22 ELECTRIC POWER AGENCY — AUTHORITY — CONFLICTING PROVISIONS.

1. In addition to any powers conferred upon an electric power agency under chapter 28F or other applicable law, an electric power agency may exercise all other powers reasonably necessary or appropriate for or incidental to the effectuation of the electric power agency's authorized purposes, including without limitation, the powers enumerated in chapters 6A and 6B for purposes of constructing or acquiring an electric power facility.

2. An electric power agency, in connection with its property and affairs, and in connection with property within its control, may exercise any and all powers that might be exercised by a natural person or a private corporation in connection with similar property and affairs.

3. The enumeration of specified powers and functions of an electric power agency in this subchapter is not a limitation of the powers of an electric power agency, but the procedures prescribed for exercising the powers and functions enumerated in this subchapter control and govern in the event of any conflict with any other provision of law.

4. The authority conferred pursuant to this subchapter applies to electric power agencies, notwithstanding any contrary provisions of section 28F.1.

Sec. 20. NEW SECTION. 476A.23 ISSUANCE OF PUBLIC BONDS OR OBLIGATIONS — PURPOSES — LIMITATIONS.

1. An electric power agency may from time to time issue its public bonds or obligations in such principal amounts as the electric power agency deems necessary to provide sufficient funds to carry out any of its purposes and powers, including but not limited to any of the following:

a. The acquisition or construction of any project to be owned or leased by the electric power agency, or the acquisition of any interest in such project or any right to the capacity of such project, including the acquisition, construction, or acquisition of any interest in an electric power generating plant to be constructed in this state, or the acquisition, construction, or acquisition of any interest in a transmission

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line or system.

b. The funding or refunding of the principal of, or interest or redemption premiums on, any public bonds or obligations issued by the electric power agency whether or not the public bonds or obligations or interest to be funded or refunded have become due.

c. The establishment or increase of reserves to secure or to pay the public bonds or obligations or interest on the public bonds or obligations.

d. The payment of all other costs or expenses of the electric power agency incident to and necessary to carry out its purposes and powers.

2. Notwithstanding anything in this subchapter or chapter 28F to the contrary, a facility shall not be financed with the proceeds of public bonds or obligations, the interest on which is exempt from federal income tax, unless the public issuer of such public bonds or obligations covenants that the issuer shall comply with the requirements or limitations imposed by the Internal Revenue Code or other applicable federal law to preserve the tax exemption of interest payable on the bonds or obligations.

3. Notwithstanding anything in this subchapter or chapter 28F to the contrary, an electric power generating facility shall not be financed under this subchapter unless all of the following conditions are satisfied:

a. The portion of the electric power generating facility financed by the electric power agency is not designed to serve the electric power requirements of retail customers of members that are municipal electric utilities established in the state after January 1, 2001.

b. The electric power agency annually files with the board, in a manner to be determined by the board, information regarding sales from the electric power generating facility in sufficient detail to determine compliance with these provisions.

The board shall report to the general assembly if any of the provisions are being violated.

Sec. 21. NEW SECTION. 476A.24 PUBLIC BONDS OR OBLIGATIONS AUTHORIZED BY RESOLUTION OF BOARD — TERMS.

1. The board of directors of an electric power agency, by resolution, may authorize the issuance of public bonds or obligations of the electric power agency.

2. The public bonds or obligations may be issued in one or more series under the resolution or under a trust indenture or other security agreement.

3. The resolution, trust indenture, or other security agreement, with respect to such public bonds or obligations, shall provide for all of the following:

a. The date on the public bonds or obligations.

b. The time of maturity.

c. The rate of interest.

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d. The denomination.

e. The form, either coupon or registered.

f. The conversion, registration, and exchange privileges.

g. The rank or priority.

h. The manner of execution.

i. The medium of payment, including the place of payment, either within or outside of the state.

j. The terms of redemption, either with or without premium.

k. Such other terms and conditions as set forth by the board in the resolution, trust indenture, or other security agreement.

4. Public bonds or obligations authorized by the board of directors shall not be subject to any restriction under other law with respect to the amount, maturity, interest rate, or other terms of obligation of a public agency or private person.

5. Chapter 75 shall not apply to public bonds or obligations authorized by the board of directors as provided in this section.

Sec. 22. NEW SECTION. 476A.25 PUBLIC BONDS OR OBLIGATIONS PAYABLE SOLELY FROM AGENCY REVENUES OR FUNDS.

1. The principal of and interest on any public bonds or obligations issued by an electric power agency shall be payable solely from the revenues or funds pledged or available for their payment as authorized in this subchapter.

2. Each public bond or obligation shall contain all of the following terms:

a. That the principal of or interest on such public bonds or obligations is payable solely from revenues or funds of the electric power agency.

b. That neither the state or a political subdivision of the state other than the electric power agency, nor a public agency that is a member of the electric power agency is obligated to pay the principal or interest on such public bonds or obligations.

c. That neither the full faith and credit nor the taxing power of the state, of any political subdivision of the state, or of any such public agency is pledged to the payment of the principal of or the interest on the public bonds or obligations.

Sec. 23. NEW SECTION. 476A.26 PUBLIC BONDS OR OBLIGATIONS — TYPES —SOURCES FOR PAYMENT — SECURITY.

1. Except as otherwise expressly provided by this subchapter or by the electric power agency, every issue of public bonds or obligations of the electric power agency shall be payable out of any revenues or funds of the electric power agency, subject only to any agreements with the holders of particular public

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bonds or obligations pledging any particular revenues or funds.

2. An electric power agency may issue types of public bonds or obligations as it may determine, including public bonds or obligations as to which the principal and interest are payable exclusively from the revenues from one or more projects, or from an interest in such project or projects, or a right to capacity of such project or projects, or from any revenue-producing contract made by the electric power agency with any person, or from its revenues generally.

3. Any public bonds or obligations may be additionally secured by a pledge of any grant, subsidy, or contribution from any public agency or other person, or a pledge of any income or revenues, funds, or moneys of the electric power agency from any other source.

Sec. 24. NEW SECTION. 476A.27 PUBLIC BONDS OR OBLIGATIONS AND RATES FOR DEBT SERVICE NOT SUBJECT TO STATE APPROVAL.

Public bonds or obligations of an electric power agency may be issued under this subchapter, and rents, rates, and charges may be established in the same manner as provided in section 28F.5 and pledged for the security of public bonds or obligations and interest and redemption premiums on such public bonds or obligations, without obtaining the consent of any department, division, commission, board, bureau, or agency of the state and without any other proceeding or the happening of any other condition or occurrence, except as specifically required by this subchapter.

Sec. 25. NEW SECTION. 476A.28 PUBLIC BONDS OR OBLIGATIONS TO BE NEGOTIABLE.

All public bonds or obligations of an electric power agency shall be negotiable within the meaning and for all of the purposes of the uniform commercial code, chapter 554, subject only to the registration requirement of section 76.10.

Sec. 26. NEW SECTION. 476A.29 VALIDITY OF PUBLIC BONDS OR OBLIGATIONS AT DELIVERY — TEMPORARY BONDS.

1. Any public bonds or obligations may be issued and delivered, notwithstanding that one or more of the officers executing them shall have ceased to hold office at the time when the public bonds or obligations are actually delivered.

2. Pending preparation of definitive bonds or obligations, an electric power agency may issue temporary bonds or obligations that shall be exchanged for the definitive bonds or obligations upon their issuance.

Sec. 27. NEW SECTION. 476A.30 PUBLIC OR PRIVATE SALE OF BONDS AND NOTES.

Public bonds or obligations of an electric power agency may be sold at public or private sale for a price and in a manner determined by the electric power agency.

Sec. 28. NEW SECTION. 476A.31 PUBLIC BONDS OR OBLIGATIONS AS SUITABLE INVESTMENTS FOR GOVERNMENTAL UNITS, FINANCIAL INSTITUTIONS, AND FIDUCIARIES.

The following persons may legally invest any debt service funds, money, or other funds belonging to such person or within such person's control in any public bonds or obligations issued pursuant to this subchapter:

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1. A bank, trust company, savings association, building and loan association, savings and loan association, or investment company.

2. An insurance company, insurance association, or any other person carrying on an insurance business.

3. An executor, administrator, conservator, trustee, or other fiduciary.

4. Any other person authorized to invest in bonds or obligations of the state.

Sec. 29. NEW SECTION. 476A.32 RESOLUTION, TRUST INDENTURE, OR SECURITY AGREEMENT CONSTITUTES CONTRACT — PROVISIONS.

The resolution, trust indenture, or other security agreement under which any public bonds or obligations are issued shall constitute a contract with the holders of the public bonds or obligations, and may contain provisions, among others, prescribing any of the following terms:

1. The terms and provisions of the public bonds or obligations.

2. The mortgage or pledge of and the grant of a security interest in any real or personal property and all or any part of the revenue from any project or any revenue producing contract made by the electric power agency with any person to secure the payment of public bonds or obligations, subject to any agreements with the holders of public bonds or obligations which might then exist.

3. The custody, collection, securing, investment, and payment of any revenues, assets, money, funds, or property with respect to which the electric power agency may have any rights or interest.

4. The rates or charges for electric energy sold by, or services rendered by, the electric power agency, the amount to be raised by the rates or charges, and the use and disposition of any or all revenue.

5. The creation of reserves or debt service funds and the regulation and disposition of such reserves or funds.

6. The purposes to which the proceeds from the sale of any public bonds or obligations to be issued may be applied, and the pledge of the proceeds to secure the payment of the public bonds or obligations.

7. Limitations on the issuance of any additional public bonds or obligations, the terms upon which additional public bonds or obligations may be issued and secured, and the refunding of outstanding public bonds or obligations.

8. The rank or priority of any public bonds or obligations with respect to any lien or security.

9. The creation of special funds or moneys to be held for operating expenses, payment, or redemption of public bonds or obligations, reserves or other purposes, and the use and disposition of moneys held in these funds.

10. The procedure by which the terms of any contract with or for the benefit of the holders of public bonds or obligations may be amended or abrogated, the amount of public bonds or obligations the holders of which must consent to such amendment or abrogation, and the manner in which consent may be given.

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11. The definition of the acts or omissions to act that constitute a default in the duties of the electric power agency to holders of its public bonds or obligations, and the rights and remedies of the holders in the event of default including, if the electric power agency so determines, the right to accelerate the date of the maturation of the public bonds or obligations or the right to appoint a receiver or receivers of the property or revenues subject to the lien of the resolution, trust indenture, or other security agreement.

12. Any other or additional agreements with or for the benefit of the holders of public bonds or obligations or any covenants or restrictions necessary or desirable to safeguard the interests of the holders.

13. The custody of any of the electric power agency's property or investments, the safekeeping of such property or investments, the insurance to be carried on such property or investments, and the use and disposition of insurance proceeds.

14. The vesting in a trustee or trustees, within or outside the state, of such property, rights, powers, and duties as the electric power agency may determine; or the limiting or abrogating of the rights of the holders of any public bonds or obligations to appoint a trustee, or the limiting of the rights, powers, and duties of such trustee.

15. The appointment of and the establishment of the duties and obligations of any paying agent or other fiduciary within or outside the state.

Sec. 30. NEW SECTION. 476A.33 MORTGAGE OR TRUST DEED TO SECURE BONDS.

For the security of public bonds or obligations issued or to be issued by an electric power agency, the electric power agency may mortgage or execute deeds of trust of the whole or any part of its property.

Sec. 31. NEW SECTION. 476A.34 NO PERSONAL LIABILITY ON PUBLIC BONDS OR OBLIGATIONS.

An official, director, member of an electric power agency, or any person executing public bonds or obligations shall not be liable personally on the public bonds or obligations or be subject to any personal liability or accountability by reason of the issuance of such public bonds or obligations.

Sec. 32. NEW SECTION. 476A.35 REPURCHASE OF SECURITIES.

An electric power agency may purchase public bonds or obligations out of any funds available for such purchase, and hold, pledge, cancel, or resell the public bonds or obligations, subject to and in accordance with any agreements with the holders.

Sec. 33. NEW SECTION. 476A.36 PLEDGE OF REVENUE AS SECURITY.

An electric power agency may pledge its rates, rents, and other revenues, or any part of such rates, rents, and revenues, as security for the repayment, with interest and redemption premiums, if any, of the moneys borrowed by the electric power agency or advanced to the electric power agency for any of its authorized purposes and as security for the payment of moneys due and owed by the electric power agency under any contract.

Sec. 34. Section 478.3, Code 2001, is amended by adding the following new subsection:

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NEW SUBSECTION. 3. For the purpose of this section, the term "public" shall not be interpreted to be limited to consumers located in this state.

Sec. 35. CODE EDITOR DIRECTIVE. The Code editor shall change references to "this chapter" in sections 476A.1 through 476A.15 as necessary and appropriate to reflect the addition of the new subchapter to chapter 476A as a result of this Act.

Sec. 36. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved July 3, 2001

[1] 2001 Iowa Acts, Regular Session, chapter 158 herein

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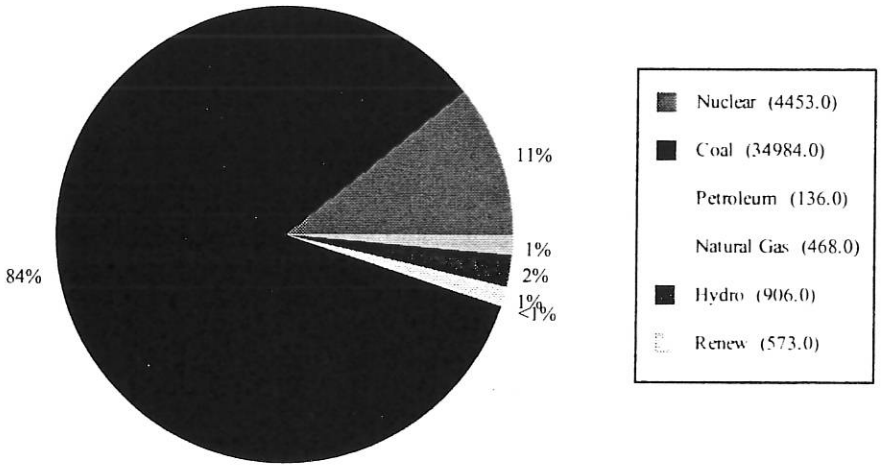
Policy Issues

Case Study: Iowa

Introduction

Iowa ranks nineteenth in the nation for average retail electricity rates. At 5.92 cents per kilowatt-hour (kWh), Iowa's average retail electric rates are well below the national average of 7.16 cents/kWh. Residential customers in Iowa typically spend 8.3 cents/kWh, commercial residents spend 6.7 cents/kWh, and industrial customers spend 4.0 cents/kWh. Coal is the number one source of electricity generation in Iowa, followed by nuclear, hydroelectricity, natural gas, biomass, petroleum, oil, and municipal solid waste. Iowa has a population of roughly 2,830,000 people and is centrally located in the middle of the United States. This location accounts for Iowa's distinct seasons which include extreme summer and winter weather.

In 1998, Iowa generated its electricity with the following fuel sources (numbers in parentheses are gigawatt-hours generated):



Iowa imports roughly 98% of its energy from other states, relying heavily on Wyoming to provide the majority of its coal. Iowa's reliance on imported energy negatively impacts its budget by an estimated $5 billion per year. The large amount Iowa spends annually on imported energy is a major reason for encouraging energy efficiency measures and exploring other methods of increasing economic performance by keeping energy dollars in the state.

Electric Utility Industry Restructuring

Iowa does not currently offer customers a choice of electricity providers. However, Senate Study Bill 2212, to be introduced in the 1999 legislative session, outlines a prospective electric industry restructuring plan which would institute a competitive

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market by January 1, 2000.

Renewable Energy and Energy Efficiency Programs

Iowa has implemented a number of renewable energy and energy efficiency measures. Iowa law mandates that 105 megawatts (MW) of the state's electricity must be generated from renewable energy sources. In addition, Iowa offers a number of incentives, state programs and regulatory policies to encourage the use of alternative energy. They are as follows:

Net Metering

In 1998, Iowa passed Senate File 2390 relating to net energy measurement and metering or "net metering." Net metering allows utility customers to generate their own electricity through alternative energy generation systems (including hydro, solar, biomass, or wind powered systems) and sell the excess energy produced back to their utility provider. If the utility customer produces excess energy during a billing period, the utility will credit the customer for the unused kWh generated. At the end of the billing year, the utility pays the customer for remaining unused credit. If needed, the customer may purchase additional power from the utility provider. In addition to Iowa's net billing program, the Alternative Energy Law (AEL) requires Iowa's investor-owned utilities to buy 105 MW of their generation power from renewable energy sources.

Integrated Resource Planning

Integrated resource planning (IRP) provides the framework for exploring the costs and benefits of energy resources. While IRP structures evaluate the cost-effectiveness of various energy resources, they additionally may identify environmental effects of various options and recommend energy efficiency and renewable energy alternatives. Biannually, Iowa utilities must submit 20-year resource plans to the Iowa Utility Board.

Local Option Special Assessment of Wind Energy Devices/ Wind Energy Equipment Exemption

Iowa's Local Option Special Assessment of Wind Energy Devices allows residential, commercial, and industrial customers to have wind energy conversion equipment assessed at a special reduced rate for property tax purposes. Wind energy conversion equipment is assessed at a zero percentage rate in the first year of assessment. In the following years, the percentage rate increases by 5% each year. After 7 years, the equipment is assessed at 30% of its cost. The Wind Energy Equipment Exemption statute exempts the total cost of wind energy equipment, including construction and installation materials, from state sales tax. This exemption is available to residential and commercial customers and does not have cost limitations.

Iowa Energy Center

The Iowa Energy Center (IEC) was established in 1990 by the Iowa Energy Efficiency Act. The IEC sponsors grants and loan programs to encourage energy efficiency and renewable energy. Details of these IEC programs are outlined below.

IEC Grant and Loan Programs

Industrial, commercial, and residential customers are able to take advantage of two IEC programs. As part of the Alternative Energy Loan Program, these customers are eligible to receive up to a $250,000 in zero-interest loans to cover half the project cost of certain renewable energy technologies. The technologies include alternative fuel, hydropower, biomass, wind, and solar. Research grants also are available to support many programs in three categories, energy efficiency, renewable energy, and information transfer.

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Energy Bank Program
Since 1986, the Energy Bank Program has supported commercial, public sector, and nonprofit agencies in making energy efficiency improvements. The improvement projects are funded through zero-interest loans administered by the State of Iowa Facilities Improvement Corporation, and can be repaid through future energy savings.

Biomass Power for Rural Development Initiative
In 1992, the U.S. Department of Energy and the U.S. Department of Agriculture initiated a plan to encourage 500 farmers and landowners to produce switchgrass (biomass) to improve local economies and to counter Iowa's heavy reliance on energy imports. Switchgrass may also be used with coal in co-firing processes. Co-firing is the simultaneous combustion of different kinds of fuel in the same power station boiler to produce energy or electricity. Because switchgrass can be used in coal co-firing processes to generate electricity without releasing additional nitrogen oxides into the air, it is an attractive alternative to traditional energy resources. Switchgrass is a perennial crop that reduces soil erosion, removes carbon dioxide from the air during the growth season and can be raised on marginal lands. The plan ultimately calls for co-firing at a rate of 5% switchgrass with 95% coal.

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476.6 Changes in rates, charges, schedules and regulations--supply and cost review--water costs for fire protection.

1. *Filing with board.* A public utility subject to rate regulation shall not make effective a new or changed rate, charge, schedule or regulation until the rate, charge, schedule, or regulation has been approved by the board, except as provided in subsections 11 and 13.

A subscriber of a telephone exchange or service, who is declared to be legally blind under section 422.12, subsection 1, paragraph *"e"*, is exempt from any charges for telephone directory assistance that may be approved by the board.

2. *Telephone directory assistance charges--record provided.* The board shall not approve a schedule of directory assistance charges unless the schedule provides that residential customers be provided a record of the date and time of each directory assistance call made from their residence.

3. *Telephone directory assistance charges--approval by board.* Notwithstanding contrary provisions of this section, a public utility shall not implement a charge for telephone directory assistance or implement a new or changed rate for telephone directory assistance except pursuant to a tariff that has been filed with the board and finally approved by the board.

4. *First seven calls exempted.* A telephone directory assistance tariff that is approved by the board on or after July 1, 1981, shall be subject to the limitation that a subscriber shall not be charged for the first seven directory assistance calls made from the subscriber's station during each of the first twelve months in which the tariff is in effect, and a charge made in violation of this limitation is an unlawful charge within the meaning of this chapter.

5. *Written notice of increase.* All public utilities, except those exempted from rate regulation by section 476.1, shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility no more than sixty-two days prior to and prior to the time the application for the increase is filed with the board. Public utilities exempted from rate regulation by section 476.1 shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility at least thirty days prior to the effective date of the increase. If the public utility is subject to rate regulation, the notice to affected customers shall also state that the customer has a right to file a written objection to the rate increase and that the affected customers may request the board to hold a public hearing to determine if the rate increase should be allowed. The board shall prescribe the manner and method that the written notice to each affected customer of the public utility shall be served.

6. *Facts and arguments submitted.* At the time a public utility subject to rate regulation files with the board an application for any new or changed rates, charges, schedules, or regulations, the public utility also shall submit factual evidence and written argument offered in support of the filing. If the filing is an application for a general rate increase, the utility shall also file affidavits containing testimonial evidence to be offered in support of the filing, although this requirement does not apply if the public utility is a rural electric cooperative.

7. *Hearing set.* After the filing of an application for new or changed rates, charges, schedules, or regulations by a public utility subject to rate regulation, the board, prior to the expiration of thirty days after the filing date, shall docket the case as a formal proceeding and set the case for hearing unless the new or changed rates, charges, schedules, or regulations are approved by the board. However, if an application presents no material issue of fact subject to dispute, and the board determines that the application violates a relevant statute, or is not in substantial compliance with a board rule lawfully adopted pursuant to chapter 17A, the application may be rejected by the board without prejudice and without a hearing, provided that the board issues a written order setting forth all of its reasons for rejecting the application. In the case of a gas public utility having less than two thousand customers, the board shall docket a case as a formal proceeding and set the case for hearing as provided in section 476.1C. In the case of a rural electric cooperative, the board may docket the case as a formal proceeding and set the case for hearing prior to the proposed effective date of the tariff. The board shall give notice of formal proceedings as it deems appropriate. The docketing of a case as a formal proceeding suspends the effective date of the new or changed rates, charges, schedules, or regulations until the rates, charges, schedules, or regulations are approved by the board, except as provided in subsection 13.

8. *Utility hearing expenses reported.* When a case has been docketed as a formal proceeding under subsection 7, the public utility, within a reasonable time thereafter, shall file with the board a report outlining the utility's expected expenses for litigating the case through the time period allowed by the board in rendering a decision. At the conclusion of the utility's presentation of comments, testimony, exhibits, or briefs the utility shall submit to the board a listing of the utility's actual litigation expenses in the proceeding. As part of the findings of the board under subsection 9, the board shall allow recovery

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of costs of the litigation expenses over a reasonable period of time to the extent the board deems the expenses reasonable and just.

9. *Finding by board.* If, after hearing and decision on all issues presented for determination in the rate proceeding, the board finds the proposed rates, charges, schedules, or regulations of the utility to be unlawful, the board shall by order authorize and direct the utility to file new or changed rates, charges, schedules, or regulations which, when approved by the board and placed in effect, will satisfy the requirements of this chapter. The rates, charges, schedules, or regulations so approved are lawful and effective upon their approval.

10. *Limitation on filings.* A public utility shall not make a subsequent filing of an application for a new or changed rate, charge, schedule, or regulation which relates to services for which a rate filing is pending within twelve months following the date the prior application was filed or until the board has issued a final order on the prior application, whichever date is earlier, unless the public utility applies to the board for authority and receives authority to make a subsequent filing at an earlier date.

11. *Automatic adjustments permitted.* This chapter does not prohibit a public utility from making provision for the automatic adjustment of rates and charges for public utility service provided that a schedule showing the automatic adjustment of rates and charges is first filed with the board.

12. *Rate levels for telephone utilities.* The board may approve a schedule of rate levels for any regulated service provided by a utility providing communication services.

13. *Temporary authority.* Upon the request of a public utility, the board shall, when required by this subsection, grant the public utility temporary authority to place in effect any or all of the suspended rates, charges, schedules or regulations by filing with the board a bond or other undertaking approved by the board conditioned upon the refund in a manner to be prescribed by the board of any amounts collected in excess of the amounts which would have been collected under rates, charges, schedules or regulations finally approved by the board. In determining that portion of the new or changed rates, charges, schedules or regulations to be placed in effect prior to a final decision, the board shall apply previously established regulatory principles and shall, at a minimum, permit rates and charges which will allow the utility the opportunity to earn a return on common stock equity equal to that which the board held reasonable and just in the most recent rate case involving the same utility or the same type of utility service, provided that if the most recent final decision of the board in an applicable rate case was rendered more than twelve months prior to the date of filing of the request for temporary rates, the board shall in addition consider financial market data that is filed or that is otherwise available to the board and shall adjust the rate of return on common stock equity that was approved in that decision upward or downward as necessary to reflect current conditions. The board shall render a decision on a request for temporary authority within ninety days after the date of filing of the request. The decision shall be effective immediately. If the board has not rendered a final decision with respect to suspended rates, charges, schedules or regulations upon the expiration of ten months after the filing date, plus the length of any delay that necessarily results either from the failure of the public utility to exercise due diligence in connection with the proceedings or from intervening judicial proceedings, plus the length of any extension permitted by section 476.33, subsection 3, then those portions that were approved by the board on a temporary basis shall be deemed finally approved by the board and the utility may place them into effect on a permanent basis, and the utility also may place into effect subject to refund and until the final decision of the board any portion of the suspended rates, charges, schedules or regulations not previously approved on a temporary basis by filing with the board a bond or other undertaking approved by the board.

If the board finds that an extension of the ten-month period is necessary to permit the accumulation of necessary data with respect to the operation of a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity and that is proposed to be included in the rate base for the first time, the board may extend the ten-month period up to a maximum extension of six months, but only with respect to that portion of the suspended rates, charges, schedules or regulations that are necessarily connected with the inclusion of the generating facility in the rate base. If a utility is proposing to include in its rate base for the first time a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity, the filing date of new or changed rates, charges, schedules or regulations shall, for purposes of computing the ninety-day and ten-month limitations stated above, be the date as determined by the board that the new plant went into service, but only with respect to that portion of the suspended rates, charges, schedules or regulations that are necessarily connected with the inclusion of the generating facility in the rate base.

The board shall determine the rate of interest to be paid by a public utility to persons receiving refunds. The interest rate to be applied to refunds of moneys collected subject to refund under this subsection is two percent per annum plus the average quarterly interest rate at commercial banks for twenty-four-month loans for personal expenditures, as determined by the board, compounded annually. The board shall consider federal reserve statistical release G.19 or its equivalent when

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determining interest to be paid under this subsection.

14. *Refunds passed on to customers.* If pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a refund or credit for past gas purchases, the savings shall be passed on to the customers in a manner approved by the board. Similarly, if pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a rate for future gas purchases which is lower than the price included in the public utility's approved rate application, the savings shall be passed on to the customers in a manner approved by the board.

15. *Natural gas supply and cost review.* The board shall periodically conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's natural gas procurement and contracting practices. The natural gas supply and cost review shall be conducted as a contested case pursuant to chapter 17A.

Under procedures established by the board, each rate- regulated public utility furnishing gas shall periodically file a complete natural gas procurement plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future twelve-month period specified by the board. The utilities shall file information as the board deems appropriate.

During the natural gas supply and cost review, the board shall evaluate the reasonableness and prudence of the gas procurement plan. If a utility is not taking all reasonable actions to minimize its purchase gas costs, consistent with assuring an adequate long- term supply of natural gas, the board shall not allow the utility to recover from its customers purchase gas costs in excess of those costs that would be incurred under reasonable and prudent policies and practices.

16. *Electric energy supply and cost review.* The board shall periodically conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's procurement and contracting practices related to the acquisition of fuel for use in generating electricity. The evaluation may review the reasonableness and prudence of actions taken by a rate- regulated public utility to comply with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549. The proceeding shall be conducted as a contested case pursuant to chapter 17A. Under procedures established by the board, the utility shall file information as the board deems appropriate. If a utility is not taking all reasonable actions to minimize its fuel and allowance transaction costs, the board shall not allow the utility to recover from its customers fuel and allowance transaction costs in excess of those costs that would be or would have been incurred under reasonable and prudent policies and practices.

17. *Energy efficiency plans.* Electric and gas public utilities shall offer energy efficiency programs to their customers through energy efficiency plans. An energy efficiency plan as a whole shall be cost-effective. In determining the cost-effectiveness of an energy efficiency plan, the board shall apply the societal test, utility cost test, rate-payer impact test, and participant test. Energy efficiency programs for qualified low-income persons and for tree planting programs need not be cost-effective and shall not be considered in determining cost-effectiveness of plans as a whole. The energy efficiency programs in the plans may be provided by the utility or by a contractor or agent of the utility.

18. *Water costs for fire protection in certain cities.*

a. Application. A city furnished water by a public utility subject to rate regulation may apply to the board for inclusion of all or a part of the costs of fire hydrants or other improvements, maintenance, and operations for the purpose of providing adequate water production, storage, and distribution for public fire protection in the rates or charges assessed to consumers covered by the applicant's fire protection service. The application shall be made in a form and manner approved by or as directed by the board. The applicant shall provide such additional information as the board may require to consider the application.

b. Review. The board shall review the application, and may in its discretion consider additional evidence, beyond that supplied in the application or provided by the applicant in response to a request for additional information pursuant to paragraph *"a"*, including, but not limited to, soliciting oral or written testimony from other interested parties.

c. Notice. Written notice of a proposed rate increase shall be provided by the public utility pursuant to subsection 5, except that notice shall be provided within ninety days of the date of application. Costs of the notice shall be paid for by the applicant.

d. Conditions for approval. As a condition to approving an application to include water-related fire protection costs in the utility's rates or charges, the board shall make an affirmative determination that the following conditions will be met:

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(1) That the service area currently charged for fire protection, either directly or indirectly, is substantially the same service area containing those persons who will pay for water-related fire protection through inclusion of such costs within the utility's rates or charges.

(2) That the inclusion of such costs within the utility's rates or charges will not cause substantial inequities among the utility's customers.

(3) That all or a portion of the costs sought to be included in the utility's rates or charges by the applicant are reasonable in the circumstances, and limited to the purposes specified in paragraph *"a"*.

(4) That written notice has been provided pursuant to paragraph *"c"* and that the costs of the notice have been paid by the applicant.

e. Inclusion within rates or charges. If the board affirmatively determines that the conditions of paragraph *"d"* are or will be satisfied, the board shall include the reasonable costs in the rates or charges assessed to consumers covered by the applicant's fire protection service.

f. Written order. The board shall issue a written order within six months of the date of application. The written order shall include a recitation of the facts found pursuant to consideration of the application.

19. *Energy efficiency implementation, cost review, and cost recovery.*

a. Gas and electric utilities required to be rate- regulated under this chapter shall file energy efficiency plans with the board. An energy efficiency plan and budget shall include a range of programs, tailored to the needs of all customer classes, including residential, commercial, and industrial customers, for energy efficiency opportunities. The plans shall include programs for qualified low-income persons including a cooperative program with any community action agency within the utility's service area to implement countywide or communitywide energy efficiency programs for qualified low-income persons. Rate-regulated gas and electric utilities shall utilize Iowa agencies and Iowa contractors to the maximum extent cost-effective in their energy efficiency plans filed with the board.

b. A gas and electric utility required to be rate- regulated under this chapter shall assess potential energy and capacity savings available from actual and projected customer usage by applying commercially available technology and improved operating practices to energy-using equipment and buildings. The utility shall submit the assessment to the board. Upon receipt of the assessment, the board shall consult with the energy bureau of the division of energy and geological resources of the department of natural resources to develop specific capacity and energy savings performance standards for each utility. The utility shall submit an energy efficiency plan which shall include economically achievable programs designed to attain these energy and capacity performance standards.

c. The board shall conduct contested case proceedings for review of energy efficiency plans and budgets filed by gas and electric utilities required to be rate-regulated under this chapter. The board may approve, reject, or modify the plans and budgets. Notwithstanding the provisions of section 17A.19, subsection 5, in an application for judicial review of the board's decision concerning a utility's energy efficiency plan or budget, the reviewing court shall not order a stay. Whenever a request to modify an approved plan or budget is filed subsequently by the office of consumer advocate or a gas or electric utility required to be rate-regulated under this chapter, the board shall promptly initiate a formal proceeding if the board determines that any reasonable ground exists for investigating the request. The formal proceeding may be initiated at any time by the board on its own motion. Implementation of board-approved plans or budgets shall be considered continuous in nature and shall be subject to investigation at any time by the board or the office of the consumer advocate.

d. Notice to customers of a contested case proceeding for review of energy efficiency plans and budgets shall be in a manner prescribed by the board.

e. A gas or electric utility required to be rate-regulated under this chapter may recover, through an automatic adjustment mechanism filed pursuant to subsection 11, over a period not to exceed the term of the plan, the costs of an energy efficiency plan approved by the board, including amounts for a plan approved prior to July 1, 1996, in a contested case proceeding conducted pursuant to paragraph *"c"*. The board shall periodically conduct a contested case proceeding to evaluate the reasonableness and prudence of the utility's implementation of an approved energy efficiency plan and budget. If a utility is not taking all reasonable actions to cost-effectively implement an approved energy efficiency plan, the board shall not allow the utility to recover from customers costs in excess of those costs that would be incurred under reasonable and prudent

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implementation and shall not allow the utility to recover future costs at a level other than what the board determines to be reasonable and prudent. If the result of a contested case proceeding is a judgment against a utility, that utility's future level of cost recovery shall be reduced by the amount by which the programs were found to be imprudently conducted. The utility shall not represent energy efficiency in customer billings as a separate cost or expense unless the board otherwise approves.

f. A rate-regulated utility required to submit an energy efficiency plan under this subsection shall, upon the request of a state agency or political subdivision to which it provides service, provide advice and assistance regarding measures which the state agency or political subdivision might take in achieving improved energy efficiency results. The cooperation shall include assistance in accessing financial assistance for energy efficiency measures.

20. *Filing of forecasts.* The board shall periodically require each rate-regulated gas or electric public utility to file a forecast of future gas requirements or electric generating needs and the board shall evaluate the forecast. The forecast shall include, but is not limited to, a forecast of the requirements of its customers, its anticipated sources of supply, and its anticipated means of addressing the forecasted gas requirements or electric generating needs.

21. *Energy efficiency program financing.* The board may require each rate-regulated gas or electric public utility to offer qualified customers the opportunity to enter into an agreement for the amount of moneys reasonably necessary to finance cost-effective energy efficiency improvements to the qualified customers' residential dwellings or businesses.

22. *Allocation of replacement tax costs.* The costs of the replacement tax imposed pursuant to chapter 437A shall be reflected in the charges of utilities subject to rate regulation, in lieu of the utilities' costs of property taxes. The imposition of the replacement taxes pursuant to chapter 437A is not intended to initiate any change in the rates and charges for the sale of electricity, the sale of natural gas, or the transportation of natural gas that is subject to regulation by the board and in effect on January 1, 1999.

The cost of the replacement taxes imposed by chapter 437A shall be allocated among and within customer classes in a manner that will replicate the tax cost burden of the current property tax on individual customers to the maximum extent practicable.

Upon the restructuring of the electric industry in this state so that individual consumers are given the right to choose their electric suppliers, replacement tax costs shall be assigned to the service corresponding to the individual generation, transmission, and delivery taxes. In all other respects, the allocation of the replacement tax costs among and within the customer classes shall remain the same to the maximum extent practicable.

Notwithstanding this subsection, the board may determine the amount of replacement tax properly included in retail rates subject to its jurisdiction. The board may determine whether the base rates or some other form of rate is most appropriate for recovery of the costs of the replacement tax, subject to the requirement that utility rates be reasonable and just. The board may also determine the appropriate allocation of the tax. Any significant modification to rate design relating to the replacement tax shall be made in a manner consistent with this subsection unless made in a contested case proceeding where the impact of such modification on competition and consumer costs is considered.

23. *Replacement tax study committee.* On or before July 1, 2000, the utilities board, in consultation with the department of revenue and finance, shall initiate and coordinate the establishment of a replacement tax study committee and provide staffing assistance to the committee. It is the intent of the general assembly that the committee include representatives of the utilities board, department of revenue and finance, department of management, investor-owned utilities, municipal utilities, cooperative utilities, local governments, major customer classes, and other stakeholders.

The committee shall study the effects of the replacement tax on both restructuring and the development of competition in the gas and electric industries in this state. The board shall report to the general assembly by January 1 of each year through 2003, the results of the study, and the committee's recommendations as to whether the replacement tax, in its then present form, should be continued, whether a different form of taxation of electric and gas utilities should be adopted in order to allow free and fair competition in the electric and gas industries, and fair competitive prices for all classes of consumers, whether a different basis for determination of the generation, transmission, and delivery taxes should be adopted or whether the relative share of the total replacement tax burden imposed on each of the generation, transmission, and delivery functions should be modified in order to allow free and fair competition in the electric and gas industries, and fair competitive prices for all classes of consumers, and whether the replacement tax in its then present form, appropriately accounts for the decline in value of electric power generating plants. The replacement tax study committee shall reconvene by January 1, 2006, to further study these same issues, and the board shall report the results of the study and the committee's recommendations to the general assembly by January 1, 2008.

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Upon recommendation of the committee, the board may contract for services necessary to the implementation of this subsection with persons who are not state employees, including, but not limited to, facilitators, consultants, and other experts required to assist the committee. The cost of contracted services shall not be paid from appropriated funds, but shall be assessed to entities paying replacement tax pursuant to chapter 437A, subchapter II, pro rata, based on the amount of tax paid.

24. *Recovery of management costs.* A public utility which is assessed management costs by a local government pursuant to chapter 480A is entitled to recover those costs. If the public utility serves customers within the boundaries of the local government imposing the management costs, such costs shall be recovered exclusively from those customers.

Section History: Early form

[C66, 71, 73, 75, § 490A.6; C77, 79, 81, § 476.6; 81 Acts, ch 156, § 6, 9, ch 157, § 1-3; 82 Acts, ch 1100, § 23]

Section History: Recent form

83 Acts, ch 127, § 19-26, 51; 84 Acts, ch 1023, § 1; 87 Acts, ch 21, § 2; 89 Acts, ch 58, § 1; 89 Acts, ch 148, § 1; 89 Acts, ch 321, § 29; 90 Acts, ch 1103, §1; 90 Acts, ch 1252, §23-27; 91 Acts, ch 253, § 22; 93 Acts, ch 68, §1; 96 Acts, ch 1196, § 8, 9; 98 Acts, ch 1013, §1; 98 Acts, ch 1148, §2, 9; 98 Acts, ch 1194, §37, 40

Internal References

Referred to in § 34A.7, 437A.14, 476.1C, 476.2, 476.4A, 476.10, 476.10A, 476.33, 476.46, 476.52, 476.97

Footnotes

Subsections 22 and 23 are effective January 1, 1999, and apply to property tax assessment years and replacement tax years beginning on or after that date; 98 Acts, ch 1194, §40

Previous Section 476.5

Next Section 476.7

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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

SENATE UTILITIES COMMITTEE
S.B 104

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
February 17, 2003

Chairman Clark and members of the committee:

Thank you for this opportunity to appear before you today an offer testimony on S.B 104. The Citizens' Utility Ratepayer Board is an opponent of this bill for the following reasons:

A. Ratemaking treatment:

It appears that S.B. 104 is intended to bring some regulatory certainty to the investment decisions that a utility must make. It is certainly understandable from the utility's perspective, and not in all instances bad for consumers. However, on balance, the scope of what is contemplated by language in S.B.104 simply goes to far to be good public policy. S.B. 104 appears to require all ratemaking decisions to be made in advance of a facility being built or contract signed and then precludes the ability of both the Commission and the utilities to adapt to changing circumstances at a later date. It is simply impossible to have the type of perfect foresight that is contemplate by this bill.

CURB believes that the language in Section 1 of the S.B. 104 is extremely vague. The term "ratemaking principles and treatment" is used consistently throughout the bill, but is never defined. A general reading of the bill seems to indicate that this language means more than a simple determination about whether it is prudent for the utility to invest in a proposed facility or whether the general level of proposed cost is within a range of reasonableness. However, it is unclear from reading the bill whether this language should be read to include every conceivable ratemaking issue related to the facility. To the extent that this language would require deciding every conceivable ratemaking principle and treatment related to a facility before the facility is even built, it represents a substantial change to the existing regulatory framework. And to the extent that this initial determination of the ratemaking principles and treatment would preclude the ability of CURB, the Commission and even the utilities to adjust to new developments at a later date, the concept embodied in this bill becomes unworkable.

Section 1 (b)(2) and (b)(3) binds all future Commissions, the utility and future ratepayers to decisions made before a project is ever built or a contract is ever entered into. In reality, things change over time. What was appropriate 10 or 20 years ago may

not be appropriate now. What is appropriate now may not necessarily be appropriate 10 years from now. For example, technologies change[1], the FERC uniform system of accounts changes periodically[2], return on equity changes in every rate case[3], depreciation lives can change as well as many other variables that can impact how a utility's investment in its facilities are recovered from consumers in rates. A recent example of this principle is the Westar Energy rate case. In the Westar Energy rate case, the Commission determined that the existing 40 year depreciation life of the Wolf Creek generating station (initially set in 1987) was too short, when compared to other similar nuclear facilities and current data. The Commission changed the depreciation life of Wolf Creek to 60 years for ratemaking purposes. Given the expected longer life of the Wolf Creek facility, at the pre-existing 40 year depreciation figure adopted in 1987, ratepayers were paying millions of dollars every year in excess depreciation expenses. The ability to adapt rates to current knowledge and existing circumstances is precluded by the language in S.B. 104, and would have precluded the Commission's ability to eliminate these excess depreciation expenses from consumer rates had the Commission been locked into a predetermined ratemaking treatment.

I would also note that, as written, S.B. 104 could be read as precluding the Commission from making changes in ratemaking treatment for a facility that may be of benefit to the utility. For example, suppose a utility proposes to build a coal fired generating plant, and receives the pre-determined ratemaking order contemplated by S.B. 104. The utility builds the plant, but 10 years later, the federal government changes the environmental laws, requiring the utility to add millions of dollars of pollution control equipment. Reading Section 1 (b)(2) literally, CURB would be within its rights to argue that the utility is precluded from recovering from consumers the costs of the new pollution control equipment, since in "all proceedings" in which "the cost of the public utilities stake in the facility" is considered, the Commission "shall" use the ratemaking principles and treatment applicable to the facility. The initial pre-determination order could not have contemplated the specific environmental control costs because these particular environment laws were not in effect at that time. Therefore the Commission is precluded from including these costs in rates at a later date.

While this may be an extreme example, and one that would work to the benefit of consumers, it does point out that inherent public policy problem in attempting to eliminate the ability of the Commission to address changing circumstances through the

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1 Computer technology is making the control of generation more efficient, allowing utilities to pool generation resources more efficiently, trade excess power and reduce excess generation capacity held for reliability purposes.

2 For example, The Federal Energy Regulatory Commission has proposed changing the Uniform System of Accounts all utilities use in response to changes by the Financial Accounting Standards Board pursuant to rule 143. FASB 143 impacts how the cost associated with future removal obligations for long-lived assets are accounted for on the books of a company. As written, would S.B 104 preclude the Commission from making changes consistent with the Uniform System of Accounts once a ratemaking treatment order has been issued?

3 Return on equity is determined in each rate case based on existing market conditions at the time. As written, would S.B. 104 require the Commission to set the return on equity before the plant is built, and preclude the Commission from changing the return on equity at a later date even if market conditions change?

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type of pre-determined ratemaking treatment contemplated in S.B. 104. It also points out that, however well intentioned S.B. 104, it is virtually impossible to write certainty into the regulatory process by statute. The simple fact is that Kansas has never had the type of pre-approval contemplated by the language of S.B. 104, and yet we don't lack generation in Kansas. Kansas public utilities have an obligation to maintain sufficient and efficient service. They have always met that obligation in the past and they will continue to do so. S.B. 104, at least in its current form should not be adopted.

B. Transmission Issues:

CURB does have a concern about what is contemplated in Section 2 and Section 3 of S.B. 104 related to transmission. Section 2 requires the Kansas Corporation Commission to conduct annual evaluations of the state's transmission facilitates to help ensure "highly reliable delivery" of electric power to the citizens of Kansas. There is certainly nothing inherently objectionable about conducting this survey, or seeking to ensure highly reliable delivery of electric power to the citizens of Kansas. However, transmission is a regional issue, with transmission facilities in Kansas being impacted by decisions that may not originate in Kansas and may not benefit Kansas consumers. With that knowledge, CURB is concerned with the language in Section 2(b) when combined with the language in Section 1 (b)(1) and Section 3(b) may result in Kansas consumers being required to pay for transmission system upgrades that do not result from action of Kansas utilities and may not benefit Kansas consumers.

Section 2 (b), as written, allows a public utility to file for a ratemaking treatment order, as discussed above, to eliminate any transmission constraints identified in the annual survey. This language does not limit the public utility that can apply for the ratemaking order to being the one whose facilities are constrained. Nor does the language provide any required nexus between whether the constraint is being cause by the actions of Kansas utilities or whether relieving the constraint will actually benefit Kansas consumers. Further, Section 3 (b) allows the issuance of Kansas revenue bonds to pay for the cost of construction of the needed transmission facilities, again with no nexus to the cause of the transmission constraint or the beneficiary. If this bill proceeds, CURB recommends that safeguard be put in place that protect Kansas consumer from having to pay for transmission upgrades that are not caused by Kansas consumers.