

MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairperson Senator Stan Clark at 9:30 a.m. on February 21, 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:

Others attending: See attached list

Continued hearing on
SB 104 - Prior authorization of ratemaking principles and treatment, K DFA issuance of bonds

Chair called for a report from the Subcommittee appointed to hear SB 104. Members of that subcommittee were Senator Emler, Senator Barone and Senator Taddiken. Senator Emler reported their deliberations had culminated into Proposed Substitute for Senate Bill No. 104. Sections 2, 3 and 4 of SB 104 were deleted and in Section 1 (4) (c) the language "90 day" changed to "360 day.." (Attachment 1)

Larry Holloway of KCC suggested the language in Section 1(a) (3) be deleted. This language is: (3) "cost" means the total installed cost of the facility". The committee agreed to delete this language.

Chair closed the hearing on SB 104.

SB 51 was opened for possible action at the Senate Utilities Committee meeting on February 18, 2003 and after considerable discussion, it was moved by Senator Brownlee, seconded by Senator Lee, that the proposed balloon amendments to SB 51 be adopted. Since there was not sufficient time to discuss the motion and take action before adjournment at the February 18 meeting, the Chairman announced the motion would remain open until the next meeting of the Senate Utilities Committee on February 21.

Substitute motion by Senator Barone, seconded by Senator Taddiken, SB 104 be amended with proposed Substitute for Senate Bill No. 104, relating to public utilities' concerning prior determination of rate-making principles and treatment by the corporation commission. Motion carried.

Moved by Senator Barone, seconded by Senator Taddington, amend Substitute for Senate Bill No 104, by deleting Section 1 paragraph (3). Motion carried.

Moved by Senator Barone, seconded by Senator Taddiken, Proposed Substitute for Senate Bill No. 104 relating to public utilities concerning prior determination of rate-making principles and treatment by the corporation commission, be passed out favorably as amended. Motion carried.

Chair opened for action on
SB 80 - Public Utilities, Commission approval for selling, assigning or leasing certain assets.

Revisor of Statutes Office had been directed to make changes in SB 80 as discussed in the committee deliberations and the committee was now considering Substitute for SB 80 - 3rs0823 (Attachment 2) Additional information was provided on action taken by the Federal Energy Regulatory Commission (FERC) on Thursday, February 20 which set stricter debt terms for US Utilities and affected the proposed Substitute for SB 80 (Attachment 3) Information by Moody's on Rating Definitions and Initial Ratings by Largest Agencies was provided the committee. (Attachment 4)

After considerable discussion on whether this bill was necessary after the action taken by FERC and further discussion on rating, KCC was requested to provide a list of companies this FERC action would

CONTINUATION SHEET

MINUTES OF THE SENATE UTILITIES COMMITTEE at on February 21, 2003 in Room 231-N of the Capitol.

involve and further action on the bill was tabled until the next meeting on Tuesday, February 24.

Chair reopened for action on

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

Moved by Senator Emler, seconded by Senator Lee, amend SB 51 by changing the language in (d) add "publicly traded" public utility.. and insert "utility officers" instead of 12 highest paid employees and change the language in Section 1 (a) (1) to included but not limited to. Motion carried.

Substitute motion by Senator Wagle, seconded by Senator Lyon to table SB 51. Motion failed. 3 Yes and 5 No

Moved by Senator Barone, seconded by Senator Clark, to amend SB 51 to exclude telecommunications companies under price cap regulation from the provisions to disclose ranges of salaries on page 2, line 12

Due to being out of time Chair announced the Committee would continue consideration of Senator Barone's motion on **SB 51** at their next meeting on February 25.

Approval of Minutes

Moved by Senator Barone, seconded by Senator Emler, minutes for the Senate Utilities meetings on February 12, 2003; February 13, 2003; February 17, 2003 and February 18, 2003 be approved. Motion carried.

The next meeting of the Senate Utilities Committee will be held on February 25, 2003.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 4

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: FEBRUARY 21, 2003

Name	Representing
John Pinegar	State Independent Telephone Assn.
Larry Hollaway	KCC
Steve Johnson	Kansas Gas Service
Bruce Graham	KEPC
Cynthia Smith	OPE
DC Long	Aquila
JP Walsh	KEC
John Jay Jamron	KS Gas Service
Steve Miller	Soflower
Mike Murray	Sprint
Mark Schreiber	Westar Energy
Ann Campbell	Midwest Energy
Tom Day	KCC
Tom Gleason	Independent Telecom Group
Shirley Allen	SITA
Tim Pickering	SBC

PROPOSED Substitute for SENATE BILL NO. 104

By

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

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

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

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

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

(3) "cost" means the total installed cost of the facility;

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

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

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

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

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

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

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

(5) If the commission does not have jurisdiction to set wholesale rates for use of the transmission facility the commission need not consider rate-making 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 rate-making principles and treatment, as proposed by the public utility, that will apply to 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) Any utility seeking a determination of rate-making principles and treatment under subsection (c)(1) shall as a part of its filing submit the following information: (A) A description of the public utility's conservation measures; (B) a description of the public utility's demand side management efforts; (C) the public utility's ten-year generation and load forecasts; and (D) a description of all power supply alternatives considered to meet the public utility's load requirements.

(3) In considering the public utility's supply plan, the commission may consider if the public utility issued a request

for proposal from a wide audience of participants willing and able to meet the needs identified under the public utility's generating supply plan, and if the plan selected by the public utility is reasonable, reliable and efficient.

(4) The commission shall issue an order setting forth the rate-making principles and treatment that will be applicable to the public utility's stake in the generating facility or to the contract in all rate-making proceedings on and after such time as the generating 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 generating facility or the cost of the purchased power under the contract is considered shall utilize the rate-making principles and treatment applicable to the generating facility or contract.

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

(d) The public utility shall have one year 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.

(e) If the public utility notifies the commission within the one-year period that the public utility will not construct or participate in the construction of the generating or transmission facility or that it will not perform under the terms of the contract, then the determination of rate-making principles pursuant to subsection (b) or (c) 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 subsection (d) that it will construct or participate in a generating facility or 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 subsection (c) within 90 days.

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

Substitute for SENATE BILL NO. 80

By

AN ACT concerning public utilities; prohibiting the subsidizing of unregulated, nonjurisdictional activities.

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

Section 1. (a) No public utility, as defined by K.S.A. 66-104, and amendments thereto, which:

- (1) Is governed by the state corporation commission;
- (2) is publicly traded; and

(3) has a bond rating of B+ or lower, shall use ratepayer funds or public utility assets to subsidize unregulated and nonjurisdictional activities.

(b) The state corporation commission shall adopt reasonable rules and regulations to implement the provisions of this section.

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

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FERC sets stricter debt terms for US utilities

WASHINGTON, Feb 20 (Reuters) -

The Federal Energy Regulatory Commission on Thursday authorized Westar Energy Inc. to issue up to \$650 million in long-term, unsecured debt in an order that also set stricter rules for all future U.S. utility debt issuances narrowing the uses of proceeds.

FERC commissioners said the new order would prevent U.S. utilities from using debt linked to utility assets for non-utility businesses, much like Enron Corp attempted to do before filing for bankruptcy protection.

Under the new terms set by FERC, U.S. utilities that seek to issue debt backed by their assets must use the proceeds for utility purposes only, the agency said.

If a utility asset is spun off or divested, the debt must follow that asset, FERC said.

"If you're going to borrow money and pledge utility assets as collateral, you've got to use that debt for utility purposes," FERC Commissioner William Massey said. The order was issued during a monthly meeting of FERC commissioners.

Westar Energy, the largest electric utility in Kansas, has been struggling with heavy debt and declining cash flow like many U.S. energy firms.

Earlier this month it announced plans to sell all non-core assets and cut its dividend as part of a restructuring plan demanded by Kansas state utility regulators. Westar said the plan should halve its \$3.4 billion debt load and focus the company on its electric utility operations while curtailing money-losing outside activities.

The restructuring should be completed by the end of 2004, it said.

Westar has also been questioned by investigators with the Securities and Exchange Commission about its accounting practices and by the Commodity Futures Trading Commission

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about its energy trading.

INCREASING SCRUTINY, TIGHTER RULES

In recent months, FERC has taken a closer look at U.S. energy firms' attempts to use regulated assets to shore up unregulated ones.

Last year, FERC approved a consent agreement with Enron's Transwestern pipeline, in which the pipeline promised it would not seek a rate hike to recover the costs of a \$550 million loan secured from its parents weeks before Enron filed for bankruptcy.

The agency reached a similar agreement separately with Northern Natural Gas, a pipeline formerly owned by Enron.

Enron had used the pipeline loan to strengthen its balance sheet in support of its application for a new \$1 billion line of credit obtained from its banks.

FERC has also been developing new rules for so-called money pools, which provide unsecured, short-term loans to utility and pipeline subsidiaries at low interest rates.

The rules would require affiliates to hold investment-grade credit ratings in order to borrow from a money pool program. The costly change in cash management rules comes at a time when the industry is reeling from a collapse in stock prices

FERC issued the Westar order in docket ES02-51.

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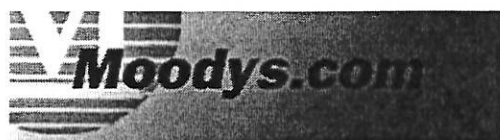
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Counterparty Ratings

Issuer ratings that are assigned to derivative product companies and clearinghouses (known as counterparty ratings) are opinions of the financial capacity of an obligor to honor its senior obligations under financial contracts, given appropriate documentation and authorizations.

Bank Issuer Ratings

Issuer ratings that are assigned to banks are opinions of the financial capacity of a bank to honor its senior unsecured financial contracts.

Municipal Issuer Ratings

Issuer ratings represent Moody's opinion about debt-service-repayment capacity of a government entity. Issuer ratings are assigned based on Moody's independent evaluation of a municipality's specific credit characteristics.

Senior Implied Ratings

Moody's Senior Implied Issuer Rating are generally employed within the speculative-grade universe. The Senior Implied Issuer Rating is an opinion of an issuer's ability to honor its financial obligations and is assigned to an issuer as if it had a single class of debt and a single consolidated legal entity structure. The Senior Implied Issuer Rating differs from Moody's Senior Unsecured Issuer Rating, which speaks to an obligor's senior unsecured obligations that may be

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junior in its capital structure and that also reflects the obligor's actual corporate structure. By contrast, the Senior Implied Issuer Rating assumes away such structural and legal complexities.

Issuer Rating Symbols

Moody's rating symbols for Issuer Ratings are identical to those used to show the credit quality of bonds. These rating gradations provide creditors with a simple system to measure an entity's ability to meet its senior financial obligations.

Aaa

Issuers rated Aaa offer exceptional financial security. While the creditworthiness of these entities is likely to change, such changes as can be visualized are most unlikely to impair their fundamentally strong position.

Aa

Issuers rated Aa offer excellent financial security. Together with the Aaa group, they constitute what are generally known as high-grade entities. They are rated lower than Aaa-rated entities because long-term risks appear somewhat larger.

A

Issuers rated A offer good financial security. However elements may be present which suggest a susceptibility to impairment sometime in the future.

Baa

Issuers rated Baa offer adequate financial security. However, certain protective elements may be lacking or may be unreliable over any great period of time.

Ba

Issuers rated Ba offer questionable financial security. Often the ability of these entities to meet obligations may be moderate and not well safeguarded in the future.

B

Issuers rated B offer poor financial security. Assurance of payment of obligations over any long period of time is small.

Caa

Issuers rated Caa offer very poor financial security.

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They may be in default on their obligations or there may be present elements of danger with respect to punctual payment of obligations.

Ca

Issuers rated Ca offer extremely poor financial security. Such entities are often in default on their obligations or have other marked shortcomings.

C

Issuers rated C are the lowest-rated class of entity, are usually in default on their obligations, and potential recovery values are low.

Note: Moody's applies numerical modifiers 1, 2, and 3 in each generic rating category from Aa to Caa. The modifier 1 indicates that the issuer is in the higher end of its letter rating category; the modifier 2 indicates a mid-range ranking; the modifier 3 indicates that the issuer is in the lower end of the letter ranking category.

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Table 1: Initial Ratings by Largest Agencies

Ratings initially assigned by Moody's and Standard & Poor's are given numerical ratings, with the safest ratings (Aaa, AAA) assigned a value of 1, the next highest ratings (Aa1, AA+) assigned a value of 2, and so on such that higher numerical ratings imply increased credit risk. The horizontal line depicts the cutoff between investment grade and non-investment grade bonds.

Rating level	Moody's	Number	Percent	S&P	Number	Percent
1	Aaa	1	0.3	AAA	3	0.8
2	Aa1	6	1.7	AA+	2	0.6
3	Aa2	6	1.7	AA	17	4.8
4	Aa3	<u>13</u>	<u>3.7</u>	AA-	<u>17</u>	<u>4.8</u>
Subtotal: "High Grade"		26	7.3		39	10.9
5	A1	28	7.9	A+	30	8.4
6	A2	70	19.7	A	69	19.3
7	A3	59	16.6	A-	46	12.9
8	Baa1	33	9.3	BBB+	44	12.3
9	Baa2	74	20.8	BBB	71	19.9
10	Baa3	<u>41</u>	<u>11.5</u>	BBB-	<u>34</u>	<u>9.5</u>
Subtotal: "Medium Grade"		305	85.9		294	82.4
11	Ba1	8	2.3	BB+	8	2.2
12	Ba2	5	1.4	BB	4	1.1
13	Ba3	5	1.4	BB-	5	1.4
14	B1	5	1.4	B+	5	1.4
15	B2	0	0.0	B	1	0.3
16	B3	<u>1</u>	<u>0.3</u>	B-	<u>1</u>	<u>0.3</u>
Subtotal: "Low Grade"		24	6.8		24	6.7
TOTALS		355	100%		357	100%
Mean numerical rating	7.59			7.41		
Median numerical rating	7.00			7.00		

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