

Approved: February 24, 2004
Date

Carl Dean Holmes

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:07 a.m. on January 27, 2004 in Room 231-N of the Capitol.

All members were present except: Representative Margaret Long

Committee staff present: Mary Galligan, Legislative Research
Dennis Hodgins, Legislative Research
Mary Torrence, Revisor of Statutes
Jo Cook, Administrative Assistant

Conferees appearing before the committee: Carl Huslig, Aquila
Steve Miller, Sunflower Electric Cooperative
Mark Schreiber, Westar Energy
David Springe, Citizens' Utility Ratepayer Board
Larry Holloway, Kansas Corporation Commission

Others attending: See Attached List

HB 2516 - Incentives to increase electric transmission system and generation capacity; state corporation commission powers

Chairman Holmes opened the hearing on **HB 2516**.

Carl Huslig, Manager Transmission Services for the Aquila Networks, testified as a proponent to **HB 2516** (Attachment 1). Mr. Huslig stated that they strongly supported the committee's vision to supply the state with a reliable and reasonably priced transmission system that provides adequate cost recovery for the owners.

Steve Miller, Senior Manager of External Affairs for the Sunflower Electric Power Corporation, appeared on behalf of Sunflower, Kansas Electric Power Cooperatives, and Kansas Electric Cooperatives. Mr. Miller presented testimony in support of **HB 2516** (Attachment 2). He stated that they believed the proposal can bring improvements to the electric power supply and delivery systems in Kansas.

Mark Schreiber, senior manager government affairs for Westar Energy, addressed the committee as a proponent of **HB 2516** (Attachment 3). Mr. Schreiber told the committee that the bill provide several incentives to the electric industry, especially for investments in construction or upgrades of transmission facilities. He also commended the committee's efforts to anticipate the energy needs of the state.

Mr. Huslig, Mr. Miller, and Mr. Schreiber responded to questions from the committee.

David Springe, Consumer Counsel for the Citizens' Utility Ratepayer Board, offered testimony in opposition to **HB 2516** (Attachment 4). Mr. Springe cautioned the committee to not create obligations that force undue burden on the customers of Kansas regulated electric utilities they the wish of the legislature is to build additional generation and transmission facilities in the state.

Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission, provided comments on **HB 2516** (Attachment 5). Mr. Holloway stated that Commission was taking a neutral stance on the bill and outlined their understanding and concerns for several sections.

Mr. Springe and Mr. Holloway responded to questions from the committee.

Chairman Holmes closed the hearing on **HB 2516**. He announced that the bill would be referred to a sub-committee consisting of Representatives Sloan, Kassebaum, Neighbor, Svaty, and Ward.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 231-N Statehouse, at 9:07 a.m. on January 27 , 2004.

Chairman Holmes then asked for bill introductions. Representative Long-Mast requested that a bill be introduced that placed a moratorium on wind farms in the Flint Hills area of the state. Representative Long-Mast moved to introduce the bill as a committee bill. Representative Carter seconded the motion. The motion carried.

The meeting adjourned at 10:23 a.m.

The next meeting will Wednesday, January 28, 2004.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 27, 2004

NAME	REPRESENTING
David Spring	Curb
Joe Diste	KCBPU
Tom Day	KCC
LARRY HOLLOWAY	KCC
SUSAN CUNNINGHAM	KCC
STEVE JOHNSON	Kansas Gas Service
Sandra Braden	Great Plains / KCPL
MARK SCHREIBER	Westar Energy
REBECCA FLOYD	KDEA
ALAN COBB	Tallgrass Partners
Jesse McCurry	Commerce
Ann Campbell	Midwest Energy, Inc.
Steve Miller	Sunflower
J Long	Aguila
Carl Huslig	Aguila

Testimony on House Bill No. 2516
House Utilities Committee
January 27th, 2004

Prepared by
Carl A. Huslig
Manager Transmission Services
Aquila Networks – WPK

Aquila Networks – WPK (Aquila) fully appreciates this opportunity to testify on House Bill 2516. Without a doubt, all of us realize that there is a need to expand and improve the transmission system in the State of Kansas, in order to improve electric system reliability and to provide the infrastructure for pending energy markets. We strongly support this committee's vision to supply the State of Kansas with a reliable and reasonably priced transmission system that provides transmission owners with adequate cost recovery. House Bill No. 2516 continues to build on the legislative processes began in 2003 to fulfill that vision. Aquila supports the general intent of this bill but has concerns with the bill as written.

New Section 1 has adequately defined the terms in New Sections 2 through 6. Aquila would suggest that the term "bulk transfer" be defined since it appears at least three times in New Section 1.

Aquila questions the need for New Section 2. We believe that quantifying the economic benefits in section (a) will be difficult. The economic benefits are many but some include

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benefits that cannot be quantified. Section (b) provides cost recovery for costs not otherwise recoverable. The Commission already determines which costs are recoverable so why would they authorize a surcharge on non-recoverable costs. Finally, Aquila believes that section (c) is redundant. Aquila's open access tariff provides the mechanism for the recovery of interconnection costs for the first generator. The second generator will pay for the interconnection costs through their transmission service request and reservation. Thus, the cost recovery is already prescribed in our open access tariffs and thus, does not need to be addressed here. As already stated, Aquila suggests that New Section 2 be deleted from House Bill No. 2516.

New Section 3 authorizes the KDFA to provide marketing bonds to finance the construction and upgrade of Electric Transmission Lines and Appurtenances that originate in Kansas and have at least 85% of the costs are located in Kansas. Aquila supports this section and views it as increasing value to House Bill No. 2018 passed last year. The only negative comment that Aquila would have is the 85% requirement. It seems very subjective and might provide obstacles to the committee's vision.

Aquila fully supports New Section 4. Providing a 15-year depreciation cycle provides an incentive for a transmission owner to construct. This section is a positive addition to the proposed bill.

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Aquila believes that New Section 5 needs further clarification. The clarifying issues are definition of transmission operators and what is meant by grant or lease interconnection facilities to.

Aquila supports New Section 6. Aquila believes that if FERC approves sale of transmission lines or contract for transmission operation, the Commission shall approve and provide mechanism for appropriate rate-making treatment.

Aquila supports the modifications proposed for Sections 7,8, and 12. Finally, Aquila supports the language in New Sections 9, 10, and 11.

As can be seen by the testimony, Aquila supports the intent of House Bill No. 2516. However, we would suggest deleting New Section 2 and providing further clarification to New Sections 1,3, and 5. Again, Aquila appreciates the opportunity to provide input on this bill.

Steve Miller

**TESTIMONY SUBMITTED TO THE
HOUSE UTILITIES COMMITTEE**

By

**Earl Watkins, Executive Vice President & General Counsel
SUNFLOWER ELECTRIC POWER CORPORATION**

**Bruce Graham, Vice President, Member Services & External Affairs
KANSAS ELECTRIC POWER COOPERATIVES, INC.**

**David Holthaus, Manager, Government Relations
KANSAS ELECTRIC COOPERATIVES, INC.**

January 27, 2004

Thank you, Mr. Chairman and members of the Committee for providing the electric cooperatives in Kansas time to speak today on House Bill 2516, a proposal we believe can bring improvements to the electric power supply and delivery systems in Kansas.

Section 2(a) requires the commission to consider local or statewide economic benefits when transmission facilities are built or upgraded.

- This proposal introduces a new aspect to utility regulation that certainly deserves further consideration.
- The key aspect of this new policy is determining the “demonstrable benefits” to our ratepayers. While we are somewhat uneasy about this new policy, we are prepared to trust the process and the commission to regulate these issues in ways that are not detrimental to our ratepayers in sparsely-populated rural areas.

Section 2(a) also limits the commission’s consideration here only to those transmission system improvements associated with the interconnection of new generation facilities.

- We believe this should be expanded to include any upgrade or addition to the Kansas transmission system at 69 kilovolts of electricity or more.

Section 2(b) says, “The commission may adopt rules and regulations or recommend legislation giving the commission discretionary authority to “implement transmission system benefit surcharge on customers of rate-regulated electric public utilities.”

- A concern we have is dealing with a potential problem that might occur if projects across the state consume our rate elasticity thereby eliminating our

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opportunities to make system improvements on existing resources, i.e., major repairs to a generating unit.

- We suggest that the best way to handle this issue would be to let the commission review projects ahead of time, project the potential impact on the state, then solicit input from other state utilities to find consensus before construction begins if costs of the line to be recovered from others have the potential to cause hardships on other utilities.
- We also believe the majority of the economic benefits associated with new transmission construction will generally reside in the areas where constraints currently exist and in those areas with the largest concentration of ratepayers.

Section 2(c) would require that the commission, acting on authority granted by FERC or RTOs, implement a process to allocate cost of interconnection and transmission facilities constructed in the last ten years between current and proposed generation facilities.

- We suggest that this provision may be premature. We believe that the Legislature, the commission and Kansas utilities should evaluate this proposal before we depend upon an allocation of responsibility to the commission by either the FERC or an RTO.
- FERC Order 2003 provides for a mechanism for refunding costs associated with interconnection of new generation facilities. Pending the rehearing of Order 2003, the Legislature should delay adoption of any specific language until Order 2003 is finalized.
- Additionally, this proposal assumes that all Kansas utilities are subject to FERC jurisdiction. This is not the case. Sunflower's transmission system is regulated by the commission.

Section 3 (a) requires that at least 85% of the new or upgraded transmission facilities reside in Kansas before assistance could be received from KDFA.

- We would suggest that only 50% of the transmission facilities or benefits must be in Kansas. One specific project we've studied (Spearville-Mooreland), would not meet the 85% test, but could bring a great deal of benefit the State.

Section 6 does not allow the commission any alternative but to approve the sale of transmission lines to an independent transmission company or operator as well as any contract with such entities for the operation of such transmission lines.

- We believe the commission should retain some authority to assure that the sale of such significant utility assets is prudent and will not negatively affect customer rates and reliability.

Section 4 provides for the recovery of capital expenditures in transmission lines over a period of 15 years.

- This is an understandable proposal for companies that are building transmission facilities, but it would increase rates for cooperative ratepayers and transmission dependent utilities like KEPCo.

Section 10 allows state agencies to contract with new power suppliers for the construction, operation and management of renewable generators.

- We know that this proposal will have a detrimental effect on retail suppliers currently serving these loads and to a smaller extent their power suppliers as well.
- If this proposal is approved, it must be amended to provide a revenue stream to the distribution systems that currently serve these state agencies to pay for the facilities they've already installed. They can't be expected to maintain these facilities on a standby basis.
- We believe that renewable generators will become valuable assets in every generating utility's portfolio in Kansas. Sunflower has already made that commitment in the wind farm that will be built near Leoti as soon as the Production Tax Credit provisions are renewed by the Congress.

Section 11 would allow utilities to recover "prudent" expenditures in research and development activities.

- We support this policy change because it has been difficult to recover these costs in rates and because we believe these investments provide benefits to utilities and ultimately to consumers.

Section 12 (b) provides for issuance of bonds for construction or upgrade of electric transmission facilities at 34.5 kilovolts or higher.

- This is inconsistent with the balance of the bill which defines electric transmission facilities as 69 kilovolts or more.

Finally, we commend Representative Sloan for his efforts to find ways to stimulate additions and upgrades to the Kansas transmission system. Hopefully, this bill can serve as a vehicle for the Legislature, the commission and affected utilities to come together to fine tune this proposal in a way that is beneficial for all Kansas ratepayers.

Testimony on HB 2516 before the
House Utilities Committee
by Mark Schreiber, Westar Energy
January 27, 2004

Chairman Holmes and members of the committee, I am Mark Schreiber, senior manager government affairs for Westar Energy. Thank you for the opportunity this morning to address HB 2516.

This bill provides several incentives to the electric industry, especially for investments in construction or upgrades of transmission facilities. It provides economic development incentives to encourage higher retention of benefits for transmission and generation investments, especially but not exclusively directed toward counties with stagnant or declining populations. This committee has been farsighted in its efforts to expand electric generation and transmission in Kansas.

It is difficult to know what incentives will be effective until Congress and FERC have established definitive ground rules. Last year this legislature enacted legislation, originating in this committee, that allows transmission costs to be recovered through a separate charge that can be changed to account for fluctuations in transmission costs. The charge and changes to it are to be set upon application to the KCC. We believe this law is a sound and foresighted way to address federal transmission policy that is still developing.

Meanwhile, if this committee wants to act before federal policy is in place, we would recommend that New Section 4, which is imposed on the KCC, be conditioned upon the authority it retains once federal policy is known. For example, New Section 2 (c) follows this course. We recommend that New Section 4 be amended so that when the KCC is required to allow recovery of transmission investments, it does so to the extent costs remain under its jurisdiction. Otherwise, some transmission costs could arguably be recovered twice, once through FERC-approved rates and then again because the KCC is directed to allow recovery upon application.

Another option is for the committee to wait for several processes to unfold. The first would be to wait for Congress and FERC to act. Second, last October the state's utilities, the KCC, and members of the legislature participated in a meeting to review the Northeast blackout and proposals on how to prevent such an event from happening in Kansas. The primary message was that the region, working at the federal level, must provide the tools for enhancing the transmission system affecting reliability in our state. The heavy lifting is now in the hands of the federal government and regional power pools or regional transmission organizations. Third, earlier this session, you heard from Lee Allison about the progress of the State Energy Resource Coordinating Council (SERCC). The SERCC's transmission task force has preliminarily found that the state's transmission system is controlled more by forces outside the state. It also has found the existing transmission system in Kansas is adequate and reliable. This task force is trying

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to identify upgrades that will be needed in the future. Some needed upgrades affecting Kansas are located outside the state, at "choke points" that can impede importing and exporting power. These "choke points" are unfortunately beyond the reach of state legislatures. During the June transmission summit in Lawrence with FERC chairman Pat Wood several of these transmission constraints were identified.

We commend the efforts of this committee to anticipate the energy needs of our state.

Citizens' Utility Ratepayer Board

Board Members:
Gene Merry, Chair
A.W. Dirks, Vice-Chair
Francis X. Thorne, Member
Nancy Wilkens, Member
Carol I. Faucher, Member
David Springe, Consumer Counsel



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Kathleen Sebelius, Governor

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HOUSE UTILITIES COMMITTEE H.B. 2516

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
January 27, 2004

Chairman Holmes and members of the committee:

Thank you for this opportunity to appear before you today and offer testimony on H.B. 2516. The Citizens' Utility Ratepayer Board is opposed to this bill for the following reasons:

This bill is intended to provide incentives to build electric transmission facilities in Kansas. As reported by the State Energy Resources Coordination Council Transmission Task Force, electric transmission facilities in Kansas are adequate and reliable at this time. This bill is also intended to provide incentives to build generation facilities in Kansas. At this time, Kansas has generation supply in excess of what Kansas needs to meet its demand. In the simplest sense, if the regulatory mechanisms in place historically have adequately served our need for generation and transmission, I question why we need to provide the additional incentives contained within this bill. Further, I am concerned about the additional costs this bill may create and who will be responsible for paying those additional costs.

If, as a policy goal, the legislature wishes to build additional electric generation and electric transmission facilities in the state, the legislature must be careful not to create obligations that force undue burden on the customers of Kansas regulated electric utilities. This is especially true where the regulated utility customers are not in need of additional electric generation or transmission facilities at this time. House Bill 2516 places many new requirements on both the Kansas Corporation Commission ("Commission"), and through the Commission's regulatory authority, the regulated

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electric utilities in the state. The regulated utility customers will ultimately pay for these obligations, and any additional costs they require, resulting in increasing utility rates. Increased utility rates are not only bad for consumers, but may make the state less competitive and less attractive to business.

For example, New Section 2(a) appears intended to provide a broad set of potential benefits that must be considered by the Commission when siting a transmission line that will interconnect new generation construction to the transmission system. These include “short and long term economic benefit to the community where the proposed generation facility is located” and the “cost of necessary transmission improvements that can be appropriately recovered from traditional sources”.

New Section 2(b) of HB 2516 (page 2, line 1-7) then allows a “transmission systems benefit charge” on customers of “rate regulated electric public utilities” to recover investment in electric transmission that provide “measurable and significant economic benefits” to “indefinable parts of the state” the full cost of which “will not otherwise be recovered”. Read together, New Sections 2(a) and 2(b) may require the Commission to approve a transmission line because there may be some benefit to a local community which is not served by a regulated utility, and allows a regulated utility to charge its utility customers a transmission systems benefit charge if all costs of the line cannot be recovered in a “traditional” manner. What is absent from this language is any requirement that the measurable economic benefits are received by, or in any way related to, the regulated utility customers that will be paying this systems benefit charge.

Although not directly stated, I believe that the incentives in this bill must be viewed in conjunction with the desire to develop wind energy resources in Kansas. While the language in the bill is written in a generic fashion, and will certainly be applicable to any proposed generation or transmission facilities, it seems that at this time, the provisions contained in this bill will be most directly applicable to those seeking to build wind generation and transport the energy to market. A policy to develop Kansas wind energy resources and to provide electric transmission to aid in the development of Kansas wind energy resources is not objectionable in an of itself. Again however, I urge the legislature to consider who will be responsible for paying the costs of this policy, and to

make sure that the cost of developing wind power in Kansas, if that is the intent of this bill, does not fall unfairly on the regulated utility customers in the state.

One final point of concern is that New Section 6(a) (page 2 line 35-41) requires the Commission, upon application "shall approve" the sale of transmission lines to an independent transmission company or system operator that has been approved by the Federal Energy Regulatory Commission, including any contract for the operation of the transmission lines to a like entity. While I am not an expert on the federal transmission scheme, or how the determination is made to build transmission, given the general intent of this bill, do we as a state want to cede jurisdiction over the entirety of the state's transmission facilities in such a summary fashion to a regional company over which the state will have little or no jurisdictional control?

Other language issues and questions:

- New Section 1 (c) defines transmission at the 69 kilovolt level. (page 1, line 24) This is consistent with definition used in Section 8(c). (page 7, line 26) However, in Section 12(b) dealing with K DFA bond authority, 34.5 kilovolts is used. (page 8, lines 26-30)
- New Section 2(a) (page 1, lines 29-34) requires the Commission to open a generic docket to examine any changes in rules, regulations or statutes necessary for the Commission to consider economic benefits to local communities and the state when reviewing applications seeking to construct or upgrade transmission. HB 2130, passed last year, by statute requires the Commission to consider "the benefit to both customers in Kansas and customers outside of the state and economic development benefits in Kansas", when siting transmission lines per K.S.A. 66-1,180. New Section 2 is not necessary since the statutory changes requested have been accomplished through the passage of HB 2130. (These potential additional transmission costs are a concern because HB 2130 also created a pass through mechanism where transmission costs are "conclusively presumed prudent" and passed on to the regulated utility customers in a transmission line item)
- New Section 2(a) (at line 34), states that "in making such determination the Commission shall consider", and then lists a broad set of benefits for consideration. (see page 1, lines 34-43) Are the listed benefits to be considered intended to be placed in rules, regulations or statutes by the Commission, or just required to be considered in determining whether there should be any changes to rules regulations and statutes?

- New Section 2(c) (page 2, lines 15-17) requires the reimbursement of a prorated share of the “benefits achieved” by the availability of the transmission capability. Are these the same broadly defined benefits as described in New Section 2(a) of the bill (page 1, lines 34-43) and if so, how do we calculate the appropriate prorated share of those benefits?
- Is New Section 3 more appropriately placed within Section 12, given both deal with KDFFA bonds? And what is the genesis of the 85% in-state requirement as it relates to KDFFA bonds?
- New Section 4 requires a 15 year capital recovery period for transmission facilities that may conflict with federal recovery and may therefore be preempted. The 15 year recovery period may also conflict with KDFFA bond payback periods if utilized pursuant to Section 12.
- New Section 5 allows any entity that constructs new or expanded generation capacity to grant or lease the interconnection facilities to transmission operators. Should there be some size limitation on the generation this applies to, or can “any entity”, including an individual, construct a small generator and connect to the grid under this provision? And are transmission operators required to accept the grant or lease of the interconnection facilities or can they turn down a request?
- New Section 11 (page 8, line 6-11) requires the Commission “shall” include in consumer rates the utility’s “prudent expenditures for research and development” performed by research centers determined by the Commission to be nationally recognized. Does this require all R&D expenditures be included in rates if the R&D is performed by a nationally recognized research center, or does this allow the Commission to still question whether the level of R&D expenditure is prudent, regardless of whether performed by a nationally recognized research center? For example, if a utility spend \$10 million on R&D costs at a nationally recognized research center, is the Commission required to place the \$10 million cost in rates simply because the research center is nationally recognized, or can the Commission question the prudence of the utility spending \$10 million?

**BEFORE THE HOUSE UTILITIES COMMITTEE
PRESENTATION OF THE
KANSAS CORPORATION COMMISSION
January 27, 2004
HB 2516**

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 provide comments on HB 2516.

This bill contains numerous incentives for construction of electric transmission throughout the state and construction of electric generating plants in rural counties. The following discussion is our understanding of different sections of the bill, its intent and our recommendations or concerns regarding that section.

Section 2 of the Bill

Section 2 of the bill requires the KCC to open a generic docket and investigate changes in rules and regulations, or recommend statutory changes necessary to effectuate the intent of this bill. This would authorize the KCC to assess a surcharge to the customers of all rate-regulated electric utilities in the state, to subsidize construction of certain transmission upgrades necessary for new generating plant construction, provided these upgrades meet the specified criteria. The criteria include economic benefit to communities where the proposed generation is to be constructed and resulting improvements to the reliability and security of the electric system.

While we are certainly willing to perform the task requested, we have two concerns and recommendations regarding this section of the bill.

First, section 2 of this bill envisions that only rate-regulated utility customers would be required to subsidize the transmission upgrades envisioned by this bill. Yet all

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Kansas electric utility customers would benefit from the increase in transmission capacity, security and reliability. However, very few customers of the 119 Kansas municipal utilities, and only retail customers of 3 of the 29 Kansas rural electric cooperatives, are rate-regulated by the KCC, and would be required to pay the surcharge. Over 25% of the retail electric utility customers in the state of Kansas would not have to pay anything, while the remaining customers would be providing the entire subsidy. Because approximately 60% of the area in the state is served by non-rate regulated electric utilities, it is highly likely that the communities receiving most of the benefits would be served by electric utilities whose ratepayers would pay no surcharge at all. If the Legislature wants to implement such a surcharge, it should be broadly based and include all electric customers in the state, regardless of whether or not they are rate-regulated by the KCC.

Additionally, while we are willing to take on the task of implementing a generic docket to make recommendations to the Legislature, we are concerned that the KCC may not be the best forum to accomplish this task. Certainly the likely outcome of any generic proceeding will be to seek clarification and approval from the Legislature. However, KCC proceedings must meet specific legal requirements. These more formal requirements may limit input from non-jurisdictional utilities and other concerned groups. We would recommend that the State Energy Resource Coordinating Council would be a better forum to perform the task envisioned by section 2 of the bill. This organization was formed, in part, to make the type of policy recommendations envisioned by section 2.

Sections 3, 7 and 12 of the Bill

Section 3 and section 12 of the bill appear to affect rules and requirements for KFDA assistance and section 7 of the bill appears to address tax incentives. We have no comments regarding these sections of the bill.

Section 4 of the Bill

Section 4 of the bill requires the KCC to allow recovery of capital expenditures for construction or upgrades of transmission facilities over a period of 15 years. We have two concerns with this section of the bill. First, allowing accelerated recovery of any utility asset is effectively discriminating between generations of ratepayers. Today's ratepayers end up paying for the benefits received by future ratepayers. This is a departure from sound ratemaking principles. Nonetheless, we recognize this accelerated recovery is occasionally allowed by policy makers to provide incentives for improvements that they believe are in the public interest.

While we recognize that Kansas lawmakers may see a pressing public interest in providing certain incentives for transmission construction, we are also concerned that incentives for transmission facilities at the state level will have little or no affect on the majority of electric transmission owners in Kansas. Last year the Legislature passed HB 2130 which required the KCC to allow electric utilities to pass through transmission charges approved by the Federal Energy Regulatory Commission (FERC). The majority of Kansas transmission owners are obligated under regional and federal proposals to deliver transmission service to their retail customers under transmission tariffs approved by the FERC, and HB 2130 codifies those initiatives to pass through FERC-approved transmission charges to Kansas retail customers. While this section of the bill envisions the KCC allowing accelerated depreciation recovery in retail transmission rates, the

reality is that last year's legislation and current practices dictate that these rates will likely be set by the FERC. As a result, this section of the bill will have no real effect or incentive on most Kansas electric transmission owners.

Section 5 of the Bill

Section 5 of the bill allows an entity, which constructs new or expanded generation capacity to grant or lease its transmission interconnection facilities to transmission operators. The intent of this section is subject to either of two interpretations. If this is intended to permit the entity to act in granting or leasing its transmission interconnection facilities, then it is merely codifying the entity's existing property rights. On the other hand, if this is interpreted as meaning that the entity has the option of taking this action, and the receiver of the lease or grant cannot protest the terms, conditions or the quality of the facilities being granted or leased, and that the KCC has no ability to protect the public from inadequate facilities or to review or approve the transaction, then we have concerns regarding this language. Additionally it is not clear what facilities are actually affected. For example, regardless of the intent, the language implies the entity may grant or lease any interconnection facilities, even if the facility is not associated with the new or expanded generation. We recommend that this section of the bill be removed.

Section 6 of the Bill

This section of the bill requires the KCC to approve any sale of transmission facilities or any operating contract for transmission facilities to an independent transmission company or system operator. It also allows the KCC discretion in allocating the proceeds from any resulting sale of assets. In general, the KCC has been in favor of,

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and actively involved in, regional discussions and initiatives to form independent system operation of the transmission grid. Nonetheless, defining what the term “independent” means has been a contentious regional and national issue. This simple term has been debated before numerous state commissions, and by various litigants before the FERC. Additionally, by requiring the KCC to approve such transactions this bill would remove the KCC’s ability to protect Kansas from being subdivided between competing independent operators, or from organizations whose practices or tariffs disadvantage Kansans. We would recommend that by simply changing the word “shall” to “may” the bill would allow the KCC appropriate discretion to determine independence and to protect Kansans from unfavorable proposals.

Section 8 of the Bill

Section 8 of this bill would revise K.S.A. 66-128 to allow the Commission the discretion to include costs for electric transmission lines under construction in a utility’s ratebase. While the KCC believes these costs will likely be considered by the FERC and not the KCC, the KCC does not oppose this change to existing statute.

Section 9 of the Bill

Section 9 of this bill provides an incentive for electric utilities to construct generating plants in certain counties by allowing the utility to retain benefits equivalent to 10% of the net revenues from sales of electricity generated in Kansas and sold outside of the state. In most rate cases, the KCC uses revenues generated from off system sales to offset the costs of a utility’s generating units and thereby reducing the burden on the utility’s ratepayers. This section of the bill envisions an incentive that would allow the utility’s shareholders to keep a portion of these revenues. While we recognize that the

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Legislature may desire this incentive, we are also obligated to note that the utility's ratepayers would pay for this subsidy.

Section 10 of the Bill

This section of the bill contains provisions for state agencies, allowing them to keep revenues from their investments in renewable generation during the state budget process. The KCC is a fee-funded agency and does not envision installing any self-generation. We have no comments on this section of the bill.

Section 11 of the Bill

This section of the bill would require the KCC to allow electric utilities to include, in rates, certain expenditures on research and development. While we do not oppose this section of the bill, we would note that the KCC has traditionally allowed such expenditures, and we are concerned that this bill would make such allowances mandatory. Because we are concerned that mandatory provisions could affect the KCC's ability to protect ratepayers in certain circumstances, we recommend that the KCC be given the option to review and approve the full breadth of the utility's expenditures by changing the word "shall" to "may".