

## MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:11 a.m. on March 4, 2004 in Room 231-N of the Capitol.

All members were present except: Representative Eric Carter  
Representative Nile Dillmore

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: Larry Dolci, Great Plains Energy  
Richard Good, Westar Energy  
David Springe, Citizens' Utility Ratepayer Board  
Don Low, Kansas Corporation Commission

Others attending: See Attached List

**SB 382 - Recovery of certain costs of security measures, public utilities**

Chairman Holmes opened the hearing on **SB 382**.

Larry Dolci, Director Resource Protection for Great Plains Energy, testified in support of **SB 382** (Attachment 1). Mr. Dolci stated that they were still collecting information for their application for recovery and anticipate its filing shortly. He said that removal of the sunset provision will benefit the citizens of Kansas by helping to make sure utilities have the funding available to follow sound and reasonable security practices.

Richard Good, Senior Manager of Disaster Recovery and Infrastructure Security for Westar Energy, addressed the committee as a proponent of **SB 382** (Attachment 2). Mr. Good stated that when the company files a rate case next year, their current security costs will be incorporated into the filing. Recovery of security costs incurred before the next rate case needs to be available to the company.

Mr. Dolci and Mr. Good responded to questions from the committee

David Springe, Consumer Counsel for the Citizens' Utility Ratepayer Board, spoke in opposition to **SB 382** (Attachment 3). Mr. Springe stated they believed that the provisions of the statute are clearly harmful to utility consumers and should be allowed to sunset.

Don Low, Director of the Utilities Division of the Kansas Corporation Commission, testified on **SB 382** (Attachment 4). Mr. Low stated that while the Commission was sympathetic to the legislature's desire to address national security issues and the recovery of costs associated with those issues, they believe that it should not be extended indefinitely.

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

Additionally, Mark Schreiber, Westar Energy, and Tim Rush, Great Plains Energy, responded to questions from the committee.

Chairman Holmes closed the hearing on **SB 382**.

The meeting adjourned at 10:02 a.m.

The next meeting will be Friday, March 5, 2004.

# HOUSE UTILITIES COMMITTEE GUEST LIST

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NAME	REPRESENTING
Mark Schreiber	Westar Energy
LARRY Dolci	GPE / K.S. City POWER & light
Richard Good	Westar Energy
Steve Johnson	Kansas Gas Service
Tim Rush	GPE / KCPL
Dan Grinye	curb
Don Low	KCC
Bruce GRAHAM	KEP/6
D. Long	AQUILA, INC.
Charlie Keller	Hein Law Firm
TOM DAY	KCC

Testimony Before the Kansas House Utilities Committee Supporting the  
Passage of SB382, Submitted by Lawrence Dolci  
Director Resource Protection, Great Plains Energy  
March 4, 2004

Mr. Chairman and members of the Committee, Great Plains Energy and its electrical company, Kansas City Power & Light Company support the passage of Kansas Senate Bill 382 that would repeal the two year sunset provision of K.S.A. 66-1233. The current period for recovery of security costs that ends on July 1, 2004, is not long enough to allow recovery of costs incurred to protect the electrical systems serving the citizens of Kansas.

The security cost recovery statute was passed in 2002. The statute was amended in 2003 as a result of questions over its interpretation. It has been less than one year since the effective date of the amended statute. Kansas City Power & Light is still gathering information for its application for recovery that will be filed shortly. Kansas's electric utilities will also have substantial additional security costs after the sunset of the current statute.

In the period immediately following the terrorist attacks of September 11, 2001, new regulations and guidelines were issued that required utilities to spend significant additional amounts on security. For example, the Nuclear Regulatory Commission, NRC, after the September 11<sup>th</sup> attacks issued formal orders on February 25, 2002, January 7, 2003 and April 29, 2003 requiring security upgrades at all nuclear plants including the Wolf Creek Plant at Burlington. These orders required hiring additional personnel and physical changes at the plant to improve security. The latest round of security upgrades at Wolf Creek must be completed by October of 2004. Much of the cost of the latest upgrades will be incurred after the July 1, 2004 sunset provision.

Non-nuclear power plants have also increased their security since September 11, 2001. The North American Electric Reliability Council, NERC, that is responsible for the reliability of the national electric grid has issued a series of cyber and physical security guidelines and has plans to issue more. NERC adopted a Cyber Security Standard last year that requires electrical utilities to complete cyber and physical upgrades by the end of 2005. The first status report on compliance with these security standards was filed by utilities on February 27, 2004. Kansas utilities will incur most of the costs of complying with this standard after July 1, 2004 when the sunset provision of K.S.A. 66-1233 is effective.

The rationale for these security expenditures was recognized in Homeland Security Presidential Directive 7, HSPD-7, issued on December 17, 2003. HSPD-7 (2) states:

Terrorists seek to destroy, incapacitate, or exploit critical infrastructure and key resources across the United States to threaten national security,

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cause mass casualties, weaken our economy, and damage public morale and confidence.

Section 25(a) of HSPD-7 further states:

(Department and Sector-Specific Agencies shall collaborate...) to identify, prioritize, and coordinate the protection of critical infrastructure and key resources...

The collaborative approach outlined in HSPD-7 is likely to identify further areas for security improvements during the review process outlined in the directive.

Removal of the sunset provision from K.S.A. 66-1233 as proposed in HB 382 will benefit the citizens of Kansas by helping to make sure utilities have the funding available to follow sound and reasonable security practices, practices that will provide for reliable utility systems for the foreseeable future.

**Testimony before the  
House Utilities Committee**

**By  
Richard Good  
Westar Energy  
March 4, 2004**

Chairman Holmes and members of the committee, I am Richard Good, senior manager, disaster recovery and infrastructure security for Westar Energy.

Westar Energy supports Senate Bill 382. It was amended in Senate Utilities committee last month from a full repeal of the sunset to extending the sunset until July 1, 2006. Although we are appreciative of the extension, Westar Energy still believes a repeal of the sunset is most appropriate. The repeal of the security cost recovery sunset would provide certainty for the recovery of prudent costs associated with providing security to a utility's generation and transmission assets. The protection of these vital assets is essential for our economy and benefits every customer. The Kansas Corporation Commission review ensures the costs recovered will be prudent and reasonable. Expedient recovery of those costs is needed.

Next year, Westar Energy will file a rate case with the Kansas Corporation Commission. At that time, our current security costs will be incorporated in our filing. It may be several years before another rate case is filed. Recovery of security costs during this time between rate cases will still be important. Thus, we are requesting the repeal of the sunset as originally proposed.

Thank you for the opportunity to address the committee this morning.

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# 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



State of Kansas  
Kathleen Sebelius, Governor

1500 S.W. Arrowhead Road  
Topeka, Kansas 66604-4027  
Phone: (785) 271-3200  
Fax: (785) 271-3116  
<http://curb.kcc.state.ks.us>

## HOUSE UTILITIES COMMITTEE S.B. 382

Testimony on Behalf of the Citizens' Utility Ratepayer Board  
By David Springe, Consumer Counsel  
March 4, 2004

Chairman Holmes and members of the committee:

Thank you for this opportunity to appear before you today and offer testimony on S.B. 382. The Citizens' Utility Ratepayer Board opposes this bill for the following reasons:

S.B. 382 (as originally drafted) removes the sunset provision in K.S.A. 66-1233 *et seq.*, ("the Kansas Energy Security Act") currently set to expire on July 1, 2004. CURB testified last year in opposition to H.B. 2374, which is now codified at K.S.A. 66-1236. As stated last year in testimony, CURB is not opposed to prudent security cost expenditures, after review, being collected from ratepayers. However, CURB objected to the provisions in H.B. 2374 that kept all information related to security cost rate increases confidential and hidden from consumers.

CURB believes the provisions of K.S.A. 66-1233 *et seq.*, and specifically K.S.A. 66-1236, are clearly harmful to utility consumers. While CURB has never advocated that all security information should be publicly available, CURB does believe that the consumers that pay utility rates in Kansas have a right to know when their utility rates are being increased, why their utility rates are being increased and how much their utility rates are being increased. Further, utility ratepayers have the right to expect that the security expenditures will be reviewed to determine whether they are prudent, before being placed on a consumer's bill. Requiring that the prudence review "shall not be based on standard regulatory principles and methods of recovery" clearly calls this principle into question. (See 66-1236(b))

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For these reasons, CURB does not believe that the sunset provision in K.S.A. 66-1233 should be removed. To the extent that S.B. 382 removes the sunset provision, CURB opposes passage of the bill. These statutory provisions should be allowed to expire and be removed from law.

S.B. 382 (as amended) extends the date of the sunset provision to July 1, 2006. Given the choice of removing the sunset entirely, as originally proposed in S.B. 382, or merely extending the sunset provision two years as is proposed in the amended version of S.B. 382, CURB would choose the two year extension. However, this does not change CURB's basic objections to the K.S.A. 66-1233 *et. seq.* or CURB's belief that the law should be allowed to sunset this year.

CURB would also note that there was some prior discussion of the use of accounting orders issued by the KCC to address security cost issues. CURB would support, and even encourage the use of accounting orders for the purpose of security cost recovery if the accounting order authority is in lieu of the provisions of K.S.A. 66-1233 *et. seq.* It should be pointed out that even if the provisions of K.S.A. 66-1233 *et. seq.* are allowed to expire July 1, 2004, as the law exists today, the Commission will have, and has always had, the authority to issue accounting orders for security cost recovery. However, CURB would oppose the use of accounting orders simply as a method to carry out the provisions of K.S.A. 66-1233 *et. seq.*, without fundamentally changing the requirements of that law.

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**BEFORE THE HOUSE UTILITIES COMMITTEE  
PRESENTATION OF THE  
KANSAS CORPORATION COMMISSION**

**March 4, 2004**

**SB 382**

Thank you Chairman and members of the Committee. I am Don Low, Director of the Utilities Division of the KCC. I appreciate the opportunity to testify on SB 382.

While we are fully sympathetic with the legislature's desire to establish emergency means to address national security issues, we believe such reaction was intended to be short term and should not be extended indefinitely. The committee should be aware that to date no electric or gas utility has approached the Commission to recover security costs anticipated under this bill, even though over two years have passed since September 11, 2001.

It is important to recognize that the underlying legislation addresses the type of unusual and atypical costs an electric or gas public utility may experience due to some external situation outside the control of the utility. In the case of security costs, a utility could experience unusual costs to respond to a known threat, to recover from an attack or to comply with a governmental security directive. Before this legislation was ever passed the Commission already had the responsibility and authority to address these types of situations without prescriptive legislation, and in fact has done on numerous occasions in the past.

In the late seventies and early eighties the Commission and utilities worked together to address large and unanticipated costs due to dramatic increases in fuel prices. To address this sudden and unusual "known threat" the Commission developed a mechanism and approved tariffs allowing Kansas electric and gas utilities to recover these unexpected and unpredictable costs. By adopting the purchased gas adjustment, or PGA, for gas utilities and the energy cost

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adjustment, or ECA, for electric utilities, the Commission made sure that utilities would recover these unexpected costs and that ratepayers would not be overcharged. Today, virtually all of our natural gas utilities have a PGA mechanism. In addition, several of our electric utilities, including Midwest Energy, Sunflower, and Aquila have an ECA mechanism.

Occasionally, an electric or natural gas utility must make large unforeseen expenditures to recover from an event that was essentially outside the utility's control. For example electric utilities may experience expensive repair and recovery costs due to ice storms or other acts of nature. Historically the Commission has allowed the utility an opportunity to recover these costs through an accounting order. For example, when Westar Energy spent over \$16 million recovering and restoring their electric system following the 2002 ice storm, the Commission allowed the company to create an account, preserving both the amount spent and the carrying costs on the amount spent, for inclusion in a future rate proceeding, in essence allowing the company an opportunity to recover the costs. Additionally, we would like the committee to understand that, in our opinion, accounting order treatment for the types of expenses envisioned by K.S.A. 66-1233 is probably more appropriate, better ratemaking policy, and achieves greater confidentiality, than the immediate recovery the statute requires.

With an accounting order, costs envisioned by K.S.A. 66-1233 would be recovered during a subsequent rate review. The net effect would be that the amount and type of security related expenditures would be blended with other changes in revenue requirements and it would be almost impossible for anyone to determine the level of security related expenditures. K.S.A. 66-1233 now requires an immediate adjustment in utility rates, allowing a dedicated analyst with ill intent to determine the amount of security expenditures, even though the filing is confidential.

While the Commission has the authority and responsibility to address recovery of unexpected costs to respond to and recover from a security event or security enhancements we do not favor adoption of prescriptive requirements in statutes for several reasons. First, the Commission already has the authority, responsibility, ability and expertise to investigate each issue, and to establish rules and policies allowing utilities to recover reasonable costs. Second, the Commission has the ability to quickly modify such a policy if it finds that it is being abused, needs revision or is no longer needed due to changing circumstances. Unfortunately this statute takes away much of the Commission's discretion and ability to prevent just such abuses. Again, we note that no electric or gas utility has applied to the Commission to recover security costs addressed by K.S.A. 66-1233 since its enactment two years ago, and that recovery of such costs under an accounting order may be more appropriate.

While the Commission is sympathetic that extraordinary events may require unusual measures, without a sunset provision, this overly prescriptive legislation stays in place until it is changed. We recommend that the Committee reject SB 382. Alternatively we recommend that K.S.A 66-1233 be changed to allow Commission discretion, as shown below:

(2) (b) On and after July 1, 2002, the state corporation commission, upon application and request, **shall may** authorize electric public utilities and natural gas public utilities to recover the utility's prudent expenditures for security measures reasonably required to protect the utility's electric generation and transmission assets or natural gas production and transportation assets by an adjustment to the utility's customers' bills. The application and request shall be subject to such procedures and conditions, including review, in an expedited manner, of the prudence of the expenditures and the reasonableness of the measures, as the commission deems appropriate. Such application and request shall be confidential and subject to protective order of the commission.