Approved: 2/18/04_
Date

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Stan Clark at 9:30 a.m. on February 16, 2004 in Room 526-S of the Capitol.

All members were present except:
Senator Robert Tyson- excused
Senator Susan Wagle- excused

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

Conferees appearing before the committee:

Others attending:
See Attached List.

The following documents were provided the Senate Utilities Committee:

KCC response to questions on SB 309 (Attachment 1)
KCC response to questions on SB 310 (Attachment 2)
EPA's response to questions on PCBs (Attachment 3)

Chair opened the discussion on
**SB 331 - Recording leases or easements related to wind resources or technologies**

Language for the new section to **SB 331** was presented and after considerable discussion, the words "per title affected" were added in (b) after $10,000. (Attachment 4)

Moved by Senator Brownlee, seconded by Senator Lee, to amend **SB 331** by inserting the new language. Motion carried.

Moved by Senator Taddiken, seconded by Senator Barone, to amend **SB 331** by striking the word "shall" in Sec. 2 (4) (b) and inserting the word "may" following ....subsection (a). Motion carried.

Moved by Senator Lee, seconded by Senator Emler, to pass out **SB 331** favorably as amended. Motion carried.

Chair opened discussion on
**SB 382 - Recovery of certain costs of security measures, public utilities**

Sandy Braden of Gaches, Braden, Barbee and Associates, had provided the committee with recommended language to amend **SB 382.** This proposed amendment to **SB 382** had been reviewed by KCPL, Westar and KCC. There was still some questions about a sunset and whether the sunset should correspond with a rate case, or if the accounting order has a relationship to the next rate case. (Attachment 5). No action taken.

Chair opened discussion on
**SB 360 - Public utilities, costs of new facilities**

Bob Alderson explained the proposed committee amendments to **SB 360.** (Attachment 6)

Due to the lack of time, no action was taken. Chairman Clark announced that **SB 309, SB 310, SB 360** and **SB 382** would be bills under consideration by the committee during their deliberations this week. On Tuesday, February 17, there will be an informational meeting on **SB 455** - Industrial wind turbine development.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

MINUTES OF THE SENATE UTILITIES COMMITTEE at 9:30 a.m. on February 16, 2004 in Room 526-S of the Capitol.

The next meeting of the Senate Utilities Committee is scheduled on February 17, 2004.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 6

# SENATE UTILITIES COMMITTEE GUEST LIST

## DATE: **February 16, 2004**

| Name | Representing |
| --- | --- |
| Chris J Nord | Sen. Oleen |
| Ken Peterson | KS Petroleum Council |
| Ed Cross | KIOGA |
| Ron Schnacke | Kinder Morgan |
| Bob Alderson | Atmos Energy |
| STEVE JOHNSON | KANSAS GAS SERVICE |
| JC Long | AQUILA, INC. |
| Mark Schreiber | Westar Energy |
| Dave Holthaus | KEC |
| David Springe | Curb |
| Scott Schneider | Kansas Wind Coalition |
| Tom Day | KCC |
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| | |

KATHLEEN SEBELIUS, GOVERNOR
BRIAN J. MOLINE, CHAIR
JOHN WINE, COMMISSIONER
ROBERT E. KREHBIEL, COMMISSIONER

**To: Senate Utilities Committee**
**From: Don Low – KCC**

Dear Committee Member:

In response to questions from the Committee during the hearing on SB 309, I am providing some follow-up information.

**Separate Statutory Fines**:

Listed below are the statutes that provide for penalties for violation of specific KCC requirements as they relate to utilities and therefore separate from K.S.A. 66-138.

Gas Pipeline Safety – K.S.A. 66-1,151 establishes penalties "not to exceed $25,000 for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed $500,000 for any related series of violations."

Underground Utility Damage Prevention (One Call) – K.S.A. 66-1812 subjects violations to the same penalties as K.S.A. 66-1,151. (This would apply to both utility company and nonutility violations)

Electric Wire Stringing – K.S.A. 66-185 provides for a penalty of $100 "and a like penalty for every ten days" during which there is noncompliance with a KCC order on wire stringing.

Overhead Power Line Accident Prevention – K.S.A. 66-1714 provides for a court-determined civil penalty of not more than $1,000 per violation. This Act is aimed at individuals conducting activities around high voltage lines and not the utilities themselves.

Telecommunications Quality of Service – K.S.A. 66-2002(l) requires KCC establishment of quality of service standards for LEC's and carriers and provides for penalties for violation of not less than $100 nor more than $5,000, to be enforced in accordance with K.S.A. 66-138 and 66–177.

Senate Utilities Committee
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**KCC Requirements Subject to Fines Under K.S.A. 66-138**

As noted during the hearing, noncompliance with any requirement imposed by statute or KCC order or rule could be subject to a penalty under K.S.A. 66-138. In order to impose a penalty, the Commission would have to determine that there was a specific requirement and that there was noncompliance with that requirement. To meet due process requirements, such findings would have to be made only after the utility had a opportunity to contest the noncompliance. The utility would also have to be given the opportunity to contest the reasonableness of the amount of any proposed fine.

As a practical matter, the KCC has infrequently used its fining authority since there have not been many serious violations. However, if there are significant failures to comply with Commission requirements, the penalties should be meaningful. Unfortunately, we have not been able to go through all our records to determine the history of the all the penalties that have been imposed but not collected in past. As I noted at the hearing, in the recent past, the KCC has levied penalties primarily with regard to telecommunications slamming problems. Although slamming is now subject to penalties under K.S.A. 50-6,103 (not less than $5,000 nor more than $20,000) to be sought by the Attorney General, that remedy only applies to victims of slamming who are defined as "consumers" under the Consumer Protection Act, i.e. individuals or sole proprietors or family partnership. The KCC therefore would still be the agency to impose penalties for slamming when the victim is a business that is not a sole proprietor or family partnership.

With regard to other KCC requirements that are potentially subject penalties for noncompliance, I will try to discuss them in broad categories encompassing the types of requirements that utilities must meet.

1. Certification. Before providing service, utilities are required to obtain certificates so that the Commission can determine that the company's service comply with various Commission statutory and other requirements. This has occasionally been a problem in the telecommunications industry since the advent of competition when new companies neglect to obtain certificate authority. The certification process is important because it allows the Commission to determine whether a company can provide adequate service in compliance with safety, consumer protection and other requirements. The KCC has occasionally levied penalties against competitive companies for failure to obtain certification before providing service but

those penalties were often difficult to collect since many times the situation involved a carrier that was no longer in business. On the gas and electric side, certification issues have mostly involved minor issues between adjoining utilities concerning who should or can provide service. Such issues are generally resolved informally. However, there was an instance where the KCC has discovered a very small gas utility that was not certificated and was providing inadequate and unsafe service. The Commission imposed a penalty, but waived it upon the company's agreement to discontinue business and pay for customer costs of conversion to propane.

2. Billing Practices. The Commission by orders has established standards with regard to billing, deposits, late payments, disconnection of service and other related interactions with customers. (For example, new telephone companies are not allowed to collect customers unless they show a certain level of financial backing. This is to protect against a transitory company from collecting deposits without having the ability to return in the event of business failure.) There are occasional customer complaints about a utility's non-compliance with the billing practice requirements. Although I'm not aware of remedial action by the KCC that included penalties, penalties may be appropriate in certain circumstances.

3. Filing of Rates and Tariffs. Many Commission orders address tariffs matters, including not only rates but also terms and conditions of service. In most instances, there is no issue of compliance with Commission determinations of the appropriate rates and tariffs. However, a penalty might be necessary and appropriate when a company does not file rates that implement an ordered rate reduction or a tariff change that has been ordered to resolve a customer complaint or new Commission policies. Obviously, if an ordered rate reduction is significant in amount, the potential penalties for failure to implement the reduction must also be meaningful.

4. Service standards. Although gas and electric utilities are required to provide reasonably efficient and sufficient service, the Commission has only limited number of specific retail quality of service standards and is exploring whether others are needed to ensure that utilities provide adequate service. For telecommunications wholesale services provided by the incumbent to competitive carriers, some performance standards are currently contained in a generic interconnection agreement. In order to enforce both the retail and wholesale standards, meaningful potential penalties are necessary.

5. Customer complaints. The Commission is often called upon to resolve complaints against utilities by retail or wholesale customers or even by another utility. This may involve service issues, practices of the utility or interpretations of tariffs. On the telephone side, these disputes may also involve arbitrations of interconnection agreements between two companies pursuant to the Federal Act. Since these disputes may involve significant amounts of money, the potential penalties for noncompliance also need to be significant.

6. Miscellaneous requirements. In various contexts, the Commission may require that the utility take some specific actions. For example, in SWBT's KUSF case the Commission approved of a settlement that required deployment of DSL pursuant to an established schedule. This requirement help settle several disputed issues, including whether SWBT was over-recovering from the KUSF. With regard to Westar and Aquila, the KCC imposed special requirements on these financially troubled utilities, including requirements for improving their financial condition and seeking Commission approval for disposal of assets. These requirements are intended to protect the companies' customers from significant harm. The Commission needs to have the ability to impose meaningful penalties for noncompliance with these orders.

7. Commission investigations. The Commission staff occasionally determines that a utility may not be complying with its own tariffs or KCC requirements, either as a result of an informal customer complaint or in some other matter. The Staff will investigate the matter and attempt to bring the utility into compliance but could propose a penalty to the Commission if the noncompliance were severe.

8. Reporting requirements. The Commission imposes various reporting requirements that may be either continuing or one-time in nature. Examples of continuing reports include the annual reports for all companies and reports on fuel acquisition or hedging activities for energy companies. One-time reports would typically involve reporting the final disposition of an accounting requirement, service problem or other matter that had come before the Commission. I'm unaware of instances when the Commission considered penalties for failure to meet a reporting requirement. It may be appropriate if a company simply refuses to comply without cause.

9. Assessments and contributions. The Commission assesses utilities for KCC costs and also determines the amount of contributions that telecommunications providers must make to the KUSF. Although some of the small competitive telecommunications providers have not

consistently paid their assessments and contributions, it would not be productive in most cases to attempt to collect penalties.

I hope the above information addresses your concerns about increasing the maximum penalty under the current statute. I would emphasize that since the increase only accounts for inflation during the last seventy years, there is no greater potential impact on the utilities than existed in 1911. Please let me know if there is any further information I can provide the Committee on this matter.

# KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR
BRIAN J. MOLINE, CHAIR
JOHN WINE, COMMISSIONER
ROBERT E. KREHBIEL, COMMISSIONER

Susan B. Cunningham
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February 12, 2004

The Honorable Stan Clark
Kansas State Senate
State Capitol, Room 449-N
300 SW 10th Avenue
Topeka, Kansas 66612

Re: Response to Questions on Senate Bill 310

Dear Senator Clark:

There have been questions and concerns expressed about the effect of Senate Bill 310 on telephone companies and specifically the KUSF audits that are taking place. The following clarifications hopefully address those questions and concerns.

With regard to affiliate transactions, this bill is simply intended to clarify the KCC's authority to promulgate rules and regulations regarding potential cross subsidies between regulated and unregulated affiliates. In light of recent significant Commission dockets involving Westar and Aquila, it appears that such rules and regulations are particularly timely. The Commission already has authority to prevent cross subsidies in the context of a rate case or other proceeding involving the determination of a utility's cost of service. There is no question that the KCC has the authority and obligation to ensure that a company's rates or its draw from the KUSF do not reflect costs associated with non-regulated activities. Otherwise, the company's customers would be paying for the costs of services they do not receive; or the contributors to the KUSF would be paying for services that the fund is not intended to support. This is especially egregious if the subsidized services are services that are subject to competition.

The Commission Staff is developing affiliate rules for two basic reasons. First, they are intended to spell out how affiliate transactions should be accounted for and how various costs should be allocated between regulated and unregulated activities. Although the Staff attempts to apply the same accounting principles consistently in rate cases, the promulgation of rules will assist the companies in knowing what is expected. Of course, no rules can be detailed enough to cover all possible situations. Since telephone companies are already subject to the FCC affiliate rules, the

Senate Utilities Committee
February 16, 2004
Attachment 2-1

Staff would intend to propose rules that either cover matters not addressed by the FCC rules or provide more specificity or guidance than the FCC rules.

The second reason to adopt rules is that not all potential abuses can be adequately addressed in the context of rate cases. If a company is improperly accounting for unregulated costs, that practice may have consequences concerning the company's financial picture that go beyond improper recovery of costs in regulated rates.

There were questions raised about the potential burden on small companies of preparing cost allocation manuals (CAMs). With regard to gas and electric companies, the Staff has not reached any conclusions on which companies should be required to prepare and submit a CAM. The FCC, in adopting its affiliate accounting rules for all ILECs in 1987, decided that all companies needed to comply with those rules because all had incentives to cross-subsidize their unregulated activities. The FCC also noted that compliance with the accounting rules should not be burdensome because the companies needed to allocate costs to justify their regulated service rates and for internal business management purposes. However, the FCC did not require the submission and approval of CAMs and annual independent audits by the smaller carriers. The KCC staff will also consider the potential burdens with regard to CAM requirements as it develops proposed rules.

Finally, a question was raised about whether price cap companies are subject to the FCC's affiliate rules. Price cap regulated telephone companies are subject to the rules. They fall within the definition of "telecommunications carrier" in the Federal Act and are required to separate regulated from non-regulated costs. Both the Federal Act and the rules prohibit the use of competitive services to subsidize non-competitive services. 47 C.F.R. 32.27 specifies accounting rules for transactions between affiliates. It includes all companies subject to the Uniform System of Accounts, which includes price cap regulated companies. (A copy of §32.27 is attached for your reference.)

If you have any additional questions, don't hesitate to contact me.

Sincerely,

/s/

Susan B. Cunningham

cc: Senate Utilities Committee Members

## Kansas Legislature
## Senate Committee on Utilities

## EPA's Response to Questions Raised at the January 22, 2004, Hearing

**Question:** What can EPA do to address the concerns of the Kansas utility companies about having to pay twice for the disposal of the same regulated materials?

**Response**: EPA promulgated regulations and required approval conditions which include financial assurances from commercial storers, but it still remains the responsibility of the utilities to investigate individuals they are planning to do business with, and to assure themselves that these individuals are following the regulations in such a manner as to assure the utilities that the disposal of their waste will be handled in an appropriate manner.

These regulations were published on December 21, 1989, EPA as Polychlorinated Biphenyls (PCB); Notification and Manifesting for PCB Waste Activities; Final Rule. This rule prohibits facilities subject to the PCB storage facility standards of §761.65, who engage in storage activities involving PCB waste generated by others, or PCB waste that was removed while servicing the equipment owned by others and brokered for disposal, from storing more that 500 gallons of PCBs unless they have submitted an application for final storage approval. The final approval to engage in the commercial storage of PCB waste is based on the decision that the following criteria have been met by the applicant:

1. The applicant, its principals, and its key employees responsible for the establishment or operation of the commercial storage facility are qualified to engage in the business of commercial storage of PCB waste

2. The facility possesses the capacity to handle the quantity of PCB waste which the owner or operator of the facility has estimated will be the maximum quantity of PCB waste that will be handled at any one time at the facility

3. The owner or operator of the unit has certified compliance with the storage facility standards in paragraphs (b) and (c)(7) of the regulations

4. The owner or operator has developed a written closure plan for the facility that is deemed acceptable by the Regional Administrator under the closure standards of paragraph (e) of the regulations

5. The owner or operator has included in the application for final approval a demonstration of financial responsibility for closure that meets the financial responsibility standards of paragraph (g) of the regulations

6. The operation of the storage facility will not pose an unreasonable risk of injury to health or the environment, and

7. The environmental compliance history of the applicant, its principals, and its key employees may be deemed to constitute a sufficient basis for denial of approval whenever in the judgement of the Regional Administrator that history of environmental civil violations or criminal convictions evidences a pattern or practice of noncompliance that demonstrates the applicant's unwillingness or inability to achieve and maintain compliance with the regulations.

The regulations also require:

1. a commercial storer of PCB waste shall have a written closure plan that identifies the steps that the owner or operator of the facility shall take to close the PCB waste storage facility in a manner that eliminates the potential for post-closure releases of PCBs which may present an unreasonable risk to human health or the environment

2. a commercial storer of PCB wastes shall have a detailed estimate, in current dollars, of the cost of closing the facility in accordance with it approved closure plan. The closure cost estimate shall be in writing, be certified by the person preparing it, and

3. a commercial storer of PCB waste shall establish financial assurance for closure of each PCB storage facility that he owns or operates. In establishing financial assurance for closure , the commercial storer of PCB waste may choose from the following financial assurance mechanisms:

   - ☐ Closure trust fund
   - ☐ surety bond guaranteeing payment into a closure trust fund
   - ☐ surety bond guaranteeing performance of closure
   - ☐ closure letter of credit
   - ☐ closure insurance
   - ☐ financial test
   - ☐ corporate guarantee
   - ☐ multiple financial mechanisms
   - ☐ modifications to approval if capacity changes or closure cost changes

**Question**: How does EPA respond to Kansas utility companies concern about checking compliance history of facility with whom they wish to conduct business?

**Response**: The EPA has provided the following options for any facility wishing to conduct investigations into the compliance history of potential suppliers:

- ☐ EPA has supplied specific regulations that each facility must follow to conduct business in a matter to protect health and the environment

- ☐ EPA encourages facilities to conduct their own third party audit to ensure that potential suppliers are conducting business in a manner that is protective of public health and the environment
- ☐ EPA supplies compliance history of any facility upon request by telephone, fax, email, letter, or in person.
- ☐ EPA supplies compliance history in response to Freedom of Information Act (FOIA) requests
- ☐ EPA is developing the Integrated Compliance Information System(ICIS), plans are that in the future this system will be available to allow the general public to check the compliance history of facilities on-line.
- ☐ Other public services such as Lexus Nexus and Westlaw are available to check court decisions and decisions by the Administrative Law Judges.

EPA has also issued guidance to the enforcement staff to encourage facilities to set up Environmental Management Systems (EMS) as part of a Supplemental Environmental Project (SEP) in response to an enforcement action by the agency. An EMS will require facilities to hire third party auditors to review their systems on a regular basis. The audit would include checking for compliance with all local, state, and federal regulations and industry standards, and continual improvement of their process.

February 12, 2004

New Section. (a) When a recorded deed or conveyance covering mineral and royalty rights purporting to cover mineral and royalty rights not owned by grantor, and which deed or conveyance may include a general conveyance provision (including but not limited to a "Mother Hubbard" clause or a "cover-all" clause) for other property conveyed by grantor, but which grantor believes there was a mistake of fact that such general conveyance provision should not have been included in such deed or conveyance, then any party with an interest in the real estate covered by such deed may make demand upon the grantee or grantor, as applicable, to rescind or reform the mistake caused by the general conveyance provision.

(b) Any grantee or grantor who refuses or neglects to correct or reform such legal description in the office of the register of deeds within 20 days after written demand has been made as provided in subsection (a), unless a longer period has been agreed to in writing by the parties, shall be liable in damages to the party for whom the demand was made in the sum of up to $10,000, and reasonable attorney's fee for preparing and prosecuting the action before any court of competent jurisdiction. The plaintiff in such action may recover any additional damages that the evidence in the case warrants.

(c) The remedies provided under this section shall not affect other remedies or damages provided by statute or law.

Session of 2004

# SENATE BILL No. 382

By Committee on Utilities
1-28

AN ACT relating to public utilities; concerning the recovery of certain
costs of security measures; amending K.S.A. 66-1233 and repealing
the existing section.

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

Section 1. K.S.A. 66-1233 is hereby amended to read as follows: 66-
1233. (a) As used in this section:
(1) ''Electric public utility'' means any electric public utility, as de-fined
in K.S.A. 66-101a, and amendments thereto.
(2) ''Natural gas public utility'' means any natural gas public utility,
as defined in K.S.A. 66-1,200, and amendments thereto.
(b) On and after July 1, 2002, the state corporation commission, upon
application and request, shall authorize electric public utilities and natural
gas public utilities to recover the utility's prudent expenditures for se-curity
measures reasonably required to protect the utility's electric gen-eration
and transmission assets or natural gas production and transpor-tation
assets by an adjustment to the utility's customers' bills. In the alternative, electric public utility or gas public utility may elect to defer the costs for later recovery. The utility may request and the state corporation commission shall issue an accounting authority order to defer the costs. Costs so deferred shall include investment return and associated income taxes for the deferral period. ~~The~~ All
applications and requests including those with costs deferred under an accounting authority order shall be subject to such procedures and condi-tions,
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.
(c) The provisions of this section shall expire on July 1, ~~2004~~ *2010*.

Sec. 2. K.S.A. 66-1233 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its
publication in the statute book.

# PROPOSED COMMITTEE AMENDMENTS

# TO SENATE BILL NO. 360

On page 3, in line 40, by striking all after "(1)"; by striking all of lines 41, 42 and 43;

On page 4, by striking all of lines 1 to 5, inclusive; in line 6, by striking "(2)"; in line 7, by inserting "(A)" after "utility"; in line 9, by inserting before the period the following: "or (B) to reduce the surcharge amount it collects from its customers to reflect a reduction in its invested capital"; also in line 9, by striking "is"; in line 10, by striking "allowed to recover" and inserting in lieu thereof the following: "shall adjust upward or downward the surcharge it collects from its customers"; in line 16, by inserting before the period the following: ", based on depreciation rates determined in the utility's last general rate case"; in line 17, by striking "(3)" and inserting in lieu thereof "(2)"; in line 20, by striking "(2)" and inserting in lieu thereof "(1)"; in line 24, by striking "(4)" and inserting in lieu thereof "(3)"; in line 31, by striking all after the period; by striking all of lines 32 to 35, inclusive; in line 36, by striking "(5)" and inserting in lieu thereof "(4)"; in line 37, by striking "(4)" and inserting in lieu thereof "(3)"; in line 41, by

striking all before "utility" and inserting in lieu thereof "(5) Any"; in line 42, by striking "does not" and inserting in lieu thereof "shall"; also in line 42, by inserting "general" before "rate"; in line 43, by striking all after "effect";

On page 5, by striking all of lines 1 and 2; in line 3, by striking all before the period; in line 4, by striking "(7)" and inserting in lieu thereof "(6)";

And the bill be passed as amended.