

Approved: March 8, 2005  
Date

*Carl Dean Holmes*

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:06 a.m. on January 19, 2005 in Room 231-N of the Capitol.

All members were present except: Representative Melody Miller - Excused

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 Holloway, Kansas Corporation Commission, Topeka, KS

Others attending: See Attached List

Chairman Holmes welcomed Mr. Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission, to the committee. Mr. Holloway introduced Don Low, Director of Operations and Susan Cunningham, General Counsel, to the committee. Mr. Holloway provided an docket review for significant rates cases, utility specific and generic investigations, as well as natural gas utility hedging programs (Attachment 1). Mr. Holloway, Mr. Low, and Ms. Cunningham responded to questions from the committee.

The meeting adjourned at 10:25 a.m.

The next meeting will be Thursday, January 20, 2005 at 9:00 a.m.

# HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 19, 2005

NAME	REPRESENTING
MARK SCHREIBER	Westar Energy
BOB ANDERSON	Atlas Energy
Larry Holloway	KCC
Don Low	"
Susan Cunningham	"
Tom Day	"
Tom Westerman	Sunflow Electric
Eannie Lehman	Midwest Energy
Sandra Braden	Great Plains
Bruce GRAHAM	KEPC
Kimberly Lencore	Aquila
TOM DAY	KCC
Carol Hansen	KCC
John Peterson	Ks Governmental Consulting
Dan Kerr	Pinegar Smith
Steve Johnson	Kansas Gas Service
Dave Holtzels	KEC

**Significant Rate Cases**

**Atmos Energy (Atmos) Natural Gas Rate Case  
(Docket No. 03-ATMG-1036-RTS)**

On June 6, 2003, Atmos filed testimony with the Commission requesting a 20% increase in their annual revenue for providing natural gas service, or an annual revenue increase of approximately \$7.4 million. The Citizens' Utility Ratepayers Board (CURB), Seminole Energy Services and Everest Midwest License were granted intervention in the proceeding. On November 3, 2003, following its investigation, KCC Staff filed testimony supporting an annual revenue increase of approximately \$500,000. Following negotiations, the parties filed a unanimous Stipulated Settlement Agreement on December 1, 2003 for a \$2.5 million annual increase. On January 5, 2004, the KCC approved the settlement.

**Aquila, Inc. Electric Rate Case  
(Docket No. 04-AQLE-1065-RTS)**

On June 2, 2004, Aquila, Inc. filed a rate case seeking to increase its Kansas electric rates by \$19 million, which represents a 13% increase. Aquila also sought interim rate relief, primarily due to increased gas costs under certain fixed rate contracts. An evidentiary hearing on Aquila's request for interim rate relief was conducted in August 2004, and an order denying Aquila's request for interim rate relief was issued on October 8, 2004. In its order denying interim rate relief, the Commission indicated that Aquila had not made a *prima facie* showing that its current rates are no longer just and reasonable. An evidentiary hearing on the full rate case was held at the end of November and early December 2004. A Commission decision is due by January 28, 2005. Aquila's last rate increase for its Kansas electric customers was \$3.9 million in August 2001.

**Sunflower Electric Power Corporation (Sunflower) Rate Case  
(Docket No. 04-SEPE-1091-RTS)**

On June 9, 2004, Sunflower Electric Power Corporation filed an Application to change the rates charged to member cooperatives for its open access transmission service but to maintain its existing wholesale rate structure. A unanimous settlement was filed prior to the scheduled evidentiary hearing on November 4, 2004. The Commission approved the settlement on January 13, 2005.

**Aquila, Inc. Natural Gas Rate Case  
(Docket No. 05-AQLG-367-RTS)**

On November 1, 2004, Aquila, Inc. filed a rate case seeking to increase its Kansas natural gas rates by approximately \$6 million. A procedural schedule has not yet been established. A Commission decision is due by June 29, 2005.

**Utility Specific Investigations**

**Westar Energy, Inc. Investigation  
(Docket No. 01-WSRE-949-GIE)**

January 19, 2005

by Larry Holloway

HOUSE UTILITIES  
DATE: 1-19-05  
ATTACHMENT 1

The KCC opened this docket in 2001 to investigate a proposal by Westar Energy, Inc. (formerly Western Resources, Inc. or "WRI") to split-off its non-regulated businesses into a wholly owned subsidiary, Westar Industries, Inc. The KCC expressed concern over the allocation of WRI's consolidated equity to Westar Industries, while leaving a substantial amount of the attendant debt with the utility operations. The KCC issued an Order on July 20, 2001 prohibiting the transactions and requiring WRI to file a financial plan to restore the company to financial health. After testimony and hearings on the plan WRI filed in compliance with the Commission's July 20, 2001 order, the Commission, on November 8, 2002, ordered WRI to refile its plan and further ordered such plan to consider certain elements set out by the Commission (*e.g.*, consider reduction or elimination of the company's dividend, sell unregulated companies, issue common equity, among other recommendations). On February 6, 2003, WRI filed its Debt Reduction and Restructuring Plan and on July 25, 2003, the KCC approved a Stipulation and Agreement concerning the Plan which requires WRI to (A) reduce debt and attain a capital structure of at least 40% common equity by December 31, 2004, (B) file a rate case on May 1, 2005, and (C) pay rebates totaling \$20.5 million in May 2005 and January, 2006. Since the Stipulation was approved, WRI has taken most, if not all, steps to implement the Plan, including obtaining approval in February 2004 to sell WRI's stake in Protection One, Inc., its former alarm and security subsidiary, reducing its dividend, issuing equity, etc.

**Investigation into Affiliate Transactions of Aquila, Inc. (Aquila)  
(Docket No. 02-UTCG-701-GIG)**

This docket began on March 11, 2002 as an investigation into certain affiliate transactions of Aquila, and the resulting financial impact of those transactions on its Kansas utility operations. At the end of 2002, the KCC ordered Aquila to submit a financial plan to restore its financial ratings to investment grade. On March 12, 2003, Aquila submitted a confidential financial plan detailing its proposal to restructure the company. On April 30, 2003, Aquila requested permission to pledge its Kansas utility assets as security for a new debt facility, which prompted the KCC to order a standstill provision prohibiting Aquila from taking certain actions without receiving KCC approval.

On February 17, 2004, the KCC denied Aquila's request for authority to pledge its Kansas utility assets as security for a new debt facility. Since that date Aquila has filed several motions requesting partial waivers of the standstill provision in order to sell certain assets and implement its proposed financial plan.

KCC Staff is currently reviewing Aquila's filed financial plan and is expected to file its report and recommendation in early 2005. Additionally, KCC Staff is currently working with Aquila to determine specific quality of service reporting criteria to ensure that financial concerns do not affect utility operations or customer service.

**Kansas City Power & Light (KCPL) Initiates Regulatory Workshops  
Focus on Future Supply, Delivery and Pricing of Electricity  
(Docket No. 04-KCPE-1025-GIE)**

On May 18, 2004, KCPL asked the KCC to begin a regulatory workshop process to explore alternatives for KCPL to meet increasing demand for power and to address environmental issues. The workshops have focused on the advisability of adding a new coal-fired generating plant near the existing Iatan plant in Weston, Missouri, reducing emissions from existing coal-fired plants and adding a portfolio of wind and other renewable energy sources. KCPL has indicated that such strategic planning may require

additional capital investments in excess of \$1 billion. In light of the magnitude of such investments, KCPL is pursuing a collaborative process between the utility, regulators, industry and the public in both Kansas and Missouri, to build a consensus and eliminate the uncertainties that raise capital costs.

### **Generic Investigations**

#### **Kansas Ad Valorem Tax Refunds (Docket No. 99-GIMG-068-GIG)**

At long last it appears that 2005 may see the conclusion of this docket, which was originally opened in 1998. This docket arose as a result of the D.C. Circuit Court of Appeals decision in *Public Service Co. of Colorado v. FERC*, 91 F.3d 1478 (D.C. Cir. 1996) indicating that the Kansas ad valorem tax was not a production-based tax and therefore could not be passed through to customers under the Natural Gas Policy Act of 1978 (NGPA). This docket relates specifically to the sale of natural gas by the interstate pipelines to Kansas direct retail purchasers ("Direct Purchasers Docket").

On August 27, 2004, the Staff of the KCC submitted a Report and Recommendation regarding the distribution of all remaining ad valorem tax refund amounts that have been pending following an initial distribution of funds to certain customers in late 2002, and subsequent distributions that were made to additional claimants in August of 2003. The Staff's recommendation appears to have support from all intervening parties. The docket is expected to conclude in early 2005.

#### **Investigation into Retail Electric Service Quality Standards (Docket No. 02-GIME-365-GIE)**

The KCC initiated a general investigation to develop Quality of Service Standards for electric utilities in November of 2002. On January 16, 2004, the KCC issued an order establishing electric reliability requirements. On March 4, 2004, the KCC issued an order on reconsideration clarifying the requirements to be implemented by July 1, 2004 and also clarifying annual reporting requirements. Additional standards under investigation include call center performance, billing standards re estimated bills, meter accuracy and testing, and others as may be determined.

#### **Generation Interconnection Standards (Docket No. 04-GIME-080-GIE)**

On July 23, 2003, the Commission opened a general investigation to establish interconnection standards. The 2003 Kansas legislature passed K.S.A. 66-1238 requiring the Commission to establish standard provisions for interconnections between electric public utilities subject to Commission jurisdiction and renewable generators. The Commission adopted certain generic requirements and required all jurisdictional utilities to file complying interconnection standards by September 1, 2003. On October 1, 2003, the Commission sponsored an interconnection workshop following the 2003 Kansas renewable energy conference in Wichita, Kansas. Following the initial filings of jurisdictional utilities, several filings were determined to be in non-compliance with the Commission's requirements, and subsequent revisions were required. Complying tariffs have now been filed and the final required filing is currently in the process of approval. The next step in this docket will to be review all of the approved filings for best practices and investigate further standardization among the utility interconnection requirements.

**Generic Investigation into a Low Income Assistance Tariff for Electric and Natural Gas Customers  
(Docket No. 04-GIMX-531-GIV)**

On December 17, 2003, the Commission opened a generic investigation to determine if it should establish low income assistance tariffs for electric and natural gas customers. This investigation was opened, as least in part, to address a settlement in the KGS rate case (Docket No. 03-KGSG-602-RTS). In this case KGS had proposed to establish a lifeline rate below the cost of service for customers who "could not afford their essential energy needs." Rather than address this proposal in the KGS rate case, KGS, Commission Staff, CURB and other interveners agreed that it should be addressed in a more general context for all electric and natural gas utilities.

**Generic Investigation into Fee Based Transactions  
(Docket No. 04-GIMX-651-GIV)**

On January 24, 2004, the Commission opened a generic investigation into fee-based transactions by electric, water and natural gas utilities. This investigation was initiated in response to a number of complaints received by Commission Staff regarding changes in the payment practices for several Kansas electric and gas utilities. Staff became aware that several of these utilities were allowing customers to pay their bills with credit cards, online checking account transfers, debit cards and other electronic means through third party vendors that charged the customers a fee for the transaction. In addition, several utilities that had closed walk-in pay centers or removed drop boxes after establishing pay center agreements with grocery stores or other merchants had subsequently initiated a fee for customers using these services. Nonetheless, none of the utilities that had entered into these agreements had received Commission review and approval for the transaction fees being charged. In all cases the utilities did not charge extra for customers that choose to pay by mailing in their payment. On December 6, 2004, the Commission issued its final order outlining changes to the Commission's billing standards to address fee based transactions.

**SPP Regional Transmission Organization (RTO) General Investigation  
(Docket No. 04-GIME-922-GIE)**

On April 16, 2004, the Commission initiated a general investigation to consider the participation of Kansas jurisdictional utilities in the SPP Regional Transmission Organization. The KCC conducted several workshops, and directed parties to respond to certain questions posed by the Commission by September 10, 2004. The questions included whether all Kansas electric utilities should belong to the same RTO and whether a utility should be allowed to belong to more than one RTO. The questions also explore issues relating to transmission costs. Currently the Commission is actively involved in the formation of the SPP RTO and a member of the Regional State Committee, with Staff members participating in various multistate committees and task forces. As a Federal Energy Regulatory Commission (FERC) requirement, SPP is expected to make a revised tariff filing to the FERC later this month. Additionally an independent consultant hired by the Regional State Committee is expected to complete a cost benefit study by next month. The results of this study and the filing will be used by Kansas transmission owners seeking Commission approval to participate in the SPP RTO.

**Property Tax Surcharges per K.S.A. 66-117(f)**

**Explanation:** Under this statute a utility may create a surcharge to recover the annual increase or decrease in ad valorem taxes. The Commission has 30 days to review the application to determine that the surcharge substantially collects or refunds changes in property taxes and is collected in a reasonable manner.

**Westar Energy Surcharge for Property Tax Recovery  
(Docket No. 05-WSEE-493-TAR)**

On December 1, 2004, Westar Energy, Inc. (Westar) filed an application requesting to recover an additional annual amount of \$9,631,507 from its Westar customers (the old KPL division) and to refund an annual amount of \$1,552,614 to its KG&E customers. The changes reflect differences between the amounts recovered in base rates, changes in ad valorem taxes since those rates were established and over/under recovery of property taxes for the year 2003. Staff reviewed the application and recommended approval. On December 23, 2004, the Commission granted the request.

**Kansas Gas Service, a Division of ONEOK, Inc. (KGS) Surcharge for Property Tax Recovery  
(Docket No. 05-KGSG-494-TAR)**

On December 2, 2004, KGS filed an application requesting to recover an annual amount of \$5,632,048 through a 2005 ad valorem surcharge of \$0.0555 per mcf. This amount reflects increases in ad valorem taxes reflected in KGS's 2004 assessment, that are above the amounts set in base rates set in 2003, and additional amounts that were not fully recovered in 2003. Upon investigation Staff discovered a minor error and recommended that the Commission allow recovery of \$5,630,338. On December 28, 2004, the Commission approved the Staff recommendation.

**Natural Gas Utility Hedging Programs**

**Explanation:** Over the past few years Kansas natural gas utilities have been exploring methods for protecting their customers from price spikes due to the increasingly volatile pricing of natural gas. During the 2004-2005 winter heating system all major Kansas natural gas utilities have implemented a gas price hedging program. While a natural gas hedging program is not expected to lower the overall cost of purchasing natural gas over time, it does protect customers from unexpected price spikes. Much like insurance, a well-designed hedging program allows natural gas customers to pay a premium in return for some protection from short term price spikes.

**Kansas Gas Service, a Division of ONEOK, Inc. (KGS) 2004-2005 Gas Hedge Program  
(Docket No. 98-KGSG-475-CON)**

KGS was the first Kansas natural gas utility to implement a gas hedging program, beginning with the 1998 to 1999 winter heating system. While future KGS hedging programs will be filed under an annual "HED" docket, a negotiated settlement between KSG, Commission Staff and CURB was filed with the Commission under this docket for the 2004-2005 winter heating season gas hedge on March 16, 2004 and approved by the Commission on March 19, 2004. Per the agreement, KGS will spend a maximum

1-5

of \$7.2 million to implement a gas hedging strategy focused on providing a price cap for natural gas purchases. Cost of the hedging program is to be recovered from sales customers through KGS's purchased gas adjustment (PGA) during the months of April 2004 through October 2004, with provisions for recovering/refunding under/over recovery.

**Atmos Energy (Atmos) 2004-2005 Gas Hedge Program  
(Docket No. 04-ATMG-711-HED)**

On February 19, 2004, Atmos filed an application with the Commission requesting approval to spend up to \$1,400,000 on its gas hedging program to establish a price cap for the 2004 to 2005 winter heating season. This application represented the fourth year that Atmos has implemented a gas hedging program to cap the price of natural gas. Atmos agreed to recover the costs of the program through its PGA for its non-irrigation sales customers during the months of May 2004 through October 2004, with provisions for recovering/refunding under/over recovery. Staff found the Atmos proposal reasonable and on April 30, 2004 the Commission approved the program.

**Aquila, Inc. d/b/a Aquila Networks – KGO (KGO) 2004-2005 Gas Hedge Program  
(Docket No. 04-AQLG-659-HED)**

On January 29, 2004, KGO filed an application with the Commission requesting approval to spend up to \$1,200,000 on its gas hedging program to establish a price cap for the 2004 to 2005 winter heating season. While this was the third year of the KGO hedge program, it was the first time that KGO proposed to establish a price cap primarily through financial hedging instruments rather than physical gas contracts. KGO proposed to recover the costs of obtaining the necessary hedging instruments through its purchased gas adjustment (PGA) for its non-irrigation sales customers during the months of May 2004 through October 2004, with provisions for recovering/refunding under/over recovery. Staff review found that KGO's proposal was reasonable and on April 30, 2004 the Commission approved the program.

**Midwest Energy, Inc. (Midwest) 2004-2005 Gas Hedge Program  
(Docket No. 04-MDWG-638-HED)**

On January 26, 2004, Midwest filed an application with the Commission requesting approval to implement its first natural gas hedging program. Essentially Midwest requested that the Commission approve a maximum expenditure of \$500,000 to be used to "cap" the price of natural gas for a 12-month period from July 1, 2004 to June 30, 2005. Midwest proposed to recover the costs of the program through a volumetric surcharge that would be collected on volumes of natural gas provided to sales customers throughout the period of the program. Staff review estimated that the program would be able to provide price caps through call options for approximately 40% of the gas purchased by Midwest from December 2004 through February 2005. The Commission approved the application on June 24, 2004.

**Misc. Dockets**



**Aquila, Inc., d/b/a Aquila Networks-WPK (WPK) Preapproval Filing  
(Docket 05-AQLE-050-PRE)**

On July 20, 2004, WPK filed an application with the Commission requesting preapproval of ratemaking principles and treatment for the recovery in rates of expected costs from multiple transmission projects. The overall estimated a cost of the projects is approximately \$29 million and WPK was requesting preapproval under K.S.A. 66-1239. This statute, as passed by the 2003 legislature and modified by Substitute HB 2516 passed by the 2004 legislature, allows a utility to request preapproval of ratemaking treatment for certain transmission projects. In this application, WPK requested that the Commission determine the overall rate of return, return on equity and depreciation treatment for the proposed facilities. On September 13, 2004, WPK filed a pleading with the Commission requesting permission to withdraw the filing for two reasons. First, the 180-day filing decision required conflicted with schedules for both Commission and WPK Staff involved in the WPK rate case (04-AQLE-1065-RTS); and second, WPK and Commission Staff had been meeting and discussing establishing a transmission surcharge to recover incremental transmission costs, as allowed by K.S.A. 66-1237, also passed by the 2003 legislature. On September 15, 2004, the Commission granted WPK's motion to withdraw its application. WPK and Commission Staff continue to work toward a filing to establish a transmission surcharge.

**Elk River Windfarm, LLC (Elk River) Public Utility Certificate  
(Docket No. 05-ERWE-499-COC)**

On December 2, 2004, Elk River filed an application requesting that the Commission grant Elk River a limited certificate as an electric public utility in Kansas. Elk River is a 150 MW wind power project in Bulter County near Beaumont, Kansas. As described under its application, Elk River will construct and operate the wind power project as an Independent Power Producer (IPP), selling the output under a wholesale sales agreement. Under 66-104(e), as revised by the 2001 legislature, IPPs such as Elk River are not required to obtain public utility certification and instead have the option of whether or not to become certified as a public utility. In this case Elk River has decided to seek public utility certification. On December 20, 2004, the Commission approved Elk River's application and provided Elk River with a limited certificate to sell wind power at wholesale.