Approved: March 16, 2005
Date

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Scott Emler at 9:30 A.M. on March 14, 2005 in Room 526-S of the Capitol.

Committee members absent: Senator Roger Reitz- excused

Committee staff present: Athena Andaya, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes' Office
Diana Lee, Revisor of Statutes' Office
Ann McMorris, Committee Secretary

Conferees appearing before the committee:
Rep. Frank Miller
Ed Jaskinia, Associated Landlords of Kansas
Larry Baer, League of Kansas Municipalities
Carl Huslig, Aquila
Larry Holloway, Kansas Corporation Commission
David Springe, Citizens' Ratepayers Tax Board

Others in attendance: See attached list

Chairman Emler opened the meeting with the announcement that following the testimony presented by the opponents on March 10, 2005 on **SB 120**, he had not closed the hearing and that action would follow.

Chair closed the hearing on **SB 120.**

Chair opened the hearing on

HB 2279 - Municipal utility services; liens for unpaid charges, exceptions

Proponents:

Representative Frank Miller noted **HB 2279** is amended to place trash and refuse removal service under the same conditions as present law on water and sewer services. Present law allows the municipalities to place a lien on the property owner's tax roll for any unpaid bills for water and sewer services. However, the law does not apply if the unpaid water or sewer bill was contracted by the tenant and not the owner. The House Utilities Committee also amended **HB 2279** to prohibit local governments that provide sewage disposal services or sold waste collection and disposal services from refusing to contract with a tenant. (Attachment 1)

Ed Jaskinia, Associated Landlords of Kansas, was in favor of **HB 2279.** In his remarks he referred to (1) **SB 328** which passed in the 2004 Session; (2) an article from the Kansas Government Journal, May 2004 entitled "Landlord Liability after SB 328" and an Ordinance contract; and (3) A petition form. (Attachment 2)

Opponents:

Larry Baer, assistant general counsel, League of Kansas Municipalities, noted the lien provided for in statute and also in most city ordinances is the mechanism by which cities and their citizens can be assured that each property pays its fair share for the use of city services. (Attachment 3)

Chair closed the hearing on **HB 2279**.

MINUTES OF THE Senate Utilities Committee at 9:30 A.M. on March 14, 2005 in Room 526-S of the Capitol.

Chair opened the hearing on:

HB 2465 - Time limit for KCC action on electric utilities' recovery of transmission costs.

Proponents:

Carl Huslig, Vice President Transmission, Aquila Networks, explained that **HB 2465** would implement a regulatory clock for response to bifurcation filings. Without a timetable, implementation could be delayed indefinitely thus impeding enhancement of the transmission network. Aquila also supports the modification providing that 90 days after the report to the KCC is submitted, the new rates become effective. (Attachment 4)

Opponents:

Larry Holloway, chief of energy operations, Kansas Corporation Commission, opposes **HB 2465** which amends K.S.A. 66-1237 by limiting the amount of time the Commission has to review and approve an electric utility's application to recover its transmission costs through a separate delivery charge. **HB 2465** as amended, proposes to establish a 120 business-day time limit on the KCC decision regarding the "first phase" filing and a 90 business-day time limit for KC action on "second phase" filings. The Commission believes these time limits are unneeded because the current 240 day statutory provision applies, and would create complications and unintended consequences for utilities, ratepayers and the Commission. (Attachment 5)

David Springe, consumer counsel, Citizens' Utility Ratepayer Board, is opposed to **HB 2465** because it makes two changes to an existing statute that remove valuable consumer protections and place arbitrary restrictions on the Commission's review authority. CURB concurs that the 240 day statutory time frame currently applies. (Attachment 6)

Chair closed the hearing on **HB 2465.**

Approval of minutes

Moved by Senator Apple, seconded by Senator Lee, the minutes of the meetings of the Senate Utilities Committee held on March 7, 2005, March 10, 2005 at 9:30 a.m. and March 10, 2005 at the rail, be approved. Motion carried.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 6

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: **MARCH 14, 2005**

Name	Representing
David Springe	CURB
BRUCE GRAHAM	KEPCo
JOE DICK	KCBPU
C. FRANK MILLER	REP. 12th DIST.
Steve Johnson	Kansas Gas Service
Larry Holloway	KCC
Dan Zakrzewski	KEC
LARRY R BASER	LKM
ED JASKINIA	THE ASSOCIATION OF KS
Mark Schreiber	Westar Energy
Kimberly Lemon	aquila
Carl Huslig	"
TOM DAY	KCC

STATE OF KANSAS

C. FRANK MILLER
REPRESENTATIVE, TWELFTH DISTRICT
MONTGOMERY, CHAUTAUQUA, AND
ELK COUNTIES
HOME ADDRESS P.O. BOX 665
INDEPENDENCE, KANSAS 67301
TOPEKA OFFICE: STATEHOUSE, RM 431-N
TOPEKA, KANSAS 66612
(785) 296-7646

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
HEALTH AND HUMAN
SERVICES
ETHICS AND ELECTIONS
LEGISLATIVE POST AUDIT

Monday March 14, 2005

Honorable Senator Jay Scott Emler, Chairman
Members of the Senate Utilities Committee

It is my pleasure to stand before you today in support of HB 2279.

Mr. Chairman I have had numerous calls from property owners telling me that the municipality has placed a tax lien on their rental property because a tenant moved out without paying all of his or her bills.

Present law allows the municipalities to place a lien on the property owner's tax roll for any unpaid bills for water and sewer charges. The law also allows these services to be discontinued until the unpaid amount has been paid. These charges are thus subject to the same penalties and collected in like manner as other unpaid taxes. However, the law does not apply if the unpaid water or sewer bill was contracted for by a tenant and not the owner of the property.

New section 5 on page 3 of the bill, simply places trash and refuse removal service under the same conditions as for water and sewer services. In this case too, the law would not apply if the unpaid trash removal service bill was contracted for by a tenant and not the landlord or the owner of the property.

New section 6 on page 3 was an amendment added by the House Utilities Committee to prohibit local governments that provide sewage disposal services or solid waste collection and disposal services from refusing to contract with a tenant.

The bill passed by a wide margin in the House February 25, 2005 by a vote of 115 yeas, and 7 nays.

It is only fair that property owners be protected from irresponsible tenants; otherwise we are going to see a further decline of entrepreneurs willing to invest and work at maintaining homes in our communities that serve the housing needs of those persons who cannot yet afford to buy a new home.

I urge the committee to support HB 2279.

Thank you Mr. Chairman and I stand for questions.

Testimony submitted by

C Frank Miller

Representative Frank Miller

Senate Utilities Committee
March 14, 2005
Attachment 1-1

Session of 2005

SENATE BILL No. 328

By Committee on Elections and Local Government

1-21

AN ACT concerning municipalities, relating to liens for water and sewer service; amending K.S.A. 12-631k, 12-860, 14-569, 19-2765b and 19-27,170 and repealing the existing sections.

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

Section 1. K.S.A. 12-631k is hereby amended to read as follows: 12-631k. *(a) Except as provided in subsection (b),* in the event any person, firm, corporation, political unit (except the United States and the state of Kansas) or organization living or operating on premises connected to a sanitary sewer, ~~shall neglect, fail or refuse~~ *neglects, fails or refuses* to pay the service charges fixed by the governing body of ~~said~~ *the* city or of such township sewer district for the operation of the sewage disposal system, such charges shall constitute a lien upon the real estate served by the connection to the sewer, and shall be certified by the clerk of the city or of the township sewer district to the county clerk of the county in which ~~said~~ *the* city or township sewer district is located, to be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other taxes are by law collectible~~, and such~~ *the* governing body is hereby authorized to refuse the delivery of water through the pipes and mains of a publicly owned waterworks until such time as such charges are fully paid.

(b) The lien established by subsection (a) shall not apply whenever the use of the sewage disposal system has been contracted for by a tenant and not by the landlord or owner of the property affected.

Sec. 2. K.S.A. 12-860 is hereby amended to read as follows: 12-860. *(a)* The governing body of the city shall establish such rates and charges for water and for the use of the sewage disposal system as shall be reasonable and sufficient to pay the cost of operation, repairs, maintenance, extension and enlargement of the water and sewage system and improvements thereof and new construction and the payment of any bonds and the interest thereon as may be issued for such water and sewage system: ~~*Provided,*~~. No revenue shall be used for the payment of bonds payable primarily by assessments against property in sewer districts: ~~*Provided further,* That~~. Such revenue may be used to pay revenue bonds or general obligation bonds payable by the city at large issued for either the water-

Senate Utilities Committee
March 14, 2005
Attachment 2-1

works system or sewage disposal system before the systems were combined or for the water and sewage system after they have been combined. The city is authorized to discontinue water service for any failure to pay the rates or charges fixed for either water service or the use of the sewage disposal system or both when due, and, *except as provided in subsection (b),* if there is sewage disposal system use without water service the charge may be certified as a lien against the property served and assessed as a tax by the county clerk or county assessor.

(b) The lien established by subsection (a) shall not apply whenever the water service or the use of the sewage disposal system has been contracted for by a tenant and not by the landlord or the owner of the property affected.

Sec. 3. K.S.A. 14-569 is hereby amended to read as follows: 14-569. *(a) Except as provided in subsection (b),* in the event any person, firm or corporation using said sewage disposal system neglects, fails or refuses to pay the charges fixed by said governing body, such person, firm or corporation shall not be disconnected from said sewage disposal system or refused the use thereof, but said charges due therefor shall be by the city clerk certified to the county clerk of the county in which said city is located, to be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other taxes are by law collectible, and shall become a lien upon the real property so served.

(b) The lien established by subsection (a) shall not apply whenever the use of the sewage disposal system has been contracted for by a tenant and not by a landlord or owner of the property affected.

Sec. 4. K.S.A. 19-2765b is hereby amended to read as follows: 19-2765b. *(a) Except as provided in subsection (b),* in the event any person, firm or corporation using said sewage disposal system neglects, fails or refuses to pay the charges so fixed by the board of directors of said district, such person, firm or corporation shall not be disconnected from said sewage disposal system or refused the use thereof, but said charges due therefor shall be certified by the board of directors of said district to the county clerk of the county in which said improvement district is located to be placed on the tax roll for collection subject to the same penalties and collected in like manner as other taxes are by law collectible, and shall become a lien upon the real property so served.

(b) The lien established by subsection (a) shall not apply whenever the use of the sewage disposal system has been contracted for by a tenant and not by the landlord or owner of the property affected.

Sec. 5. K.S.A. 19-27,170 is hereby amended to read as follows: 19-27,170. (a) As used in this section and in K.S.A. 19-27,171 and 19-27,172, *and amendments thereto,* county means Finney county.

(b) As a complete alternative to all other methods provided by law,

the board of county commissioners of a county which has created or has received a petition seeking to create main sewer districts, lateral sewer districts, or joint sewer districts pursuant to the provisions of article 27 of chapter 19 of the Kansas Statutes Annotated, may by resolution determine that all or a portion of the cost of acquiring, constructing, reconstructing, enlarging or extending the storm or sewage systems and related disposal works, pumping stations, pumps or other apparatus for handling and disposing of sewage be borne by the county-at-large and paid out of the general revenue fund or by the issuance of general obligation improvement bonds of the county as the board of county commissioners may determine, in the manner provided by law. The proportionate share of the costs of such sewer improvements not borne by the county-at-large shall be assessed against the property within the sewer district in accordance with the provisions of article 27 of chapter 19 of the Kansas Statutes Annotated. Where the county shall issue bonds to pay the costs of sewer improvements in accordance with this act, and all or a portion of such costs shall be borne by the county-at-large, such bonds shall be general obligations of the county, shall be issued in accordance with the general bond law, and shall be in addition to and may exceed the limits of bonded indebtedness of such county.

(c) The board of county commissioners shall have the power to establish a schedule of charges for the use of such sewer improvements financed in accordance with this act. Such charges may be based on the use required and shall include consideration of, but not limited to the quantity, quality and rate of sewage or waste water contributed to the system. *Except as provided in subsection (d),* any such service charge shall become a lien on the property against which the service charge is made from the date such charge becomes due. Funds generated by such service charges shall be used for the purpose of paying all or any portions of the costs of constructing or reconstructing the sewer improvements, for the costs of operation and maintenance thereof, or for the payment of principal and interest on general obligation bonds issued in accordance with this act.

(d) The lien established by subsection (c) shall not apply whenever the use of the sewage disposal system has been contracted for by a tenant and not by the landlord or owner of the property affected.

Sec. 6. K.S.A. 12-631k, 12-860, 14-569, 19-2765b and 19-27,170 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

Landlord liability Alter SB 328...

by sandy Jacquot

On April 16, 2004, the Governor signed into law SB 328, the so-called landlord liability law. SB 328 amends K.S.A. 12-631k, K.S.A. 12-860, K.S.A.14-569, and K.S.A. 19-27,170 to prohibit cities and improvement districts from holding landlords or lessors liable for the delinquent sewer and water bills of their tenants. Thus, the legislative policy is to create a class of property owners to be given special treatment, quite likely driving up the cost of water and sewer service to the remaining customers. Those astute in looking for home rule possibilities, however, no doubt noticed that K.S.A. 14-569 is a statute applicable only to mayor/council cities of the second class, treats those cities differently than other cities with respect to sewer service and renders the entire enactment nonuniform. More discussion of that follows below.

There are probably 200 to 300 cities in Kansas that have ordinances holding landlords liable for delinquent utility bills of tenants. Those ordinances will need to be repealed and new ordinances adopted to address the prohibitions in SB 328. First, this bill does not become law until July 1, 2004, so any city with a landlord liability ordinance in place may continue to enforce it until July 1.Second, this bill only applies to sewer and water utilities operated by cities, so those with gas and electric utilities may continue to hold landlords liable for those bills.

Previous to the adoption of this bill, there was statutory authority to hold landowners liable for delinquent water and sewer bills. The applicable statutes will now provide that the liens placed on real property for delinquent utility charges will not apply whenever the water or sewer service is contracted for by a tenant and not the landlord or owner of the property affected. Historically, water, sewer, and other utility service has been considered to add value to the land, and, in fact, the utility connection is the value. Therefore, the payment for the service and the delinquency ran with the land, which is why liens on the property for delinquencies has been allowed. Curiously, for owner/residents, this will continue to be the law and liens will be allowed. The prohibition will only apply to landlords.

After some legal research, LKM believes there are three ways to address the problems created by SB 328. LKM is not recommending a particular remedy, but merely informing cities of their options. First, cities may simply choose to repeal their existing landlord liability ordinances and not replace the ordinances with any other provisions, thus eliminating the landlords' liability. Second, a city may choose to do a charter ordinance making inapplicable to the city the statutes amended by SB328 and continue to hold landlords liable for the delinquent utility bills of their tenants. Because one of the statutes that the bill amends, K.S.A. 14-569, applies only to mayor/council cities of the second class who operate sewer disposal systems and treats those cities differently than other cities in Kansas, a charter ordinance may be adopted. Specifically, K.S.A. 14-569 does not allow discontinuing sewer service to the property for non-payment of the bill, the only remedy being a lien on the property. The exception now becomes that no lien is allowed when a landlord has not contracted for the service. This leaves virtually no remedy for cities of the second class operating a sewer utility. K.S.A. 12-631k, however, another statute amended in the bill, provides that cities may discontinue the service, creating the nonuniformity.

The final option, is to adopt an ordinance requiring all owners of properties desiring to receive city sewer and water service to contract for the service. Thus, the city is serving the property and not the individual, allowing for a lien to be placed on real property for non-payment of sewer and water bills. Tenants would not be eligible to have utility service in their name. A sample ordinance is set forth on page 143.

Note that the sample ordinance provides for notice to the tenant and a provision to allow tenants to continue to receive sewer and water service for a limited time by paying the applicable utility bills. This provides due process to the tenant and allows a period of time for the tenant to work out the issue with the landlord. Ultimately, service can be discontinued if the landlord does not accept responsibility for payment of the bill. Presumably, the tenant will have legal remedies if the landlord has breached the lease agreement. The sample ordinance provides that service to the premises may be refused until the utility bills are paid. The city also has the option of placing a lien on the property because the service is in the landlord's name.

Finally, LKM believes that adopting the ordinance set forth herein or adopting a charter ordinance, could subject the city to a challenge by one or more landlords. Please consult your city attorney to determine the most prudent course of action for your city.

2-4

ORDINANCE NO.

AN ORDINANCE PROVIDING FOR UTILITY SERVICE TO PROPERTIES LOCATED IN THE CITY OF KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF _____ , KANSAS:

Section 1. DEFINITION. For the purposes of this ordinance, "utility services" shall include water and sewer services provided by the city.

Section 2. SERVICE CONNECTION REQUIRED. (a) Owners of premises served by utility services under this ordinance shall be required to carry such services in their name, whether owned individually or by another legal entity. Owners of the served premises shall be liable for payment of the cost of any utility service account arising from service provided to the premises. This provision shall also apply when the premises are leased to a third party by the owner or when leased by or through an agent or other representative of the owner. In the case of properties other than residential, the city may permit the owner's legal representative to contract for utility services, but the owner will continue to be ultimately liable for payment for utility services furnished by the city to the premises.

Section 3. NOTICE; HEARING. (a) If a utility bill has not been paid on or before the due date, a delinquency and termination notice shall be issued by the city clerk within five days after the delinquency occurs and mailed to the owner at the address provided to the city for mailing utility bills. A copy also shall be mailed to the tenant as provided below.

(b) The notice shall state:

(1) The amount due, plus delinquency charge;

(2) Notice that service will be terminated if the amount due is not paid within 10 days from the date of the notice unless the date on the notice to pay the charges due shall be on a Saturday, Sunday, or legal holiday, in which event such notice will give the owner until the close of the next business day in which to pay the charges;

(3) Notice that the owner has the right to a hearing before the designated hearing officer;

(4) Notice that the request for a hearing must be in writing and filed with the city clerk no later than three days prior to the date for termination of service.

(c) Upon receipt of a request for hearing, the city clerk shall advise the owner of the date, time, and place of the hearing which shall be held within three working days following receipt of the request.

Section 4. SAME; FINDING. Following the hearing, if the hearing *officer* shall find that service should not be terminated, then notice of such finding shall be presented to the city clerk. If the *officer* finds that service should be terminated, an order shall be issued terminating service five days after the date of the order. The owner and tenant, if applicable, shall be notified either in person or by mailing a letter to his or her billing address and/or the premises, return receipt requested. However, if the order is made at the hearing in the presence of the owner, and if applicable, the tenant, then no further notice need be given. The hearing officer has a right, for good cause, to grant an extension, not to exceed 10 days, for the termination of such service.

Section 5. TENANTS RIGHTS. (a) In the event a delinquency arises involving a leased premises, the tenant shall be notified in writing of the delinquency of the landlord by first class regular mail within 10 days after the billing to the landlord becomes delinquent.

(b) If the tenant chooses to pay the delinquent account, service will not be terminated.

(c) The tenant will be allowed to continue paying for utility services for a period of 90 days to allow resolution of the nonpayment by the landlord or to allow the tenant to obtain other housing, at which time service to the leased premises will be terminated.

Section 6. RECONNECTION. If service has been terminated to the leased premises for failure by the landlord to pay the delinquent utility bill or after 90 days of payment by the tenant, no further utility services shall be furnished by the city to the premises until all billings for the utility service to said premises, interest, late payment charges, and a reconnection charge is paid in full.

(b) If the bill remains unpaid, the delinquent utility account charges shall constitute a lien upon the real estate served, and shall be certified by the city clerk to the county clerk, to be placed on the tax roll for collection, subject to the same penalties, and collected in like manner as other taxes collectible by law.

Section 7. EFFECTIVE DATE. This ordinance shall operate prospectively for services contracted for after the effective date of the ordinance. This ordinance shall be in full force and effect from and after its adoption and publication in the official city newspaper.

ADOPTED AND APPROVED by the Governing Body, this _____ day of _____ , 20

_____
Mayor

(SEAL)
ATTEST:

City Clerk
_____

PETITION

SHALL THE FOLLOWING ORDINANCE, OR RESOLUTION, BECOME EFFECTIVE?

CHARTER ORDINANCE NO. 4

A CHARTER ORDINANCE EXEMPTING THE CITY OF SCRANTON, KANSAS, FROM THE PROVISIONS OF 2004 SENATE BILL 28 AND ANY AMENDMENTS THERETO.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SCRANTON, KANSAS.

Section 1. The City of Scranton, by the power vested in it by Article 12, Section 5 of the constitution of the State of Kansas, hereby elects to exempt itself from the provisions of Senate Bill 328. Senate Bill 328 is part of an enactment commonly known as the Kansas landlord liability law, which enactment applies to this City but does not apply uniformly to all cities.

Section 2. The limitation on landlord liability as provided in Senate Bill 328 shall not be applicable to the City of Scranton.

Section 3. This Charter Ordinance shall be published once each week for two consecutive weeks in the official City newspaper.

Section 4. This Charter Ordinance shall take effect 61 days after final publication unless a sufficient petition for a referendum is filed, requiring a referendum to be held on the ordinance as provided in Article 12, Section 5 of the constitution of the State of Kansas, in which case this Charter Ordinance shall become effective upon approval by a majority of the electors voting thereon.

PASSED BY THE GOVERNING BODY, not less than two-thirds of the members-elect voting in favor thereof, this 16 day of November, 2004.

Rodger Franks, Mayor

ATTEST: Bobbi Morris, City Clerk

We, the undersigned electors of the City of Scranton, State of Kansas protest Charter Ordinance No. 4 exempting the City of Scranton from the provisions of 2004 Senate Bill 328 (commonly known as the Kansas landlord liability law) and any amendments thereto. We, the undersigned electors of the City of Scranton, seek to bring the aforementioned question to a vote of the electors of the City of Scranton in the City of Scranton as is provided in Article 12, Section 5 of the constitution of the state of Kansas.

I have personally signed this petition. I am a registered elector of the state of Kansas and of the City of Scranton and my residence address is correctly written after my name.

Number	Printed Name	Signature	Address	Date Signed
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				

I am the circulator of this petition and a resident of the state of Kansas and possess the qualifications of an elector of the state of Kansas. I have personally witness the signing of the petition by each person whose name appears thereon.

_____

(Signature of circulator)

_____

(Circulator's residence address)

Subscribed and sworn to before me this _____ day of _____, 20___.

(SEAL)

_____

Person authorized to administer oaths

My appointment expires _____, 20____.

LKM
League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

Date: March 14, 2005

To: Senate Utilities Committees

From: Larry R. Baer
Assistant General Counsel

Re: HB 2279 – Testimony in Opposition

Thank you for the opportunity to appear before you today on behalf of the 565 member cities of the League of Kansas Municipalities (LKM). LKM and our member cities stand in opposition to SB 2279. Because HB 2279 would prohibit the collection of fees due and owing to the city from landlords, HB 2279 would have a negative impact on all cities that operate solid waste disposal services.

Under state law, and most city ordinances, cities are allowed to collect fees for solid waste disposal services from landlords if a particular tenant refuses to pay their bill. There are three key reasons for this policy.

- **Solid Waste Services Run With the Land.** Except for large commercial or industrial users, most solid waste fees are a flat monthly fee. The amount paid is not dependent upon the amount of trash that an individual puts out to be picked up. In this way, curbside solid waste services are really services which belong to the property and not to the individual residing at the property.
- **Equity.** The real crux of this issue is equity. If cities are unable to collect delinquent solid waste bills from landlords who have rented to tenants who refuse to pay their bills, then the remaining citizens of the city will bear the cost in higher solid waste rates. Citizens of the community who pay their bills in a timely fashion should not be penalized for those tenants who refuse to pay their bills. The landlords, who own the property and are using the property as a money-making enterprise, should be obligated to make sure that the city services which are delivered to that property are ultimately paid for.
- **Landlords Have Alternatives.** Allowing a tenant to individually contract for his or her own solid waste services is really up to the landlords. Many landlords simply include solid waste services as part of their rent charges, thereby avoiding the situation where a tenant "skips out" on the payment of those charges.

The lien which is provided for in statute and in most city ordinances is the mechanism by which cities and their citizens can be assured that each property pays its fair share for the use of city services. HB 2279 would amount to a subsidy of landlords by property owners who pay their bills appropriately. For these reasons, we respectfully request that you do not report HB 2279 favorably for passage. Thank you for the opportunity to share our concerns on this issue. I would be happy to stand for questions at the appropriate time.

Senate Utilities Committee
March 14, 2005
Attachment 3-1

Aquila

Testimony In Support of House Bill No. 2465
Senate Utilities Committee
March 14th, 2005

Prepared by
Carl A. Huslig- V.P. Transmission
Aquila Networks – WPK
Raytown, Missouri

Good Morning Mr. Chairman and fellow committee members. My name is Carl Huslig and I am the Vice President of Transmission for Aquila Networks – West Plains Kansas. Aquila appreciates the opportunity to testify before you in support of House Bill 2465.

As I have discussed with this committee before, the Kansas Legislature has passed several pieces of legislation critical to the enhancement of the transmission system in Kansas. You have heard me say that the FERC Chairman, Pat Wood, has deemed Kansas "best-in-class"- the model which other states should follow concerning the advancement of the transmission network. It is imperative that we continue to advance this "best in class" model which is why Aquila strongly supports this bill.

I recently had a conversation with Denise Bode, Chairman of the Oklahoma Corporation Commission (OCC) and President of the Regional State Committee (RSC) for the Southwest Power Pool (SPP). Chairman Bode requested a copy of KSA 66-1237 which allows for the unbundling or bifurcation of transmission investment and expense from our other costs in base retail rates. Bifurcation provides that transmission costs may be isolated from other retail rate costs and appear as a separate line item on our customers' monthly bills.

In 2003, when the Kansas Legislature passed HB 2130, Kansas became the first state to enact bifurcation legislation. The OCC is in the process of drafting such legislation in Oklahoma.

Chairman Bode went on to state that bifurcation legislation is the answer to Regional Transmission Organization (RTO) cost recovery and transmission

expansion in the Southwest Power Pool. In fact, she stated that Chairs of the Texas and Arkansas corporation commissions agreed that this type of legislation is the only model to follow. FERC also concurs that transmission needs to be bifurcated.[1]

So why am I advocating the modification of a statute that Aquila and transmission experts in many other states so strongly support? Presently, the statute has no regulatory clock for response to bifurcation filings. A company could make a bifurcation filing at the Kansas Corporation Commission (KCC), but the KCC has no timetable upon which to respond. Such a timetable should be established. Without one, implementation could be delayed indefinitely thus impeding enhancement of the transmission network.

The KCC has a set 240-day clock to issue an order in a retail rate case. Since a bifurcation filing is based upon the most recent rate case data by statute, a 240-day clock is not necessary. A 120 business-day regulatory clock is appropriate and allows for ample time for a decision to be reached on the application.

Aquila also supports the modification in Section 1 (b) providing that 90-days after the report to the KCC is submitted, the new rates become effective.

Finally, Aquila appreciates the opportunity to provide input on this bill. Let's keep the momentum rolling. I am happy to stand for questions at the appropriate time. Thank you.

[1] FERC Docket No. ER05-285, FERC staff agreed with AMP-Ohio that transmission needs to be bifurcated.

KANSAS
CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR
BRIAN J. MOLINE, CHAIR
ROBERT E. KREHBIEL, COMMISSIONER
MICHAEL C. MOFFET, COMMISSIONER

BEFORE THE SENATE UTILITIES COMMITTEE
PRESENTATION OF THE
KANSAS CORPORATION COMMISSION
March 14, 2005
HB 2465

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 testify for the Commission on HB 2465.

This legislation proposes to modify K.S.A. 66-1237 which was enacted by the 2003 legislature by limiting the amount of time the Commission has to review and approve an electric utility's application to recover its transmission costs through a separate delivery charge. The Commission opposes this legislation.

K.S.A. 66-1237, as currently enacted, requires the Commission to allow an electric utility to institute a separate transmission delivery charge. This is done in two phases. The first, as detailed in section "a" of the statute, requires an electric utility to file a proposal to recover its transmission costs through a separate charge. The Commission is required to establish the surcharge so that the utility's current rates are reduced such that the charge plus the reduced rates are equal to "the revenue recovered from the retail rates in effect immediately prior to the effective date of the initial transmission delivery charge."

The second, or ongoing phase, as detailed in section "b" of the statute, allows the electric utility to change the transmission charge based upon an order of a "regulatory authority having legal jurisdiction over transmission matters." This is a reference to charges that could be imposed, for example, as the result of actions of the Federal Energy Regulatory Commission

(FERC) or a Regional Transmission Organization. In this case the utility has to file a report with the Commission 30 days prior to changing the utility's transmission delivery charge.

This bill, as amended, proposes to establish a 120 business-day time limit on the Commission's decision regarding the initial, or "first phase" filing, and a 90 business-day time limit for Commission action on ongoing or "second phase" filings. The Commission believes these time limits are unneeded and would create complications and unintended consequences for utilities, ratepayers and the Commission. .

The purpose of the initial filing is to establish an unbundled transmission charge through a revenue-neutral change in the electric utility's rates. This is not a simple process, and while it involves no loss or gain by the electric utility itself, if it is done incorrectly, it can have a dramatic impact on the individual customer. To understand this problem it is necessary to understand the process that generally occurs in establishing utility rates.

Utility rates are established by first reviewing the utility's annual revenue requirement. The utility's annual revenue requirement is essentially the amount of money that the utility needs to collect through rates every year to cover its expenses and to allow its investors a return on their investment. After determining the amount of annual revenue requirement, the next task is the difficult one of rate design, or how to recover the annual revenue requirement from customers of various classes, such as residential, commercial and industrial. Normally utility rates are designed to allocate costs to the customers based upon the principle of "cost causation." This is accomplished by a class cost of service study. This study determines the cost to serve each individual utility customer class. While rate design is always difficult and somewhat subjective, the overall purpose is to properly assign the utility's costs to each customer in a manner that best reflects the cost of providing service to that customer. While the utility and Commission Staff and interveners often have different ideas regarding revenue requirements and rate design, in the end, the utility is generally indifferent to small changes in the rate design itself. The reason is quite simple. The utility recovers the same annual revenue requirement regardless of the rate design.

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The language in K.S.A. 66-1237 explicitly requires that the initial transmission surcharge is to be revenue neutral, but that doesn't mean that determining how to implement this requirement is simple, either for the utilities or for the Commission. While it is generally not that difficult to determine what portion of the utility's revenue requirement is transmission related, how to carve that out of each customer's rate is not simple. Additionally, setting up this initial unbundled transmission charge is very important because it determines how the "ongoing" changes in FERC-approved transmission rates will be automatically passed through. Currently, for example, most residential electric customers pay a monthly "customer charge" and a rate based upon the kilowatt-hours, or energy, used. However, most transmission rates approved by the FERC are based upon a monthly demand rate. Fairly allocating this demand rate to residential, commercial and industrial customers is a task that requires a great deal of customer data and analysis. Yet, if this allocation is not done correctly, individual customers could see a substantial change in their monthly bills for the same level of energy consumption, even though the total revenue recovered by the utility remains the same.

As an example of how this works, suppose that, for whatever reason, a certain source of state revenue were no longer available, yet the legislature had to recover that revenue from other sources in a manner that required each taxpayer to pay no more or less than they did before. For the purpose of this example, suppose that gasoline taxes were no longer allowed. You can appreciate the difficulty in trying to replace this important source of revenue without changing the "impact" on any citizen or business. This is why the Commission is concerned that a 120 business-day time limit on the initial phase could hamper its ability to best revise rates in a manner that is revenue neutral to customers, as well as the utility.

Another reason the Commission objects to this proposal is that it is unnecessary and potentially confusing. 120 business-days is approximately 168-days. K.S.A. 66-117(c) establishes a 240 day limit for Commission action anytime a public utility files a "proposed change in rate, joint rate, toll, charge or classification or schedule of charges, or in any rule or regulation or practice pertaining to the service or rates of such public utility..." During the

hearing in the House Utilities Committee it was clear that proponents did not understand that the K.S.A. 66-117(c) 240-day time limit would apply to the K.S.A. 66-1237(a) initial filing and the K.S.A. 66-1237(b) subsequent filings. The Commission believes that both the initial and subsequent filings are clearly a proposed change in rates and schedules of charges and therefore the appropriate time limit is already addressed in statute, and that appropriate time limit is 240-days. Creating separate time limits for different types of filings creates unnecessary confusion and complication for both the Commission and utilities filing applications.

The Commission notes that HB 2465, as amended, establishes a time limit of 90 business-days to review subsequent filings under K.S.A. 66-1237(b). The standard established in K.S.A. 66-1237(b) for the Commission review is to verify that subsequent changes in the transmission delivery charge are "resulting from an order of a regulatory authority having legal jurisdiction over transmission matters..." There is little rationale for limiting the Commission's ability to determine if proposed changes to the transmission charge truly reflect an order of a different regulatory authority. Unlike the effects of K.S.A. 66-1237(a), which merely establishes a revenue neutral change in rate design, changes in the transmission charge may truly reflect a rate increase, and the Commission's ability to thoroughly investigate these changes should not be hampered by time limits shorter than the 240-days envisioned by K.S.A. 66-117(c). While the Commission does not foresee that these filings will normally require this amount of time, this process has not been done before and unforeseen circumstances could arise that require additional investigation.

Additionally, the Commission notes that no one can show that the Commission has not been diligent in expediting this review under normal circumstances, because no utility has even implemented the provisions of K.S.A. 66-1237. Certainly the legislature can always revisit this issue in the future if a problem does arise but for now this is a solution in search of a problem. Finally, I would point out that while setting these transmission charges may be a difficult process, it will not necessarily be a controversial one. Commission Staff is currently working with two separate electric utilities to determine just how to approach this issue. As each utility

has a different situation, each requires a different approach to getting the initial charge unbundled in a manner that is fair to both the utility and the customer

In conclusion, this bill is unneeded and would create complications and unintended consequences for utilities, ratepayers and the Commission.

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Citizens' Utility Ratepayer Board

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A.W. Dirks, Vice-Chair
Francis X. Thorne, Member
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SENATE UTILITIES COMMITTEE
H.B. 2465 (as amended)

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
March 14, 2005

Chairman Emler and members of the committee:

Thank you for this opportunity to offer testimony on H.B. 2465. The Citizens' Utility Ratepayer Board is opposed to this bill for the following reasons:

This bill makes two changes to an existing statute that remove valuable consumer protections and place arbitrary restrictions on the Commission's review authority. This bill seems to be about forcing quick answers. CURB believes it is more important to make sure we find the right answers.

Section 1.

This bill will amend K.S.A 2004 Supp. 66-1237 to require that the Kansas Corporation Commission issue an order in not more than 120 business days when any utility files an application pursuant to the statute, unless filed in conjunction with a rate case. CURB believes that requiring the Kansas Corporation Commission issue an order in these types of proceedings within 120 business days, regardless of the facts of the case, is arbitrary and not in the best interest of the public. Setting an arbitrary 120 business day restriction ignores the potentially complicated nature of these cases, ignores that time constraints can be dictated by what other cases are currently before the Commission, and ignores the fact that regulators (and legislators) should be more concerned with getting the rate change correct than getting it within a short period of time.

This section of the statute will only apply to each utility one time. After the mechanism (and line item charge) has been established, the Commission will only review subsequent rate changes pursuant to Section (b) of the statute. There are only 5 utilities this will apply to (Westar, Aquila, KCPL, Empire and Midwest Energy) and possibly two co-ops (KEPCO and Sunflower). CURB suggests that the importance of establishing this mechanism correctly, and insuring that only the proper level of costs are passed to consumers under this mechanism outweighs any need to finish the proceeding by an artificially established deadline. Whether it takes 30 days or 200 days, we should not arbitrarily limit the time necessary to insure that the charges placed on consumer bills are correct.

If the legislature does believe a deadline is necessary, CURB suggests the 240 day time frame consistent with a ratecase timeline.

Senate Utilities Committee
March 14, 2005
Attachment 6-1

Section 2.

The bill also makes a fundamental change to the Commission's review authority in Section (b) of the statute. Currently, any time "subsequent" to the utility filing its change in transmission rates pursuant to the statute, if the Commission "determines that all or part of the change did not result from an order described by this subsection, the Commission may require changes in the transmission delivery charge and impose appropriate remedies". This is an appropriate protection for consumers. The utility should not benefit from improper actions, and the Commission should be able to reverse any rate changes and refund any money to consumers that resulted from improper rate changes at any time.

Under the amended language in the bill, the Commission's review is restricted to only 90 business days. Again, this is an arbitrary time constraint, and reverses a valuable consumer protection. If the Commission finds on the 91st day, or the 191st day that consumers have been wrongly overcharged, consumers should have the right to the return of their money. CURB believes that consumers should always be assured that improper overcharges will be refunded. Arbitrarily restricting the period of review denies consumers this important protection.

For the above reasons, CURB opposes this bill, and opposes these changes to the existing statute.

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