

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 A.M. on February 1, 2007 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Mary Galligan, Kansas Legislative Research
Dennis Hodgins, Kansas Legislative Research
Renae Hansen, Committee Assistant

Conferees appearing before the committee:

Don Low, KCC
Jim Ludwig, Westar
Michael Byington, Kansas Association for the Blind and Visually Impaired
Mike Murray, Embarq
Mark Schreiber, Westar
Dave Holthaus, Kansas Electric Cooperatives
Richard Cram, Department of Revenue

Others attending:

Twenty-Three including the attached list.

Hearing on:

HB 2220: Electric utility recovery of transmission-related costs.

Proponents:

Jim Ludwig, Westar, (Attachment 1), spoke in favor of **HB 2220**, noting the specific clarifications needed for the previous statute that became law in 2003 and was used by Westar for the first time in 2005.

Don Low, KCC, (Attachment 2), offered testimony in support of **HB 2220** noting the specific weaknesses of the statute currently in effect.

Questions were asked and comments made by Representatives: Margaret Long, and Terry McLachlan.

Hearing on **HB 2220** was closed.

Hearing on:

HB 2221: Promotions by local exchange carriers within an exchange or group of exchanges, conditions.

Proponents:

Michael Byington, Kansas Association for the Blind and Visually Impaired, (Attachment 3), offered testimony in favor of **HB 2221** giving some history of the path leading to the legislation that is before the committee.

Opponents:

Mike Murray, Embarq, (Attachment 4), spoke in opposition of **HB 2221**, noting some of the manners in which customers could abuse this legislation if it were in enacted.

Questions were asked and comments made by Representatives: Oletha Faust-Goudeau, Terry McLachlan, Rob Olson, and Judy Morrison.

CONTINUATION SHEET

MINUTES OF THE House Energy and Utilities Committee at 9:00 A.M. on February 1, 2007 in Room 241-N of the Capitol.

In addition to Mike Murray and Michael Byington answering questions, Jim Gartner, AT&T responded to committee questions.

Hearing on **HB 2221** was closed.

Hearing on:

HB 2240: Sales taxation; sales tax exemptions; service for rebuilding of public utility facilities.

Proponents:

Mark Schreiber, Westar, (Attachment 5), offered testimony in support of **HB 2240** because it includes within the list of catastrophes two of the most common types of severe weather in Kansas, windstorm and ice loading, noting a specific part of the bill that might need some changes, with offers to compromise with the department of revenue on those areas. They also agreed to changing the intent to apply only to catastrophic storms and not to new construction.

Dave Holthaus, Kansas Electric Cooperatives, (Attachment 6), spoke in favor of **HB 2240** noting the changes in the current law where the new law would broaden the exemption to include all electric and gas utilities in the exemption, and add ice loading, windstorm, and terrorism to the list of natural disasters.

Steve Johnson, Kansas Gas Service, spoke in support of **HB 2240**.

Opponents:

Richard Cram, Department of Revenue, (Attachment 7), offered testimony in opposition to **HB 2240**.

Questions were asked and comments made by Representatives: Tom Sloan, Annie Kuether, Cindy Neighbor, Josh Svaty, Carl Holmes, Margaret Long, Tom Moxley, and Oletha Faust-Goudeau.

Doug Sheppard, Kansas Electric Cooperatives, also helped answer questions from the committee in addition to the conferrees listed.

Hearing on **HB 2240** was closed.

The next meeting is scheduled for February 2, 2007.

Meeting adjourned.

**Testimony of
Jim Ludwig
Vice President Regulatory and Public Affairs
Westar Energy
On House Bill 2220
February 1, 2007**

Chairman Holmes and members of the committee, my name is Jim Ludwig. I am the Vice President of Regulatory and Public Affairs for Westar Energy. Westar Energy and Midwest Energy support HB 2220 because it provides clarification for the use of a transmission delivery charge (TDC).

During the 2003 legislature session, HB 2130 was introduced and passed. The resulting statute allowed the initiation of a TDC, which would be a separate line item on a customer's bill. This charge represented the transmission costs, which have been historically bundled within the customer's electric rate.

Westar used this statute for the first time in its 2005 rate case. The KCC applied the statute as we believe the legislature intended and implemented a TDC. However when the KCC's rate order was appealed, the Kansas court of appeals reversed the KCC's decision.

There are two issues in the statute that need greater clarification to address the court of appeals objections to the implementation of the TDC.

- (1) Although not explicitly stated by the court, its ruling made implementation of a TDC in the context of a general rate case nearly impossible. Most utilities and regulators would argue that implementing a TDC during a general rate case is the best time to do it because all costs and allocations are updated and audited at that time. In the context of a general rate case, the component of rates attributable to transmission can be identified and 'unbundled.' The revisions to the statute in HB 2220 explicitly address implementation of the TDC in the context of a general rate case, permitting the KCC to determine transmission-related costs to be recovered through the TDC. The revisions allow the KCC to identify and unbundle transmission costs that were already embedded in retail rates and also to deal with changes in transmission costs since retail rates were previously set.
- (2) The court also ruled that the transmission-related charges in the TDC must be set based upon a 'final' order from the authority with jurisdiction over transmission. The FERC is the authority with primary jurisdiction over transmission. FERC's process of putting rates into effect is a bit different than the KCC's, but the end result is no different. When the FERC receives an application from a utility to change its transmission rates, the FERC puts those rates as filed into effect subject to refund. By contrast, the KCC typically suspends implementation of the filed rates until it has gone through a process to determine what the approved "final"

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rate will be. Since the FERC's process provides for refunds with interest in the event the filed and final rates differ, in the end there is not any practical difference between the FERC and the KCC approaches to implementing rates. The revisions in HB 2220 acknowledge that the TDC can be based on filed rates at FERC and directs that any refunds and interest be returned to the appropriate customers in the event the filed FERC rate is higher than the final approved rate.

Westar Energy and Midwest Energy believe HB 2220 supports the original legislative intent envisioned in HB 2130 in 2003. We urge your support of HB 2220.

Thank you for the opportunity to provide testimony this morning. I will be glad to stand for questions at the appropriate time.



KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR

BRIAN J. MOLINE, CHAIR

ROBERT E. KREHBIEL, COMMISSIONER

MICHAEL C. MOFFET, COMMISSIONER

BEFORE THE HOUSE UTILITIES COMMITTEE

Presentation of the Kansas Corporation Commission February 1, 2007

HB 2220

Thank you, Chairman and members of the Committee. I am Don Low, Director of the Utilities Division for the Kansas Corporation Commission. I appreciate the opportunity to testify for the Commission on HB 2220. The Commission does not oppose the bill.

In general, the Commission supports the concept of a separate transmission charge on electric bills so that retail customers are aware of the transmission related electricity costs, just as they are informed of the costs of the generation of electricity through the Energy Cost Adjustment (ECA).

We believe that the bill will correct the problems with implementing a Transmission Delivery Charge (TDC) in strict accordance with the current statutory language in K.S.A. 66-1237, as interpreted by the Court of Appeals.¹ Under the construction of K.S.A. 2005 Supp. 66-1237 given by the Court, the "revenue neutrality" requirement in the statute means that a TDC cannot be implemented in the context of a rate case since rate cases result in a change in revenues. However, the Commission's initial unbundling of transmission related costs from other costs and approval of a TDC is most efficiently and logically done in the context of a rate case when transmission costs can be fully and most easily determined, rather than in a separate proceeding when the Commission may be forced to rely on outdated data.

¹ See *Kansas Industrial Consumers Group, Inc. v. State Corporation Commission*, 36 Kan. App. 2d 83, 98-105, 138 P.3d 338 (1996) (*Kansas Industrial Consumers*).

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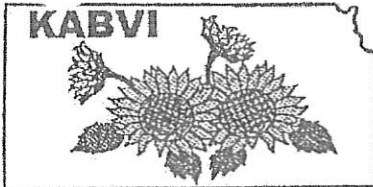
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Further, the Court found that the Commission cannot rely on a FERC authorized transmission rate that is "interim" and subject to refund, reasoning that K.S.A. 66-117 Kansas requires KCC determination of a final permanent rate within the deadline for rate case decisions. We believe the Court erred since there are prior court decisions finding that the Commission has authority to fix interim rates. In any event, we suggest that it is generally desirable for the TDC to reflect the costs actually being paid by the utility under the FERC interim rate rather than adjust the TDC after the year or more lag period before the FERC rates are permanent.

I would note that when K.S.A. 2005 Supp. 66-1237 was first proposed and enacted in 2003, the KCC opposed it. At that time, the KCC suggested that the Commission already had authority to allow a TDC and that the bill did not provide sufficient flexibility, given the evolving nature of FERC regulation of transmission. The Court of Appeals decision confirms the potential problems of enacting statutes that are too detailed in proscribing how the KCC is to regulate and determine rates. If this were a blank slate, the Commission might prefer different or no legislation. However, given the possible court interpretation of a repeal of K.S.A. 66-1237 entirely, our current knowledge of the FERC procedures for determining transmission charges, and the desirability of fixing the statutes, the Commission is comfortable with HB 2220.

Thank you for consideration of this bill. I will be happy to answer any questions.



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January 31, 2007

TO: House Energy and Utilities Committee
The Honorable Representative Carl D. Holms, Chair

FROM: Michael Byington, C.E.O. and Correspondence Manager
Kansas Association for the Blind and Visually Impaired, Inc.

SUBJECT: House Bill 2221 – Support!

The change, and reason for this Bill can be found on page six, lines 34 and 35. Although the change is a small one, it is significant for Kansas wireline telephone customers who have disabilities, particularly disabilities that prevent them from holding, reading, or otherwise using, printed telephone directories.

A recent history is as follows. Prior to the 2005 session of the Kansas Legislature, the statute addressed by this Bill simply stated that promotions had to be non-discriminatory. The term “non-discriminatory” was not defined as it related to usage in the statute, but several major players in the telecommunications industry found it to be unacceptable, because some of the non-regulated players, and more minimally regulated players, who were venturing into telecommunications related marketing areas, were not subjected to this same high standard of non-discrimination. This resulted in the introduction of House Bill 2042 in the 2005 Session of the Kansas Legislature. The purpose of this bill was stated to be that of leveling the playing field between competitors. This bill changed the language to wording, stating that promotions could not be, “unjust, unreasonably discriminatory, or unduly preferential.” None of these “hedge” words were of course specifically defined as they related to this statute, but there was certainly a consensus that the non-discriminatory aspects of the law and the regulatory direction against discrimination were being weakened by this Legislation.

The Kansas Association for the Blind and Visually Impaired, Inc. is a small, all volunteer consumer organization representing interests for and of the blind and visually impaired. We do the best we can to track all legislation and evaluate it for its relevance to Kansans who are blind and visually impaired. In this instance, however, we did not immediately see the potential impact of this legislation on Kansans who are blind and visually

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impaired, and we thus let the bill slide through the House without voicing our opposition. By the time this Legislation made it to the Senate Utilities Committee, we had become aware that the Bill could have negative impacts on access to telephone services for Kansans who are blind and visually impaired. We opposed the Bill on the Senate side, but, an amendment we proposed in an attempt to resolve the situation, which was properly and timely filed through the electronic filing system used by the Senate Utilities Committee, was lost, due apparently to computer glitches on the part of the State electronic systems. The Legislation thus sailed through the Senate on a fast track without consideration of our concerns.

This proposed bill carries the language that we were unable to get introduced as an amendment when the Bill went through two years ago. I will now articulate the concerns we are attempting to correct through this Legislation. This will necessitate offering a little more telecommunications legal and regulatory history, and this time we have to go back a bit further than 2005.

When Section 504 of Public law 93-112, which was the first major national civil rights statute adopted protecting Americans with disabilities from discrimination, was signed into law by President Nixon, in 1973, there essentially was one monopoly providing local directory assistance services across the nation. Charges for local directory assistance services were being implemented for the first time around that time. As blind and severely visually impaired customers can not read local telephone directories, made available to all customers, a nationally available exemption was granted to local directory assistance charges for blind and visually impaired customers provided that such customers were willing to document and prove their visual status. This was generally regarded as a very clear requirement of Public Law 93-112, and was not court tested prior to divestiture.

Divestiture has created some conundrums with regard to this local directory assistance charge exemption for the blind and visually impaired. The exemption has not completely gone away, but the armor has been severely weakened. In the current competitive environment that comprises the telecommunications industry, numerous local and long distance providers provide directory assistance services. Many smaller telephone companies contract for this service with other, larger providers. Many companies who provide directory assistance services do not print telephone directories, and the reverse is also true. There are now companies who provide telephone directories, but who have little or nothing to do with the actual operation of the telecommunications infrastructure. Additionally, all telephone directories do not cover the same areas. Regional directories, and regional direct dial access has caused the line to be grayed concerning what constitutes a local call as opposed to an out-of-area call.

These circumstances have caused a lot of uncertainty and confusion about the local directory assistance charge exemption for customers who are blind and visually impaired. While most companies still offer some form of such an exemption, a few do not. Among companies who do still offer such an exemption, customer service representatives are often confused about its availability, and how application is made for it. Some companies

are now offering only partial exemptions, limiting access to a certain number of directory assistance calls per billing periods, or limiting local access only to residential numbers, etc.

On our organization's toll free information line, we probably get more calls about our members and blind constituents losing, being denied, or having only partial access to exemptions to local directory assistance charges than we get over any other single advocacy or service issue. Some of these calls come from older individuals who only recently have become blind or visually impaired, and who are not well equipped to fight an advocacy battle in order to continue to have access to looking up telephone numbers without having to pay for the service; these are usually people who have used their local, printed, telephone directories to get numbers all of their lives, and now, due to vision loss, they can no longer do so. We also receive calls from older constituents who have been blind for many years or all of their lives, and who have had unlimited free directory assistance under the original directory assistance charge exemption from the 1970s through the present; these individuals may have chosen to accept a new promotion from a different telephone company, or differing service plans from their same company. They assume that their exemption to directory charges will remain in place, but they find that it does not. It is eliminated or limited due to the changes they have made in their services or service providers.

Now let me explain how we feel the legislation we are proposing will help with the above problem. First of all, please bear in mind that exemption to local directory assistance charges for people who are blind and visually impaired is a wireline related issue. Cellular telephone providers make no effort to provide telephone directories, and usually cellular telephones are used in locations where a hard copy telephone directory is not available. Thus sighted and blind customers alike pay for cellular directory assistance charges. A few cellular telephone service providers have made some accommodations concerning cellular directory assistance charges assessed against blind customers, but there is no requirement for such accommodations. No telephone directory has been provided for which equal access must be provided. With regard to wireline, however, most wireline telephone service providers today offer services in bundles. The amount that will be charged for directory assistance calls is set as a part of the service package or bundle being offered, and is thus a part of that promotion. In contacts we received from blind and visually impaired Kansans concerning problems with directory assistance charges on wireline telephone services, prior to 2005, we were occasionally able to use the old language of K.S.A. 66-2005(l) in our negotiations with providers. This usually ultimately resulted in blind customers being granted the exemption to directory assistance charges, and without any formal complaints being filed. I know that our Association's work did not get on the radar screen of the telecommunications industry sufficiently enough that our efforts were the reason House Bill 2042 was introduced. In fact, I do not believe that overall the wireline portion of the telecommunications industry is consciously attempting to take free directory assistance away from blind and visually impaired people who can not read the printed telephone directory. Nonetheless, the weakening of the wording in K.S.A. 66-2005(l) has made it much more difficult for us to advocate with regard to such cases. We simply believe that it is a matter of good public

policy that promotions that discriminate against customers who have disabilities should be prohibited from being discriminatory. This should be clear and without any wiggle room or hedge word in the statutory language.

In crafting the language of this Legislation, we did not simply go back to the 2005 language and try to undue the changes that were made at that time. Doing so would have addressed our concerns, but we do support a level playing field for competition overall. This is why we have crafted House Bill 2221 to keep the wording the telecommunications industry settled upon two years ago, but to simply add that promotions can not discriminate against people with physical disabilities.

I have been asked to address whether there are other examples of promotions that would be impacted by this legislation in addition to the issue of free directory assistance. There are a few other examples of promotions that might be impacted, but overwhelmingly, the reason for the introduction of this legislation is to deal with the directory assistance access conundrum.

Nonetheless, I will provide a second example of telephone service promotions that have been discriminatory to people who are blind. Such promotions were quite clearly unacceptable under the former language of K.S.A. 66-2005(1), and our Association got some of these corrected under the pre-2005 language of this statute. The post 2005 language, however, probably makes such discrimination acceptable.

A number of telephone companies have promoted their caller identification service by offering the caller identification hardware box free of charge to those who sign up for the caller identification service. A blind or severely visually impaired user quite obviously needs a talking caller identification box in order to access this same service. Talking caller identification equipment is only very minimally more expensive than the type of equipment which has a visual display only, yet some companies fostering such promotions have initially refused to provide the talking equivalent needed by blind customers in order to take advantage of the promotion. Again, these are actual incidents, and the pre-2005 K.S.A. 66-2005(1) helped in resolving such cases in a manner favorable to the blind customer.

Thus, in conclusion, it would be our Association's assertion, that rolling back civil rights for anyone is not in the best public interest. We are surprised that the Kansas Corporation Commission supported House Bill 2042, as written, which seemingly did exactly that during the 2005 session. We have not, however, simply proposed to undue the wording changes made in 2005, and change the statute back to its former wording. As noted earlier, the stated, primary purpose for the introduction of House Bill 2042 back in 2005 was to create a more level playing field for competitors who are competing under slightly differing regulatory circumstances. We do not wish to undo this effort for regulatory parody. We simply wish to insure that an effort intended to promote regulatory parody does not inadvertently end up weakening anti-discrimination provisions for Kansans who have disabilities. Thank you.



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Before the House Utilities Committee
HB 2221
Thursday, February 1, 2007
Michael R. Murray

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to comment on HB 2221.

We question whether this amendment to KSA 66-2005 would solve the problem which the proponent claims to exist—that some phone companies are not giving free directory assistance to customers who are disabled in some manner.

If this amendment were added, we are concerned as to what it could mean if we offer promotions in the future? For instance, could someone claim discrimination and get free phone service or damages?

Examples of promotions we might offer include: Sign up for 12 months of local service and we'll give you two months free; or buy the bundle we'll give you gift certificate to Home Depot; or come back to us and we'll waive installation fees.

We fail to see how this proposed language fits in this section of the statute. And we certainly do not believe it addresses its purported purpose.

I've included two documents with my testimony. One is Embarq's General Exchange Tariff on file at the KCC which specifically says that "**Charges for Directory Assistance Service are not applicable to customers whose physical, visual, mental or reading handicaps prevent them using the telephone directory. The method of exempting those handicapped customers shall be via the completion of an exemption form and the Telephone Company's acceptance of that form...**"

The other is **Section 255 of 47 USC which speaks to availability and accessibility of telecommunications equipment and services to the disabled population.** In our view, the issue is already addressed both at the state and federal levels and needs no further codification.

There may be carriers who are not regulated and who may not offer free directory assistance, but this bill as introduced does nothing to correct that situation if it actually exists. This bill applies only to local exchange companies such as Embarq, AT&T and the rural independent telephone companies. Competitive local exchange carriers, wireless carriers, cable providers and providers of VoIP would not be affected by passage of HB 2221.

Respectfully, we ask that you vote NO on HB 2221.

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DATE:

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Michael R. Murray

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DIRECTORY SERVICES

14. GENERAL REGULATIONS - DIRECTORY ASSISTANCE

- A. The Telephone Company furnishes Directory Assistance Service whereby customers may request assistance in determining telephone numbers.
- B. The rates apply to calls from customers who request assistance in determining telephone numbers of customers who are located in the same local calling area or the same Home Numbering Plan Area (HNPA).
- C. No credit will be given for requested telephone numbers that are not found in the directory.
- D. Charges for Directory Assistance Service are not applicable to customers whose physical, visual, mental or reading handicaps prevent them from using the telephone directory. The method of exempting those handicapped customers shall be via the completion of an exemption form and the Telephone Company's acceptance of that form.

15. RATES - DIRECTORY ASSISTANCE

- A. Customer dials the directory assistance number direct (1+411 or 1+555+1212). The charge for each call is \$1.45.
- B. Where the customer places a call to Directory Assistance via an Operator (0+411 or 0+555-1212) the charge for each call is \$1.95.
 - 1) Third number, special billing number, or credit card billing will be acceptable for Directory Assistance Charges.

16. GENERAL - NATIONAL DIRECTORY ASSISTANCE (NDA) SERVICE

- A. National Directory Assistance Service is provided to customers of the Telephone Company for the purpose of requesting telephone numbers of individuals or businesses who are located outside the Telephone Company's Local and Home NPA serving areas for the originating line.
- B. National Directory Assistance Service is available only in exchanges for which the Telephone Company provides local operator services.

47 USC Sec. 255

Sec. 255. Access by persons with disabilities

(a) Definitions. As used in this section -

- (1) Disability. The term "disability" has the meaning given to it by section 12102(2)(A) of title 42.
- (2) Readily achievable. The term "readily achievable" has the meaning given to it by section 12181(9) of title 42.

(b) Manufacturing. A manufacturer of telecommunications equipment or customer premises equipment shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable.

(c) Telecommunications services. A provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.

(d) Compatibility. Whenever the requirements of subsections (b) and (c) of this section are not readily achievable, such a manufacturer or provider shall ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.

(e) Guidelines. Within 18 months after February 8, 1996, the Architectural and Transportation Barriers Compliance Board shall develop guidelines for accessibility of telecommunications equipment and customer premises equipment in conjunction with the Commission. The Board shall review and update the guidelines periodically.

(f) No additional private rights authorized. Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section or any regulation thereunder. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

(June 19, 1934, ch. 652, title II, Sec. 255, as added Pub. L. 104-104, title I, Sec. 101(a), Feb. 8, 1996, 110 Stat. 75.)

**Testimony of
Mark Schreiber
Director Government Affairs
Westar Energy
On House Bill 2240
February 1, 2007**

Chairman Holmes and members of the committee, my name is Mark Schreiber. I am the Director Government Affairs for Westar Energy. Westar Energy supports HB 2240 because it includes within the list of catastrophes two of the most common types of severe weather in Kansas, windstorm and ice loading. An act of terrorism has also been added. The bill allows for the consistent application of the sales tax exemption for all electric and gas utilities when repairing utility facilities in the event of a major storm.

When a major storm strikes Kansas, utility service is usually severely damaged and restoration can take days or weeks. We have witnessed this most recently in western Kansas and in 2005 for our customers in and around Wichita. Current law grants a retail sales tax exemption for rural electric co-ops for certain storms but not for windstorms or ice loading. Electric and gas public utilities do not receive a sales tax exemption for restoration work for any storm.

House Bill 2240 remedies the inconsistent application of the sales tax exemption and provides for its use during two of the most common types of storms. During the 2005 ice storm in south central Kansas, some of our customers were without electricity for over a week. Utility crews from across the eastern half of the United States provided assistance. Westar paid sales tax on that labor. For that one storm, we paid the state approximately \$1.5 million in sales tax that ultimately is recovered from our customers. For the state to gain from the hardship of customers during a severe storm would not seem to be appropriate public policy.


Thank you for the opportunity to provide testimony this morning. I will be glad to stand for questions at the appropriate time.

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ATTACHMENT 3



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**TESTIMONY OF DAVE HOLTHAUS
KANSAS ELECTRIC COOPERATIVES, INC.
HOUSE ENERGY AND UTILITIES COMMITTEE
HB 2240
February 1, 2007**

Mr. Chairman and members of the Committee, I am testifying in support of HB 2240

Kansas law provides a retail sales tax exemption for electric cooperative and municipal utilities on labor to repair electric utility facilities damaged during natural disasters. HB 2240 would broaden this exemption to 1.) include all electric and gas utilities in the exemption and 2.) add ice loading, windstorm, and terrorism to the list of natural disasters.

An amendment on page 5, line 37, would expand the list of natural disasters for which the sales tax exemption would apply. Current law does not exempt contract labor charges associated with the "restoration, reconstruction, or replacement" of electric lines damaged by wind or ice storms. This labor was previously exempt as a result of a law enacted in 1977 in response to concerns about the high cost of repairing power lines downed by ice storms. This exemption was eliminated in 1988 when the Legislature amended the definition by deleting windstorm, hailstorm, rainstorm, and snowstorm, and adding tornado. My understanding is that nearly every roofing repair or replacement project was claimed to be the result of damage caused by hail even in cases where the true cause was normal wear and tear. The Legislature acted to close this loophole by amending the natural disaster definition and inadvertently removed the exemption for ice loading of power lines, the original intent of the exemption.

The proposed amendment would apply only to electric and gas utilities that hire contract labor to restore, reconstruct, or replace utility plant damaged by terrorism or natural disaster, including windstorms, ice loading, or terrorism. We believe that this amendment will not adversely impact the preparation of the state budget, as natural disasters such as those covered in the bill are infrequent in nature. Importantly, contract labor associated with normal plant repair or re-construction would continue to be taxable.

Thank you for the opportunity to address this issue.

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ATTACHMENT 6

Testimony to the House Energy and Utilities Committee

Richard Cram

February 1, 2007

Department Concerns with House Bill 2240

Representative Holmes, Chair, and Members of the Committee:

House Bill 2240 would amend K.S.A. 79-3603 (p) to expand the sales tax exemption of labor services on original construction. The proposal broadens the definition of "original construction" to include the restoration, reconstruction or replacement of a building or facility damaged or destroyed by windstorm, ice loading, or terrorism. The proposal adds to the definition of "facility" to include the transmission or distribution lines of any natural gas or electric public utility.

The fiscal note for the "ice storm" portion of the exemption alone is significant: approximately \$3 million in state sales tax revenue, based on cost estimates received concerning the recent 2005 ice storm. Although a major ice storm may not hit the state every year, the damage to power transmission lines, and subsequent repair costs, can be extensive when they do occur. Transmission line replacement may still be in progress in the aftermath of the extensive snow and ice storms in late December 2006 and January of this year.

By adding "windstorm" to the type of damage for which labor services on transmission line restoration, reconstruction or replacement would be exempt, the bill creates an interpretation issue. Given the amount of wind in Kansas, what should be considered windstorm damage sufficient for the exemption to apply vs. normal wear and tear?

Addition of distribution and transmission lines of natural gas and electric public utilities to the definition of "facility" also provides a major expansion of the sales tax exemption for "original construction" labor services to include construction of new distribution or transmission lines of natural gas and electric public utilities. We have not yet completed our fiscal impact estimate for this portion of the exemption. It will also be significant and may add up to \$7 million more of lost sales tax revenue to the fiscal note, for a total cost to the State of around \$10 million.