Approved: March 9, 2007
Date

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on March 5, 2007 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Raney Gilliland, Kansas Legislative Research Department
Mike Corrigan, Revisor of Statutes
Tatiana Lin, Legislative Fellow
Ann McMorris, Committee Secretary

Conferees appearing before the committee:
Jim Ludwig, Westar
Don Low, KCC

Others in attendance: See attached list

Chair opened the hearing on
HB 2220 - Electric utility recovery of transmission-related costs

Proponents
Don Low, Director of the Utilities Division, Kansas Corporation Commission, testified that KCC does not oppose **HB 2220**. 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. (Attachment 1)

Jim Ludwig, Vice President Regulatory and Public Affairs, Westar Energy, noted there are two issues in the statute that needed greater clarification to address the court of appeals objections to the implementation of the TDC and the revisions in **HB 2220** address them. He suggested a change in the effective date of the bill to be when published in the Kansas Register rather than the statute book which would ensure the statute being available when the KCC revisits this issue. (Attachment 2)

The Chair asked if there were any further proponents, neutrals or opponents. Being none, the Chair closed the hearing on **HB 2220.**

Moved by Senator Francisco, seconded by Senator Reitz, **HB 2220** be amended to change the effective date of the bill to be when published in the Kansas Register. Motion carried.

Moved by Senator Francisco, seconded by Senator Petersen, **HB 2220** be moved out favorably as amended. Motion carried.

Chair opened the hearing on
HB 2033 - Certain public utility construction work in progress required to be included in rate base.

Proponents:
Jim Ludwig, Vice President Regulatory and Public Affairs, Westar Energy, explained Construction Work in Progress (CWIP) and its impact on Westar Energy and its customers. He provided two examples of the effect of CWIP on customer rates. He noted there are at least four benefits to electric utilities and their customers with **HB 2033**. (Attachment 3)

Written testimony in support of **HB 2033** was provided by Kansas City Power & Light. (Attachment 4)

Opponents:
Don Low, Director of the Utilities Division, Kansas Corporation Commission, testified **HB 2033** would remove the Commission's discretion on whether to allow cost recovery for certain utility projects that are still under construction. KCC is opposed to this bill and noted some of the conflicting considerations that come into play on the CWIP issue. (Attachment 5)

Questions from the committee on how rates are set, procedure of utility company to recapture funds if the

utility construction is discontinued, and how KCC authority is involved. Due to the lack of time, the Chair continued the hearing on **HB 2033** to the March 6 Senate Utilities Committee meeting.

Mike Corrigan, Revisor of Statutes Office, distributed the proposed **Substitute for SB 20** (7rs1262) to the committee and will review the proposed bill as time permits in a future committee meeting. (Attachment 6)

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 6

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: MARCH 5, 2007

Name	Representing
Mark Schreiber	Westar Energy
Lindsey Douglas	Hein Law Firm
Dan Springe	Cubs.
PHIL WAGES	KGPCO
Leo Haynes	KCC
Don Low	KCC
Tom DAY	KCC
Dave Matthews	KEC
Tom Thompson	Sierra Club
Katie Gilman	Kearney & Associates
Steve Johnson	Kansas Gas Service
Mike Reecat	ATMOS
Lon Stanton	Northern Natural Gas Co
Kimberly Lefever	ITC Great Plains

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 5, 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 KCC 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 KCC 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*).

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 prescribing 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 allowing appropriate procedures to implement a TDC, the Commission is comfortable with HB 2220.

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

Westar Energy®

JAMES LUDWIG
Vice President, Regulatory & Public Affairs

Testimony of
James Ludwig
Vice President Regulatory and Public Affairs
Westar Energy
On House Bill 2220
March 5, 2007

Chairman Emler 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 customers' 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

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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" 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.

We would suggest one change to the bill. We would like the effective date of the bill to be when published in the Kansas Register rather than in the statute book. By changing the effective date, it ensures the statute will be available when the Kansas Corporation Commission revisits this issue.

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 and the proposed change.

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

Westar Energy®

JAMES LUDWIG
Vice President, Regulatory & Public Affairs

Testimony of
James Ludwig
Vice President, Regulatory and Public Affairs
Westar Energy
On House Bill 2033
March 5, 2007

Chairman Emler and members of the committee, my name is Jim Ludwig. I am Vice President of Regulatory and Public Affairs for Westar Energy. Thank you for the opportunity to address you today on House Bill 2033. Westar Energy supports HB 2033.

I would like to first explain Construction Work In Progress (CWIP) and its impact on Westar Energy and its customers. An important aspect to remember is that the types of construction projects that I will be discussing are large multi-year commitments. They have significant exposure to fluctuations in interest rates, and material and labor costs.

Construction Work In Progress is the accumulation of such costs as labor, material, equipment, overheads and Allowance for Funds Used During Construction, commonly referred to as AFUDC (interest or carrying costs) associated with each major construction project. The current statute makes CWIP an optional adjustment by the Kansas Corporation Commission (KCC) at its discretion. Passage of this bill would require the inclusion of CWIP into rates when requested by a utility in a general rate case. There would be no need for the utility to accumulate AFUDC on the amount of CWIP being recovered in rates, thereby reducing the effect of carrying costs on rates. An important note to remember is that the KCC authority to evaluate and rule on the prudence of the construction projects remains intact.

Attached to my testimony are two examples of the effect of CWIP on customer rates.

In 1985, the Wolf Creek Generating Station began commercial operation providing energy to Kansas Gas and Electric Company (KGE), Kansas City Power and Light Company (KCPL) and Kansas Electric Power Cooperative (KEPCo). As example 1 indicates the total cost for KGE's 47% share of Wolf Creek was $1.4 billion. Included in the total cost was $432 million of interest or approximately 31% of the cost. If the entire interest cost associated with Wolf Creek's construction could have been avoided by inclusion of CWIP in rates, the average KGE residential customer would have saved approximately $65 per year. Likewise in example 2, KPL's interest expense for building the Jeffrey Energy Center that began construction in 1974 was $108 million. If CWIP had been allowed to be included in rates, the average KPL customer would have saved $14 per year.

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March 5, 2007
Attachment 3-1

The legislature has endorsed the equivalent of recovery of construction work in progress in public works projects through the passage of an increased fuel tax incorporated in the comprehensive highway legislation. The tax is collected during the construction years of the program. If the state waited until the 10-year highway plan was built before charging a higher fuel tax, the impact on gasoline prices would have been more severe. In the private sector, I can go to a local bank for a home construction loan. Then I would be expected to pay on the loan as construction progresses, and in doing so would ultimately pay a lower overall cost than if I waited until construction was complete before paying anything.

There are at least four benefits to electric utilities and their customers with this legislation:

1. Lower construction costs resulting in overall lower rates. CWIP reduces carrying costs for the project thus reducing the overall cost of the project.
2. Avoidance of rate shock. CWIP allows rates to be increased gradually rather than sudden one time increases.
3. KCC retains ability to evaluate the prudence of all construction projects. Regulatory oversight remains in force.
4. Indirect savings can also come from lower financial risk of major construction projects, resulting in lower cost of capital and better access to capital.

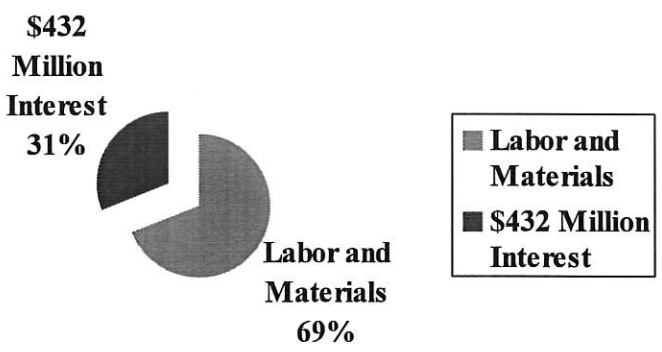
Thank you for the opportunity to provide testimony this morning. I will be glad to stand for questions at the appropriate time.

Cost Comparison

Example 1

KGE's Cost to Build Wolf Creek

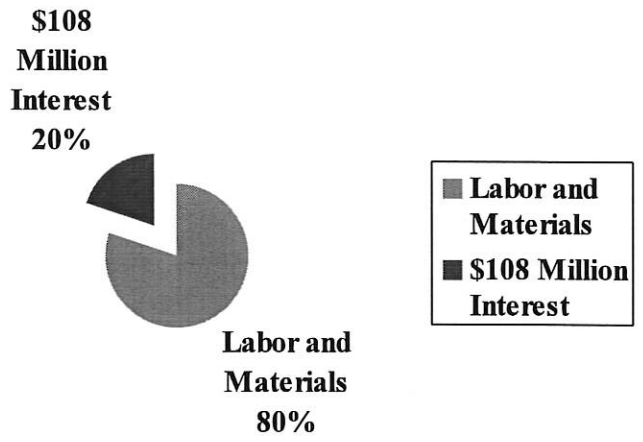
Total Cost $1.4 Billion



Example 2

KPL's Cost to Build JEC

Total Cost $535 Million



Written Testimony in Support of HB 2033
Before the Senate Utilities Committee
March 5, 2007

Kansas City Power & Light encourages the committee to support House Bill 2033. Passage of this legislation adds certainty to the regulatory process and provides utilities of all sizes better financing options. KCP&L and other utilities in the state look for financing options that lower the overall rate impact on our customers.

HB 2033 would not change the ability of the KCC to review and determine the appropriateness of utility investments and expenses. Allowing Construction Work in Progress cost recovery is a fiscally responsible tool that will save Kansas consumers money and allow utilities to continue to make significant investments in the state.

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Submitted by:
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KANSAS
CORPORATION COMMISSION

BEFORE THE SENATE UTILITIES COMMITTEE

Presentation of the Kansas Corporation Commission
March 5, 2007

HB 2033

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 2033.

Because this bill would remove the Commission's discretion on whether to allow cost recovery for certain utility projects that are still under construction, the Commission opposes the bill. The bill would instead mandate that ratepayers begin paying immediately for such projects before they begin providing service. Before I discuss the KCC's concerns with this bill, I want to provide some background on the CWIP issue, which has been the subject of debate for many years.

In general, under traditional utility regulation, ratepayers are not required to pay for utility assets unless those assets are "used and useful" or, as stated in K.S.A. 66-128, "used and required to be used." This general principle has been aimed at protecting ratepayers from paying for "gold-plated" facilities or plant that represents "excess capacity." It has also generally meant that ratepayers shouldn't pay for plant under construction and not yet in service, or as it is commonly referred to: "Construction Work in Progress" or "CWIP". However, as reflected in the statute, there is no absolute prohibition against allowing cost recovery of CWIP. Instead, the current statute lays out specific situations in which the KCC may consider CWIP to be used and required to be used. That discretion allows the Commission to evaluate on a case by case basis

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March 5, 2007
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the conflicting considerations that come into play on this issue. Some of those considerations are:

- Not allowing CWIP corresponds to the general practice in the marketplace of consumers paying for goods or service only when such goods or services are ready to be used. This logical practice especially makes sense if it is unknown either when development of the product will be finished or if the consumers will fully utilize the product when it is produced.
- With regard to utility assets, there is a general regulatory philosophy that one generation of ratepayers should not pay for facilities that will only provide service to future generations. This "intergenerational equity" concern should be greater as the construction period lengthens since there will be a corresponding increase in the number of current customers who move or pass on before the plant is completed.
- On the other hand, assuming that a construction project is eventually put into service and fully utilized, the total cost to ratepayers over the life of the asset is usually greater if the facility is added to rate base after it begins providing service than if cost recovery commences during construction. This is because of the accounting recognition given to the carrying costs associated with the money that is tied up during the construction period if CWIP is not recognized.[1] However, the net difference in cost is very dependent on the assumptions made about the time value of money for ratepayers. A commitment to allow CWIP cost recovery can also reduce costs of debt because lenders generally view such an approach as a reduction in risk that will merit a lower cost of money.
- Aside from policy considerations, there are accounting considerations. For example, the Commission has generally agreed that Staff should be able to audit the actual costs incurred rather than rely on projections or estimates. This has meant as a practical matter that CWIP is usually allowed only for projects that are completed about six months after the close of the

[1] This "Allowance for Funds Used During Construction" ("AFUDC") is added to the cost of the facility that is put into ratebase when the plant is completed and in service. The "return of" (through annual depreciation expense) and "return on" (through the overall rate of return given on net ratebase) the AFUDC component increases the total costs to ratepayers.

test year in rate cases. Also, if the project is likely to have offsetting effects on the costs or revenues of the utility, CWIP is not allowed without consideration of such offsets in order to provide a fair representation of the company's overall revenue requirements.

With regard to the CWIP issue, K.S.A. 66-128 originally gave the KCC discretion to allow only projects that would be completed within a year.[2] In 1995, the legislature added to the eligible CWIP facilities: generation from a renewable resource that is 100 megawatts or less, and transmission lines or generating facilities that have received siting approval from the KCC. In 2001, the legislature added all generation placed in service after 2000, and all transmission lines and appurtenances. There have been no requests for CWIP under the latter amendments.

The Commission believes it has reasonably exercised its discretion to allow CWIP in appropriate circumstances and has been flexible in meeting utility financial needs with regard to major projects and therefore opposes the proposed change in this statute to *mandate* cost recovery of CWIP. (For example, KCPL is in the midst of a complicated four year resource plan that was negotiated with staff and approved by the Commission. Also, the KCC's approval of Westar's mechanism to annually recover costs of new pollution control equipment was recently upheld by the Court of Appeals.) We therefore see no compelling need to make the change proposed in this bill.

The proposed change could lead to undesirable or uncertain results. For example, what happens if a new generating facility gets CWIP treatment during construction but never gets put into service because of changes in environmental rules, technical, economic or other problems? The Commission could be foreclosed from requiring a refund of any of the costs that were paid by ratepayers, even though they will never receive any benefits from the un-completed plant. The amendment made by the House committee, the addition of subsection (b)(4), does not address that problem. Nor can we foresee all other potential problems with an absolute mandate. With this bill, the KCC is potentially handicapped in how it addresses varying circumstances.

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[2] The 1984 amendment clarified the 1978 version to state that construction of the project had to be *commenced* and completed within one year or less rather than just completed in one year or less.

Without this bill, the KCC continues to have the discretion to consider the potential problems with allowing cost recovery for CWIP in specific circumstances and impose appropriate conditions or otherwise tailor make solutions.

This bill reminds me of what has happened with regard to K.S.A. 66-1237, which addresses recovery of electric transmission costs. Because that statute, enacted in 2003, was so specific, it was interpreted by the Court of Appeals as not providing the Commission with the discretion it attempted to exercise in implementing the statute. House Bill 2220 addresses a court decision that reversed the KCC's approval of Westar's proposal for a Transmission Delivery Charge in its last rate case. I don't believe the original problems with K.S.A. 66-1237 caused any irreversible harm to either ratepayers or electric utilities. However, I can't say that HB 2033's changes to remove KCC discretion under K.S.A. 66-128 wouldn't result in greater problems.

Thank you for your consideration. I will be happy to answer questions at the appropriate time.

5-4

PROPOSED Substitute for SENATE BILL NO. 20

By Special Committee on Utilities

AN ACT concerning the Kansas underground utility damage prevention act; amending K.S.A. 66-1802, 66-1804, 66-1805 and 66-1806 and repealing the existing sections.

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

Section 1. On July 1, 2008, K.S.A. 66-1802 is hereby amended to read as follows: 66-1802. As used in this act:

(a) "Damage" means any impact or contact with an underground facility, its appurtenances or its protective coating, or any weakening of the support for the facility or protective housing which requires repair.

(b) "Emergency" means any condition constituting a clear and present danger to life, health or property, or a customer service outage.

(c) "Excavation" means any operation in which earth, rock or other material below the surface is moved or otherwise displaced by any means, except tilling the soil for normal agricultural purposes, or railroad or road and ditch maintenance that does not change the existing railroad grade, road grade and/or ditch flowline, or operations related to exploration and production of crude oil or natural gas, or both.

(d) "Excavator" means any person who engages directly in excavation activities within the state of Kansas, but shall not include any occupant of a dwelling who: (1) Uses such dwelling as a primary residence; and (2) excavates on the premises of such dwelling.

(e) "Facility" means any sanitary sewer or underground line, system or structure used for transporting, gathering, storing, conveying, transmitting or distributing potable water, gas, electricity, communication, crude oil, refined or processed petroleum, petroleum products or hazardous liquids; facility shall not include, any stormwater sewers or production petroleum lead lines, salt water disposal lines or injection lines, which are not located on platted land or inside the corporate limits of any city.

(f) "Locatable facility" means facilities for which the tolerance zone can be determined by the operator using generally accepted practices such as as-built construction drawings, system maps, probes, locator devices or any other type of proven technology for locating.

(g) "Marking" means the use of stakes, paint, flags or other clearly identifiable materials to show the field location of underground facilities, in accordance with the rules and regulations promulgated by the state corporation commission in the administration and enforcement of this act.

(h) "Municipality" means any city, county, municipal corporation, public district or public authority located in whole or in part within this state which provides firefighting, law enforcement, ambulance, emergency medical or other emergency services.

(i) "Notification center" means the statewide communication system operated by an organization which has as one of its purposes to receive and record notification of planned excavation in the state from excavators and to disseminate such notification of planned excavation to operators who are members and participants.

(j) "Operator" means any person who owns or operates an underground <u>tier 1 or tier 2</u> facility, except for any person who is the owner of real property wherein is located underground facilities for the purpose of furnishing services or materials only to such person or occupants of such property.

(k) "Preengineered project" means a public project or a project which is approved by a public agency wherein the public agency responsible for the project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground

facilities, if any, within the construction area and where the location of all known and underground facilities are duly located or noted on the engineering drawing as specifications for the project.

(l) "Permitted project" means a project where a permit for the work to be performed must be issued by a city, county, state or federal agency and, as a prerequisite to receiving such permit, the applicant must locate all underground facilities in the area of the work and in the vicinity of the excavation and notify each owner of such underground facilities.

(m) "Person" means any individual, partnership, corporation, association, franchise holder, state, city, county or any governmental subdivision or instrumentality of a state and its employees, agents or legal representatives.

(n) "Production petroleum lead line" means an underground facility used for production, gathering or processing on the lease or unit, or for delivery of hydrocarbon gas and/or liquids to an associated tank battery, separator or sales facility. Production petroleum lead lines shall include underground lines associated with lease fuel and saltwater disposal and injection.

(o) "Platted land" means a tract or parcel of land which has been subdivided into lots of less than five acres for the purpose of building developments, including housing developments, and for which a surveyor's plat has been filed of record in the office of the register of deeds in the county where the land is located.

(p) "Tier 1 facility" means an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing gas, electricity, communications, crude oil, refined or reprocessed petroleum, petroleum products or hazardous liquids.

(q) "Tier 2 facility" means an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing potable water or sanitary sewage.

~~(p)~~ (r) "Tolerance zone" means the area ~~within~~ not less than 24 inches of the outside dimensions in all horizontal directions

of an underground facility, except that the tolerance zone for a tier 2 facility shall be established by rules and regulations adopted under K.S.A. 2006 Supp. 66-1815, and amendments thereto.

~~(q)~~ (s) "Update" means an additional request from the excavator to extend the time period of the request for intent to excavate beyond the 15 calendar day duration of the request.

~~(r)~~ (t) "Whitelining" means the act of marking by the excavator the route or boundary of the proposed excavation site with white paint, white stakes or white flags.

~~(s)~~ (u) "Working day" means every day Monday through Friday beginning at 12:01 a.m., except for the following officially recognized holidays: New Year's day, Memorial day, Independence day, Labor day, Thanksgiving day, the day after Thanksgiving and Christmas.

Sec. 2. On July 1, 2008, K.S.A. 66-1804 is hereby amended to read as follows: 66-1804. (a) Except in the case of an emergency, an excavator shall serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator having underground tier 1 facilities located in the proposed area of excavation.

(b) An excavator may serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator of tier 2 facilities located in the proposed area of excavation.

~~(b)~~ (c) The notice of intent to excavate or any subsequent updates shall be valid for 15 calendar days after the excavation start date and such notice shall only describe an area in which the proposed excavation reasonably can be completed within the 15 calendar days.

~~(c)~~ (d) No person shall make repeated requests for remarking unless the request is due to circumstances not reasonably within the control of such person.

~~(d)~~ (e) The notice of intent of excavation shall contain the name, address and telephone number of the person filing the

notice of intent, the name of the excavator, the date the excavation activity is to commence and the type of excavation being planned. The notice shall also contain the specific location of the excavation.

~~(e)~~ (f) The person filing the notice of intent to excavate shall, at the request of the operator, whiteline the proposed excavation site when the excavation location cannot be described with sufficient detail to enable the operator to ascertain the location of the proposed excavation.

~~(f)~~ (g) The provisions of this section shall not apply to a preengineered project or a permitted project, except that the excavators shall be required to give notification in accordance with this section prior to starting such project.

Sec. 3. On July 1, 2008, K.S.A. 66-1805 is hereby amended to read as follows:66-1805 (a) This act recognizes the establishment of a single notification center for the state of Kansas. ~~The notification center shall provide prompt notice to each affected member of any proposed excavation.~~ Each operator who has an underground facility shall become a member of the notification center.

(b) For operators of tier 1 facilities or operators of tier 2 facilities that desire notification in the same manner as operators of tier 1 facilities, the notification center shall provide prompt notice of any proposed excavation to each affected operator that has facilities recorded with the notification center in the area of a proposed excavation site.

(c) For operators of tier 2 facilities that desire direct contact with the excavator, the notification center shall provide the excavator with the name and contact information of the affected operator that has facilities recorded with the notification center in the area of the proposed excavation.

~~(b)~~ (d) Notification~~, as required by K.S.A. 66-1804, and amendments thereto,~~ to operators as defined in subsection (b) shall be given by notifying the notification center by telephone at the toll free number or by other communication methods

approved by the notification center. The content of such notification shall be as required by K.S.A. 66-1804, and amendments thereto.

(e) Notification to operators as defined in subsection (c) of this section may be given by notifying the operator of tier 2 facilities using the contact information provided by the notification center. The content of such notification shall be as required by K.S.A. 66-1804, and amendments thereto.

~~(e)~~ (f) Each operator who has an underground facility within the state shall be afforded the opportunity to become a member of the notification center on the same terms as the original members.

~~(d)~~ (g) A suitable record shall be maintained by the notification center to document the receipt of notices from excavators as required by this act.

(h) A suitable record shall be maintained by operators of tier 2 facilities to document the receipt of notices from excavators.

Sec. 4. On July 1, 2008, K.S.A. 66-1806 is hereby amended to read as follows: 66-1806. (a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

(b) If the operator of tier 2 facilities cannot accurately mark the tolerance zone, such operator shall mark the approximate location to the best of its ability, notify the excavator that the markings may not be accurate, and provide additional guidance to the excavator in locating the facilities as needed during the excavation.

(c) The operator of tier 2 facilities shall not be required to provide notification of the tolerance zone for facilities

which are at a depth at least two feet deeper than the excavator plans to excavate but does have to notify the excavator of their existence.

~~(b)~~ (d) If the operator of a tier 1 facility has no underground facilities in the area of the proposed excavation, such operator, before the excavation start date, shall notify the excavator that it has no facilities in the area of proposed excavation by telephone, facsimile, marking the area all clear or by other technology that may be developed for such purposes.

~~(c)~~ (e) If the excavator notifies the notification center, within two working days after the initial identification of the tolerance zone by the operator, that the identifiers have been improperly removed or altered, the operator shall make a reasonable effort to reidentify the tolerance zone within one working day after the operator receives actual notice from the notification center.

~~(d)~~ (f) If the excavator has provided notice to an operator pursuant to K.S.A. 66-1804, and amendments thereto, and the operator fails to comply with subsections (a), (b) or (c) of this section or notifies the excavator that it has no underground facilities in the area of the planned excavation, ~~fails to respond or improperly marks the tolerance zone for the facilities,~~ the excavator may proceed and shall not be liable to the operator for any direct or indirect damages resulting from contact with the operator's facilities, except that nothing in this act shall be construed to hold any excavator harmless from liability to the operator in those cases of gross negligence or willful and wanton conduct.

~~(e)~~ (g) For economic damages in any civil court of this state, failure of an operator to inform the excavator within two working days of the tolerance zone of the underground facilities of the operator in the manner required by subsection (a) of K.S.A. 66-1806, and amendments thereto, shall not give rise to a cause of action on the part of the excavator against an operator, except that nothing in this act shall be construed to hold any

operator harmless from liability in those cases of inaccurate marking of the tolerance zone, gross negligence or willful and wanton conduct. Such failure may subject an operator to civil penalties as determined by the state corporation commission.

~~(f)~~ (h) Any person claiming that an operator has failed to inform the excavator within two working days of the tolerance zone of the underground facilities of the operator shall file a complaint with the state corporation commission requesting enforcement of subsection (a) within one year of becoming aware of the violation.

~~(g)~~ (i) All tier 1 facilities installed by an operator after January 1, 2003, shall be locatable.

(j) All tier 2 facilities installed by an operator after July 1, 2007, shall be locatable.

New Sec. 5. (a) All tier 2 facilities installed by an operator after July 1, 2007, shall be locatable.

(b) As used in this section, "tier 2 facility" means an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing potable water or sanitary sewage.

Sec. 6. On July 1, 2008, K.S.A. 66-1802, 66-1804, 66-1805 and 66-1806 are hereby repealed.

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