

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on March 6, 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:

David Springe, Citizens Utility Ratepayer Board  
Tom Thompson, Kansas Chapter of the Sierra Club  
Trudy Aron, American Institute of Architects

Others in attendance: See attached list

Chairman Emler continued the hearing on

**HB 2033 - Certain public utility construction work in progress required to be included in rate base.**

Opponents:

David Springe, Citizens Utility Ratepayer Board, opposed the change from a permissive "may" to a mandatory "shall" on page 1, line 31 of **HB 2033**. He argued that this was the single remaining protection for consumers in this statute and by replacing "may" with "shall" this basic protection for consumers was removed. He commented on the new language on page 2, lines 6-10, as retaining KCC discretion to balance the interest of ratepayers and the utility. (Attachment 1)

Tom Thompson, Kansas Chapter of the Sierra Club, opposed **HB 2033** as it gives an unfair favor to coal fired powered plants. It excludes forms of energy like wind and solar and results in unequal footing for other energy generation methods. (Attachment 2)

Questions from the committee on CWIP use with nuclear construction and prudent long term investment. Discussion on definitions in K.S.A. 79-201. Staff was requested to provide explanation of definitions as referred to on page 2, lines 2-5 of **HB 2033**. Chair closed the hearing on **HB 2033**.

Chair opened the hearing on

**HB 2485 - Energy conservation; design standards for public buildings; L.E.D. traffic signals**

Proponents:

Trudy Aron, Executive Director, American Institute of Architects, stated AIA believes **HB 2485** is a good first step to sustainable design and, more specifically, high performance buildings. (Attachment 3)

Tom Thompson, Kansas Chapter of the Sierra Club, spoke in support of **HB 2485** as a benefit to the State of Kansas from efforts to be more energy efficient. (Attachment 4).

After discussion on the requirement "to have traffic signals use LED lightz", and the expense cities would have to replace their old fixtures with LED systems, consensus more information was needed before any action could be taken on **HB 2485**. Staff directed to report findings to the committee.  
Closed hearing on **HB 2485**.

Approval of Minutes

Moved by Senator Apple, seconded by Senator Reitz, minutes of the Senate Utilities Committee held on February 20, 2007, February 21, 2007, February 28, 2007 and March 1, 2007 be approved. Motion carried.

Adjournment.

Respectfully submitted,  
Ann McMorris, Secretary  
Attachments - 4

# SENATE UTILITIES COMMITTEE GUEST LIST

DATE: MARCH 6, 2007

Name	Representing
Leo Haynos	KCC
Tom Thompson	Sierra Club
Dan Springle	Cuib
JOHN C. BITTENBERG	Westar Energy
Mark Schreiber	Westar Energy
Kimberly DeFazio	ITC Great Plains
Judy Groves	Am. Inst of Arch
LARRY BERG	MIDWEST ENERGY
Mark Tomb	LICM
Ron Gaches	KCPL
Shirley Allen	KS Road Telcos
Wes Ashtor	Aquila

# Citizens' Utility Ratepayer Board

## Board Members:

Gene Merry, Chair  
A.W. Dirks, Vice-Chair  
Carol I. Faucher, Member  
Laura L. McClure, Member  
Douglas R. Brown, Member



State of Kansas

Kathleen Sebelius, Governor

David Springe, Consumer Counsel  
1500 S.W. Arrowhead Road  
Topeka, Kansas 66604-4027  
Phone: (785) 271-3200  
Fax: (785) 271-3116  
<http://curb.kcc.state.ks.us/>

## SENATE UTILITIES COMMITTEE

### H.B. 2033 (as amended)

Testimony on Behalf of the Citizens' Utility Ratepayer Board

By David Springe, Consumer Counsel

March 5, 2007

Chairman Emler and members of the committee:

Thank you for this opportunity to offer testimony on H.B. 2033. HB 2033 amends K.S.A. 66-128 to change the statutory framework from a permissive "may" to a mandatory "shall" statute. The Citizens' Utility Ratepayer Board opposes this change.

A touchstone consumer protection in the regulation of public utility rates is that the cost of utility plant is not allowed into consumer rates until that plant is finished and operational. Utilities have not historically been allowed to charge consumers for facilities that are not providing services to those consumers. K.S.A. 66-128(b)(1) is specific in that ***"property of any public utility which has not been completed and dedicated to commercial service shall not be deemed used and required to be used"*** in the public utility's service to the public.

The exception to this touchstone rule appears in K.S.A. 66-128(b)(2), which allows that certain property ***"may"*** be deemed ***"completed and dedicated to utility service"*** if certain requirements are met. This is generally known as the "construction work in progress" exception, or "CWIP".

Historically, CWIP was used on those projects that would be completed within the very near term after a utility had filed a rate case. The rationale is that the utility should not have to file a second rate case to recover costs that were just outside of the test year in a rate case. And since the statute contained the word "may", consumers still had some level of protection as the Commission is required to balance the interest of consumers in determining whether or not to allow the proposed CWIP costs into rates.

Over time the CWIP exceptions have grown so broad that there is no longer a linkage in time to a current rate case proceeding. For example, in K.S.A. 66-128(b)(2)(D) all that is required now to meet CWIP is that the costs are for "an electric generation facility or addition to electric generation facility" placed in service after January 1, 2001. There is no restriction on when, or if, that generation facility will begin operation and actually supply power to consumers.

Senate Utilities Committee  
March 6, 2007  
Attachment 1-1

It can be argued that using CWIP to place construction costs into consumer rates as the plant is being constructed, rather than waiting until the plant is operational, will save consumers money over the long term. From a utility perspective that may be true. Paying as you go rather than capitalizing interest over the construction period may result in a slightly lower rate increase when the plant comes on line. It also results in lower risk to utility shareholders.

From a ratepayer perspective, the time value of money is also important. It may be more valuable to a consumer to have lower utility rates today and be able to spend the extra money on other items, than to have higher utility rates today and less money to spend elsewhere, just so they can save a little on their utility bill later. Paying a slightly higher utility rate later, when the plant is actually providing service, may be preferable to paying higher utility rates today for something that is not providing service. Also, from a ratepayer perspective, if we are again being forced to accept financing risks that have traditionally been shouldered by the utilities, there should be a benefit for consumers from a commensurate reduction in shareholder profits built into consumer rates. Lower risk usually means lower return, yet the regulatory process rarely applies this concept to consumer rates.

Legally, mandatory CWIP is also a concern. Once costs are put into filed consumer rates, consumers cannot get a refund of any money paid under those rates if, at a later date, the costs are found to be imprudent, or the plant never comes on line. Those costs can be removed from rates going forward, but no refund of past payments can be ordered. Generally this is why the costs were not put into consumer rates until the plant was operational and costs had been reviewed.

The single remaining protection for consumers in this statute is the word “may”. The Commission retains some level of discretion to balance the interest of ratepayers and the utility. Utilities cannot automatically pass costs onto consumer bills without convincing the Commission that consumers should pay those costs. Consumers have an opportunity to be heard by the Commission on those costs. Replacing “may” with “shall” removes even this basic protection for consumers.

HB 2033 was amended to include the language on page 2, lines 6-10, to make clear that nothing in the statutory changes are to preclude the Commission from reviewing whether expenditures were efficient and prudent. It is interesting that the Commission is trusted to perform this complex and difficult task, but not trusted with the discretion (“may”) to know when CWIP is proper based on all the facts and evidence and balancing consumer interests against utility interests.

CURB respectfully urges the Committee to not pass this bill. It is clear that making CWIP, as set forth in K.S.A. 66-128(b)(2) mandatory rather than permissive goes against good regulatory practice. Consumers will lose what little protection is left in this statute.

**Testimony before the Senate Utilities Committee  
March 5, 2007  
Opposing H.B. 2033**

Chairman Emler and Honorable Members of the Committee:

My name is Tom Thompson and I represent the Kansas Chapter of the Sierra Club. I have come today to speak in opposition to H.B. 2033.

H.B. 2033 gives an unfair favor to coal fired powered plants. It mandates that work not completed be deemed completed. This is done without little oversight by the KCC as to whether this is appropriate and justified. Furthermore, this advantage only helps large facilities that take years to build. Forms of energy like wind and solar that can be built more quickly are not able to take advantage of this incentive. This would result in unequal footing for these other energy generation methods.

The Sierra Club opposes the construction of new coal fired power plants and HB 2033. HB 2033 gives those constructing these plants a short cut for getting them built. Furthermore, the Sierra Club believes that the risks for building power plants should be with the investors not the ratepayers.

The Sierra Club opposes H.B. 2033 and encourages the committee to also.

Thank you for your time

Sincerely

Tom Thompson  
Sierra Club



**AIA Kansas**  
A Chapter of the American  
Institute of Architects

March 6, 2007

TO: Senate Utilities Committee  
FROM: Trudy Aron, Executive Director  
RE: Support of HB 2485

Good Morning Chairman Emler and Members of the Committee, I am Trudy Aron, Executive Director of the American Institute of Architects in Kansas (AIA Kansas.) I am here to testify in support of HB 2485.

President  
Douglas R. Cook, AIA  
Olathe  
President Elect  
C. Stan Peterson, FAIA  
Topeka  
Secretary  
David S. Heit, AIA  
Topeka  
Treasurer  
J. Michael Vieux, AIA  
Leavenworth

Directors  
Jan Burgess, AIA  
Lawrence  
Corey L. Dehn, AIA  
Topeka  
Dale R. Duncan, AIA  
Olathe  
John Gaunt, FAIA  
Lawrence  
Gary Grimes, AIA  
Topeka  
Josh Herrman, AIA  
Wichita  
Chris C. Kliewer, AIA  
Wichita  
Craig W. Lofton, AIA  
Lindsborg  
Bruce E. McMillan, AIA  
Manhattan  
Hans Nettelblad, AIA  
Overland Park  
Don I. Norton, P.E.  
Wichita  
Wendy Ornelas, FAIA  
Manhattan  
Zachary Snethen,  
Associate AIA  
Topeka  
Daniel (Terry) Tevis, AIA  
Lenexa  
Jerry E. Volesky, AIA  
Topeka  
Eric Wittman,  
Associate AIA  
Wichita  
Nadia Zhiri, AIA  
Lawrence

Executive Director  
Trudy Aron, Hon. AIA

AIA Kansas is a statewide association of architects and intern architects. Most of our 700 members work in over 120 private practice architectural firms designing a variety of project types for both public and private clients. The rest of our members work in industry, government and education where many manage the facilities of their employers and hire private practice firms to design new buildings and to renovate or remodel existing buildings.

HB 2485 requires that the design of any public building construction shall conform to the International Energy Conservation Code 2006 (IECC 2006) or shall be made using life cycle cost methods and procedures. AIA Kansas believes that this bill is a good first step to sustainable design and, more specifically, high-performance buildings.

Hans Nettelbald testified before your committee on February 8<sup>th</sup> that there was an immediate need to strengthen the State of Kansas' commitment to high-performance buildings. As he told the committee sustainable design is a holistic design and decision-making process which considers all three elements of the triple bottom line equally and concurrently when designing a high-performance building, community, or landscape. **The health and productivity of the user, the impact on our natural resources and environment, and the distinct and quantifiable fiscal advantages** resulting from this balanced approach are interdependent from the beginning of the design process, and continuing on through the **lifetime operation of the building.**

We believe that requiring lifecycle analysis is a great way to "prove" that the building meets a high performance standard. However, IECC won't get us there alone. And, without some guideline that public owners can use, we will not be able to compare one building to another to see what decisions made during the design and construction make the most sense to a particular building type.

We want to work with the committee during the remainder of the year to enhance this legislation to really make a difference in the health of our buildings, our environment and our pocket books.

We ask that you pass HB2485 out of the committee favorable and come back next year to make it even better. Thank you.



**Testimony before the Senate Utilities Committee  
March 6, 2007  
Supporting H.B. 2485**

Chairman Emler and Honorable Members of the Committee:

My name is Tom Thompson and I represent the Kansas Chapter of the Sierra Club. I have come today to speak in support of HB 2485.

The Sierra Club believes that the most effective way to curb global warming, and to save money, is through energy efficiency. It supports the requirement of this bill to have government buildings be of life cycle cost methods or procedures or International Conservation Codes 2006 and to have traffic signals use LED lightz. It would especially like to see government buildings to be LEED certified. !7 states currently require LEED design standard and several cities including Kansas City, Missouri.

The Sierra Club believes that efficiency standards pay, they don't cost. Energy efficiency helps to decrease the ravaging effects of global warming. They decrease reliance on energy generation methods that add pollutants to the air that can result in increased respiratory illnesses and other health problems. Plus, over the life of a building, energy efficiencys will save tax payers money. It is time for the State of Kansas to lead the way in efforts to be energy efficient.

The state of Kansas can only benefit from efforts to be more energy efficient. The Sierra Club supports 2485 and encourages the committee to do the same.

Thank you for your time

Sincerely

Tom Thompson  
Sierra Club

Senate Utilities Committee  
March 6, 2007  
Attachment 4-1