

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on March 7, 2007 in Room 526-S of the Capitol.

Committee members absent: Senator Roger Reitz- excused

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:
Larry Berg, Midwest Energy
Steve Rarrick, Citizens' Utility Ratepayer Board

Others in attendance: See attached list

Chair opened the hearing on
Substitute for HB 2278 - Limitations on public utility liability relating to financing of energy conservation equipment.

Proponent

Larry Berg, Vice President of Corporate Relations for Midwest Energy, explained Midwest Energy's proposed Pay-As-You-Save type pilot program named How\$mart which would provide money for energy efficiency improvements to customers who would repay the funds through energy savings on their monthly bill. (Attachment 1)

Opponent

Steve Rarrick, staff attorney, Citizens' Utility Ratepayer Board, noted that Midwest Energy has already filed two tariffs to implement its proposed energy conservation program. **HB 2278** would provide complete immunity to the utility and eliminate longstanding existing remedies available in the event that a utility violates the rights of Kansas consumers. He offered amendments to **HB 2278** which would retain KCC oversight of the tariff/energy audit and preserve consumer rights against other parties to the transaction. (Attachment 2)

Discussion was held on the notification process, the rights of contractors installing equipment, financing charges and the billing of renter for the equipment.

Chair closed the hearing on **HB 2278**.

Moved by Senator Taddiken, seconded by Senator Francisco, adopt the amendments to **HB 2278** as proposed by Citizens' Utility Ratepayer Board in (Attachment 2). Motion carried.

Moved by Senator Francisco, seconded by Senator Pine, move **HB 2278** out favorably as amended. Motion carried.

Revisor Report on **HB 2033**

Mike Corrigan, staff from Revisor of Statutes Office, at the direction of the committee at their hearing on **HB 2033** on March 6, 2007, reported on his research regarding the language in **HB 2033**, p 2, lines 1-5. A memo on **HB 2268** was distributed which covered the intent. Mike called attention to the following language in that memo "To qualify for CWIP, electric generation facilities may be newly constructed or additions to existing facilities. However, they may not be used to generate electricity using nuclear resources or renewable energy resources." (Attachment 3)

Moved by Senator Lee, seconded by Senator Taddiken, to amend **HB 2033** on p. 2 lines 3-5 by inserting a period after the word "resources" and deleting, "or technologies or by using renewable energy resources or technologies, as defined in K.S.A.79-201 and amendments thereto." Motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate Utilities Committee at 9:30 A.M. on March 7, 2007 in Room 526-S of the Capitol.

Moved by Senator Taddiken, seconded by Senator Lee, to amend **HB 2033** on page 1, line 35 by striking the language "has a capacity of 100 megawatts or less and". Motion carried.

Moved by Senator Francisco, seconded by Senator Lee, to amend **HB 2033** by striking the remaining language in Section 1 (2) (B). Motion failed.

Due to the lack of time, no further action was taken on **HB 2033**. Further action will be taken at a future meeting.

Chair called attention to the communication received from the League of Kansas Municipalities regarding **HB 2485** LED lighting. (Attachment 4)

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 4

Testimony of Larry Berg
Substitute for HB 2278
March 7, 2007
Senate Utilities Committee

Chairman Emler and members of the committee, my name is Larry Berg and I'm Vice President of Corporate Relations for Midwest Energy, a customer-owned electric and natural gas utility headquartered in Hays, Kansas serving 88,000 customers in 41 central and western Kansas counties. I stand before you in support of Substitute for HB 2278.

This bill was carried to the House floor by Representative Light and supported by Representative Kuether. Substitute for HB 2278 passed out of the House by a vote of 120-0.

The newly revived Kansas Energy Council (KEC) is charged with the development of a comprehensive State Energy Plan. In the 2007 Kansas Energy Plan, the KEC encourages utility implementation of a Pay-As-You-Save (PAYS)[®] type program, and Midwest Energy has volunteered to step up to the plate to implement such a plan. There is currently an open docket at the KCC in which we have requested approval of our pilot project that we have named How\$mart^(SM). We hope to implement our pilot program sometime this spring.

The How\$mart^(SM) program would provide money for energy efficiency improvements to customers who would repay the funds through energy savings on their monthly bill. Under the plan, participating customers will see a lower net bill, including the repayment. If the tenant moves or if a property owner changes, the repayment obligation transfers to the next customer who also receives the benefit of the energy savings. We believe the Pay-As-You-Save[®] concept lowers barriers to efficiency investments that now exist, especially in low income and rental markets.

We have held preliminary meetings with landlords, contractors and social service agencies. These have indicated interest in and support of our proposal. We are already receiving calls from customers who want to participate.

We believe that electric and natural gas utilities that enter into agreements with customers for the financing of energy conservation equipment, which costs will be recovered through tariffs approved by the Kansas Corporation Commission, should not assume liability for the installation, operation or maintenance of such measures. Substitute for HB 2278 gives us that protection.

I urge your support of Substitute for HB 2278.

Mr. Chairman, I'll stand for questions at the appropriate time.

Citizens' Utility Ratepayer Board

Board Members:

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



State of Kansas

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Testimony on Behalf of the Citizens' Utility Ratepayer Board
By Steve Rarrick, Staff Attorney
Before the Senate Utility Committee
Re: Substitute for House Bill 2278
March 7, 2007

Chairman Emler and Members of the Committee:

Thank you for the opportunity to appear before you this morning on behalf of the Citizens' Utility Ratepayer Board (CURB) to testify in opposition to Substitute for House Bill 2278. My name is Steve Rarrick and I am an attorney with CURB.

Substitute for House Bill 2278 was proposed by Midwest Energy, a gas and electric utility that filed tariffs on January 29, 2007, seeking Kansas Corporation Commission (KCC) approval of a pilot energy conservation program similar to what is known as a Pay-As-You-Save ("PAYS") program. PAYS and similar programs are designed to assist and motivate ratepayers to buy cost effective, energy efficient products such as high efficiency heating and air conditioning units. The cost of the products are repaid over time, and the obligation to repay is tied to the meter rather than the homeowner or tenant. As a result, when an owner sells or a tenant moves, the PAYS obligation passes to the next owner or tenant paying for the utility. CURB supports the concept of PAYS programs and appreciates the efforts of Midwest Energy to implement a PAYS program. CURB has some concerns about Midwest's proposed program, including whether it provides sufficient notice to subsequent home owners or tenants about the ongoing obligation to pay, but has been working with Midwest Energy to resolve those concerns in the tariff docket before the KCC.

This is not enabling legislation. Midwest Energy has already filed two tariffs to implement its proposed energy conservation program. What this bill does is provide complete immunity to the utility and eliminate longstanding, existing remedies available in the event, however unlikely, that a utility violates the rights of Kansas consumers.

For example, let's assume for a moment that a utility implements an energy conservation program, and the employee doing the energy audit grossly oversells the potential energy savings, causing the consumer to assume a significant financial obligation without any resulting energy savings. This bill would leave the consumer without any remedy. While CURB does not believe Midwest Energy will do this, this bill will apply to all future energy conservation programs, and eliminates all of the remedies consumers currently have available should such an event occur.

Senate Utilities Committee
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Attachment 2-1

CURB does not believe there is a need to provide complete immunity to utilities for implementing energy conservation measures. CURB understands the utility's concern about becoming liable for the installation, operation, and maintenance of the products installed. Unfortunately, this bill goes beyond that and unreasonably provides complete immunity to a utility from representations made during an energy audit which may contain grossly overstated energy savings to the detriment of the consumer.

However, should the Committee decide to move forward with this bill, I have attached to my testimony balloon amendments which will retain KCC oversight of the tariff/energy audit and preserve consumer rights against other parties to the transaction. Our proposed balloon amendments are as follows:

- Line 15, insert “and landlords of customers” after the word “customers.” This will accurately reflect that the contracts will often include both the tenant/customer and the landlord, who under the tariff will become liable for the PAYS obligation under certain circumstances.
- Line 21, strike “tariff approved by the” and at line 22, insert “through the approved tariff or otherwise.” We believe this will ensure the KCC retains oversight of both the tariff and the energy audit, and may in appropriate circumstances find an energy conservation tariff was unjust and unreasonable as applied to that ratepayer.
- Line 24, insert “or” and at line 25, delete “or its energy conservation efficiency.” This will preserve the rights of the ratepayer in the event an energy conservation program is grossly oversold, with little or no energy savings. However, the utility will still be shielded from warranty or other claims regarding the installation or the product installed.
- Line 27, insert “Nothing in this section shall be construed to limit any rights or remedies of utility customers and landlords of utility customers against other parties to a transaction involving the purchase and installation of energy conservation products and services.” This will make it clear that all rights and remedies of the customer or landlord are preserved with regard to the manufacturer or contractor for the products installed and services provided.
- Lines 13, 16, 21, and 27, we have suggested some paragraph headings to subdivide the section.

On behalf of CURB, I urge the Committee to vote against passage of Substitute for HB 2278, or at the very least, pass the amendments we have proposed to preserve some measure of protection for consumers. Mr. Chairman, I would stand for questions at the appropriate time.

**CURB PROPOSED
BALLOON AMENDMENTS**

Substitute for HOUSE BILL No. 2278

By Committee on Energy and Utilities

2-9

9 AN ACT concerning electric and natural gas public utilities; relating to
10 financing of energy conservation equipment.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. Electric and natural gas public utilities, as defined in
14 K.S.A. 66-101a and 66-1300, and amendments thereto, may enter into
15 agreements with customers for the financing of the purchase price and
16 installation cost of energy conservation measures by such utilities. Such
17 utilities may recover the cost of such financing and related program costs
18 through tariffs approved by the state corporation commission pursuant to
19 K.S.A. 66-117, and amendments thereto, and paid for by the customers
20 benefiting from the installation of the energy conservation measures.

21 ~~Except as otherwise required by the tariff approved by the state corpo-~~ (c)
22 ~~ration commission, such utilities shall assume no liability for the instal-~~ through the approved tariff or
23 ~~lation, operation or maintenance of such measures, and shall not provide~~ otherwise

24 any warranty as to the merchantability of the measures, its fitness for a
25 particular purpose or its energy conservation efficiency, and no action
26 shall be maintained against any such utility the basis of which is such
27 liability or warranty. ; or

28 (d) Nothing in this section shall be
29 construed to limit any rights or
remedies of utility customers and
landlords of utility customers against
other parties to a transaction
involving the purchase and
installation of energy conservation
measures.

the 12 taxable years immediately following the taxable year in which construction or installation of the property is completed. For peak load plants and pollution control devices at such plants, the tax exemption will apply for six taxable years immediately following completion of construction or installation. These tax exemption provisions for both types of plants and pollution control devices became effective on January 1, 2001.

Electric Public Utilities—Expanded Use of Construction Work in Progress

HB 2268 provides the following incentives for the construction in Kansas of certain electric utility property which is owned or operated by Kansas public utilities.

The expanded application of an accounting treatment which allows into the rate base any public utility's construction work in progress (CWIP) of generation facilities and transmission lines to be placed in service on or after January 1, 2001. (Under prior law, construction costs of such facilities and lines could not be included in customers' rates until the facilities and transmission lines were completed and ready to provide service.) To qualify for CWIP in this bill, electric generation facilities may be newly constructed or additions to existing facilities. However, they may not be used to generate electricity using nuclear resources or renewable energy resources. Transmission lines eligible for CWIP may include towers, poles, and other necessary property. These lines also must be connected to an electric generation facility that is eligible for CWIP.

Public utilities will be eligible to receive revenue bond financing from the Kansas Development Finance Authority for the construction, purchase, and installation of pollution control devices at electric generation facilities that are eligible for CWIP.

Eligible electric generation facilities, pollution control devices at such facilities, and eligible transmission lines will be exempt from all property tax levies. That exemption will apply from and after commencement of construction of such facilities (except for peak load plants) or transmission lines and from and after purchase or commencement of construction or installation of pollution control devices at non-peaking plants for ten taxable years immediately following the year in which construction is completed. The exemption provisions for all this property took effect on January 1, 2001.

The term "peak load plant" is defined in the bill as an electric generation facility used during maximum load periods. The property tax exemption provisions for peak load plants and pollution control devices installed at such plants also took effect on January 1, 2001. However, the tax exemption is authorized for four years following the year in which construction is completed rather than ten years for the nonpeaking facilities described above.

Expanded Authority to Intervene in Rate Proceedings

HB 2397 authorizes any municipality to intervene on behalf of persons located within its boundaries in public utility rate proceedings before the KCC. Under prior law, municipalities could only intervene before the Commission in their capacity as consumers of public utility services but not on behalf of their residents (residential and small business customers). The Citizens' Utility Ratepayer Board continues to be statutorily authorized to intervene in such proceedings on behalf of residential and small business customers.



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To: Senate Utilities Committee
From: Mark Tomb, LKM
Date: March 6, 2007
Re: HB 2485 LED Lighting

Thank you for allowing the League of Kansas Municipalities to clarify a few points regarding the requirement that any new lighting installed in traffic signals after January 1, 2008 be installed with light-emitting diodes (commonly referred to as LED lighting). While this is a mandate, LKM finds that almost all new construction of traffic signals complies with the provisions of HB 2485. The somewhat troubling part will be the replacement of existing traffic signals. While it is generally cost effective to replace traffic signals from an energy cost standpoint, this is not always the case. This choice is currently left to the discretion of the city.

For example, the City of Topeka has replaced nearly all of the red and green traffic signals with LED lighting over the past three years. However, they have not replaced their yellow (or amber) lights. Amber lights are on for only a few seconds at a time and regular incandescent bulbs will last nearly as long as the LED red and green lights. LED amber bulbs cost about \$95 where incandescent amber bulbs cost about \$3. It will take a considerable amount of time to make up the increased initial costs versus total operating costs (including energy) to have the improvement pay for itself. This is not to say it will not pay for itself, as many cities have decided to replace all traffic signal lights based on economics. The important point is that right now cities are making choices based on energy usage and overall costs.

LKM believes that LED lighting is an important way to save energy and that cities should strongly consider LED lighting options as a way to save energy and resources. However, requiring all cities to install LED lighting in existing traffic signals may have unintended consequences on seldom used traffic lights or on some older traffic signals.

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March 7, 2007
Attachment 4-1