

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 a.m. on January 28, 2009, in Room 783 of the Docking State Office Building.

All members were present.

Committee staff present:

Melissa Doeblin, Office of the Revisor of Statutes
Mary Galligan, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Renaë Hansen, Committee Assistant

Conferees appearing before the committee:

Stuart Lowry, Kansas Electric Cooperatives
Dave Springe, CURB
Tom Thompson, Sierra Club

Others attending:

Thirty-one including the attached list.

Chairman Carl Holmes reminded the committee of scheduled sub-committees agendas for January 26 and the week of February 2.

Hearing on:

HB 2035 - Permitting members of large electric cooperatives to elect to be exempt from regulation by the KCC.

Melissa Doeblin spoke to the committee on **HB 2035**.

Proponents:

Stuart Lowry, Kansas Electric Cooperatives, (Attachment 1), spoke to the committee in favor of **HB 2035** explaining why they feel it is necessary to enact this proposed legislation.

Opponents:

Dave Springe, CURB (Attachment 2), offered testimony in opposition to **HB 2035**, noting why they felt this legislation should not be enacted.

Tom Thompson, Sierra Club (Attachment 3), presented testimony in opposition to **HB 2035** commenting that the Kansas Corporation Commission acts as a counter balance.

Questions were asked and comments made by Representatives: Annie Kuether, Joe Seiwert, Tom Sloan, Milack Talia, Tom Moxley, Carl Holmes, Forrest Knox, Josh Svaty, and Margaret Long.

The hearing on **HB 2035** was closed.

The next meeting is scheduled for January 29, 2009.

The meeting was adjourned at 10:12 a.m.

HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

DATE: January 28, 2009

NAME	REPRESENTING
Dave Holtzhaus	KFC
Tom Thompson	Sierra Club
Maui Hackett	CEP
Joe Dick	KCBPU
Phil Wages	KEPCo
Clare Gustin	Sunflower Electric
Ligh Keck	Hein Law Firm
Nelson Kneeger	PAR
Scott Jones	KCP
Tom Day	KCC
Carol McDowell	Tallgrass Ranchers
Bill Smalley	Smalley HVAC
Susan Metzger	KWO
Russ Tomeri	BAC / KWO
Betty Criss	KWA
Corey Mohy	Commerce
Andy Ehart	City of Murram
Chris Rome	City of Merriam
Chris Evans Hards	"



**Testimony of Kansas Electric Cooperatives, Inc.
House Bill 2035**

January 28, 2009

Kansas Electric Cooperatives, Inc. supports HB 2035

Local option deregulation has been good public policy.

- HB 2035 amends K.S.A. 66-104d, which allows member-owned electric utilities to deregulate from the jurisdiction of the Kansas Corporation Commission.
- K.S.A. 66-104d has been in force since 1992. 25 distribution electric cooperatives have deregulated.
 - Proposed amendment would remove limits on distribution cooperatives eligible to seek deregulation. Cooperatives no longer qualifying for deregulation due to acquisition of members would be eligible to conduct a deregulation election.
 - Proposed amendment would allow generation and transmission cooperatives (G & T) the opportunity to seek deregulation.
- The law allows the members an opportunity to vote on the deregulation question.
- If the members approve deregulation, the law allows for local control of a local issue, the rates and terms of service of a member-owned electric cooperative. This has saved the time and expense of rate cases before the KCC.
- Rate decisions are made by a Board of Trustees elected from the membership of the electric cooperative.
- Some specific issues continue to be fully regulated by the KCC.
 - Proposed amendment excludes transactions between a generation and transmission cooperative and its member/owner from the definition of a sale of power for resale, which is otherwise regulated.

The law provides regulatory safeguards to consumers.

- Members (3% of a rate class or 5% of the membership) may petition to have KCC review decisions of Board of Trustees.
 - Proposed amendment allows 20% of the members of a G & T or 5% of the retail customers of the members of a G & T to petition for KCC review.
- Since the adoption of K.S.A. 66-104d, there has been no review proceeding at the KCC for any deregulated cooperative.

HOUSE ENERGY AND UTILITIES

DATE: 1/28/2009

ATTACHMENT 1

Citizens' Utility Ratepayer Board

Board Members:
Gene Merry, Chair
Randy Brown, Vice-Chair
Carol I. Faucher, Member
Laura L. McClure, Member
A.W. Dirks, 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.kansas.gov>

HOUSE UTILITIES COMMITTEE H.B. 2035

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
January 28, 2009

Chairman Holmes and members of the committee:

Thank you for this opportunity to offer testimony on H.B. 2035. The Citizens' Utility Ratepayer Board is opposed to this bill for the following reasons:

A small cooperative electric provider in Kansas, small defined in K.S.A. 66-104d, currently has the statutory authority to remove itself from KCC regulatory jurisdiction if the members of the cooperative vote in favor of this action, in accordance with the statute. It is my understanding that the 15,000 customer level for the opt-out provision in the current law was created because of the cost impact of the regulatory process on small utility systems. The current law does contain a provision that the KCC "shall" investigate the deregulated cooperative's rates if a set percentage of customers petition the KCC within one year of a rate change. The KCC has the power to fix and change rates if it finds the cooperative's rates unreasonable.

HB 2035 amends K.S.A. 66-104d to eliminate the current cap on the size of an electric cooperative that can voluntarily opt-out of KCC regulation. Currently the larger Kansas electric cooperatives (above 15,000 customers) remain under KCC regulatory jurisdiction per K.S.A. 66-104d. Sunflower and KEPCO also remain under KCC regulatory jurisdiction.

CURB does not believe there is any justification for a large electric cooperative to exempt itself from KCC oversight. This bill could functionally deregulate a good portion of the wholesale and retail electric providers in the state. CURB is concerned that customers that have historically had specific due process protections through the regulatory process, like the former Aquila electric customers who are now cooperative customers, may lose those protections in the future. I believe that in some instances, the former Aquila customers do not have the same voting rights at the cooperative level as the cooperative customers that acquired the Aquila system.

If this bill does pass committee, CURB would request that language be added, perhaps to section (h)(1), that requires the deregulated cooperative include a provision in its notice to customers, either before or after the rate change, of the right of customers pursuant to K.S.A. 66-104d(g)(1) to request KCC review of the rate change.

Thank you.

HOUSE ENERGY AND UTILITIES
DATE: 1/28/2009
ATTACHMENT 2

**Testimony before the House Energy and Utilities Committee
January 28, 2009
Opposing H.B. 2035**

Chairperson Holmes 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. 2035.

HB 2035 allows an electric cooperative whose clients are customer-owned electric cooperatives to allow that coop to be exempt from the jurisdiction, regulation, supervision and control of the Kansas Corporation Commission. This can be done by having a handful of customer coop board members sign a petition then the member owned coop board vote on it. If the customers want this changed the process is much more difficult and time consuming.

The Sierra Club does not think this is a good idea. The coops in question are not customer owned but rather member owned. That is it is owned by other cooperatives. They cover a far bigger area and provide services to a much larger number of people than customer coops. If customers don't like what these member owned coops are doing they cannot vote their board members out of office.

The Kansas Corporation Commission, which is a board appointed by the Governor and confirmed by the Kansas Senate, acts as a counter balance for the customers. The Sierra Club believes that this would be a disservice to the customers of the customer owned coops.

One of these Coops is Sunflower who is currently trying to permit and build two large coal fired power plants in Holcomb Kansas. The action to take them out from under KCC is being done at a time when there are many unanswered questions about its construction and costs that could effect electricity rates for customers in the area should it be built. Some of the questions that need to be answered that the KCC might sift through include how much will the new plant really cost? How much will coal cost in the future? What will be the interest rates on loans to build the plant and make other needed changes? Will the member coops be paying their fair share of costs especially in light of the fact that most of this electricity will be sold elsewhere? As Carbon Dioxide becomes more regulated, how will costs and rates be affected? If a cap and trade system is implemented, what will this cost especially in light of the permit being issued in Kansas? All that Carbon Dioxide will be produced in Kansas, in the Sunflower area.

The Sierra Club believes that KCC jurisdiction in this situation is important. To protect the customers in Western Kansas and elsewhere please vote no on HB 2035.

Sincerely
Tom Thompson
Sierra Club

HOUSE ENERGY AND UTILITIES

DATE: 1/28/2009

ATTACHMENT 3