Approved: March 19, 2009
Date

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:40 p.m. on March 11, 2009, in Room 545-N of the Capitol.

All members were present except
Sen. Masterson, excused

Committee staff present:
Mike Corrigan, Office of the Revisor of Statutes
Melissa Doeblin, Office of the Revisor of Statutes
Cindy Lash, Kansas Legislative Research Department
Ann McMorris, Committee Assistant

Conferees appearing before the Committee:
Ron Gaches, Williams Company
David Springe CURB
George Lippincott, AARP
Tom Thompson, Kansas Chapter of the Sierra Club
Randy Degenhardt, Westar
Scott Jones, Kansas City Power & Light
Nancy Jackson, Climate & Energy

Others attending: See attached list.

Chair called the meeting to order and opened the hearing on:
SB 299 - Regulation for underground hydrocarbon storage wells.

Proponents
Ron Gaches spoke on behalf of the Williams Company in support of **SB 299**. He explained how the proposed change to current Kansas statutes to define "company or operator" as any form of legal entity would be very beneficial to his client in fulfilling its financial surety requirement. Passage of **SB 299** would allow KDHE to accept the master limited partnership's financial guarantee instead of the costly Letter of Credit. (Attachment 1)

Chair closed the hearing on **SB 299.**

Chair opened the hearing on:
SB 284 - Third party administrator authorized for certain utilities energy efficiency and conservation programs.

Proponents
David Springe, Citizens' Utility Ratepayer Board, CURB supports **SB 284** as it is a clear statement that the intent of the legislature is to help consumers reduce energy use and reduce energy bills. The bill mandates the creation and funding of an independent entity guided by an independent board with one singular purpose: "To achieve reductions in energy use through increasing the level of cost effective energy efficiency, conservation and education available to Kansas citizens." (Attachment 2)

George Lippencott, AARP, stated AARP supports **SB 284** which will authorize the Kansas Corporation Commission to establish and oversee an energy efficiency program administered independently from the state's utilities. He cited other states that have created independent entities with the responsibility of administering ratepayer-funded energy efficiency programs. (Attachment 3)

Tom Thompson, Kansas Chapter of the Sierra Club, stated the Sierra Club supports the concept of having Kansas create a third party entity that is charged with the purpose of reducing energy use. He offered several suggestions for clarification and definition in the language of **SB 284.** (Attachment 4)

Minutes of the Senate Utilities Committee at 1:30 p.m. on March 11, 2009, in Room 545-N of the Capitol.

Opponents

Randy Degenhardt, Director of Energy Efficiency, Westar Energy, testified that Westar Energy is opposed to **SB 284**. Westar believes that utilities can deliver more cost-effective energy efficiency programs than a third party administrator. (Attachment 5)

Scott Jones, Kansas City Power & Light, noted that KCPL has offered customers a portfolio of energy efficiency and conservation programs the past several years. With the proven record of success of these programs, KCPL opposes establishment of a third party administrator. (Attachment 6)

Neutral

Nancy Jackson, Executive Director, CEP (Climate & energy project) cited the advantages and challenges faced by the utilities and a third party, non-profit provider in delivering energy efficiency. CEP encouraged amending **SB 284** if this project is pursued, to require an ongoing competitive bid process to award contracts to provide energy efficiency services. (Attachment 7).

Written testimony only on **SB 284** was provided by Janet Buchanan on behalf of the Kansas Corporation Commission. (Attachment 8)

Due to lack of time, Chair continued the hearing on **SB 284** to the Senate Utilities Committee meeting on Monday, March 16.

He also announced scheduling of an informational hearing on electric rates regarding state fair facilities to be provided by Westar and KCC on Tuesday, March 17.

The next meeting is scheduled for March 12, 2009.

The meeting was adjourned at 2:30 p.m.

Respectfully submitted,

Ann McMorris
Committee Assistant

Attachments - 8

GUEST LIST
SENATE UTILITIES COMMITTEE
MARCH 11, 2009

NAME	COMPANY
Mari Tucker	Dept of Commerce
Nelson Krueger	PAR Electric
LON STANTON	NORTHERN NATURAL GAS
Tom Thompson	Sierra Club
Scott Jones	KCPL
Dan Sprunge	Curb
George Lippencott	AARP
Erin Kutzley	AARP
Mark Harlett	CEP
Nancy Jackson	CEP
JANET BUCHANAN	KCC
Joe Mosimann	Mein Law
Dave Holthaus	KEC
Mick Urban	Kansas Gas
LARRY BERG	MIDWEST ENERGY
Selby Bush	Williams
Ron Gaches	Williams
Brad Stauffer	Carter Group

GACHES, BRADEN & ASSOCIATES

Government Relations & Association Management

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Testimony of Williams Company
Presented by Ron Gaches
In Support of SB 299 Re: KDHE Storage Requirements
Before Senate Utilities Committee
Submitted by Ron Gaches
Wednesday 11, 2009

Thank you Mr. Chairman for this opportunity to speak to your Committee on behalf of the Williams Company in support of SB 299. The bill addresses an issue regarding the means by which hydrocarbon storage well owners and operators may fulfill their financial surety requirements with the Kansas Department of Health and Environment (KDHE).

In the past, KDHE has taken a limited view of which legal entities qualify to provide financial assurance on behalf of hydrocarbon storage well owners and operators. Under current interpretation, only corporations qualify as an entity capable of providing parental guarantees to the KDHE as a means of financial assurance. In today's economic environment, many companies operate using limited liability companies (LLC) or master limited partnerships (MLP) to remain competitive and to take advantage of federal tax laws. Unless an underground storage well owner/operator is allowed to utilize the creditworthiness of their MLP parent companies to satisfy the KDHE's financial responsibility requirements, the owner/operator is forced to post expensive letters of credit.

SB 299 proposes a change to current Kansas statutes to define "company or operator" as any form of legal entity including, but not limited to, a corporation, limited liability company, and limited or general partnership as organized under the laws of any state within the United States. Broadening the interpretation of "company or operator" creates the opportunity for hydrocarbon storage well owners and operators to satisfy financial responsibility requirements through affiliates which are not organized as corporations. This interpretation is in line with current practices in other states as well as business structures across the energy industry.

Williams Partners L.P. is a publicly traded master limited partnership that owns natural gas gathering, transportation, processing and treating assets serving regions where producers require large scale and highly reliable services, including the Gulf of Mexico, the San Juan Basin in New Mexico and Colorado, and the Washakie Basin in Wyoming. The partnership also serves the natural gas liquids (NGL) market through its NGL fractionating and storage assets located in Kansas and throughout the United States.

As it relates to Senate Bill 299, Mid-Continent Fractionation and Storage LLC (MCFS), a subsidiary of Williams Partners L.P, owns and operates over 150 underground hydrocarbon storage caverns, 18 brine ponds, and is a 50 percent owner and operator of a 107,000 barrel per day fractionator located near Conway, Kansas. During the time that Williams Company held its Kansas storage facilities in the name of the Corporation, KDHE allowed the company to fulfill its financial surety requirement with a Letter of Guarantee from the corporation. Once the assets were transferred to the master limited partnership, that option was no longer available and the MLP was required to obtain a Letter of Credit from the marketplace. Passage of this bill would not require KDHE to allow the MLP to avoid providing financial assurance, but it would allow KDHE to accept the MLP's financial guarantee instead of the costly Letter of Credit.

MCFS has invested $30 million in local expansion and maintenance projects over the past five years. Currently, MCFS is working on several capital projects to increase and enhance its Kansas operations. These projects are expected to inject more than $20 million into the local economy and create more opportunities for growth in both revenue and local employment. MCFS takes pride in its role as an industry leader in the underground storage business and spends a considerable amount of time and resources working with local and state agencies to ensure all regulations and best practices are met or exceeded.

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
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SENATE UTILITIES COMMITTEE
SB 284

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
March 11, 2009

Chairman Apple and members of the committee:

The Citizens' Utility Ratepayer Board supports this bill for the following reasons:

Energy prices have been climbing in recent years and will continue to climb in the future. Utilities are spending billions of dollars to upgrade facilities to meet demand, meet environmental requirements, enhance the transmission system and make the distribution system more efficient. Add to this the cost of renewable energy and the potential cost of carbon regulation and it is clear that consumer bills will not go down in the future. Natural gas prices have also been volatile in the last few years affecting the many customers that use natural gas to heat their homes. Consumers are struggling to pay their bills and the current recession has only exacerbated this problem. Consumers need help.

SB 284 is a clear statement that the intent of the legislature to help consumers reduce energy use and reduce energy bills. To accomplish this goal, the bill mandates the creation and funding of an independent entity guided by an independent board with one singular purpose: "*to achieve reductions in energy use through increasing the level of cost effective energy efficiency, conservation and education available to Kansas citizens*."

CURB has been a strong advocate for energy efficiency and conservation, both in the legislature and at the Kansas Corporation Commission. Up to this point, the Kansas Corporation Commission appears content to let the regulated public utilities be the only source of energy efficiency and conservation programs for their customers.

Why an independent entity?

- An independent entity can offer consistent programs and a consistent message across different utility territories. This generates consumer focus on the entity and its purpose, and achieves economies of scale in administration and delivery of programs not possible with individual utility programs. Currently programs differ from utility to utility.

- Provides an independent source of information to consumers and avoids the incentive for electric utilities to promote electric products and for natural gas utilities to promote natural gas products. Consumer can make independent decisions.

- Independent model has been used successfully in other states[1]: Vermont, Oregon, New York, Wisconsin, Maine, and New Jersey. Delaware just created an independent "sustainable energy utility".

- Can leverage funds in the Federal Stimulus package intended for energy efficiency and conservation efforts.

- An independent entity with a single purpose is not conflicted about its objective. Investor owned utilities increase revenue and profit by building plant and selling units of energy. Promoting conservation will decrease a utility's revenue and profit. This is a fundamental conflict. The board believes utilities will never take conservation seriously[2].

- Avoids having to create other regulatory mechanisms or laws to "incent" utilities to offer conservation, including decoupling mechanisms, lost revenue mechanisms, capitalization of expense mechanisms, shared savings mechanisms.

What the bill does.

- Provides a clear statement that it is the intent of the legislature to help consumers reduce energy use and reduce energy bills.

- Requires the KCC to create a non-profit entity to pursue the goals of the act.

- Requires the KCC to appoint an independent board to oversee the entity.

- Requires the KCC to establish a charge on consumer bills to fund the entity in an amount no less than ½ of 1% of utility retail revenues.

- Requires the KCC energy programs division to begin the process of develop guidelines for the entity including designing goals and objectives, setting program priorities, developing program infrastructure and recommending appropriate staffing and budgets until the board is able to take over these functions.

- Allows, but does not require customer owned cooperatives and municipal utilities to opt into the service.

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1 According to the American Council for an Energy Efficient Economy's 2008 State Energy Efficiency Scorecard, five of the top ten states ranked for Utility and Public Benefits Efficiency Programs and Policies had independent entities like that created in SB 284.

2 In response to CURB's suggested rate design changes meant to encourage conservation in the current KCP&L rate case, a KCP&L Vice President of Regulatory Affairs filed testimony stating "Mr. Kalcic (CURB's witness) indicated the Commission should implement policy that encourages conservation. I disagree, Commission policy should encourage the most efficient use of electricity, not conservation of electricity." KCC Docket No. 09-KCPE-246-RTS, Rebuttal Testimony of Chris B. Giles, February 23, 2009.

- Requires the entity to maximize the cost effectiveness of delivered energy efficiency and conservation programs and maintain accountability to the utility and customer classes providing the funds that support the program.

What the bill does not do.

- Does not cut the KCC out of the process. The KCC is an integral part of the creation of the entity, appointing the board, beginning the process of establishing objectives and the verification of the entity's success. The bill is not prescriptive and allows KCC a level of discretion in carrying out the objectives stated in the bill.

- Does not cut the utilities out of the process. Utility participation is important to the overall success of the entity. Utilities can serve on the board of the entity. Utilities also still have very important roles to play in demand management programs and in investing in technologies and plant that allow the utility system to operate more efficiently. Utilities are free to do what utilities do best.

Funding in comparison to other initiatives.

- ½ of 1% of 2007 retail investor owned utility revenues equals about $13 million for all investor owned utilities.

- By comparison.

    - Westar's 300 MW of wind is about $45 million/year in consumer rates.
    - The Renewable Portfolio Standards passed by the Senate and House will require Westar alone to acquire an additional 600-800 MW's of wind, adding and additional $80-$130 million/year in rates.
    - Kansas Gas Service hedging program budget is $14 million per year.

CURB believes that the most important thing this state can do for a consumer facing increasing energy bills is to give that consumer the tools and knowledge to manage and reduce energy use. This bill will create a customer funded, independent entity whose sole purpose is to help consumers reduce energy use. A consumer needs a simple, one stop, easy to access resource for energy efficiency and conservation information, programs, rebates and loans. A consumer needs the flexibility to access programs regardless of the utility territory in which the consumer lives. A consumer needs the independence to make decisions that are right for that consumer, not accept decisions that may further their serving utility's goals.

CURB believes that the consumer funded independent entity created in SB 284 is right answer for consumers and the right answer for Kansas. CURB strongly supports the passage of SB 284

Thank you for the opportunity to testify on this important bill.

2007 Retail Revenue

Utility	Residential Revenue	C&I Revenue	Lighting Revenue	Other Sales	Total
KCPL	218,510,763	221,947,952	5,073,619		445,532,334
Empire	10,639,257	9,864,084	147,000	375,479	21,025,820
Kansas Gas & Electric	235,918,879	361,276,330	4,428,219	0	601,623,428
Westar	255,243,884	351,908,328	5,428,292	0	612,580,504
Aquila (Blackhills)	80,551,997	28,845,948		15,157,152	124,555,097
Atmos	106,613,875	40,397,641	0	5,151,164	152,162,680
Kansas Gas Service	555,929,368	145,979,329	0	0	701,908,697
					2,659,388,560
				1/2 of 1% of retail sales:	**13,296,943**
Midwest Energy (Electric)	26,464,485	66,299,203	1,376,675	0	94,140,363
Midwest Energy (Gas)	27,425,639	13,273,162	0	0	40,698,801
Aquila	10,891,662	22,731,499	381,938	303,464	34,308,563

Source. 2007 FERC Form 2

2-4

AARP

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March 11, 2009

The Honorable Pat Apple
Senate Utilities Committee

Testimony of AARP in Support of SB 284
Creating an Independent Administrator for Energy Efficiency Program in Kansas

Good afternoon Chairman Apple and members of the Senate Utilities Committee. My name is George Lippencott and I am the lead Financial Security volunteer for AARP Kansas. AARP is a nonprofit, nonpartisan membership organization dedicated to making life better for people 50 and over. AARP has more than 40 million members nationwide and more than 375,000 members in Kansas. We provide information and resources and engage in legislative, regulatory and legal advocacy.

AARP supports SB 284, which will authorize the Kansas Corporation Commission (KCC) to establish and oversee an energy efficiency program administered independently from the state's utilities. An independent energy efficiency administrator will benefit Kansas by:

- implementing much-needed energy efficiency programs in the most cost effective manner;
- providing accountability and transparency in the administration of energy efficiency programs;
- eliminating contentious debates over utility incentives related to energy efficiency, while continuing to address any lost revenues due to declines in usage in rate case proceedings; and

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- potentially serving as the entity that would receive, plan for, and oversee expenditures of federal energy efficiency funds.

Growth in the demand for energy and rising prices has led to significant increases in energy bills for consumers. Increased energy efficiency is vital to address the state's energy future. In fact, the state has already established goals to reduce energy usage over the next ten years. AARP supports the development of cost-effective energy efficiency programs for residential customers, which include consumer education. Both the energy industry and consumers have much to gain from the adoption and implementation of energy efficiency programs that help consumers, including those on low and fixed incomes, to lower their monthly energy usage and reduce their monthly energy bills. Energy efficiency also reduces the need for utility investment in new power plants and expenditures on fossil fuels. However, Kansas has a long way to go. According to the American Council for an Energy Efficient Economy (ACEEE), Kansas currently ranks near the bottom of states (tied for 38) in rankings of energy efficiency programs and policies.

There's no question that Kansas will implement and fund energy efficiency programs paid for by consumers. The controversy is in how to best deliver and fund these programs. AARP strongly believes that the administrator created under SB 284 is needed to get energy efficiency programs rolling in Kansas, and at less cost to consumers than they would pay for utility-administered programs.

Discussion of utility-sponsored energy efficiency programs at the KCC has been contentious, particularly around issues such as program costs, net lost revenues, utility incentives, cost recovery mechanisms and measurement and evaluation of program expenditures and energy savings. AARP participated in Docket No. 08-GIMX-441-GIV, relating to cost recovery and incentives for energy efficiency. The KCC chose not to mandate Kansas utilities to offer energy efficiency programs, although some do. Moreover, parties were far from in agreement regarding cost recovery, lost revenues and incentives for utilities. The Commission did not resolve the controversy and chose to consider these issues on a case by case basis. SB 284 sets aside this controversy.

An independent administrator removes the implementation of energy efficiency from the utility, eliminating the controversies over utility incentives and the calculation of so-called "lost revenues." The utility is not disadvantaged because any reduction in usage that is not offset by customer growth will be addressed in a rate case, in the same manner as is done today, through an adjustment to rates.

Further, Kansas is expected to receive millions in federal energy efficiency funds over the next two years (in addition to an expected funding for the low income weatherization assistance program). States and local governments are required to submit plans for how these funds will be used. An administrator, overseen by the KCC with a diverse stakeholder board, such as that required under SB 284, would be an ideal body to participate in planning for energy efficiency programs. The independent administrator would also provide the accountability and transparency required under the federal law.

An independent administrator is independent of the utilities but not of state oversight. It would be created and overseen by the KCC, who would appoint an oversight board that included consumer and utility representatives. The KCC would design goals and objectives, establish priorities, develop the budget, and the like. Funding would come from a small fee on utility bills of ½ of 1% of revenues, which is approximately

$13 million dollars. While we understand it is difficult to pass legislation that adds a fee to utility bills, the fact is that utility bills will increase to fund energy efficiency whether this bill passes or not. However, we believe the increases that would be approved by the KCC will be much greater, because they are likely to include additional costs, such as utility bonuses, incentives, and lost revenues.

In summary, lawmakers in other states have created independent entities with the responsibility of administering ratepayer-funded energy efficiency programs. Under a third party administered program, many of the controversial issues described above are eliminated or mitigated. Third party administered energy efficiency programs in other states have been very successful and are highly cost effective, according to recent studies.

We appreciate the opportunity to provide these comments and respectfully request your support in support of SB 284.

Thank You. I stand for questions.

Testimony for Senate Utilities Committee
March 11, 2009
Testimony in Support of S. B. 284

Chairman Apple and Honorable Members of the Committee:

My name is Tom Thompson and I represent the Kansas Chapter of the Sierra Club. The Sierra Club encourages the committee to support SB 284.

The Sierra Club supports the concept of having Kansas create a third party entity that is charged with the purpose of reducing energy use. It believes that it is important to encourage doing so throughout the state. Energy efficiency and conservation make sense by helping people to reduce their energy bills. This is especially important in these hard economic times.

The Sierra Club believes putting energy efficiency and conservation in the hands of a not for profit entity will allow for programming that focuses on getting the biggest decrease in energy use for the dollar spent instead of the biggest profit. Energy efficient endeavors that are effective but not necessarily profitable would be less likely to be over looked.

The Sierra Club believes energy efficiency and conservation are important and cost effective ways to decrease the need for building additional energy generating capacity, especially that generated from fossil fuels. As a result, there will be a decrease in greenhouse gas emissions helping to decrease the human impact on global warming.

The Sierra Club does have some concerns with this bill. It would like to see all utilities, not just those that are investor owned, be involved in this entity or at least be encouraged to be. This program can only maximize its benefits to the state if all utilities are actively involved.

Sec. 1(d) page l, lines 32-33 states that "the state corporation commission shall establish an equitable volumetric charge." Although the Sierra Club hopes this means that an inclining block tariff will be put in place with the effect that the more energy a customer uses the higher price that customer pays for each unit of energy, it would like to see this term defined. A charge of this type could be an effective incentive for increased energy conservation.

In Sec. 1(f), there is a list of possible guidelines to be made by the Kansas Corporation Commission. The Sierra Club would like to see one guideline focused on setting goals or targets for decreasing energy usage.

The Sierra Club would like to see clarification of the 15% administrative costs in Sec. 1(g). The bill should delineate the administrative activities that will be covered and how any outsourcing will be affected.

Another concern is that there be some guarantee that funds going into the third party administrator program fund, in Section 2, will remain separate from the state general fund and unavailable for uses other than those outlined in this bill.

The Sierra Club hopes the committee will consider our concerns carefully. We do believe its consideration is important and hope you make changes that will make it effective long into the future.

Sincerely

Tom Thompson
Sierra Club

Westar Energy.

Testimony of Randy Degenhardt
Director Energy Efficiency
Before the Senate Utilities Committee
On SB 284
March 11, 2009

Westar Energy is opposed to SB 284. The bill creates a third party administrator for energy efficiency programs in the state. Every customer of all investor-owned electric and natural gas utilities will be assessed a special charge to pay for the administrator's expenses. Westar Energy believes that utilities can deliver more cost-effective energy efficiency programs than a third party administrator.

A 2008 study sponsored by the Kansas Energy Council (KEC) titled "DSM Potential Study and Plan" collected information from 16 utilities and 6 central agencies (third party administrators) on demand side management and demand response programs.

Attachment 1 replicates a scatter plot in the KEC study that illustrates where each organization places relative to median electric energy savings as a percentage of sales (0.8%) and median cost of electric energy savings ($0.18 per kwh). The top (high savings-low cost) performers are as follows: Interstate P&L (MN), Southern California Edison, Pacific Gas and Electric, Mid-American (IA), British Columbia Hydro, Xcel Energy (MN) and Interstate P&L (IA). Of the six central agencies studied: one (Connecticut Energy Efficiency Fund) was on the high savings-high cost category; two (Wisconsin Focus on Energy and Efficiency Maine) were low savings-low cost; and three (New York State Energy Research and Development Authority, Efficiency Vermont and New Jersey Clean Energy Program) were low savings-high cost.

Attachment 2 illustrates where these organizations place relative to median peak demand savings as a percentage of peak demand (0.6%) and median cost of peak demand savings ($836 per kw). As in Attachment 1, all top performers were utilities.

Utilities have extensive interactions with their customers; something a third party administrator lacks. With this experience comes the knowledge and confidence to serve their energy efficiency needs. Westar Energy has been emphasizing energy efficiency programs for over a year. We have initiated several programs and have others ready to launch. Westar Energy is prepared to continue to help our customers become wise users of energy.

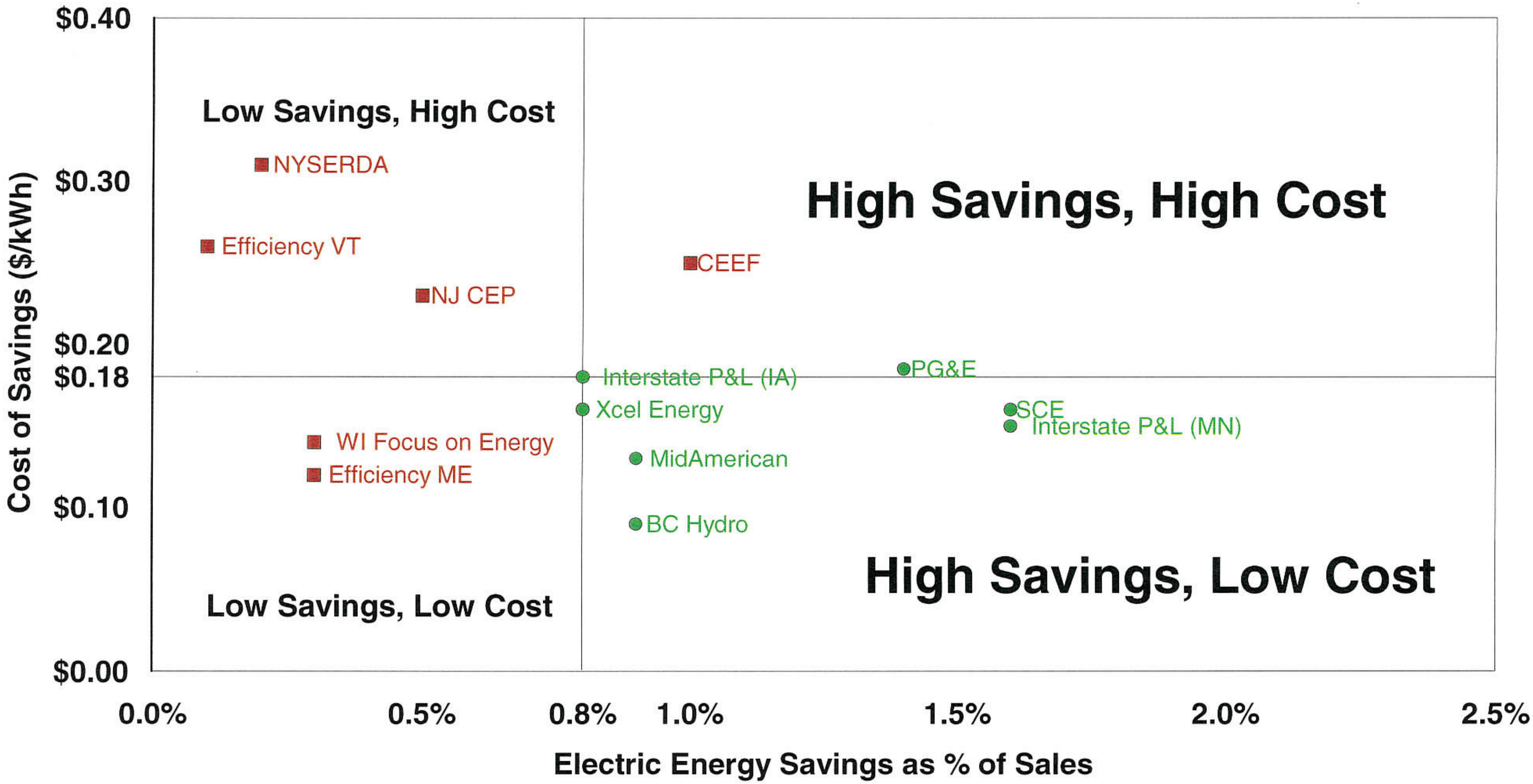
Senate Utilities Committee
March 11, 2009
Attachment 5-1

818 S Kansas Ave / PO Box 889 / Topeka, Kansas 66601-(

Attachment 1

SCATTER PLOT OF ELECTRIC ENERGY SAVINGS AND COST OF ELECTRIC ENERGY SAVINGS

5-2

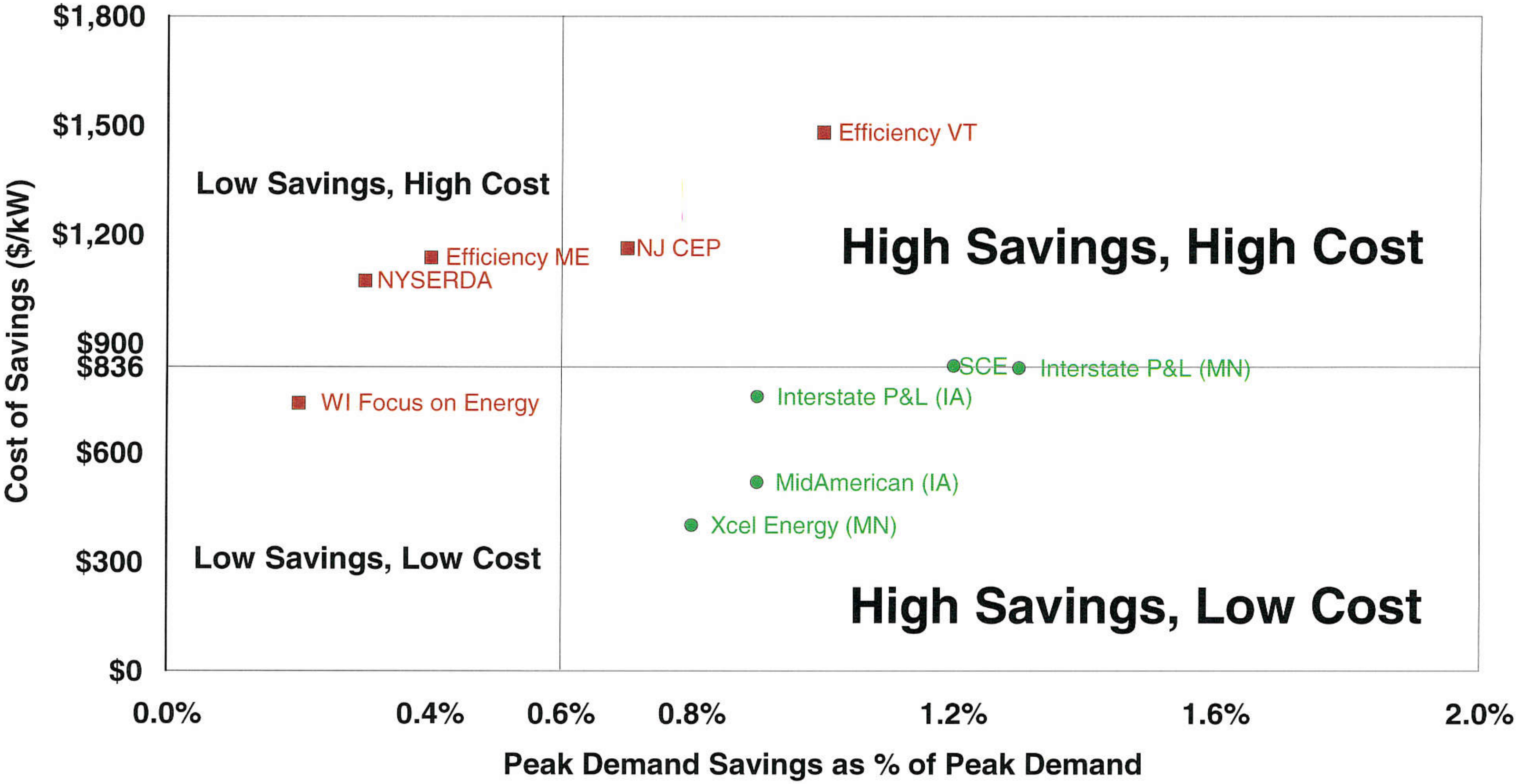


Source: Kansas Energy Council, "DSM Potential Study and Plan", August 2008, p.17 & p. B-2.

Attachment 2

5-3

SCATTER PLOT OF PEAK DEMAND SAVINGS AND COST OF PEAK DEMAND SAVINGS



Source: Kansas Energy Council, "DSM Potential Study and Plan", August 2008, p.18 & p. B-2.

KCP&L

Testimony of Scott Jones
Before the Senate Utilities Committee
In Opposition to Senate Bill 284
March 11, 2009

Kansas City Power & Light has offered customers a portfolio of energy efficiency and conservation programs the past several years. Customers are participating in record numbers as witnessed by the tremendous growth of these programs. With this proven record of success we oppose establishment of a third party administering energy efficiency and conservation programs.

We recommend each utility be allowed to submit a portfolio of programs that targets its needs as well as the needs of its customers. We feel each utility has the best perspective to comprehensively assess the value of energy efficiency and conservation programs against other resource alternatives in its specific energy portfolio. Because of the utility's obligation to serve, system planners must ensure adequate capacity reserves in order to maintain high reliability standards. When comparing energy efficiency and conservation resources against traditional supply-side resources, system planners need the ability to forecast the amount of energy efficiency and demand response that is being implemented and have some control over the timing to ensure the most optimal economic impact to the customer. Under the scenario where energy efficiency and demand response is performed by an independent agency, the ability for a utility to optimize a mix of programs specific to a utility's unique resource portfolio will be lost.

Each utility has relationships with their customers that should be utilized to achieve the best acceptance of energy efficiency and conservation programs. The utility has ownership of the programs and dedicated resources in support of the programs. The programs are designed to meet the resource needs of the utility and to maximize customer participation. Ultimately, the utility has credibility with the customer in energy-related matters and is often looked to as a reliable source of information and support.

Further, in the case of KCP&L, any expenses incurred by a third party to implement programs in its service area would be duplicative of the infrastructure already in place to implement our energy efficiency and conservation programs. Utilities are already subject to oversight through existing statutes and rules.

Thank you for your consideration.

Scott Jones – KCP&L
Manager, Kansas Government Affairs
816-556-2458; scott.jones@kcpl.com

Senate Utilities Committee
March 11, 2009
Attachment 6-1

a project of The Land Institute

CEP
climate + energy project

P.O. Box 442217 Lawrence, KS 66044 climateandenergy.org

Mr. Chairman, members of the committee, good afternoon, and thank you for the opportunity to address you regarding SB 284.

Energy efficiency is our most important, least expensive, most available source to meet new demand. At an average 3 cents/kwh with no new pollution, efficiency should be the centerpiece of any comprehensive energy policy.

Today, Midwest Energy operates the most successful and acclaimed energy efficiency program in Kansas. Midwest's How$mart program audits buildings' energy use, identifies cost-effective efficiency improvements (often including insulation, weather-stripping, duct sealing, and furnace, heat pump, or high efficiency air conditioning), and finances those improvements on the utility bill – all while ensuring bill savings from day one.

Both KCPL and Westar have worked over the last several years to build energy efficiency divisions and develop and deploy programs. KCPL's programs include online interactive home energy use analysis (as well as a special calculator for thermostat settings and potential savings), free programmable thermostats, rebates on high efficiency air conditioners and heat pumps, and assistance with home energy audits and improvements. (A number of these programs are available only in Missouri, awaiting KCC approval here in Kansas.) Westar has filed several similar programs with the Commission and is considering a Midwest-style approach as well.

Kansas Power Pool recently approved rebates for efficient heating and air conditioning units (including window units) as well as replacement refrigerators, and like many other utilities is distributing CFLs.

Utilities possess several key advantages for delivering energy efficiency.

- <u>Customer relationships</u>: Utilities have "brand recognition" and an existing relationship with their customers.
- <u>Data availability</u>: Utilities have immediately available, proprietary customer data that can focus energy efficiency investments.
- <u>Access to capital</u>: Utilities are among the most credit-worthy institutions in today's economy and can attract capital for expensive up-front investments that individual consumers frequently cannot afford.

At the same time, utilities face real hurdles in delivering energy efficiency.

- For investor-owned utilities, incentives are currently misaligned, providing substantially greater returns to shareholders for building new generation and transmission than for making their systems more energy-efficient (i.e., regulated utilities today make more money for shareholders as they sell more).
- For smaller rural electric cooperatives and municipal utilities, less capital for up-front investment as well as smaller staffs with less specialized time to devote may make energy efficiency either unachievable or an inescapably low priority.

A third-party, non-profit provider of energy efficiency for the entire state of Kansas could offer real advantages.

- Consistency: All Kansans would have access to the same programs.
- One-stop shopping: Kansans would know where to look for information on rebates, incentives, and technical assistance to make their homes, businesses, and churches more efficient.
- Supply chain impact: A single provider could work effectively with wholesalers and retailers to ensure adequate, cost-effective supply of energy efficient appliances and with subcontractors to provide a dependable workforce of qualified installers who will emphasize energy efficiency.
- Geographic targeting: A single provider could focus on areas with constrained supply to help defer or avoid significant investments in energy distribution.
- Single purpose: An energy efficiency provider's sole purpose is to save energy, so competing incentives do not exist.

Third-party providers, however, face challenges as well:

- Must build name recognition and customer trust,
- Must create data-sharing agreements and practices with participating utilities,
- Like utilities, must receive program approval from KCC (and would be starting from scratch to design).

In other words, ramp-up for a third party provider may take considerably longer than encouraging and extending existing utility programs.

Should Kansas decide to pursue a third-party provider for energy efficiency, CEP would encourage amending SB 284 to require an ongoing competitive bid process to award contracts to provide energy efficiency services. We would also encourage statutory performance standards that determine compensation (for example, 0.5% reduction earns 70% of possible return while 1% reduction earns 100%, with potential "bonuses" for geographic focus and/or peak reduction).

In addition, and critically, the advantages of a state-wide third-party provider are dramatically diminished by opt-in participation. To succeed in equitably delivering energy efficiency services to all Kansans through a third party nonprofit deliverer, all Kansas utilities should be required to participate. CEP would support an opt-out for utilities that demonstrate their programs meet the performance and cost-effectiveness standards set for the third party.

In sum: CEP supports the ambitious pursuit of energy efficiency across the state, with an emphasis on the improvement of existing structures and strong building standards for new structures as well as the replacement of highly inefficient major appliances. We endorse rewarding those who deliver energy efficiency – whether utilities or a third party provider – with performance-based incentives.

| Nancy Jackson | Executive Director, CEP | jackson@climateandenergy.org | 785.331.8743 |
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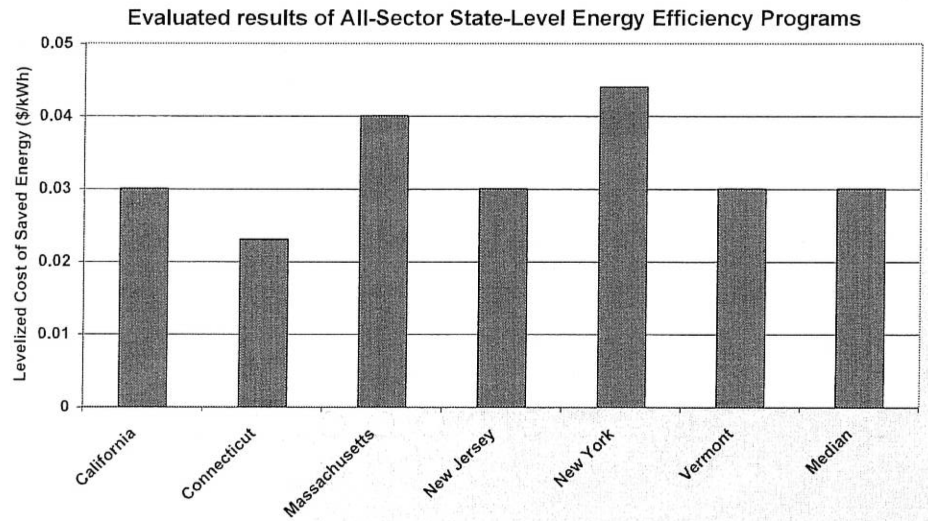
7-3

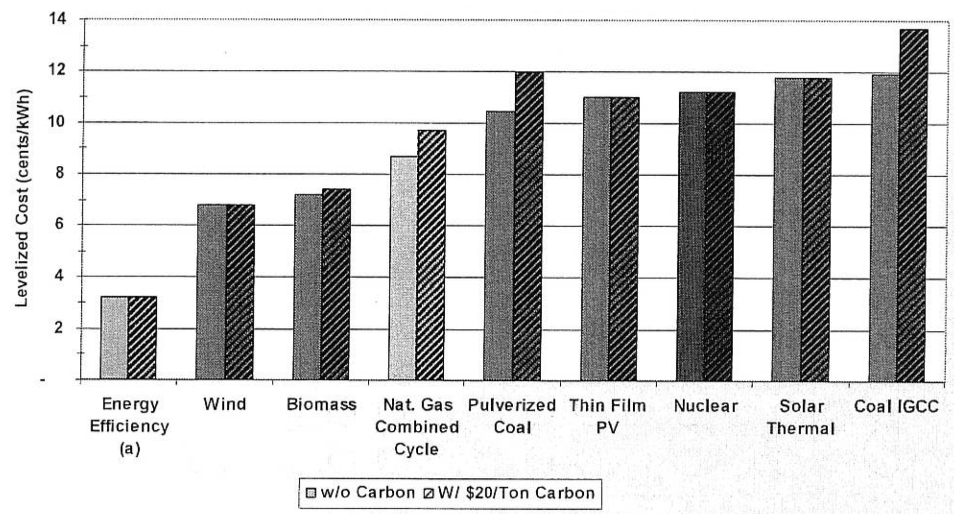
Efficiency Resources Cost Effective



ACEEE

Source: ACEEE, "Five Years In," 2005

Cost of New Electricity Resources



ACEEE

Source: Lazard 2008 for NARUC (midpoint of range)

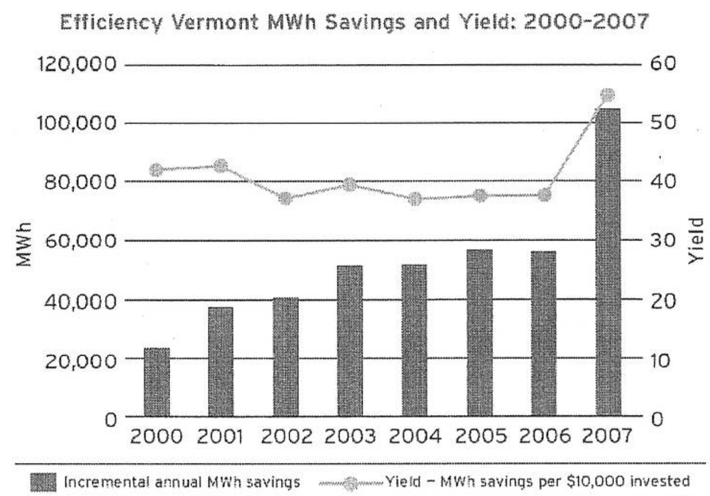
7-4

Texas

- First state to establish an EERS
- Initially 10% of load growth but increased by legislature to 20% of load growth
- Utilities have not had difficultly meeting and exceeding targets
- In 2009, bill likely to come up to increase to 30% or even 50% of load growth or the equivalent as % of sales

ACEEE American Council for an Energy-Efficient Economy

Vermont



ACEEE American Council for an Energy-Efficient Economy

KANSAS
CORPORATION COMMISSION

Kathleen Sebelius, Governor
Thomas E. Wright, Chairman
Michael C. Moffet, Commissioner
Joseph F. Harkins, Commissioner

Testimony of Janet Buchanan
On SB 284
On Behalf of the Kansas Corporation Commission
March 11, 2009
(Written Only)

Chairman Apple and members of the Committee:

The Commission has had the opportunity to consider whether to utilize a third party administrator to deliver energy efficiency programs to Kansas consumers within several dockets. Ultimately, the Commission determined it would work cooperatively with electric and natural gas utilities to bring energy efficiency options to consumers in a cost effective manner. Below is a brief history of the Commission's decisions and discussion of the use of third party administrators in other states.

Among other issues, the Commission addressed the question of whether to utilize a third-party administrator to oversee the development and implementation of energy efficiency programs in Docket No. 07-GIMX-247-GIV. This docket was initiated on September 11, 2006 and parties filed comments and reply comments in response to questions contained in the Commission's order. On May 7, 2007, the Commission's staff filed a report and recommendation for the Commission's consideration. The Commission's staff advised that further proceedings would be necessary to determine whether the Commission could require a third party administrator and whether a system benefit charge could be ordered by the Commission for funding of energy efficiency programs implemented by a third party administrator.

The Commission's Final Order in this docket indicated that utilities had already begun developing energy efficiency programs and noted consumers were adopting efficiency measures on their own initiative. The Commission established that it had general authority to approve energy efficiency programs and noted that no party disputed this authority. However, in light of progress being made by utilities, the Commission stated its desire to work collaboratively with utilities and would neither require programming nor address the question of whether it had authority to require utilities to implement efficiency programs. In that same light, the Commission found that there was "no need, at this time, to create an efficiency program administrator for energy efficiency, and accordingly" did not decide the legal issue of whether the Commission has the authority to require the creation of a third party administrator. The Commission also concluded that it would open two new dockets to address issues related to utility sponsored efficiency programs.

The Commission opened Docket Nos. 08-GIMX-441-GIV and 08-GIMX-442-GIV on November 6, 2007 to address issues related to energy efficiency. In both of these dockets, the

Citizens' Utility Ratepayer Board provided comments to the Commission supporting the use of a third party administrator to pursue energy efficiency programs. However, in the orders opening both dockets, the Commission determined that it would continue "to work collaboratively with utilities and other entities to encourage, facilitate and guide current and future energy efficiency programs."

Additionally, in its June 2, 2008 order in Docket No. 08-GIMX-442-GIV the Commission reiterated its desire to work cooperatively with utilities. The Commission again acknowledged that utilities had already begun voluntarily implementing energy efficiency programs. The Commission recognized the efforts of Kansas City Power & Light to address energy efficiency and praised the efforts of Midwest Energy, Inc. in implementing the How$mart program. The Commission acknowledged that energy efficiency is a tool for meeting future energy needs and encouraged utilities to view energy efficiency as a resource, along with traditional and renewable resources, in their planning efforts. In the spirit of cooperation, the Commission also encouraged its staff, the utilities, and other interested parties to engage in collaborative meetings to work out many of the details involved in reviewing and evaluating energy efficiency programs.

In its final order in Docket No. 08-GIMX-441-GIV, the Commission again reiterated its intent to cooperate with utilities to bring energy efficiency programs to Kansans. The Commission again noted that it had chosen not to require energy efficiency programming but would work with utilities to bring about such programming. The Commission also stated its belief that utilities will work cooperatively because "state, national, and international forces are combining to make the need for energy efficiency as a resource alternative a shared vision between the Commission, utilities, and the people of Kansas." The Commission specifically addressed the use of a third party administrator in this order. The Commission indicated it "had chosen not to pursue a third party approach to energy efficiency program implementation, but [was] relying on utilities to develop those programs they believe best meet the unique requirements of their customers and their future energy needs."

The Commission recognizes that there are both pros and cons to either utility sponsored or third party sponsored energy efficiency programs. Cheryl Harrington, a senior advisor with the Regulatory Assistance Project, indicates that most energy efficiency programming began through utility sponsored efforts, "[b]ecause efficiency programs were seen as integral pieces of a utility's overall resource portfolio."[1] She went on to state that:

> [t]his was the model for program design and delivery until industry restructuring came along, throwing into question the premise that utilities needed to be or should be vertically integrated or that they should be further involved in energy efficiency markets.[2]

Ms. Harrington concludes that:

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[1] Harrington, Cheryl, *Who Should Deliver Ratepayer Funded Energy Efficiency?*, the Regulatory Assistance Project, May 2003, page 6. (*Harrington Paper*)
[2] *Harrington Paper*, page 7.

8-2

> The more robust ratepayer funded efficiency programs are less the result of administrative structure per se, than clear and consistent commitment of policy makers. It is our view that either utility administration or administration by a third party non-governmental can work well. Relevant factors to consider when comparing utility to independent administration are: responsiveness to PUC direction, regulatory performance incentives that are properly constructed and implemented, staff competency, sustainability of the institution and its budget sources, and, link to system planning decisions.[3]

Six states are frequently included in discussions of third party administrators of energy efficiency programs. New Jersey, Maine, New York and Wisconsin all administer energy efficiency through a state agency.[4] Vermont and Oregon administer energy efficiency through an entity independent from the utility and the state but with governance that includes reporting to the public utility commission. The Northwest Energy Efficiency Alliance is a non-profit organization that provides energy efficiency programming to Oregon, Washington, Utah and Montana. It is funded in part by the Bonneville Power Administration and in part by other utilities within those states.

There are strong arguments in favor of and against the use of a third party administrator. For instance, some argue that one set of program administrators would allow energy efficiency programs to be offered with less overhead expense than incurred through multiple utilities. Others argue that if utilities are to incorporate efficiency in planning for future demand, it is better to allow the utility to implement efficiency. Some argue that a third party administrator can offer the same programs broadly across utility territories while others argue that the utility is most likely to understand the usage patterns and efficiency needs of its customers. The Commission continues to consider the relative advantages weighed against costs. To this point there has not been sufficient showing of need to create an independent entity.

The Commission would note that any bill such as this one that establishes a new entity supported by funds collected from utilities needs to be carefully reviewed to ensure that the exact scope of the entity's authority and the funding process are precisely and carefully spelled out. The Commission has not had time to analyze this bill in that regard.

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[3] *Harrington Paper*, pages 24-25.

[4] Illinois and Ohio also have government administered programs but provide very little programming relative to the other states mentioned here.