

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:15 a.m. on February 4, 2010, in Room 785 of the Docking State Office Building.

All members were present except:

Representative Mike Burgess- excused
Representative Dan Johnson- excused
Representative Cindy Neighbor- excused

Committee staff present:

Matt Sterling, Office of the Revisor of Statutes
Cindy Lash, Kansas Legislative Research Department
Iraida Orr, Kansas Legislative Research Department

Conferees appearing before the Committee:

Dave Springe, CURB
Brad Mears, KMU
Dave Holthaus, Kansas Electric Cooperatives
Mark Schreiber, Westar Energy
Tom Day, Kansas Corporation Commission

Others attending:

Twenty-four including the attached list.

Hearing on:

HB 2419 - Authorizing contracts between utilities and customers for the installation of renewable energy generation units and energy storage devices.

Matt Sterling, Office of the Revisor of Statutes, (Attachment 1), gave a brief overview to the committee regarding **HB 2419**.

Proponents:

Representative Tom Sloan, 45th District (Attachment 2), offered testimony in support of **HB 2419**, noting why this legislation was necessary.

Questions were asked and comments made by Representatives: Milack Talia, Richard Proehl, Joe Seiwert, Tom Moxley, Vern Swanson, Don Myers, and Rob Olson.

Opponents:

Dave Springe, CURB (Attachment 3), spoke to the committee in opposition to **HB 2419**.

Brad Mears, KMU (Attachment 4), offered testimony in opposition to **HB 2419**.

Dave Holthaus, Kansas Electric Cooperatives (Attachment 5), gave testimony to the committee in opposition to **HB 2419**.

Written Opponents:

Mark Schreiber, Westar Energy (Attachment 6), submitted written testimony in opposition to **HB 2419**.

Tom Day, Kansas Corporation Commission (Attachment 7), read the testimony via his blackberry that was supposed to be written opposition to **HB 2419**.

Questions were asked and comments made by Representatives: Forrest Knox, and Tom Sloan.

CONTINUATION SHEET

Minutes of the House Energy and Utilities Committee at 9:15 a.m. on February 4, 2010, in Room 785 of the Docking State Office Building.

The hearing was closed on **HB 2419**.

Representative Holmes reminded the committee that we will meet at 9:00 a.m. on Monday instead of our usual 9:15 a.m.

The next meeting is scheduled for February 8, 2010.

The meeting was adjourned at 10:13 a.m.

HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

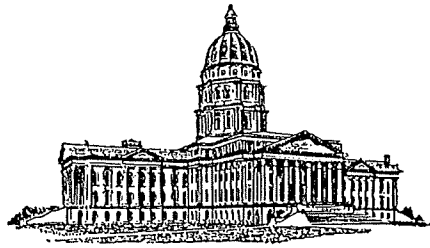
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DATE: February 2, 2010

NAME	REPRESENTING
Jackson Lindsey	Hein Law
JOHN BOTTENBERG	WESTAR
Nike Reecht	ATMOS ENERGY
Dave Habhaus	Kec
Joe Dick	KCBPU
BRAD MEARS	KMU
Ken STANTON	Northern Natural GAS Co
Scott Jones	KCP
SUNDA LOWRY	KEC
Kimberly Sraty	KMU
Michael Weyner	KCC
Andy King	KCC
Doug Smith	PSA
Michelle Peterson	Capitol Strategics
Nathan Eberly	LKM
Tom Hink	KASB
Mark Schreiber	Westar
Charlie Sargent	KFB

MARY ANN TORRENCE, ATTORNEY
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FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

MEMORANDUM

To: Chairman Holmes and members of the House Committee on Energy and Utilities
From: Matt Sterling, Assistant Revisor of Statutes
Date: 2/4/10
Subject: House Bill No. 2419 .

Some of the definitions used in the act include:

- “Energy storage device” is defined as any device or equipment for the storage of electrical energy generated from a renewable energy resource for at least three hours and which is at least one kilowatt in size.
- “Public utility” is defined as any public utility defined in K.S.A. 66-104 and includes any municipally owned or operated utility and any cooperative, as defined by K.S.A. 17-4603, and any nonstock member-owned electric cooperative corporation.
- “Renewable energy resources” means any renewable energy resource defined in K.S.A. 2009 Supp. 66-1257.

K.S.A. 2009 Supp. 66-1257 defines "Renewable energy resources" as net renewable generation capacity from: Wind; solar thermal sources; photovoltaic cells and panels; dedicated crops grown for energy production; cellulosic agricultural residues; plant residues; methane from landfills or from wastewater treatment; clean and untreated wood products such as pallets; existing hydropower; new hydropower, not including pumped storage, that has a nameplate rating of 10 megawatts or less; fuel cells using hydrogen produced by one of the above-named renewable energy resources; and other sources of energy, not including nuclear power, that become available after the effective date of this section, and that are certified as renewable by rules and regulations established by the commission pursuant to K.S.A. 2009 Supp. 66-1262, and amendments thereto. "Net renewable generation capacity" is defined as the gross generation capacity of the renewable energy resource over a four-hour period when not limited by ambient conditions, equipment, operating or regulatory restrictions less auxiliary power required to operate the resource, and refers to resources located in the state or resources serving ratepayers in the state.

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ATTACHMENT

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HB 2419 would permit a public utility to enter into an agreement with its customers to install a renewable energy storage generation unit or storage unit on the customer's property. The bill would require that any contract for such unit or device must include provisions concerning the: Installation of a unit or device; maintenance and monitoring of the installed unit or device; ownership of the unit or device by the public utility; plan to remove the unit or device at the end of the productive life of each unit or device and payment to the customer's account either in monetary form or by free or reduced rates or service.

Under the bill, if ownership of property containing the units or devices changes, authorization of the contract and payments remain with the property and not with the customer. Under such circumstances, the public utility shall establish a new contract with the new land owner. The bill would also require a public utility to install at least 10% of the utility's total units and devices on the property of customers with low income. "Customers with low income" is defined as a household with a gross household income less than or equal to 150% of the federal poverty guidelines. Lastly, public utilities would be permitted to capitalize the reasonable costs incurred in the installation of any unit or device.

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TOPEKA
HOUSE OF
REPRESENTATIVES

Testimony: HB 2419 – Renewable Energy and Energy Storage Units: Utility Ownership/Cost Recovery

House Energy & Utilities Committee

February 3, 2010

Mr. Chairman, Members of the Committee: HB 2419 establishes a mechanism by which utilities and their customers can develop distributive (local) renewable electricity generation and energy storage capabilities in partnership with each other.

Previous legislation authorizing net metering encourages property owners to install renewable energy generation units. The reality of that legislation is wealthier persons can pay to install wind or solar generation units, but those less affluent are not able to participate. Some of you may recall comments during our Committee discussions regarding “rich” people’s electricity being “subsidized” by “poorer” customers because of the perceived disparity between those who can afford to participate in net metering and those who cannot.

HB 2419: a) authorizes utilities to contract with customers for the installation, maintenance, and removal of the renewable energy generation or storage units;
b) requires utility ownership of the generation or storage unit;
c) requires a compensation agreement between the utility and customer on whose premises the generation or storage unit is installed, but the type of compensation is left to the negotiating parties;
and
d) specifies that should the property on which the generation or storage unit is sold, the generation or storage unit remains with the property and a new contract shall be executed between the utility and the property owner.

This bill is based on the following principles: a) more Kansans should have the opportunity to participate in small scale renewable generation and energy storage to improve distribution system reliability;
b) utilities should determine when and where such generation and storage units responsibly contribute to energy security and distribution system reliability;
c) utilities are better able to buy generation and storage units in cost-effective quantities than are individual Kansans;
d) utilities are able to employ persons to install, maintain, and remove such units more cost-effectively than are individuals; and
e) Legislatively authorized utility funding of energy conservation investments, in partnership with customers, with cost-recovery through meter charges (e.g., Midwest Energy) is analogous to this means of providing opportunities for distributive generation and energy storage that meet utilities’ and customers’ needs.

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The issue of utility cost recovery is addressed in the bill, BUT liability issues are not. This was an oversight when I requested the bill be drafted. Attached to this testimony is language to address the liability issue. The proposed language is based on statutory language enacted for Midwest Energy (and any other utility) engaged in energy conservation investments on behalf of/in partnership with customers.

Thank you for your consideration of this renewable energy bill. I will be pleased to respond to your questions.

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1 remain with the property and not with the customer. The utility shall
2 establish a new contract in such case.

3 (d) If a public utility enters into contracts with customers as permit-
4 ted in this section, the utility shall install at least 10% of the utility's total
5 units and devices on the property of customers with low income. For the
6 purposes of this section, "customer with low income" shall mean a house-
7 hold with a gross household income less than or equal to 150% of the
8 federal poverty guidelines published in the most recent calendar year by
9 the United States department of health and human services.

10 (e) Public utilities may capitalize the reasonable costs incurred in the
11 installation of any unit or device, including but not limited to costs of
12 equipment, financing and earnings on investment.

13 ~~Sec. 2. This act shall take effect and be in force from and after its~~
14 publication in the statute book.

(f) Public utilities shall assume no liability for the installation, operation or maintenance of renewable energy generation units or energy storage devices, and shall not provide any warranty as to the merchantability of such units or devices, or their fitness for a particular purpose, and no action shall be maintained against any such public utility the basis of which is such liability or warranty.

(g) Nothing in this section shall be construed to limit any rights or remedies of public utility customers and landlords of public utility customers against other parties to a transaction involving the installation and maintenance of renewable energy generation units or energy storage devices.

Citizens' Utility Ratepayer Board

Board Members:

A.W.Dirks, Chair
Carol I. Faucher, Member
Nancy Scott Jackson, Member
Stephanie Kelton, Member



State of Kansas
Mark Parkinson, Governor

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HOUSE UTILITIES COMMITTEE H.B. 2419

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
February 4, 2010

Chairman Holmes and members of the committee:

Thank you for this opportunity to offer testimony on H.B. 2419. The Citizens' Utility Ratepayer Board is opposed to this bill for the following reasons:

H.B. 2419 provides that a public utility may enter into a contract with a customer to install a renewable energy generation unit, an energy storage device, or both, on the customer premises. The bill sets forth certain necessary contract provisions including "payment of compensation to the customer's account in monetary form or by free or reduced rates or service". Ten percent of the utility's total units shall be installed on the property of "customers with low income", defined as gross household income less than or equal to 150% of the federal poverty guidelines. Finally, utilities may "capitalize the reasonable cost incurred in the installation of any unit or device including the cost of equipment, financing and earnings on investment.

The bill as written is unnecessary. Any utility, whether regulated or deregulated, has the option of pursuing a contract with a customer to install a renewable energy generation unit, an energy storage device, or both, on consumer customer premises. There is no need for a law authorizing this activity. This bill adds nothing to the current legal and regulatory framework.

However, CURB is concerned that this bill appears to encourage Kansas utilities to acquire and own small renewable energy generation units and energy storage devices, and further, pay compensation to the customer on whose premises these units are installed. Small renewable energy generation units and energy storage devices are very expensive on a per kilowatt hour produced basis when compared to other renewable generation sources. Utilities can acquire far more cost effective renewable energy from industrial sized wind farms.

Since utility expenditures are ultimately collected from utility customers, as is also indicated by the bill, CURB does not believe it should be the policy of the state to encourage the acquisition of the most expensive form of renewable energy by utilities when other cheaper sources of renewable energy are available. This bill encourages a poor economic decision.

The bill does require customers with low income to receive 10% of the units contracted for by the utility. Conversely low income customers will pay higher utility rates to pay for the cost

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of the 90 percent of renewable generation and storage units that are not installed at low income households. Low income households have been hardest hit by the current increasing utility cost environment in Kansas. If the legislature is going to mandate utility expenditures on high priced generation and storage units as represented by this bill, CURB suggest that better state policy would be to require 100% of the units be installed on low income households.

In a broader text, it is possible that the cost incurred in pursuing a policy of having a utility acquire and own small renewable generation and storage units would be better spent purchasing efficiency and conservation products. For the \$20,000-\$40,000 a solar or wind generation and storage unit may cost, you might get far more demand or energy reduction purchasing insulation, high efficiency heating and air systems and efficient lighting and appliances.

While CURB always welcomes the opportunity to discuss Kansas energy policy, including how different energy policy initiatives will affect Kansas consumers, and recognizing that this bill does not, at this time, contain specific mandates, CURB is concerned about the policy direction this bill indicates and CURB therefore opposes passage of this bill.



kansas municipal utilities

Testimony Provided to the

House Committee on Energy and Utilities

February 4, 2010

*Brad Mears, Government Relations Director
Kansas Municipal Utilities*

House Bill 2419

Chairman Holmes and Members of the Committee:

On behalf of Kansas Municipal Utilities (KMU), we appreciate the opportunity to provide testimony to the committee regarding House Bill 2419 as it relates to renewable generation units and energy storage devices located on customer-owned property.

Formed in 1928, Kansas Municipal Utilities is the statewide association that represents the interests of 175 municipal electric, natural gas, water and wastewater utilities across the state.


In general, KMU and its members support the development of renewable energy, and our member utilities are continuing their efforts to identify ways of helping their resident customers take advantage of renewable energy opportunities. In fact, several KMU members have voluntarily adopted net metering standards for their utilities, and a KMU technical task force is currently developing net metering standards for consideration and adoption by the remaining of the 119 municipal electric systems in Kansas. However, we wanted to raise the question of the necessity for the legislation as proposed in House Bill 2419.

From our reading, the proposed legislation provides public utilities, including municipally-owned and operated systems, with the ability to enter into contracts with customers for the installation of renewable energy generations and energy storage devices (or both). It is our belief that municipal utilities would generally have the ability and authority to enter into this type an agreement with its customers should the municipal utility choose to pursue this approach for promoting renewable resources. If utilities currently have the ability to pursue these types of arrangements, we would suggest that additional legislation is not necessary at this time.

Another possible concern from the utility perspective would be the potential impact on rates should the costs of such a program be capitalized across the total rate base since the actual benefit accrues to only a small subset of a utility's customers and given the requirement for 10% of the total units and devices to be installed on the property of low income households.

Again, thank you for the opportunity to present this testimony



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**Testimony of Dave Holthaus
Manager of Government Affairs
Kansas Electric Cooperatives, Inc.
Before the House Energy & Utilities Committees
House Bill 2419**

February 4, 2010

Good Morning Mr. Chairman and members of the committee.

Kansas Electric Cooperatives, Inc. and Kansas Electric Power Cooperative, Inc. (KEPCo) oppose HB 2419.

The bill says a utility may enter into a contract with its customers/member-owners to install, maintain and own a renewable generation unit and storage device located on the property of its customer. The bill also states that:

- Payments remain with the property and not the customer
- 10% of these units shall be sold to low income customers
- Utilities may capitalize the costs incurred.

We simply believe that this bill is not needed for electric cooperative to accomplish what we believe this bill intends to do.

Renewable generation such as small wind and solar systems are currently available to customers through various vendors with financing options is available through local banks and credit unions, if not through the equipment vendors themselves. Electric cooperatives remain committed to assisting them as needed to insure a safe interconnection.

I will stand for questions at the appropriate time.

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MARK A. SCHREIBER
Director, Government Affairs

**Testimony of Mark Schreiber
Director Government Affairs
Before the House Energy and Utilities Committee
On HB 2419
February 4, 2010**

Westar Energy opposes HB 2419. The bill's objective appears to expand the presence of small renewable/energy storage systems. HB 2419 allows utilities to enter into contracts with customers for installation, maintenance and ownership of small renewable/energy storage systems on the customer's property. Legislation is not needed to negotiate this type of contract. Thus, Westar does not see the need for HB 2419.

If a contract is negotiated, HB 2419 requires certain measures to be part of every contract, and then mandates ten percent of all small renewable/energy storage systems installed to be placed on the property of low income customers. We are unsure of the reason for this section. We suggest it is better to install small renewable/energy storage systems in areas where the equipment would be most effective and not base their placement on the economic conditions of the landowner.

Thank you again for the opportunity to provide testimony in opposition to HB 2419.



Mark Parkinson, Governor
Thomas E. Wright, Chairman
Michael C. Moffet, Commissioner
Joseph F. Harkins, Commissioner

**Statement of the
State Corporation Commission of the State of Kansas
On
House Bill No. 2419**

The Corporation Commission must oppose this bill for several basic reasons. It is not clear what the overall intent is, what some of the provisions mean and how they are to be implemented. While the Commission appreciates the fact that the bill seems to contemplate new opportunities for utilities to partner with their customers, the Commission cannot adequately evaluate the bill if the objectives are not clearly defined.

The bill, at section (b)(1), suggests that public utilities be allowed to contract with their customers for the use of the customers' property in support of the installation of renewable generating units and energy storage devices, presumably as part of some kind of distributed generation program. Utilities can already enter into contracts with their customers for the leasing of property (e.g. most wind farms) so there is no evident need for this part of the bill.

What is most unclear is the intent of section (d), which requires installation of at least 10% of the units and devices on the property of low income customers. Does this mean that 10% of wind turbines that are located on leased customers' land must be allocated to low income customer's property? If it is not intended to apply to renewable wind generation, then further explanatory details are needed.

Subsection (b)((2)(E) of the bill, which provides for compensation to the customer "in monetary form or reduced rates or service," raises some interesting legal issues. Since the compensation potentially impacts customer rates, the Commission may be required to approve of the compensation or at least monitor it to insure that it doesn't result in unjust or unreasonably

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discriminatory rates under KCC statutes. This could prove difficult, depending on how the utility structures their contract with each customer. Without knowing the specifics of any installation, it is difficult to determine whether a customer's utility account could appropriately be "free" or at reduced rates. Likewise, the lack of legislative details raises implementation issues, such as whether utilities would need to file tariffs for such installations and contracts with their customers, so that the Commission will be able to regulate and provide consistency across the customers of each utility. Tariffs may also be required to address other important factors such as safety, operating parameters, and accountability by parties involved in any such installations.

Section (c) deals with keeping the installed equipment and payments with the property. However, it does not adequately address all the potential events. For example a property owner could subdivide the land and thereby separate the section of land where the renewable generating equipment is installed from the account meter. Retention of ownership of the land where the generating equipment is installed after a change in ownership of the original parcel of land would complicate the compensation process.

Lastly, it is not evident why the provision regarding capitalization of these units and devices mandates a departure from normal ratemaking accounting. Section (e) provides for capitalization of installation costs, including costs of equipment, financing and earning on investment. Equipment costs are, of course, normally capitalized. But financing costs for equipment are included in the overall capital structure and cost of capital as part of the determination of the overall rate of return on rate base. Likewise, "earning on investment" is not considered a cost of installation. Earning on investment is provided as a return on the capital costs so it doesn't make sense to compound the amount of earnings by capitalizing earnings.