

SESSION OF 2002

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR SENATE BILL NO. 545**

As Amended by House Committee of the Whole

Brief*

Sub. for SB 545 allows a public utility, which is assessed by a city and which collects and remits fees associated with the utility's use, occupancy, or maintenance of its facilities in the public right-of-way, to file a tariff with the Kansas Corporation Commission (KCC). The tariff could then be added to the end-user customer's bill, statement, or invoice as a surcharge equal to the pro rata share of any fee. Costs are not to include expenses covered by any other cost recovery mechanism in existence as of April 1, 2002, including franchise fee and relocation expenses. The bill provides the same relief for costs which are incurred by a public utility in excess of those normal and reasonable costs incurred applying good utility practices due to actions of a city's governing body. The bill's provisions do not apply to telecommunications public utilities.

The KCC is required to approve tariffs within 30 days of filing, provided the KCC finds that:

- ! the recovery fees in a surcharge were required to be paid by the utility as a result of action by a city;
- ! the costs were incurred as a result of an action of a city;
- ! the costs were reasonably incurred to meet the requirements imposed by a city; and
- ! the surcharge is applied to bills in a reasonable manner and is calculated to collect the increase in fees and costs of the utility or

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org/cgi-bin/fulltext/bills.cgi>

reduce any existing surcharge based upon decreases in fees and costs.

If the KCC determines that the surcharge is not applied to bills in a reasonable manner, the costs do not meet the above requirements, or the calculation is not adequately supported by documentation provided in the filing, the KCC may either disapprove the tariff within 30 days of filing and require resubmission or suspend the effective date of the tariff for an additional 60 days, or modify the tariff.

The establishment of a surcharge would not be deemed to be a rate increase.

The utility would be required to deliver to the affected city a copy of the filing within 10 days of the filing. Only cost and fees incurred between April 1, 2002, and June 30, 2003, would be subject to this act.

The provisions of the first three sections of the bill would sunset on June 30, 2003.

The bill also allows the KCC to authorize electric and natural gas public utilities to recover costs incurred from implementing security measures used to protect electricity and natural gas production and transmission. Such authorization would sunset on July 1, 2004.

The act would be in effect upon publication in the *Kansas Register*.

Background

The bill, as introduced, was at the request of a spokesperson for Westar Energy. At the hearing on the bill a spokesperson for Westar Energy indicated that the company faces a number of significant issues involving franchise and right-of-way issues. The conferee stated that the company is negotiating a new franchise with the City of Wichita. These negotiations have exposed a series of issues that Westar believes involve abuse of the authority granted by state franchise law. Examples were provided to the Senate Utilities Committee. The original bill would have provided for a moratorium. The conferee indicated that Westar has been involved in discussions with the League of Municipalities about an approach other than a moratorium. The conferee indicated that the company must allow it to recover the costs associated with the rapidly

increasing costs associated with new mandates imposed by local cities. The conferee offered a substitute bill for the Committee's consideration.

Also appearing on the issue was a spokesperson from the League of Kansas Municipalities. This conferee discussed right-of-way management and franchise issues.

The Senate Utilities Committee adopted the substitute bill as proposed by Westar Energy.

The House Utilities Committee amended the bill to exclude certain costs in the cost recovery mechanism, include certain conditions before the KCC approves or disapproves tariffs, require delivery of filing to affected cities, include time limitations when costs and fees are affected, sunset the act, and make the effective date change to the *Kansas Register*.

The House Committee of the Whole amended the bill to include provisions from Sub. for HB 2644 allowing the KCC to authorize utility companies to recover costs incurred from implementing security measures. The Committee also included the sunset provision of July 1, 2004.

The fiscal note on the original bill indicates that it would not have a fiscal effect on the Kansas Corporation Commission.