

**BEFORE THE SENATE UTILITIES COMMITTEE**

**PRESENTATION OF THE**

**KANSAS CORPORATION COMMISSION**

**February 9, 2004**

**SB 382**

Thank you Chairman and members of the Committee. I am Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission. I appreciate the opportunity to be here today to testify in opposition to SB 382.

While we are fully sympathetic with the legislature's desire to establish emergency means to address national security issues, we believe such reaction was intended to be short term and should not be extended indefinitely. The committee should be aware that to date no electric or gas utility has approached the Commission to recover security costs anticipated under this bill, even though over two years have passed since September 11, 2001.

It is important to recognize that the underlying legislation addresses the type of unusual and atypical costs an electric or gas public utility may experience due to some external situation outside the control of the utility. In the case of security costs, a utility could experience unusual costs to respond to a known threat, to recover from an attack or to comply with a governmental security directive. Before this legislation was ever passed the Commission already had the responsibility and authority to address these types of situations without prescriptive legislation, and in fact has done on numerous occasions in the past.

In the late seventies and early eighties the Commission and utilities worked together to address large and unanticipated costs due to dramatic increases in fuel prices. To address this

sudden and unusual “known threat” the Commission developed a mechanism and approved tariffs allowing Kansas electric and gas utilities to recover these unexpected and unpredictable costs. By adopting the purchased gas adjustment, or PGA, for gas utilities and the energy cost adjustment, or ECA, for electric utilities, the Commission made sure that utilities would recover these unexpected costs and that ratepayers would not be overcharged. Today, virtually all of our natural gas utilities have a PGA mechanism. In addition, several of our electric utilities, including Midwest Energy, Sunflower, and Aquila have an ECA mechanism.

Occasionally, an electric or natural gas utility must make large unforeseen expenditures to recover from an event that was essentially outside the utility’s control. For example electric utilities may experience expensive repair and recovery costs due to ice storms or other acts of nature. Historically the Commission has allowed the utility to recover these costs through an accounting order. For example, when Westar Energy spent over \$16 million recovering and restoring their electric system following the 2002 ice storm, the Commission allowed the company to create an account, preserving both the amount spent and the carrying costs on the amount spent, for inclusion in a future rate proceeding, in essence allowing the company an opportunity to recover the costs. The Commission order addressing these costs has been given to this committee. Additionally, we would like the committee to understand that, in our opinion, accounting order treatment for the types of expenses envisioned by K.S.A. 66-1233 is probably more appropriate, better ratemaking policy, and achieves greater confidentiality, than the immediate recovery the statute requires.

With an accounting order, costs envisioned by K.S.A. 66-1233 would be recovered during a subsequent rate review. The net effect would be that the amount and type of security related expenditures would be blended with other changes in revenue requirements and it would

be almost impossible for anyone to determine the level of security related expenditures. K.S.A. 66-1233 now requires an immediate adjustment in utility rates, allowing a dedicated analyst to determine the amount of security expenditures, even though the filing is confidential.

The Commission has also responded when governmental actions, beyond the control of the utility, have required the utility to incur additional costs. I have given the Committee KGE and KPL's "Relocation of Facilities Tariff" and KCPL's "Municipal Underground Service Rider. As shown, KPL's and KGE's Relocations of Facilities Tariff provides a mechanism for KPL or KGE to recover costs incurred when specific actions by a governmental subdivision require KGE or KPL to either relocate or bury existing or new facilities at a cost in excess of the cost absent such governmental action. KCPL's Municipal Underground Service Rider provides a similar mechanism for KCPL to recover its costs should a governmental subdivision require KCPL to construct underground facilities, when KCPL would normally construct overhead facilities absent such governmental action.

As discussed, the Commission already has the responsibility and authority to take any needed action to implement mechanisms for additional costs utilities may face due to

extraordinary circumstance including unexpected economic conditions, acts of nature or governmental actions. Obviously this would include any actions mandated by federal, state or industry directives regarding additional security measures. Furthermore the Commission's actions have gone one step further by establishing that only specific customers bear the costs when the condition arises from the actions of that customer's local government.

While the Commission has the authority and responsibility to address recovery of unexpected costs to respond to and recover from a security event, security enhancements or unanticipated costs due to federal, state or local governmental actions, we do not favor adoption of prescriptive requirements in statutes for several reasons. First, the Commission already has the authority, responsibility, ability and expertise to investigate each issue, and to establish rules and policies allowing utilities to recover reasonable costs. Second, the Commission has the ability to quickly modify such a policy if it finds that it is being abused, needs revision or is no longer needed due to changing circumstances. Unfortunately this statute takes away much of the Commission's discretion and ability to prevent just such abuses. Finally, we note that no electric or gas utility has applied to the Commission to recover security costs addressed by K.S.A. 66-1233, and that recovery of such costs under an accounting order may be more appropriate.

While the Commission is sympathetic that extraordinary events may require unusual measures, without a sunset provision, this overly prescriptive legislation stays in place until it is changed. Finally, while this legislation was enacted two years ago, there has yet to be a single

related filing before the Commission, and therefore you should question the need for this legislation at all.

As stated, the Commission believes the underlying legislation is not needed and therefore deleting provisions to sunset the legislation is unnecessary and potentially poor public policy.

We recommend that the Committee reject SB 382. Alternatively we recommend that the sunset provisions be extended for a period for two years, or if the sunset provisions are removed, that statute 66-1233 be changed to allow Commission discretion, as shown below:

(2) (b) On and after July 1, 2002, the state corporation commission, upon application and request, ~~shall~~ may authorize electric public utilities and natural gas public utilities to recover the utility's prudent expenditures for security measures reasonably required to protect the utility's electric generation and transmission assets or natural gas production and transportation assets by an adjustment to the utility's customers' bills. The application and request shall be subject to such procedures and conditions, including review, in an expedited manner, of the prudence of the expenditures and the reasonableness of the measures, as the commission deems appropriate. Such application and request shall be confidential and subject to protective order of the commission.