

MINUTES

SPECIAL COMMITTEE ON UTILITIES

August 20-21, 2001
Room 526-S—Statehouse

Members Present

Representative Carl Holmes, Chairman
Senator Stan Clark, Vice Chairman
Senator Jim Barone
Senator Jay Emler
Senator Mark Taddiken
Representative Nile Dillmore
Representative Tricia Lightner
Representative Laura McClure
Representative Don Myers
Representative Tom Sloan
Representative Jerry Williams

Staff Present

Robert Chapman, Kansas Legislative Research Department
Mike Heim, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department (August 21)
Mary Torrence, Revisor of Statutes Office
Lisa Montgomery, Revisor of Statutes Office
Jo Cook, Committee Secretary

Conferees

Barry Hart, Kansas Electric Cooperatives
Kirk Thompson, CMS Electric Cooperative Inc.
Donald Hellwig, DS&O Rural Electric Cooperative
Ken Maginley, Blue Stem Electric Cooperative
Dan O'Brien, Kaw Valley Electric Cooperative
Dale Short, Butler Rural Electric Cooperative
Alan Henning, Sedgwick County Electric Cooperative
Doug Lawrence, Kansas Electric Cooperatives
Bruce Graham, Kansas Electric Power Cooperative (written only)
Stewart Lowry, Kansas Electric Cooperatives

Colin Hansen, Kansas Municipal Utilities
Carolyn Armstrong, City of Colby
Rick Anderson, McPherson Board of Public Utilities
Larry Holloway, Kansas Corporation Commission
David Dayvault, Kansas Independent Oil and Gas Association
Earl Watkins, Sunflower Electric
Richard Kaup, Kinder Morgan Corporation
Chuck Dehart, Williams Company
Laine Lobban, El Paso Pipeline Group
Chris Giles, Kansas City Power & Light
Larry Berg, Midwest Energy, Inc
Steve Ferry, UtiliCorp United
Jim Ploger, Kansas Corporation Committee
Dick Brewster, BP Amoco (written only)

Others Attending

See attached list.

Monday, August 20 Morning Session

Chairman Carl Holmes opened the meeting with announcements regarding the topics assigned to the Committee.

Mike Heim, Principal Analyst for the Kansas Legislative Research Department, addressed the first topic assigned the Committee: Municipal Annexation and Electric Service Territories (Attachment 1). Mr. Heim included in his testimony background documentation and history of the topic and copies of the statutes covering the topic. He also reviewed the Court of Appeals' decision on the *Lyon-Coffey Electric Cooperative, Inc. v. State Corporation Commission of the State of Kansas and The City of Burlington, Kansas*. Mr. Heim provided history regarding the Retail Electric Suppliers Act. He explained that this topic was requested by the Kansas Electric Cooperatives, Inc. and by Senator Clark. Both parties expressed concern that electric cooperatives often lose the right to serve in annexed areas due to the ability of cities to extinguish that right. Responding to a request from the Committee, Mr. Heim provided additional information and detail regarding the court case opinion distributed.

Mr. Barry Hart, Executive Vice President of Kansas Electric Cooperatives, thanked the Committee for the opportunity to present their case regarding the annexation and service territory concern (Attachment 2). Mr. Hart explained that the problem occurs when a municipality annexes certified territory of a rural electric cooperative and fails to grant a franchise to the cooperative within 180 days from the date of annexation. He stated that several conferees, representing individual Rural Cooperatives, would outline how the

resulting conflict between the electric suppliers and cities is damaging to the cooperative, and to rural Kansas communities that are competing for economic development against towns in other states that have solved this territorial problem.

Kirk Thompson, General Manager of the CMS Electric Cooperative Inc., in Meade, presented comments to the Committee ([Attachment 3](#)). He stated they had been involved in discussions with the city councils in their territory to obtain franchises. Mr. Thompson detailed recent annexation situations with the City of Liberal and the City of Coldwater.

Donald Hellwig, General Manager of DS&O Rural Electric Cooperative in Solomon, KS, stated the problem was three fold ([Attachment 4](#)): the compensation formula in the Retail Electric Suppliers Act does not address costs adequately; loss of service territory with growth potential perpetuates the primary reason for rate disparity (*i.e.* customer density); and the current process is controlled exclusively by the cities. Mr. Hellwig said that the issue comes down to a matter of fairness and the deck is stacked against the rural cooperatives.

Mr. Ken Maginley, General Manager of Bluestem Electric Cooperative, Inc. in Wamego, KS, addressed the Committee ([Attachment 5](#)). Mr. Maginley stated that he is not opposed to the right of a city to annex, but is concerned about the automatic change in the certificate issued by the KCC without a review to determine if the change is in the best interest of all parties. He also expressed a concern about the compensation issue.

Dan O'Brien, General Manager for the Kaw Valley Electric Cooperative in Topeka, testified on the topic ([Attachment 6](#)). Mr. O'Brien provided background on the Cooperative's history including an annexation problem with the City of St. Marys.

Dale Short, Butler Rural Electric Cooperative's General Manager in El Dorado, presented testimony ([Attachment 7](#)). Mr. Short stated that there had been annexations, that resulted in approximately \$100,000 in lost annual revenues.

Alan Henning, General Manager of the Sedgwick County Electric Cooperative Assn, Inc. in Cheney, shared his company's experience in negotiating franchises ([Attachment 8](#)). He explained that their largest franchise was with the City of Wichita. Mr. Henning also said that in all franchise situations, they essentially negotiate from a precarious position of weakness.

Doug Lawrence, appearing on behalf of Lyon-Coffey Electric Cooperative, addressed the Committee ([Attachment 9](#)) regarding the recent case between the Lyon-Coffey Electric Cooperative, Inc., the State Corporation Commission and The City of Burlington. Mr. Lawrence provided additional details about the case and stated that the outcome of this case was contrary to the stated public policy goals established in the Retail Electric Supplier's Act.

Bruce Graham, Vice President of Member Services and External Affairs for the Kansas Electric Power Cooperative, Inc., appeared before the Committee in support of measures which he said would put fairness into the statutes regarding the certification of a power supplier in territory annexed by municipalities ([Attachment 10](#)).

Mr. Stuart Lowry, General Counsel on behalf of the Kansas Electric Cooperatives detailed two cases he had recently been involved with regarding annexation of service territory ([Attachment 11](#)). Mr. Lowry stated that these cases illustrate the problems associated with the award of certifications under the provisions of the Retail Electric Suppliers Act following a municipal annexation. Included with Mr. Lowry's testimony was a proposed bill draft to amend the Retail Electric Suppliers Act.

The conferees responded to questions from the Committee.

Afternoon Session

Colin Hansen, Executive Director for Kansas Municipal Utilities, addressed the Committee on behalf of his association ([Attachment 12](#)). Mr. Hansen said that changes to the existing service territory statutes would be a serious mistake. The current annexation procedures provide a vital component of consensus service territory legislation that enable municipal utilities to support the move to the current concept of single service. Mr. Hansen outlined two main points: 1) existing service territories were established by consensus legislation that amended municipal annexation provisions and greatly benefitted rural electric cooperatives; and, 2) growth rates indicate that rural electric cooperatives and investor-owned utilities have not been harmed by municipal annexation. Mr. Hansen concluded by stating that one need only review the history of the service territory law in tandem with current rates of growth by utility sector to see that severe revision of service territory statutes is not needed nor even advisable.

Carolyn Armstrong, City Manager for the City of Colby, testified regarding electric service territories and current statutes governing municipal annexation ([Attachment 13](#)). Ms. Armstrong shared her concern about the efforts to "undermine the statutes governing the provision of electric service in areas annexed due to the natural growth of cities." Ms. Armstrong stated that state law demands cities provide all municipal services to its annexed areas. She believes that state policy in this area must be consistent. Ms. Armstrong also addressed her concern about loss of local control and the undercutting constitutional home rule authority.

Mr. Rick Anderson, General Manager of the McPherson Board of Public Utilities, provided comments to the Committee ([Attachment 14](#)). Mr. Anderson stated that legislation removing the decision over who provides electric service to annexed areas from elected city officials would stifle the orderly development of communities and limit a city's electric utility growth. Mr. Anderson closed his testimony by stating that it would be a grave mistake to modify the system that may be imperfect but overall works in a fair and efficient manner.

Conferees responded to questions from the Committee. A member of the Committee requested that a breakdown of customer class and customer consumption be provided to the Committee. Another member of the Committee requested that the number of cities providing full service electric generation be provided to the Committee.

Chairman Holmes asked the Committee for input as to the direction they should take on this topic. By consensus, the Committee agreed to have the industry and municipalities should meet and attempt a compromise. They were asked to report back to the Committee during the October meeting.

Chairman Holmes reported on the task forces he had been appointed to. The first one is through the NCSL and will be looking at what is happening with the tax policies nationwide regarding utilities. Additionally they met to discuss a 50-state comparison on generation and siting. He stated that Kansas is ahead of the curve on relieving siting and transmission issues. The second task force from the NCSL is the Advisory Council on Energy.

Larry Holloway, Chief of Energy Operations for the Utilities Division of the Kansas Corporation Commission addressed the Committee on the activities of the Regional Transmission Operators (RTO's). Mr. Holloway distributed copies of a map of the North American Electric Reliability Councils (Attachment 15). Mr. Holloway responded to questions from the Committee.

Mr. Jim Ludwig, Western Resources, arranged for a tour of the "map room" at Western Resources. The meeting was recessed for the tour.

**August 21, 2001
Morning Session**

Chairman Holmes reconvened the meeting and asked the Committee members to keep track of topics they would like the Committee to address during the coming meetings.

Vice Chairman Senator Clark presented a report on the National Association of Regulatory Utility Commissioners 43rd Annual Regulatory Studies Program he and staff attended (Attachment 16). Senator Clark stated he felt there were three questions at the heart of the sessions. They were: 1) Why should we be required to move to a national competitive market? 2) What tools do you intend to give the consumer to allow "choices" as we moved into "competitive" energy market? and 3) While the Federal Reserve System has the levers to stabilize the economy, who has the levers to stabilize electric and natural gas supply? Senator Clark outlined the sessions he attended and broke them down into three areas: energy, natural gas and electricity. Although the conference also had sessions on telecommunications and water, Senator Clark chose courses that concentrated on energy and natural gas. He then provided an outline of each course he attended along with a narrative description of each.

Robert Chapman, Fiscal Analyst, Kansas Legislative Research Department, also attended the conference and provided a brief description of each course he attended (Attachment 17). Mr. Chapman explained that his goal was to get as much exposure to the different topics of public utilities as possible.

Robert Chapman provided copies of a spreadsheet prepared by Kansas Legislative Research Department on Federal Energy Plan Recommendations and Committee Actions (Attachment 18). This spreadsheet is a breakdown of the National Energy Policy recommendations from the Republican National Energy Plan and the Democratic Energy Plan along with Kansas' actions already taken in reference to those recommendations and policies. Also distributed to the Committee was a copy of the report of the National Energy Policy Development Group's--**Reliable, Affordable, and Environmentally Sound Energy for America's Future** (Attachment 19).

Mary Torrence, Assistant Revisor of Statutes, presented information to the Special Committee on the History of Kansas Legislation relating to energy resources and energy planning (Attachment 20). Ms. Torrence first outlined energy policy and planning activities, followed by energy conservation. She then described electric generation and transmission incentives. She concluded her remarks with renewable energy resources, alternative fuels and oil and gas production concerns.

The Chairman asked the Committee to provide to staff their listings of topics they would like to see addressed. Staff will compile the list and present at the afternoon session.

A copy of the *Wind Energy Development in Kansas--Final Report* was distributed to the Committee (Attachment 21).

Afternoon Session

Chairman Holmes announced that he would like the Committee to prioritize the listing of topics distributed (Attachment 22) and return before the end of the day.

David M. Dayvault, Chairman of the Federal and State Taxation Committee for the Kansas Independent Oil and Gas Association (Attachment 23), commented on the tax provisions of the Bush Energy Plan and how these provisions address many of the concerns of oil and gas producing companies. He stated the most significant tax provision affecting producers is the credit for producing oil and gas from marginal wells at times when the price of oil is lower than \$18 a barrel and gas is lower than \$2.00 per MCF. He also addressed the provision that allows producers to expense their geological and geophysical expenditures. He explained that since both these issues are price sensitive, they would not have any current revenue impact based upon today's market and should not affect the state's budget. They do however, provide a certain degree of relief to energy producers who are thinking about making investment decisions. He made several recommendations to the Committee.

Earl Watkins, General Counsel for the Sunflower Electric Power Corporation, outlined the planning processes they utilize to make sure they are able to continue providing reliable wholesale power to their member cooperatives (Attachment 24). Mr. Watkins provided a brief history of Sunflower Electric's existing and planned facilities. He also addressed the company's transmission service and the fact they were one of the first utilities in the nation to purchase a product known as "spike insurance." He explained that the insurance policy

paid them to purchase power when they encounter a “covered outage event.” That policy has now been replaced by an agreement with a power marketer that guarantees power. Mr. Watkins responded to questions from the Committee.

Richard Kaup, Director of Business Development for Kinder Morgan, addressed the Committee ([Attachment 25](#)). Mr. Kaup provided a brief history of Kinder Morgan and Kinder Morgan Interstate Gas Transmission (KMIGT). He included maps of their pipelines and service territories. Mr. Kaup also explained what it takes to get gas into Kansas. He concluded his remarks by stating that pipeline companies are willing to build needed infrastructure to import clean burning natural gas into Kansas, but need long-term contracts and reasonable tax policies. Mr. Kaup responded to questions from the Committee.

Chuck Dehart, Manager of State and Government Affairs for the Williams Company, distributed a folder that included Williams’ work on the Western Frontier Pipeline, LLC ([Attachment 26](#)). Mr. Dehart also outlined what they believe the legislature should do: encourage production of gas from western Kansas, promote the production of alternative fuel for the siting of new electric power plants and transmission lines to ensure that new plants become operative within a reasonable time frame, review the State’s One-Call laws, promote sound and competitive electric markets, and request that the Kansas Congressional delegation support a national energy policy based on sound economics and promote access to energy supplies. Mr. Dehart responded to questions from the Committee. A member of the Committee asked about expansion of storage facilities and Mr. Dehart responded that they had no plans to expand.

Mr. Laine Lobban, El Paso Pipeline Group, presented information to the Committee on the various pipelines now part of the El Paso group ([Attachment 27](#)). Mr. Lobban included proposed expansion projects on the Colorado Interstate Gas Pipeline and Wyoming Interstate Company. Mr. Lobban responded to questions from the Committee.

Chris Giles, Senior Director of Revenue and Resource Management for the Kansas City Power & Light Company, addressed the Committee on his company’s capacity obligations ([Attachment 28](#)). Mr. Giles stated that they meet their firm load obligations through a wide mix of resources that include coal, nuclear, natural gas, and oil fired generating plants. He said the company continues to ensure its customers will have safe and adequate service by doing its own capacity planning. Mr. Giles responded to questions from the Committee.

Larry Berg, Community Services Manager for Midwest Energy, Inc. explained to the Committee the services provided by his company ([Attachment 29](#)). He stated that they were a member owned cooperative and never find themselves walking a tightrope between maximizing value to shareholders while minimizing costs to customers. Mr. Berg said they see their niche as that of a delivery company but fully recognize the need to provide energy to their customers and do so efficiently. He also explained that they are committed to working closely with the KCC and the Legislature to formulate policy that ensures Kansans will continue to have access to reliable and affordable energy supplies. Mr. Berg made several recommendations to the Committee and responded to questions.

Steve Ferry, Vice President of Wholesale Power Services, UtiliCorp United (West Plains Energy), outlined Utilicorp’s divisions supplying power to Kansas ([Attachment 30](#)).

Mr. Ferry explained his company's comprehensive planning process in providing power to serve its customer's future power requirements. The process includes three components: 1) customer forecast; 2) demand side management; and, 3) supply. He also explained that reliability considerations must also be addressed in the planning process and that the current regulatory environment does not warrant business risks associated with building new regulated generating facilities. Mr. Ferry responded to questions from the Committee.

Written testimony was provided by Bruce Graham, Vice President of Member Services and External Affairs for the Kansas Electric power Cooperative, Inc. (Attachment 31) and by Dick Brewster, Director of Government Affairs for BP (Attachment 32). Mr. Brewster made several recommendations for the Committee to consider.

Jim Ploger, Kansas Corporation Commission's Manager of Energy Programs, addressed the Committee (Attachment 33). Mr. Ploger provided information on 1) Energy efficiency and energy conservation programs the KCC is involved with during FY 2002; 2) Ideas and thoughts of possible incentives to encourage energy efficiency and conservation in residential buildings; 3) Summary of a report regarding possible use of a renewable energy cooperative mechanism for future commercial wind farms; and 4) An update on the current use of net metering in the country. He also distributed copies of the 1995 Progress Report to the Governor and Legislature (Attachment 34) and the 1996 Progress Report to the Governor and Legislature (Attachment 35).

Chairman Holmes asked that the conferees furnish staff with their top two priorities for legislation that would help insure power and energy in the future. Chairman Holmes directed the Committee's attention to two items he had referred to the previous day: information regarding the Wind Energy 2000 Conference follow up meeting in Dodge City (Attachment 36) and the 'pebbles' alternative nuclear power documentation (Attachment 37). He then asked that the Committee prioritize the list of topics previously distributed and turn in to staff. Chairman Holmes asked that staff go through the testimony and outline the conferees' recommendations to be later included in the final interim report.

Following Committee discussion, it was determined that the scheduled meetings dates in September would be cancelled and October 12 would be added to the meeting times.

The meeting was adjourned.

Prepared by Jo Cook
Edited by Robert Chapman, Mike Heim,
and Dennis Hodgins

Approved by Committee on:

April 12, 2002