

Approved

Ken Grotewiel
Date 2/14/91

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Representative Ken Grotewiel at
Chairperson

3:30 ~~am~~ p.m. on February 12, 1991 in room 526-S of the Capitol.

All members were present except:
Representative Holmes, excused

Committee staff present:

Raney Gilliland, Principal Analyst, Legislative Research
Pat Mah, Legislative Research
Lenore Olson, Committee Secretary

Conferees appearing before the committee:

Marshall Clark, Kansas Electric Cooperatives
Louis Stroup, Jr., Executive Director, Kansas
Don Schnacke, Kansas Independent Oil & Gas Association

Chairperson Grotewiel called the meeting to order and announced that there would be introduction of bills.

A motion was made by Representative Shore, seconded by Representative Correll, to introduce a bill relating to unfair business practices by state regulated public utility companies and their affiliates. The motion carried. (Attachment 1)

A motion was made by Representative McClure, seconded by Representative Corbin, to introduce a bill concerning electric generation facilities; relating to siting of such facilities and additions thereto. The motion carried. (Attachment 2)

Chairperson Grotewiel opened the hearing on HB 2161.

Marshall Clark, Kansas Electric Cooperatives, Inc., testified in support of HB 2161. He stated that this bill provides the potential for more "home rule," which is what cooperatives offer anyway. He also stated that this bill does not touch the territorial issue nor siting rules. (Attachment 3) Mr. Clark also responded to questions from members of the Committee.

Louis Stroup, Jr., Kansas Municipal Utilities, Inc., testified in opposition to HB 2161, but stated that they would not oppose the measure if the Committee were to adopt an amendment that they prepared (shown on his written testimony). He also stated that this bill as written exempts Sunflower, Midwest Energy and KEPCo from the bill - but it also leaves nine cities in a position of having no regulatory recourse to settle any contract disputes. (Attachment 4)

Don Schnacke, Kansas Independent Oil & Gas Association, testified in opposition to HB 2161, stating that if legislative assurances could be amended into this bill that their fear of discrimination toward heavy industrial users, like their own oil producers, will not occur, they could support the concept of this bill. (Attachment 5)

Written testimony in opposition to HB 2161 was submitted by Patricia Hackney, attorney from Lawrence. (Attachment 6)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES,
room 526-S, Statehouse, at 3:30 ~~am~~/p.m. on February 12, 1991.

Chairperson Grotewiel closed the hearing on HB 2161.

A motion was made by Representative Freeman, seconded by Representative McKechnie, to approve the minutes of February 7, 1991. The motion carried.

The meeting adjourned.

**PUBLIC UTILITY AFFILIATE AND NONUTILITY
SERVICE REGULATION ACT**

AN ACT Relating to unfair business practices by state regulated public utility companies and their affiliates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Sec. 1. As used in this act:

(a) "Affiliate" means a person, including an individual, corporation, corporate subsidiary, firm, partnership, or incorporated or unincorporated association, whether located within or without the State, that directly or indirectly controls, is controlled by, or is directly or indirectly under common control with a rate-regulated gas or electric public utility, and that is engaged in the sale, lease, rental, installation, construction, modernization, retrofit, maintenance, or repair of equipment, products, or services. The term "affiliate" specifically includes a public utility holding company or an affiliate of a holding company.

(b) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract or otherwise.

(c) "Nonutility service" shall mean any services, products or activities other than the generation, transmission or distribution of electricity or natural gas.

(d) "Emergency service" means service performed by a public utility to correct malfunctions or interruptions in the generation, transmission, distribution, or use of natural gas or electricity that, if not corrected, may endanger life or property or otherwise affect public safety. The term "emergency service" specifically includes the lighting or extinguishing of pilot lights and incidental service and maintenance work necessary to restore and maintain the supply of electrical or gas service to the premises.

Sec. 2

A public utility or affiliate that willfully violates a provision of this chapter, a rule or regulation adopted by the state corporation commission, or a provision of any order lawfully issued by the state corporation commission, is subject to a civil fine, which may be levied by the state corporation commission, of not more than one thousand dollars per violation or one thousand dollars per day of a continuing violation. Civil fines collected pursuant to this section shall be paid to the state treasurer and shall be used only for the low income home energy assistance program and the weatherization assistance program administered by the department of social and rehabilitation services. Fines paid by a rate-regulated public utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to customers.

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Sec. 3.

(a) Rate regulated gas and electric companies are hereby prohibited from providing non-utility services to utility customers except through an affiliate. Non-utility services specifically include providing, leasing, servicing, selling or installing home or business appliances or heating and cooling equipment. However, this subsection does not prohibit the following activities by rate regulated gas and electric companies or rate recovery thereof:

(i) providing emergency service, any service required by law, any projects or activities required by the state corporation commission, or any energy conservation programs established by the commission or by statutes; or

(ii) construction, maintenance or repair of public utility property necessary for the generation, transmission or distribution of electricity, gas or steam if the work performed is necessary to protect the public safety or to avoid interruption of service.

(b) The affiliate shall not have a place of business at or on premises owned or occupied by the public utility. The affiliate shall not share the use of premises, equipment, inventory, personnel or other resources of the public utility. The affiliate shall keep records and accounts separate and distinct from those of the public utility. All transactions between a public utility and its affiliates shall be for current fair market value.

(c) A public utility that makes available to an affiliate the following types of access shall make available on a non-discriminatory basis to all persons engaged primarily in providing nonutility services the following services if utilized by the public utility in connection with its nonutility services:

(i) Access to and use of the public utility's customer lists;

(ii) Access to and use of the public utility's billing and collection system;

(iii) Access to and use of the public utility's mailing system.

(d) This section shall be applicable only to rate-regulated gas or electric public utilities.

Sec. 4.

The state corporation commission shall have jurisdiction over affiliates of rate-regulated gas and electric public utilities operating within this state to ensure compliance with this act and to the extent necessary to accomplish the objectives and purposes of this act. The state corporation commission shall adopt rules as necessary to accomplish the objectives and purposes of this act.

Sec. 5.

The state corporation commission shall have the power to do the following:

(a) Review, inspect, and audit books, accounts, and other records kept by an affiliate.

(b) Investigate the operations of all rate-regulated gas and electric public utilities and their affiliates and their

relationship to each other for the purpose of ensuring compliance with this act.

Sec. 6

A person aggrieved by unfair competition from a utility or a utility affiliate as defined in this act may file a complaint before the state corporation commission.

Sec. 7.

This act shall not apply to water utilities and telecommunication companies.

Sec. 8.

This act shall be known as the "Public Utility Affiliate and Nonutility Service Regulation Act".

DRAFT
~~HOUSE BILL NO. _____~~

By Committee on Energy and Natural Resources

AN ACT concerning electric generation facilities; relating to siting of such facilities and additions thereto; amending K.S.A. 66-1,158 and K.S.A. 1990 Supp. 66-1,159, 66-1,161 and 66-1,162 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 66-1,158 is hereby amended to read as follows: 66-1,158. ~~As used in this act, the following words and phrases shall have the meanings ascribed to them herein:~~

(a) "Commission" means the state corporation commission.

(b) "Electric generation facility" means any physical plant used for the production or generation of electricity or electric power except that the remodeling, reconditioning or retrofitting of any existing physical plant shall not be deemed an addition to an electric generation facility.

(c) "Electric utility" means every public utility, as defined by K.S.A. 66-104 and amendments thereto, which owns, controls, operates or manages any equipment, plant or generating machinery for the production, transmission, delivery or furnishing of electricity or electric power.

(d) "Environmental effect" means an analysis of the impact of a proposed electric generation facility or proposed addition to an electric generation facility on the state's land, water, air, wildlife, historic structures and landmarks, or other environmental resources.

(e) "Environmental impact statement" means a document which discloses the short-term and long-term environmental effects of a proposed electric generation facility or proposed addition to an electric generation facility and includes an analysis of reasonable alternatives to the proposed facility or addition.

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(f) "Landowner" means any person having an estate or interest in any land, which land is proposed to be acquired by an electric utility in connection with the construction, operation and maintenance of an electric generation facility or an addition to an electric generation facility.

~~(e)~~ (g) "Party" means any landowner, electric utility, governmental board or agency, or any other person allowed to intervene in any proceeding under this act.

~~(f)~~ (h) "Person" means any individual, partnership, corporation or other association of persons.

Sec. 2. K.S.A. 1990 Supp. 66-1,159 is hereby amended to read as follows: 66-1,159. (a) No electric utility may begin site preparation for or construction of an electric generation facility or an addition to an electric generation facility or exercise the right of eminent domain to acquire any land in connection with site preparation for or construction of any such facility or addition thereto, without first acquiring a permit from the commission.

(b) Whenever any such electric utility desires to obtain such a permit required by subsection (a), it shall file an application with the commission, setting forth therein that it proposes to construct an electric generation facility or an addition to an electric generation facility and specifying the description and the total number of acres of land that such utility contemplates is needed in connection with the construction, operation and maintenance of such facility or addition thereto. Also, The electric utility shall file with the application: (1) Documents and plans which indicate the total planned utilization of a proposed location for electric generation purposes and; (2) documents and plans for utilization of an alternative location or locations. ~~Such documents and plans with respect to alternative locations shall not be required for additions to existing electric generation facilities. In addition, the electric utility shall file with the application;~~ (3) an environmental impact statement; and (4) such documents

pertaining to the construction, operation and maintenance of the proposed electric generation facility or addition to the electric generation facility and such other matters deemed relevant thereto as may be required by rules and regulations of the commission. Thereupon,

(c) Upon the filing of an application in accordance with subsection (b), the commission shall fix a time for a public hearing on such application, which shall be not less than 30 nor more than 180 days from the date the application was filed and shall be conducted in accordance with the provisions of the Kansas administrative procedure act, to determine. Such hearing shall be for the purpose of determining the necessity for and environmental effect of the proposed electric generation facility or addition to an electric generation facility and the most reasonable location and size of the proposed electric generation facility or addition to an electric generation facility such facility or addition. Prior to the hearing, the commission shall undertake an independent analysis of the environmental impact statement. The commission shall fix the place for hearing, which may be in Topeka or in the county in which is located the major portion of the land which has been or is proposed to be acquired in connection with the construction, operation and maintenance of the proposed electric generation facility or the addition to the electric generation facility. Such hearing may be held in Topeka. The commission shall give public notice of the hearing to all parties who may be affected by the proposed electric generation facility or proposed addition to the electric generation facility.

Sec. 3. K.S.A. 1990 Supp. 66-1,161 is hereby amended to read as follows: 66-1,161. The commission shall appoint an attorney to represent the interests of the landowners at the hearing and an attorney to represent the interest of all parties ^{determined by the comm.} environmentally ^{to be} affected by the proposed electric generation facility or proposed addition to the electric generation facility. The commission shall allow a reasonable attorney's-fee attorney fees for such

attorneys, which shall be taxed as part of the costs thereof. Landowners or parties environmentally affected by the proposed facility or addition, at their own expense, may retain counsel to represent their individual interests at such hearing. The chief administrative officer, or any other person or persons designated by such officer, of any governmental board or agency affected by the siting of the proposed electric generation facility or addition to an electric generation facility shall be deemed to meet the requirement for intervention contained in subsection (a)(2) of K.S.A. 77-521 and amendments thereto. Any owner or lessee of land whose estate or interest in such land would not be acquired by the electric utility but would be affected in some other manner by the construction, operation or maintenance of the electric generation facility or addition to an electric generation facility may petition for intervention in accordance with the provisions of K.S.A. 77-521 and amendments thereto.

Sec. 4. K.S.A. 1990 Supp. 66-1,162 is hereby amended to read as follows: 66-1,162. (a) Except as otherwise provided in this act, the rules and regulations adopted by the commission pursuant to K.S.A. 66-106 and amendments thereto to govern the commission's proceedings shall be applicable to any proceeding before the commission under this act. The electric utility shall proceed with the introduction of evidence of the necessity for the proposed electric generation facility or addition to an electric generation facility and of the reasonableness of the proposed location and size of the ~~electric-generation-facility-or addition---to--an--electric--generation~~ facility, including an analysis of the environmental impact of the proposed facility or addition. The burden of proof on any such matter shall be upon the electric utility and shall be established by a preponderance of the evidence. All parties present or represented by counsel at the hearing shall have an opportunity to be heard and the right to cross-examine any witness appearing before the commission at the hearing. The commission shall cause a transcript to be made of the hearing. All costs of any hearing,

shall be taxed against the electric utility. The hearing and all parties' arguments shall be completed within 90 days after the commencement thereof. At any time after the commencement of the hearing, the electric utility may withdraw its application for the permit required by K.S.A. 66-1,159 and amendments thereto.

(b) The commission shall make findings of fact and file such findings with its decision to grant, grant conditioned by such findings or withhold the permit applied for, except that whenever approval of applications are pending with or must be obtained from any state regulatory authority which relate to the operation of any such facility or addition to a facility, the commission shall postpone its decision until proof of the approval or disapproval of any such application is received. In any case where a state regulatory authority cannot render final approval of any such application until the facility or addition to a facility is in actual operation, the commission shall accept as proof of approval or disapproval the state regulatory authority's certification of probable acceptability or unacceptability of an application. Prior to making its determination with respect to the most reasonable location and size of a proposed electric generation facility or addition to an electric generation facility, the commission shall make its determination of whether or not a necessity exists for the electric generation capacity of a proposed electric generation facility or addition to an electric generation facility. In addition to any other consideration deemed necessary in making such determination, the commission shall consider and make determinations on the following factors: (1) Whether or not the electric generating capacity of the proposed facility or addition to a facility meets or contributes to the meeting of the electrical energy needs of the people of this state considering the probable future statewide electrical energy needs thereof; and (2) whether or not available electrical generating capacity exists within the state that is capable of being distributed economically, reliably, technically and environmentally; and (3) whether any adverse

proposed

Those to be served by

environmental effects of the proposed facility or addition to a facility outweigh the benefits to the economic and public welfare of [the area where the] facility or addition [is proposed to be located.] Whenever the commission determines that a necessity exists for electric generation capacity to be provided by a proposed electric generation facility or addition to an electric generation facility, it shall make its determinations with respect to the most reasonable size and location of any such facility or addition to a facility. In addition to any other consideration deemed necessary in making a determination with respect to the size of a proposed facility or addition to a facility, the commission shall consider the electric utility's total planned utilization of a proposed location for electric generation purposes as it relates to the necessity found by the commission for additional electric generating capacity in the state. In addition to any other consideration deemed necessary in making a determination with respect to the most reasonable location of a proposed facility or addition to a facility, the commission shall consider the environmental effects and the availability of natural resources necessary in the operation of a proposed facility or addition to a facility as the same relates to each alternative location submitted by the electric utility as required by the provisions of K.S.A. 66-1,159 and amendments thereto. The location of the existing generation facility shall be the most reasonable location for any addition to such facility. Upon a determination that a necessity exists for the proposed electric generation facility or the addition to an electric generation facility and that the proposed location and size of such facility or addition thereto are the most reasonable, the commission shall issue to the electric utility a permit to construct such facility or addition thereto, except that the commission may condition such permit with respect to the location and size of the proposed electric generation facility or addition to an electric generation facility to provide for an alternate location or size, or both, thereof, but in no case

shall the commission provide for a size larger than that applied for. Upon the issuance of such permit, no local ordinance, resolution or regulation shall prohibit the construction of the electric generation facility or addition to an electric generation facility, and the electric utility may proceed with such facility or addition thereto notwithstanding any requirement to obtain any building permit under any local zoning ordinance, resolution or regulation.

Sec. 5. K.S.A. 66-1,158 and K.S.A. 1990 Supp. 66-1,159, 66-1,161 and 66-1,162 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

TESTIMONY

H.B. 2161

Good afternoon, Mr. Chairman and members of the Committee. Thank you for this opportunity to appear before you in support of H.B. 2161.

I am Marshall Clark, and I represent the Kansas Electric Cooperatives, Inc. (KEC) which is the statewide association for thirty-four rural electric cooperatives in Kansas.

H.B. 2161 does not in itself deregulate anybody. It puts in place a local option so that a local distribution cooperative may, by a vote of its members, as explained in the bill, remove itself from the purview of the Kansas Corporation Commission (KCC) for rates and rules and regulations. The bill excludes KEPCo, Sunflower and Midwest Energy by use of wording which actually mimes CURB's statutory wording. So, the option would only be available to the small distribution cooperatives which range from about 7,000 members down to about 1,400 members, with the bulk being in the 2,000 to 5,000 range.

The bill does not touch the territorial issue nor siting rules. The purpose of the bill is principally economic. Since cooperatives are self-regulating, that is, run by the customer members, cost involved in regulation, especially dealing with rate cases, is redundant. Sometimes, these administrative costs make half or more of the total rate increase. Rural electric rates, on average, are higher than urban rates simply because there are far fewer users to bear the costs. The bill also provides the potential for more "home rule", which is what

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cooperatives offer anyway.

The KEC voted approval to pursue this local option legislation. KEC staff, at the instruction of its board, has met with Governor Finney and her Senate and House liaisons, Mr. Alexander and Mr. Reser, with CURB, and with each of the KCC Commissioners to make sure none had objections to the bill. Staff has also made the bill available to the investor-owned utilities and the municipals to see if they had problems with it.

With this testimony is a statement from PR&W Cooperative Manager Kenneth Maginley.

Mr. Chairman, it is the rural electric consumer who, through us, is asking for this local option to deregulate. We hope you will respond favorably. This concludes my testimony and, if the Chairman wishes, I'll stand for questions.

STATEMENT OF KENNETH MAGINLEY
MANAGER, PR&W ELECTRIC COOPERATIVE ASSN., INC.

Good afternoon, Mr. Chairman. I am Kenneth Maginley, and I am manager of the PR&W Electric Cooperative in Wamego, Kansas. I support H.B. 2161, the local option to deregulate from certain KCC rules, in particular, rate jurisdiction. As a manager, I am acutely aware of the costs of regulation. Without going into detail, I can say that, typically, 25% of the total increase requested in a rate case will be spent on the administrative costs.

Each distribution cooperative elects a board of directors, usually seven or nine people, from its cooperative territory. Many cooperatives divide their own territory into sections, much like the state is divided into legislative districts, so that the cooperative board members or directors will truly reflect the entire membership of the cooperative territory. This board elects its own officers to set cooperative policy (and rates).

The board employs a professional manager for the day-to-day operation of the business, and he in turn employs the staff to service the lines and run the office. In a case such as the legislation under consideration, each co-op supplies a delegate to act as official board member to KEC, our statewide association. Among a number of standing committees within the KEC is a Legislative Committee. When interest in an initiative such as this occurs, it is referred to that committee. After thorough discussion, the committee makes a recommendation to

the board. In this case, of course, the committee recommended pursuit of the legislation. It was then discussed at several KEC board meetings. Each representative took the issue back to his or her cooperative, where the local boards again discussed it. Finally, the RECs came back and voted for KEC to help prepare a bill. In addition, KEC staff held further clarification discussions at each of six annual district meetings to make sure everyone was clear on the subject.

The bottom line of all this is that through one of the most democratic systems anywhere the membership of the co-ops, that is the consumers, have directed KEC staff to solicit the Kansas Legislature to make this local option available to them.

I firmly believe that if a co-op is content with its board and manager's operation of its system, that it should have the option to deregulate.

Thank you for your consideration.

Respectfully,

Kenneth Maginley

TESTIMONY ON HB 2161
Before House Energy & Natural Resources Committee
February 12, 1991

Mr. Chairman, members of the Committee, I am Louis Stroup, Jr., executive director of Kansas Municipal Utilities, Inc., a statewide association of municipal water, gas and electric cities which was founded in 1928. KMU has 145 member cities which provide utility services to slightly more than 1 million Kansans.

We are opposed to HB 2161 as written, but would not oppose the measure if the Committee were to adopt an amendment that we have prepared (amendment attached).

A majority of our 122 municipal electric systems are interconnected with neighboring utilities and the resulting transmission services and purchases of power for resale (wholesale) are under the jurisdiction of either the Federal Energy Regulatory Commission in Washington, D.C. or the Kansas Corporation Commission. FERC has jurisdiction over transmission and resale contracts between private power companies and the cities -- KCC has jurisdiction over transmission and resale contracts between RECs and the cities.

HB 2161 as written exempts Sunflower, Midwest Energy and KEPCo from the bill -- but it also leaves nine of our cities in a position of having no regulatory recourse to settle any contract disputes. Because these cities are small and because our cities do not own transmission lines, they could not easily obtain alternate power sources if they reached an

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impasse with a local REC over transmission or resale power costs.

By adopting our amendment, all transmission services and sale for resale (wholesale) contracts would remain under the KCC, regardless of the size of the REC's membership. This would provide those cities the same protection that all the other cities that purchase similar services receive from FERC or the KCC.

We have no problem with the 69 cities which RECs sell at "retail" because those customers are actual members of the RECs and would have a vote on deciding the issue of deregulation. The 9 wholesale cities would have no such vote.

We urge the adoption of the proposed amendment so that we may remove our opposition to the bill.

HOUSE BILL No. 2161

By Representatives McClure, Bryant, Campbell, Correll, Garner, Gatlin, Hamm, Jones, Krehbiel, Larkin, McKechnie, Minor, Mollenkamp, Rezac, Roe, Roper, Shore, Watson, Wempe, White and Wiard

2-6

11 AN ACT concerning the state corporation commission; providing for
12 exemption of certain electric public utilities from certain aspects
13 of commission regulation.

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. (a) As used in this section, "cooperative" means any
16 cooperative, as defined by K.S.A. 17-4603 and amendments thereto,
17 which has fewer than 15,000 customers and which provides power
18 principally at retail.

19 (b) Except as otherwise provided in subsection (f), a cooperative
20 may elect to be exempt from the jurisdiction, regulation, supervision
21 and control of the state corporation commission by complying with
22 the provisions of subsection (c).

23 (c) To be exempt under subsection (b), a cooperative shall poll
24 its members as follows:

25 (1) An election under this subsection may be called by the board
26 of trustees or shall be called upon receipt of a valid petition signed
27 by not less than 10% of the members of the cooperative.

28 (2) The proposition for deregulation shall be presented to a meet-
29 ing of the members, the notice of which shall set forth the proposition
30 for deregulation and the time and place of the meeting. Notice to
31 the members shall be written and delivered not less than 10 nor
32 more than 35 days before the date of the meeting.

33 (3) If the proposition for deregulation is approved by the affirm-
34 ative vote of not less than 2/3 of the members voting on the prop-
35 osition, the cooperative shall notify the state corporation commission
36 in writing of the results within 10 days after the date of the election.

37 (4) Voting on the proposition for deregulation shall be in person
38 but, if the bylaws of the cooperative so provide, may also be by
39 proxy or by mail, or both. With regard to a vote on the proposition
40 for deregulation, no person shall vote as proxy for more than three
41 members.

42 (d) A cooperative exempt under this section may elect to ter-

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1 minate its exemption in the same manner as prescribed in subsection
2 (c).

3 (e) An election under subsection (c) or (d) may be held not more
4 often than once every two years.

5 (f) ~~Nothing in this section shall be construed to affect the single
6 certified service territory of a cooperative or the authority of the
7 state corporation commission over a cooperative with regard to serv-
8 ice territory, wire stringing and transmission line siting, pursuant to
9 K.S.A. 66-131, 66-183, 66-1,170 et seq. or 66-1,177 et seq., and
10 amendments thereto.~~

11 Sec. 2. This act shall take effect and be in force from and after
12 its publication in the statute book.

A SUBSTITUTE SECTION (f):

Nothing in this section shall be construed to affect the single certified service territory of a cooperative or the authority of the state corporation commission over a cooperative with regard to service territory, transmission services, sales of power for resale, wire stringing, and transmission line siting, pursuant to K.S.A. 66-131; 66-183; 66-1,170 et seq.; or 66-1,177 et seq., and amendments thereto.

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MUNICIPAL ELECTRIC CITIES
NOT CONNECTED WITH RECS
BUT NOT PROTECTED UNDER
HB 2161 BY KCC

Kiowa (Alfalfa)
Lakin (Wheatland)
Meade (CMS)
Dighton (Lane- Scott)
Lindsborg (DS&O)
Johnson City (Pioneer)
Herndon (Northwest)
Mahaska (NCK)
Anthony (Alfalfa)

MUNICIPAL ELECTRIC CITIES
INTERCONNECTED WITH RECS
THAT ARE PROTECTED
UNDER HB 2161 BY KCC

Garden City (Sunflower-WH)
Colby (Midwest)
LaCrosse (Midwest)
Oakley (Midwest)
Goodland (Midwest)
Hill City (Midwest)
Jetmore (Midwest)
Norton (Sunflower)
Oberlin (Sunflower)
St. Francis (Sunflower)
Sharon Springs (Sunflower)
Radium (Midwest)

MUNICIPAL ELECTRIC CITIES INTERCONNECTED WITH PRIVATE POWER COMPANIES
THAT ARE PROTECTED BY FERC

KPL Cities

Alma
Altamont
Axtell
Centralia
Chapman
Clay Center
DeSoto
Ellinwood
Elwood
Enterprise
Eudora
Herington
Hillsboro
Holton
Horton
Larned
Lindsborg
Marion
McPherson
Minneapolis
Morrill
Osage City
Sabetha
Scranton
Seneca
Severance
St. John
St. Marys
Stafford
Sterling
Toronto
Troy
Vermillion
Wamego
Waterville
Wathena
Robinson

KGE Cities

Arcadia
Blue Mound
Elsmore
Girard
LaHarpe
Mount Hope
Oxford
Augusta
Coffeyville
Neodesha
Winfield
Iola
Arma
Bronson
Erie
Haven
Moran
Mulberry
Savonburg
Burlington
Mulvane
Wellington
Chanute
Fredonia

Centel Cities

Ashland
Glasco
Osborne
Isabel
Hoisington
Beloit
Lincoln
Stockton
Montezuma
Attica
Cawker City
Lucas
Cimarron
Pratt
Washington
Glen Elder
Mankato
Holyrood
Russell
Luray

KCPL Cities

Kansas City
Prescott
Baldwin City
Garnett
Gardner
Pomona
Osawatomie
Ottawa

NOTE: 32 cities are members of the Kansas Municipal Energy Agency in Mission -- KMEA is under KCC jurisdiction



KANSAS INDEPENDENT OIL & GAS ASSOCIATION

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February 12, 1991

TO: Members of the House Committee on Energy and Natural Resources

RE: HB 2161

KIOGA has made electrical rates an issue for a number of years for very good reasons.

We intervened in the Wolf Creek rate making hearing in 1985 to call the KCC's attention to how sensitive electric power is to the economic well-being of the independent oil operators in Kansas.

We conducted a survey among over 4700 licensed oil operators in Kansas and confirmed that electric power was the fuel of choice when natural gas was not available; and that increased electric rates for producers who use electricity 24 hours a day, seven days a week, will have a dramatic economic impact on our industry and the economy of Kansas.

Electricity equates to about 50% of our lifting costs. Premature abandonment and plugging of wells are of real concern to us.

We have a very good relationship with the electric co-ops today and we want to maintain that good relationship. We think that good relationship exists, in part, through the regulatory discipline that arises from the KCC. We also buy electricity from the larger and publicly held electric companies such as KPL-Gas Service, KG&E, and Centel. In many instances, special rate design and incentives are extended to oil operators to keep them happy and hooked up to electricity.

When the KCC regulatory control is lost as is provided under HB 2161, and the members of the cooperative are put in control, we feel that the balance of fairness relating to rates could tilt away from the oil producers, many of whom are not local residents, nor have they the votes to keep cooperative members from favoring certain consumers over very high use industrial users such as oil producers.

If we could amend into HB 2161 legislative assurances that our fear of discrimination toward heavy industrial users, like our own oil producers, will not occur, then we could support the concept of HB 2161.

Donald P. Schnacke

DPS:pp

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Attachment 5

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To: House Energy and Natural Resources Committee

From: Patricia Hackney

Date: February 12, 1991

RE: HB 2161

Although I am unable to appear before the Committee today to testify in person regarding HB 2161, I appreciate the opportunity to express my concerns and opposition to this bill.

HB 2161 deregulates certain electric cooperatives from regulation by the KCC if those cooperatives vote to be deregulated. I hope the Committee will take the following information into account before passing such a law.

First, please note that I am not a member of a rural electric cooperative. My concerns regarding this issue stem from my work as an administrative assistant to Commissioner Margalee Wright during most of her term on the Commission. During that time, the idea of deregulating the rural electric cooperatives was debated several times.

Coops already have an expedited filing process. In 1986, KCC staff were asked to comment on expedited rate cases for rural electric cooperatives. They recommended that although cooperatives should be able to file an abbreviated rate case, specific issues should not be allowed to be raised in an expedited case. These issues included rate design. Since a change of administration was about to take place, the Commission did not act, but waited until the change in power. After that change, the KCC dramatically streamlined the requirements for rural electric cooperatives filings. Those looser regulations were incorporated into the rules and regulations of the KCC. Therefore, these utilities already enjoy a faster, less complex and costly rate filing process currently under the KCC regulations.

Lack of member participation in the cooperative structure and process was an ongoing concern, even with the partial deregulation by the Commission. To attempt to answer this concern, the Commission wrote mandatory member notice and hearing requirements into the streamlined regulations. In addition, the Commission sent letters to the cooperatives (a copy is attached) in an effort to encourage them to allow more member participation in light of the looser KCC regulations. Many

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attachment 6

concerns continued to be raised by electric cooperative members about the partial deregulation of those entities.

Numerous letters and calls were received by Commissioner Wright. When I saw that this bill was introduced, I wanted to make sure that the problems that were expressed in 1986 in even partially deregulating rural electric cooperatives be raised before this Committee.

Members did not have access to board meetings. A main problem was access. Although it sounds perfectly logical that under a cooperative situation the members would have control, that is not true. The Attorney General has ruled that electric cooperatives are not subject to the open meeting law (see attached articles). Many coop members have little or no access to board meetings. If members did want to attend, in at least one coop they had to give up to 14 day notice to the Board that they wanted to attend, an explanation of why they wanted to attend, and must leave after their topic of interest is discussed.

Members did not have access to cooperative records. Members did not have open access to review cooperative records. And if they were able to look at the records, they were not in a form that was understandable. This is a problem staff continued to have. Much of KCC staff time in a coop rate case was used in straightening out the books of the cooperative. There was little or no itemization of specific expenditures (such as "contributions", "meeting expenses", "PR expenses", "general miscellaneous"). In some cooperatives, members could view records only if they could tell the cooperative exactly what record they wanted.

Members did not have access to a membership list in order to communicate their ideas to other members or to campaign to get elected to the board. Even if a member wanted to work to get elected to the Board, they had a hard time. We were told membership lists are not available to members. Secondly, the board appoints the nominating committee.

Board authority to amend bylaws. Several members told us that their board had the authority to amend the bylaws at any regular or special board meeting without any member involvement.

Most cooperative members do not have the expertise to regulate their utility. Utility regulation is a difficult field. Complex accounting procedures and rate designs do not make it an easy hobby for a ratepayer or coop member-owner. Expertise, time, money, and access to coop records and information is needed to even begin to oversee and question management. This problem is similar to what happens in a municipally-regulated or owned

utility. City commissioners and consumers have problems overseeing management because of lack of expertise. For example, issues that need to be regulated include cost-service studies and how they are done, line loss calculations, out-of-test year charges, and customer charges. There are policy as well as cost considerations.

Rate design should not be deregulated. Rate design determines which class of customers pays what percentage of the cost of electricity. The conflicts between irrigation, industry, residential, business are acute. Utilities have built-in incentives to design rates so the inelastic customer (captured customer which is usually residential) pays more. Even if the higher rates for residential are justified by a cost of service studies, there are conflicting economic methods of determining cost of service. The customer service charge is an aspect of rate design where the coops have repeatedly tried to charge higher rates. That up-front charge is a stable source of income for the coop, but not necessarily the best way to price energy. Small users end up paying more.

Rural electric cooperatives are monopolies that supply a necessity to the community. These are not cooperatives like a food cooperative or a credit union. If I get angry at my food cooperative board, or if I disagree with their policies, I can go shop at Dillons. It must be remembered that rural electric cooperatives are monopoly suppliers of electricity, an absolute necessity to rural communities and families. It is issues such as these that make deregulation of rural electric coops a disturbing proposition.

The bill as written presents problems in the way an election to be deregulated would be held. It does not mandate an informative mailing to all members explaining what the vote is about. The bill says that the board could call for the election, and the proposition for deregulation "shall be presented to a meeting of the members." Notice to members must be delivered no less than 10 nor more than 35 days before the meeting. All that is needed is 2/3 OF THE MEMBERS VOTING ON THE PROPOSITION (presumably 2/3 of the people who show up for the meeting) to deregulate the coop. If the legislature insists on allowing for such a drastic step as deregulation of these monopolies, it should at least require 2/3 of ALL members. Further, I hope you will consider amendments mandating access by members to board meetings and records.

Deregulation does not have a pretty history. It is deregulation of bus systems, train routes and airlines that have contributed to the decline of rural America. Without assurances that adequate controls are in place, it is unconscionable that the legislature would continue to erode the protections of our rural communities.

Thank you for the opportunity to present my concerns.



Kansas Corporation Commission

MIKE HAYDEN GOVERNOR
 KEITH R. HENLEY CHAIRMAN
 RICH KOWALEWSKI COMMISSIONER
 MARGALEE WRIGHT COMMISSIONER
 JUDITH MCCONNELL EXECUTIVE DIRECTOR
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 TOPEKA, KANSAS 66612-1571

February 23, 1988

Alfalpa Electric Cooperative, Inc.
 Max Ott, General Manager
 P.O. Box 39
 Cherokee, OK 73728

Dear Mr. Ott:

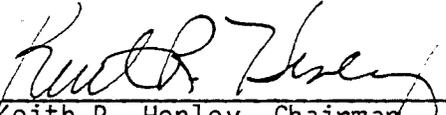
The new alternative filing procedures for rural electric distribution cooperatives with membership less than 15,000 will be in effect on May 1, 1988. We appreciate your effort in working with staff to arrive at a procedure that is both efficient and thorough.

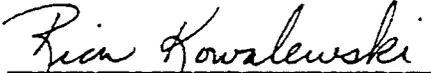
The success of the new procedures will largely be based on increased customer participation in the cooperatives' decision-making process. One key factor in accomplishing this would be for the Rural Electric Cooperatives to open their board meetings to their respective members. We strongly encourage those Cooperatives that have not already opened their board meetings to do so.

The rate-making process can only be strengthened by encouraging active member participation. We ask that you make the commitment to open your board meetings.

Thank you, in advance, for your cooperation.

Sincerely,


 Keith R. Henley, Chairman


 Rich Kowalewski, Commissioner


 Margalee Wright, Commissioner

Electric Co-ops Keep Members In Dark

By DALE GOTER
Harris News Service

TOPEKA — The people who brought electric light to Kansas barnyards are catching heat for not bringing sunshine to their board meetings.

Kansas rural electric cooperatives — a 50-year institution across the state — are the center of a controversy that stretches from Gov. Mike Hayden's office in Topeka to the office of Irwin Alefs, mayor of the Southwestern Kansas community of Moscow, population 225.

At issue is deregulation of rural electric co-ops, championed by Hayden's gubernatorial campaign but feared by some rural electric customers who say they are losing control of the member-owned utility companies.

Last week, the Kansas Corporation Commission — made up of one Democrat and two Hayden-backed Republicans — tentatively approved a modest deregulation measure. Chairman Keith Henley says the action was his initiative. Although Hayden supports deregulation of the small co-ops serving 141,000 Kansans, he did not order the action, Henley said.

Under the change, 34 rural electric co-ops serving 15,000 or fewer customers each, would be allowed to take an abbreviated and less expensive route to raising electric rates. Midwest Electric Cooperative, which serves Central Kansas, is ineligible for the new procedure because it serves more than 15,000 customers. Sunflower Electric, serving Western Kansas, and KEPCO, serving mostly Eastern Kansas, are ineligible because they are wholesalers.

Instead of dealing with the time and expense of the KCC's standard 240-day rate increase procedure, eligible co-ops will be allowed to submit far less information and have the rate increase approved in 80 days or less.

The KCC has had an informal procedure for "expedited" rate cases in the past, allowing for rate increases in as little as 30 days. The new proposal formalizes the procedure, and includes a requirement for a public hearing to allow members to comment on the proposed increase.

The change has the endorsement of Kansas Electric Cooperatives, Inc., which lobbies the state Legislature on behalf of Kansas rural co-ops. KEC's political action committee also donated \$1,750 to Hayden's election campaign.

Lester Murphy, executive vice president of KEC Inc., says the change is long overdue. For small co-ops, the task of dealing with the 240-day rate increase procedure was a tremendous obstacle, he says.

"In many cases, the cost of the process would be half of what the rate increase would raise," Murphy said.

But the proposed change does little to appease critics such as Alefs, whose father was one of the founders of the Central Kansas Electric Cooperative in Great Bend in the

1930s. Alefs cites two main reasons groups such as the Moscow City Council and the Southwest Kansas Consumer Group are wary of the new procedure proposed by the KCC.

One involves Sunflower Electric and its expensive new power plant at Holcomb, which has required double-digit rate increases to pay off the debt. The other is the lack of access by customers to the board meetings of co-ops such as Sunflower Electric.

Alefs and other co-op critics agree with the need for a shortened rate increase procedure, but they also worry about losing control of the co-ops if the KCC steps away from regulating them.

Without strict oversight by the KCC, critics say, co-op boards are vulnerable to the pressure of special interests and could shift the burden of cost onto certain member groups — such as residential or small business customers — so that large industrial customers can get cheaper rates.

"Either the KCC maintains its regulation or we be given the same open meetings protection afford the city dweller, school patron or county resident," Alefs wrote the KCC.

"The system is designed to keep member-owners from knowing what is going on," agrees Barbara Jessup, Moscow housewife who heads the Southwest Kansas Consumer Group.

Although co-ops are required to have annual meetings with their members, those sessions are little more than "dog and pony shows" where members get little information about how decisions are made, Jessup says.

Stan Clark, a photographer in the Western Kansas town of Oakley, says co-op managers and boards are bent on keeping the average customer from knowing how the co-op is run.

"In theory, I agree totally with streamlining and deregulating co-ops," Clark says. "But there are times when it usurps its authority and loses sight of the fact it was created to serve the people. They have become employee co-ops and not member co-ops."

Clark, a former board member of the Great Plains Cooperative, says the system is set up to discourage member participation.

Members who want to speak to the board at its meetings must file notice 14 days before the meeting, he said. The board, however, can meet after just five days' notice, making it impossible for members to get on the agenda.

Murphy acknowledged that co-op boards would rather not be compelled to open up their meetings in the same fashion as school boards, county commissions or city councils.

"The board of directors has the responsibility by law to protect the co-op and its members," he said. "They can see the potential for misuse of certain information. There are some sensitive matters and information taken up at

meetings."

Because co-op boards are elected by their member-owners, they are held accountable to the membership, Murphy said. The same logic applies to the need for an expedited rate review by the KCC, he said.

"In essence, our members have to pay the cost of presenting the rate increase to the KCC, and they also have to pay the commission's costs to investigate the proposal," Murphy said.

On the issue of open meetings, the co-op boards have Attorney General Robert Stephan on their side. In a 1985 opinion, Stephan said co-ops are private organizations not covered by the Open Meetings Act.

That opinion doesn't sit well with consumer activists like Jessup, who contend that the co-ops relied on government-guaranteed loans for their start and therefore should be more open to members.

KCC Chairman Henley says he agrees with the open meetings concept, but sees no recourse for the KCC.

"Philosophically, I believe co-op members should have access to all meetings and information," he said, but the KCC lacks the legal clout to force that.

Commissioner Margalee Wright, the lone Democrat on the KCC, has reservations about the proposal.

"It seems to me if you have co-ops operating as they were intended to operate, then they are run by member-owners and that is the ideal," she said.

"If that was the case, there wouldn't be much need for the KCC to do much more than rate design.

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