Approved: 3/17/93
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Chairperson Ben Vidrickson at 9:00 a.m. on March 16, 1993 in Room 254-E of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Martha Ozias, Committee Secretary

Conferees appearing before the committee:
Jim Ludwig, Western Resources
Rebecca Rice, Midwest Energy
Jack Lane, KNNI, Wichita
Don Low, KCC
Gary Hibbert, Hudson, Kansas
Stephen Hill, President, The Bowersock Mills & Power Company, Lawrence
Jack Glaves, Bowersock Mills & Power Company of Lawrence
Earnie Lehman, Director of Electric and Gas Rates, Western Resources, Inc.
Pat Parke, Director of Customer Services and Marketing, Midwest Energy, Inc.

Others attending: See attached list

Hearings continued on **HB 2041** concerning prevention of damage to certain underground utilities facilities. Jim Ludwig spoke in support of this bill which would reduce third party damage to natural gas and underground electric lines as well as enhance public safety. He was in agreement with earlier testimony which requested that the definition of "excavator" be amended and offered a clarification of the amendment. (See Attachment A)

Rebecca Rice and Jack Lane spoke briefly in support of this bill.

Testimony was distributed but not read from Martha Jenkins, Government Affairs Manager, (See Attachment B), Mike Reecht, Director, State Government Affairs for AT & T in Kansas, (See Attachment C) and Rob Hodges, President of Kansas Telecommunications Association. (See Attachment D)

Don Low addressed the committee on **SB 381** relating to parallel generation services, and expressed concern that the bill was unclear and ambiguous as to whether capacity costs are to be considered regardless of the need of additional capacity represented by parallel generators. He pointed out that if it was the intent to require compensation which includes capacity costs regardless of excess capacity on the utility's system, it was probably not legal and if it was intended to require compensation based on capacity costs then it restates current requirements. (See Attachment E)

Gary Hibbert gave a comparative analysis of the way the law is now written to encourage independent power production in Kansas by verbatim law instead of being loose-ended as he now interprets it. (See Attachment F)

Stephen Hill spoke in support of this bill and pointed out that renewable energy sources have not been adequately encouraged in the state and Kansas ranks in last place in the development of these sources. He stated that Kansas is not deficient in such resources, particularly wind energy. He explained that passage of this bill would encourage renewable energy sources in Kansas, which is sound public policy and in the best interest of all Kansans inasmuch as wind and water are renewable natural energy sources which do not deplete or pollute. (Attachment G)

Jack Glaves also spoke in support of **SB 381** saying it sends a clear message to regulators and to existing and potential cogenerators and small power producers that it is the policy of Kansas to encourage environmentally beneficial projects. Efficient power producers are encouraged to participate in supplying electric cogeneration for Kansas and will be compensated for costs if, by supplying such energy, it will avoid construction of additional capacity by the utilities. (See Attachment H)

Earnie Lehman spoke in opposition to this bill stating that if passed into law, it would lead to a proliferation of new power plants, and would require a raise in rates for customers. (See Attachment I)

Pat Parke also spoke in opposition to **SB 381** and presented a list of concerns, the major ones being 1, 2, and 5 as listed in the attachment. (See Attachment J)

Testimony was also distributed but not read from Lee Sippel, of the Kansas City Power and Light Company, (See Attachment K) as well as the Fiscal Note for **SB 381** by The Senate Committee on Federal and State Affairs. (See Attachment L.)

The chairman called for action on **SB 329** concerning age requirements for commercial drivers' licenses and **HB 2189** amending the Kansas uniform commercial drivers' license act. Senator Brady made a motion to amend **SB 329** into **HB 2189.** This was seconded by Senator Tiahrt. Motion carried. Senator Papay then made a motion to pass **SB 329 and HB 2189** as amended favorably out of committee. This was seconded by Senator Harris. Motion carried.

Because of time constraints **HB 2415** on Emergency Vehicles was not heard and will be rescheduled at a later time.

The Chairman adjourned the meeting

The next meeting is scheduled for March 17, 1993.

GUEST LIST

SENATE TRANSPORTATION COMMITTE

DATE: March 16, 1993

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Lester Murphy	Box 4267 Topeka	Kansas Electric Co-Op.
Marshall Clark	topeka	KCC
Tom Day	Topeka	KCC
Earnie Lehmann	~~Western Resources~~, Topeka	Western Resources
Robert A Fox	Topeka	KCC
Jim Ludwig	"	WESTERN RESOURCES
Jim Caplinger	Topeka	Ks. State Fire Marshal
Glenn D Miller	"	KCC
ED SCHAUB	"	WESTERN RESOURCES
Tom Whitaker	"	Ks Motor Carriers Assn
David Nichols	"	SWBT
Whitney Damron	Topeka	Pete McGill & Assoc. / KEPC
Lena Powers	"	MCI
Russ Bishop	4107 St. Michaels, Houston	Panhandle Eastern
GARY HIBBERT	RT 3, BOX 38	SELF
BRUCE GRAHAM	Topeka	KEPCo
Dave Frankel	Lawrence	KTLA - intern
Pat Parke	PO Box 898 Hays	Midwest Energy
Rebecca Rice	Topeka	Midwest
Curt Carpenter	Great Bend	West Plains Energy
Cameron Brewer	Topeka	KTLA

GUEST LIST (continued) DATE: 3/16/93

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Dick Duncan	Topeka	KMCA
Mary E Turkington	Topeka	Ks Motor Carriers Assn
Don Smith	TOPEKA	KS Motor Car Dealers Assn
Don Low	KCC	KCC
Stephen H. Hill	LAWRENCE	The [illegible] Mill & Power Co
[illegible]	Wichita	" " & PH Eaton
[illegible]	Topeka	AT&T
Tim Louderback	Topeka	BARBEE & ASSOC.
Don Schnacke	"	KIOGA
Janet Stubbs	"	HBAK-KLICA
KEVIN ROBERTSON	"	Enron Corp/Barbee Assoc

TESTIMONY BEFORE THE

Senate Transportation and Utilities Committee

by

Jim Ludwig
Western Resources

March 15, 1993

Chairman Vidricksen and members of the Committee:

We support the efforts of the Kansas Corporation Commission to enact HB 2041. A mandatory excavation notification (One-Call) law will reduce third party damage to our natural gas lines and underground electric lines. It will also enhance public safety.

We agree with other proponents that the definition of excavator in Sec. 2(d) needs amending. The House committee amendment attempts to exempt residence dwellers from the bill when they are digging on their own premises. The amendment, however, may be construed to exempt a residence dweller excavating anywhere, not only on their own premises. This effectively exempts everyone from the bill except the homeless, which was obviously not the intent of the House committee. The amendment below clarifies the exception of residence dwellers from the definition of excavator:

AMEND SECTION 2(d):

(d) "Excavator" means any person who engages directly in excavation activities within the state of Kansas, but shall not include any occupant of a dwelling who:

(1) uses such dwelling as a primary residence, and;

(2) excavates on the premises of such dwelling.

In the past, there has been some disagreement regarding tolerance zones for the markings that indicate to excavators where underground facilities are located. We agree with the Commission that the horizontal tolerance zone [cf. Sec. 2(l)] should be 24 inches. A narrower zone would jeopardize the safety of excavators. One-Call statutes in Oklahoma and Missouri, the other states where we do business, have a 24 inch tolerance zone.

We support HB 2041, and ask the committee to adopt our amendment and recommend HB 2041 favorably for passage.

ATTACHMENT A
3/16/93

TRANS.
3/16/93
A

Sprint

8140 Ward Parkway
P.O. Box 8417
Kansas City, MO 64114-0417

March 15, 1993

The Honorable Ben Vidricksen
Chairman, Senate Transportation and Utilities Committee
Kansas State Senate
Topeka, KS 66612

Re: HB 2041

Dear Senator Vidricksen,

I regret that a scheduling conflict precludes my personal appearance before your committee today. I wanted to let you and members of your committee know that Sprint generally supports the efforts embodied in HB 2041 to take affirmative action to limit damage to underground facilities. As you may know, Sprint maintains a vigorous, private "call before you dig" program, and the company supports any public policy that contributes to or otherwise enhances those efforts.

The purpose behind the bill could be better achieved, however, with an amendment that redefines the term "excavator". We are concerned that the current definition can be construed to mean that any excavator who owns a home would be exempt from the provisions of the bill. Sprint recognizes this is not the legislature's intent and therefore tighter language is necessary to clarify that definition.

Expenses incurred with respect to damages to underground facilities have increased as technologies become more sophisticated and reliance on our underground system increases. Enactment of this legislation into law should provide for adequate protections of underground facilities. Please let me know if I can provide you with additional information. I look forward to working with you and your committee on those matters of mutual interest to Sprint and the state of Kansas.

Sincerely,

Martha Jenkins

Martha Jenkins
Government Affairs Manager

ATTACHMENT B
3/16/93

TRANS.
3/16/93
B

Mike Reecht
State Director
Government Affairs
Kansas

Capitol Tower
400 SW 8th Street, Suite 301
Topeka, KS 66603
Phone (913) 232-2128

COMMENTS ON BEHALF OF AT&T
BEFORE THE HOUSE JUDICIARY COMMITTEE
MIKE REECHT
HB 2041
MARCH 15, 1993

Mr. Chairman and members of the Committee:

My name is Mike Reecht. I am Director-State Government Affairs for AT&T in Kansas. I appreciate the opportunity to offer comments on HB 2041.

AT&T supports the concept of the mandatory "One Call" legislation contained in HB 2041. AT&T has approximately 800 miles of fiber and copper cable buried across the state of Kansas. It is imperative, in order to provide continual, uninterrupted long distance service to which Kansans are accustomed, that Kansas support a mandatory, statewide notification center. The center should have the ability to handle emergency requests to locate underground facilities on a 24 hour a day/7 days a week basis.

The changes incorporated by the House Judiciary Committee, have created a bill that is fair to both the facility owner and excavator. In addition, the liability area of the legislation creates an equal standard for both the owner and excavator.

In summary, AT&T requests your support of this important legislation that will help ensure quality telecommunications service that is essential to all Kansans.

ATTACHMENT C
3/16/93

TRANS.
3/16/93
C-1

Legislative Testimony

Kansas Telecommunications Association, 700 S.W. Jackson St., Suite 704, Topeka, KS 66603-3731

Testimony before the
Senate Committee on Transportation and Utilities

HB 2041 March 15, 1993

Mr. Chairman, members of the committee, I am Rob Hodges, President of the Kansas Telecommunications Association. Our membership is made up of telephone companies, long distance companies, and firms and individuals who provide service to and support for the telecommunications industry in Kansas.

The KTA supports the concepts of HB 2041. Many KTA member companies are already participating in the voluntary "one call" program.

KTA members support establishing the tolerance zone definition at 24 inches, as was done by the House Committee on Judiciary. We also support the language that makes it clear there is to be only one notification center in Kansas.

One feature our members particularly like about HB 2041 is that city and county excavators would be subject to the notification requirements prior to excavation. KTA members seem to have more trouble with those excavators than with most others. We feel the bill will be most effective if city and county excavators remain subject to its provisions.

Thank you, Mr. Chairman, for the opportunity to appear and tell you of our support for HB 2041.

ATTACHMENT D
3/16/93

TRANS.
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D

PRESENTATION BEFORE THE
SENATE TRANSPORTATION AND UTILITIES COMMITTEE
BY THE CORPORATION COMMISSION
ON
SB 381 - PARALLEL GENERATION SERVICES

The main intent of bill is unclear:

> ". . . compensation which will approximate such utility's total costs, including capacity costs, which it would otherwise incur in either producing such energy for itself or purchasing such energy from another source, whichever is the greater amount."

Ambiguous as to whether capacity costs to be considered regardless of need for additional capacity represented by parallel generator.

1. If intended to require compensation which includes capacity costs regardless of excess capacity on utility's system - probably not legally effective.

   - Kansas Supreme Court 1984 decision in Kansas City Power & Light Company v. State Corporation Commission found that the federal law, Public Utility Regulatory Practices Act, preempted states from requiring compensation greater than the avoided cost, which, in the case of a utility having excess capacity, excludes capacity costs. Since the federal preemption would apply not only to the Commission but also state legislation, this provision could not be legally effective.

2. If intended to require compensation based on capacity costs which are actually avoided by purchase from parallel generator, then merely restates current requirements.

   -As part of Integrated Resource Planning process, KCC will need to further refine how to measure avoided costs in light of expected demand and resource alternatives.

In any event, see no real practical effect of provision.

ATTACHMENT E
3/16/93

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3/16/93
E

IN THE KANSAS STATE SENATE

BEFORE THE COMMITTEE ON
TRANSPORTATION AND UTILITIES

RE: Proposed Amendment to K.S.A. 66-1,184.

TESTIMONY BY: Mr Gary Hibbert
Rt 3, Box 38
Hudson, Kansas 67545
(316) 458-4801

Honorable Chairman, Vice-Chairman, and members of the Committee;

I come before you today to testify on a matter of considerable importance and urgency. Namely, the much-needed amendment to K.S.A. 66-1,184. At the onset, we should be cognizant of the circumstances surrounding this matter. K.S.A. 66-1,184 and 185 were passed in the wake of the Congressional mandate to "encourage" independent electric power production, which is embodied in the Public Utility Regulatory Policies Act of 1978, hereinafter referred to as "PURPA". Clearly, 185 is intended to give practical effect to the federal mandate on a local basis, and is not in question here. 184 would seem to have been intended as a statutory aid for enforcement of the more-technical aspects of independent power production. The proposed amendments to the language respecting the various technical provisions would take more time than I am afforded here today. The justification for such amendments is adequately expressed in my proposal to Senator Papay, which I understand you all have copies of, and I am certainly willing to discuss it further with any of you, if you so desire. I will rather devote my limited time here today to address the most troublesome issue inherent in the Statute. This being the language which states that the Kansas Corporation Commission, hereinafter referred to as the "KCC", is to "establish" the terms and conditions of any contract in the event the parties thereto cannot agree upon such terms or conditions.

The challenge to this statutory provision is problematical for me. Since I am from the engineering discipline and therefore accustomed to intense attention-to-detail, I am often accused of over-explaining an issue to the extreme of obscuring the original question. I will try, however, to give you a condensed version, and be as brief as possible, and begin by stating that if the utilities and the KCC had interpreted the statutory provision here in question in the spirit of the federal mandate to encourage independent power production in Kansas, rather than verbatim, then all would be well, which, of course, they did not.

The justification for immediate legislative action can be approached from various perspectives. The most apparent which is that the provision is contrary to federal law (PURPA), and under the auspices of a 1984 Kansas Supreme Court's conclusion, any "State" action contrary to or deviating from PURPA and the FERC regulations promulgated thereunder, is unlawful. Thus, the language here in question statutorily takes power from the courts and places it in the hands of the KCC unlawfully. As you are all aware, the language of law must "say what it means and mean what it says". Where there exists the potential for problems, Murphy's law will previal. The provision here in question explicitly states that the KCC will "establish" the terms and conditions. I pose the question; "Based on what"? Is the KCC's "establishing" of such terms and conditions to be based on the full moon, or the rise and fall of the tide, or what? The language does not specify. If this synopsis sounds ridiculous to you, let me assure you that it is no more ridiculous than the language here in question is from the perspective of the potential independent producer. Allow me to give you an example in basic terminology. If you and your neighbor had shared the expense of constructing a fence on your adjoining property line, and if the fence was now in need of repair, and if your neighbor refused to share the repair expenses, then you would feel comfortable in placing the resolution of the disagreement in the hands of a court. You would not feel comfortable in allowing your neighbor's mechanic to decide the issue. Obviously, the KCC deals with the utilities on a regular basis, and is only concerned with what is in the best interest of the rate-paying public. Where the issues arising under the concept of independent power production are ratepayer neutral, and whereas the KCC's contact with the independent producer is on a one-time basis, rather than on an on-going basis as it is with the given utility, then the KCC will decide in favor of the utility every time. These Commissioners are not persons experienced in judicial practice, or judgments in equity. They are rather supervisors of a staff of engineers, accountants, and statisticians. The judgment of that which is fair and reasonable in the resolution of a disagreement between two opposing parties, has always been relegated to the courts... until now. The reason for this is elementary. A court is bound by the judicial standard that any decision it makes must be based on the evidence and argument presented, and upon law and regulations already in existance. The KCC, on the other hand, is not bound by such judicial standard. Being an "arm" of the legislature, it has wide "discretionary" powers to base its determinations on whatever criteria it deems is in the public interest. That is its sole prerequisite, but in the case of independent power production, the concept must be economically neutral to the ratepayers, by federal mandate.

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With the Commissioner's sole requisite being thusly inapplicable to any issue under the concept of independent power production, then the Commissioners feel free to base their determinations upon whatever criteria they may invent, and in the eyes of the lower courts, the KCC has all the authority of the Kansas Legislature to do so, under the Constitutional Separation of Powers doctrine.

The troublesome language here in question makes some dangerous assumptions. Keeping in mind that these Commissioners are not elected officials or masters of law, and therefore do not have to answer to either the public nor the scrutiny of a higher authority for their actions, the provision here in question assumes that the Commissioners have no political leanings, that they harbor no personal animosities, that they have no personal friendships, that they are above approach by influence peddlers, that they know the law, that they will always be fair-minded and reasonable, that they are generally perfect, and that only the same type of individual will inherit their seat on the Commission. If the Legislature thusly gives the KCC a signed, blank-check of authority, without any of the restrictions such as the ones placed upon the powers of the judiciary, then such legislation acts to circumvent our system of "checks-and-balances", and the agency to which such unlimited and unrestricted authority is entrusted becomes, in fact, a dictator over the subject matter addressed by the Statute. Whereas the KCC is realistically answerable to only the Legislature, under the Constitutional Separation of Powers doctrine, then if any segment of the Legislature is responsible for monitoring the KCC's actions to ensure integrity, such entity has been grossly negligent and derelict of its duty. Actually, I am confident that this provision would not withstand a "constitutionality" test before the Kansas Supreme Court, much less the U.S. Supreme Court.

For those of you who are, or have been, practicing attorneys-at-law, you will say that all KCC decisions are "reviewable" under the Kansas Administrative Procedures Act. I will however argue from five-years litigation experience respecting precisely the subject matter here addressed, that a decision by the KCC must be so unreasonable as to be obviously absurd before the lower courts will intervene, and whereas the KCC is the recognized by the lower courts to be the "expert" on such matters, it then comes down to the independent producer's word against such hypothetical "expert's" word, as to whether the decision is, or is not, unreasonable. There is not, to my knowledge, a single precedent case in Kansas, in which the lower courts overturned the KCC's decision on the grounds of being "unreasonable" or "unlawful". Only the Kansas Supreme Court has found thusly. Which means, of course, that a potential

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independent producer must be prepared to bear the litigation expenses and time from the KCC all the way through the Kansas Supreme Court for just resolution of the matter. This circumstance serves to defeat the original reason for the Statute. Conversely, in the absence of the provision here in question, resolution could be obtained in the lower courts, and without such court's concern of infringing of the Separation of Powers doctrine.

Let's approach this problem from another perspective. What is the language here in question intended to accomplish? There surely must have been some Legislative reason to include it. We could spend the rest of the day examining the Legislative history of the Statute, but I already have, and I will simply state that neither the language here in question nor any mention of the KCC what-so-ever was included in the Statute's original version as it passed on the Senate floor. Nor was it included in the House version as it there passed the floor. The provision was rather the result of a last-minute "conceptual" motion before the Energy and Natural Resources Committee, and apparently thusly avoided scrutiny by the concerned broad legislative membership. Also, the language was considerably altered from the time of the "conceptual" motion to the time it was printed in final form. I suspect foul-play, but that was far too long ago to now allege improprieties, and it would serve no useful purpose anyway. The "conceptual" motion merely addressed the concern that the KCC have the responsibility to "administrate" the technical provisions of the Statute. Primarily, the concern which prompted the "conceptual" motion was unfounded in the first place, since it is already addressed in 66-1,185. The "conceptual" motion there adopted by the Committee was therefore redundant, unnecessary, and "overkill", and was furthermore altered before being printed as it exists today.

To support my theory that the provision here in question is altogether unnecessary, let's examine the situation as though the troublesome provision did not exist. We still have in place everything that is needed to proceed in the traditional way. First, the portion of the FERC regulations which is to be "implemented" on the State-level, is Subsection C (excluding §292.302 thereof), as set forth in §292.401. Secondly, the technical provisions of 66-1,184 parallels, nearly verbatim, such "Subsection C" portion of the federal regulations which is to be "implemented" in Kansas. Thirdly, 66-1,185 gives the KCC explicit authority to adopt rules "as is required to provide compliance with and carry out" the requirements of PURPA and the FERC regulations pursuant thereto. The KCC thereby has all the authority it needs, by and through 66-1,185, to adopt such rules as is necessary to carry out the technical provisions of 66-1,184. Furthermore, any such rule thusly adopted by the KCC would then be subject to challenge thereof

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in a State court, under explicit jurisdiction granted in Sections 123 and 210(g) of PURPA, to ensure compliance with the federal authorities...and if such rule is there found to be valid, it would be "enforceable" also under jurisdiction of the State courts, pursuant to the "Enforcement" provisions of the same two sections of PURPA already mentioned. This must be all that was originally intended...to comply with the federal authorities, and carry out the requirements there set forth.

Unfortunately, the resultant inclusion of the troublesome language here in question has, in fact, acted so as to frustrate this such admirable intention, by negating the courts' role therein. I would urge repeal of 66-1,184 in its entirety, except for the fact that it could be a valuable tool for the courts' enforcement of the technically-complex federal mandate, if the here-proposed amendments are adopted to eliminate the existing ambiguities. I would prefer no mention of the KCC what-so-ever, but I have included it in an "advisory" role only. I did this, exclusively, to address any potential Legislative concerns of the KCC's authority pursuant to 66-1,185 being diluted by this amendment...for that is not my intention.

I have been intensely devoted to the development of an independent electric power industry in Kansas for the past seven years, and have been defeated at every turn by the KCC's authority here challenged. I am not asking the Legislature to give me and other potential independent producers new legal right and entitlements. I am rather here asking the Legislature to remove this insurrmountable barrier, and make locally-available that which we have already been given by the federal authorities, and which has previously been denied us by Legislative error. This Committee need not "re-invent the wheel" here, and thereby re-evaluate the merits of the concept of independent power production embodied within PURPA. The development of this concept has already been "tried" to extreme at every turn, and much experience has been gained since its onset in 1978. This Committee rather needs to evaluate the former Legislature's inadvertant creation of an opportunity, whereupon a politically-ambitious State agency has imagined its powers created thereunder to be pre-eminent and beyond reproach by the State courts, and independent of the federal mandate to "encourage" independent power production in Kansas. The evidence supporting this allegation, which I have collected over the last five years, is both abundant and substantial.

I ask this Committee to act on the proposed amendment now, while the Legislature is still in session. There exists sufficient justification for such prompt action, among which is...do it so that the Kansas public can finally reap the benefits afforded under the concept of independent power

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production...do it to "check" the megalomaniacal ambitions of the KCC, which has strayed far afield at this juncture...do it to spawn the development of a new industry State-wide, and without expending any public funds or necessitating federal funding... do it to restore the "checks-and-balances" to our legal system under the Constitution...but, let's "cut to the chase" and I'll give you the bottom line. The Congressional decision to "encourage" independent power production whenever and whereever possible, is not a suggestion or recommendation...it is a MANDATE! The concept has clearly not been "encouraged" in Kansas, and contrarily has been discouraged to-date. Given the renewed "movement" by D.O.E. and E.P.A. respecting "renewable" energy sources and environmental concerns, and given that Kansas has been named as having the worst "energy policy" in the United States, then Kansas may very-likely be denied federal funding which would otherwise have been available to develop "renewable" energy sources and ecologically-enhancing technologies, upon such federal authorities' discovery of our failure to comply with the federal mandate. It is only a matter of time, under the present circumstances, before I am forced to litigate this issue before the federal courts, and in any such action, the statutory provision here in question will certainly surface as the culprit for Kansas's failure to comply. This Committee now has before it the opportunity and the means to divert this ensuing confrontation and avoid a potential fiasco, by adopting the amendment as here proposed.

The utility conglomerate and its powerful lobby will probably oppose this amendment and argue that the provision here in question is necessary for the KCC's ongoing "regulation" responsibilities respecting independent power production. They view this statutory provision, and the KCC's supposedly-unlimited authority thereunder, as the only quasi-legal means available to thwart any independent producer's efforts. In fact, if the issues of the concept of independent power production are ever tried before a State court, the conglomerate will fail, and independent power production will become a reality in Kansas. Primarily, the KCC does not need the provision here in question to adopt any required "regulation" under authority granted it in 66-1,185. Furthermore, the KCC's sole function in life, is to "regulate" retail rate-structures and arrangements between utilities which may affect such retail rate-structures. Again, by FEDERAL MANDATE, any independent producer's sale of electricity to a given utility MUST result in retail-rate NEUTRALITY to the consumer. Thus, the KCC's need to "regulate" independent power production in the traditional sense is negated. The Congress knew precisely what it was doing when it statutorily provided that once the federal regulations were "implemented" at the State-level...which they have been, to the satisfaction of FERC (See KCC's Docket No. 115,379-U and FERC regulation 18 C.F.R. §292.401(c))...then

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the resolution of any resulting conflicts between the utilities and independent producers LIES BEFORE A STATE COURT OF PROPER JURISDICTION! (See Sections 123 and 210(g) of PURPA).

The utilities may further argue that the entire concept of independent power production is not in the Kansas public's best interest. This also has been clearly defined by the federal authorities. FERC regulation 18 C.F.R. §292.304 explicitly states that independent power production is "deemed" to be "in the public interest" if the rate paid by the utility to the independent producer RESULTS IN RETAIL-RATEPAYER NEUTRALITY. The federal authorities are very thorough with considerable attention-to-detail, which unfortunately contributes to the complex nature of the concept...but there is clear evidence that Congress anticipated the utility-conglomerate's adamant opposition to its mandate, and therefore devised the means to overcome it...by placing resolution in the hands of the courts, to ensure the parties are "acting in good faith and in the spirit of the federal mandate". The Legislature must therefore be likewise consciously vigilant for such manipulative designs by the utilities.

Finally, and in support of the theory that the KCC cannot have original jurisdiction over the subject matter of the Statute, the provision here in question violates the sovereignty of Kansas municipalities. First, it has long-since been established by all regulatory laws and rules, that a state's municipalities do not fall under the jurisdiction of the state's regulatory authority, or in this case, the KCC. Second, the provisions of PURPA and the FERC regulations promulgated thereunder are clearly inure upon any electric utility, including those which are owned and operated by Kansas municipalities. Third, 66-1,184, which locally implements a portion of the federal requirements, likewise begins with the language of; "Every public utility which provides retail electric services in this state...", which certainly includes such "municipal" electric utilities. The troublesome provision here in question, then, rather ignores the federal provisions which grant Kansas "municipal-utilities" immunity from the KCC's authority, and there contrarily gives the KCC jurisdiction to "establish the terms and conditions" of any contract between a potential independent producer and a "municipal" electric utility. Any such dispute arising between "municipal" electric utilities and private individuals has traditionally always been placed before a court of proper jurisdiction...until now! The previous Legislature obviously intended 66-1,184 to parallel the federal provisions, as evidenced by the beginning language of the Statute, and thereby apply to "municipally-owned" electric utilities and "KCC-regulated" electric utilities alike. This further supports my theory that the concerned broad membership

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of the Legislature was not aware of the "conceptual" motion which resulted in the provision here in question, or the Statute would not have passed as now written.

...and with that, I thank you for allowing me the time here today, and unless there are any questions, this concludes my testimony.

Respectfully,

Gary Hibbert
Rt 3, Box 38
Hudson, Kansas 67545

TRANS.
3/16/93
F8

To: Senate Committee on Transportation and Utilities

Re: Senate Bill #381

Testimony From: Stephen H. Hill, President
The Bowersock Mills & Power Co.
Lawrence, Kansas

Description of Company:
The Bowersock Mills & Power Co. is a privately owned hydro-electric generating plant located on the Kansas River at Lawrence. The company has water powered generators with capacity of approximately 2200 KW and produces about 10,000,000 KW annually. The company, in business since 1874, sells all of its electrical output to the KPL Gas Service division of Western Resources and is paid on the basis of the KPL Gas Service parallel generation tariff. Bowersock is classified under the Public Utility Regulatory Act of 1978 as a Small Power Producer.

Reason for support of Senate Bill #381:
Renewable energy sources have not been adequately encouraged in the State of Kansas. The state ranks in last place for all 50 states in the development of renewable energy sources (see attached exhibit #1 for the Associated Press news story of last November which appeared in the Topeka, Lawrence, Kansas City, and other Kansas newspapers). Kansas is not deficient in such resources, particularly wind energy (see Exhibit #2 for the March 3, 1993 article on the potential for wind energy in Kansas).

Why is Kansas in last place in the development of renewable energy resources?
Because the rates offered for producers of renewable energy in Kansas are among the lowest, if not the lowest, in the nation. We believe there is a perceived uncertainty as to the permitted capacity costs to be paid to small power producers and we believe there is confusion in this state as to whether small power producers should receive average fuel costs or avoided energy costs as called for by the Public Utility Regulatory Act of 1978.

What went wrong:
The implementation of the Public Utility Regulatory Act of 1978 called for average fuel costs as the primary basis for rates for small power producers rather than the federally mandated avoided energy cost rates. Only very modest incentive rates for capacity were implemented rather than full avoided capacity costs as called for by federal law. Consequently renewable energy in many other states receives from 2 to 5 times more than is received in Kansas! The wind generators shown in Exhibit 2 receive about 5 times what they would receive in Kansas.

What have been the results?
What has happened to parallel generation rates since the KCC implemented the Public Utility Regulatory Act in 1983? Rates inadequate to start with have fallen over 20% while the cost of doing business is up over 40%. (See Exhibit #3 for history of the Consumer Price Index and the parallel generation rates in the KPL Gas Service Territory since 1983).

Why have these rates fallen?
They reflect only the delivered average costs of fuel, principally coal and natural gas. They do not reflect the increases in wages, salaries, supplies, materials, construction costs, etc. that all utilities, including small power producers, have experienced.

What needs to be done?
Senate Bill #381 calls for full avoided energy and capacity costs to be paid to parallel generators (see lines 28-32). Passage of this Bill will encourage renewable energy sources in Kansas, which is sound public policy in the best interests of all Kansans. Why? Because wind and water are renewable natural energy sources which neither deplete or pollute. At a time when major national legislation has recently been passed in order to clean up our air and reduce acid rain, I feel confident that Kansans will want to support the development and sustenance of wind and water energy by reasonably supporting their use through adequate compensation.

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Exhibit #3

History of Parallel Generation Rates
KPL Gas Service

Tariff Date	Parallel Generation Tariff Formula	Year	Average Cents per KW	CPI (All Urban)
5/27/83	1.047 [2.050¢ ± ECA]	1983	2.442	99.6
		1984	2.649	103.9
		1985	2.292	107.6
		1986	2.205	109.6
12/22/87	1.032 [1.909¢ ± ECA]	1987	2.212	113.6
		1988	1.932	118.3
2/01/89	1.036 [1.875¢ ± ECA]	1989	1.929	124.0
		1990	1.976	130.7
		1991	1.940	136.2
3/26/92	1.036 [0.275¢ per KWH plus the per KWH cost of fuel, purchased power and net interchange.]	1992	1.961	140.3

Kansas Gas & Electric

Rates for parallel generators in KGE territory have been significently lower than in KPL Gas because the very low cost of nuclear fuel brings down the average fuel cost. For example, in the first quarter of 1992 comparative rates were as follows:

	KGE	KPL Gas Service
Jan 1992	1.035¢	1.964¢
Feb 1992	1.527¢	1.890¢
Mar 1992	1.276¢	1.879¢

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Exhibit #1

Kansas ranks lowest on 'energy scoreboard'

WASHINGTON (AP) — Kansas ranks the worst in the nation for its energy use, including a heavy reliance on "dirty, dangerous and depletable energy resources," a consumer group said today.

A report by Public Citizen, a group founded by consumer activist Ralph Nader, criticized Kansas for little use of renewable energy sources and for inefficient or heavy energy use by residential and industrial customers.

The group ranked Kansas below all other states and the District of Columbia on an overall "energy scoreboard," which combined several indicators of energy use.

For example, Kansas was 28th in its dependence on energy from fossil fuels, such as oil, natural gas and coal, and nuclear power. The study estimated 83.2 percent of the state's energy consumption in 1990 was from those "dirty, dangerous or depletable" resources.

Kansas ranked last for its reliance on renewable energy sources, including solar, water and wind-generated power. Kansas was 17th for per-person residential energy consumption.

Missouri ranked 28th overall for its energy use. The report said 86.9 percent of Missouri's energy came from fossil fuel and nuclear power sources, ranking the state 42nd.

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Ma- 4, 1993

Exhibit #2

Johnson County/Metro
THE KANSAS CITY STAR

Section C

Look to sun, wind for energy

Coal getting too costly, experts say

By MICHAEL MANSUR
Environment Writer

By the year 2020, the electricity for Johnson County homes might come from a giant wind turbine near Dodge City, Kan. In rural Missouri, new cash crops might feed a power plant that once burned coal.

It's not a pipe dream, but a feasible option, says the Union of Concerned Scientists, a Washington group that has advocated energy conservation and increased use of renewable energy sources, such as solar and wind power.

In a report released this week, "Powering the Midwest," the group detailed how renewable energy sources — including biomass energy, in which certain crops are used as fuel — could supply this region with affordable energy.

In some cases, a renewable energy source could provide electricity more cheaply than building coal-fired power plants, the report said.

"This study proves that renewable energy can be cheaper than fossil fuel energy," said Peter Dreyfuss, president of the Metropolitan Energy Center in Kansas City.

"Renewables are ready now," he said, "and now is the time for us to use them."

The famous Kansas winds could produce more than 100 times the electricity that the state now uses, the report found. In southwestern and western Kansas, winds are strong enough to produce electricity at or below the cost of a coal-fired power plant.

"This region's wind resources are second to none in the entire world," Dreyfuss said.

In California, wind turbines — modern-day windmills — now provide 1 percent of that state's electricity.

"This is not your old windmill on the farm," Dreyfuss said. "It's efficient turbines."

Biomass generation of electricity — in which organic matter such as plants is converted to energy — has great potential. Old power plants could be converted to burn small, fast-growing trees. Switchgrass, a perennial plant, could be converted to liquid or gas fuel that can power turbines.

Those renewable energy sources could be combined to replace old power plants or to meet increased electrical demand, said Stephen Mahfood, director of the Missouri Environmental Improvement and Energy Resources Authority.

"Instead of building a new power plant, this could be a cost-effective alternative," he said.

For years, solar and wind power sounded like a good idea whose time hadn't come. Concerns about reliability and costs compared to coal-fired plants weighed down renewable energy as viable options.

But new federal laws, proposed federal taxes and pending state public service commission rules could make these renewable energy sources more attractive to utilities.

"Relatively simple changes in statutes and utility regulations could foster significant investments in wind, solar and biomass energy," said Michael Bower, the union's research director.

The 1992 federal Energy Policy Act offers new tax credits for developing alternative energy. Utilities must take advantage of the tax credits by the year 2000.

President Clinton's economic package exempts renewable energy from his proposed energy tax, which would increase the cost of electricity from coal and nuclear plants.

New restrictions on air pollution will drive up the cost of coal-fired plants.

Indeed, utilities will be examining renewable resources as potential options, said Mike Messer, a spokesman for Kansas City Power & Light Co.

"We're always looking at those options," Messer said. "Hopefully, the technology will be perfected, and the cost will be brought down."

Most of the electricity in the Midwest now comes from coal and oil, which can pollute air, damage the land and contaminate water supplies. Nuclear power also supplies energy, but states now face the problem of disposing of its radioactive waste.

Midwestern states have been reluctant to look at the possibilities of renewable energy, the report said, because fossil fuels have meant so much to their economies.

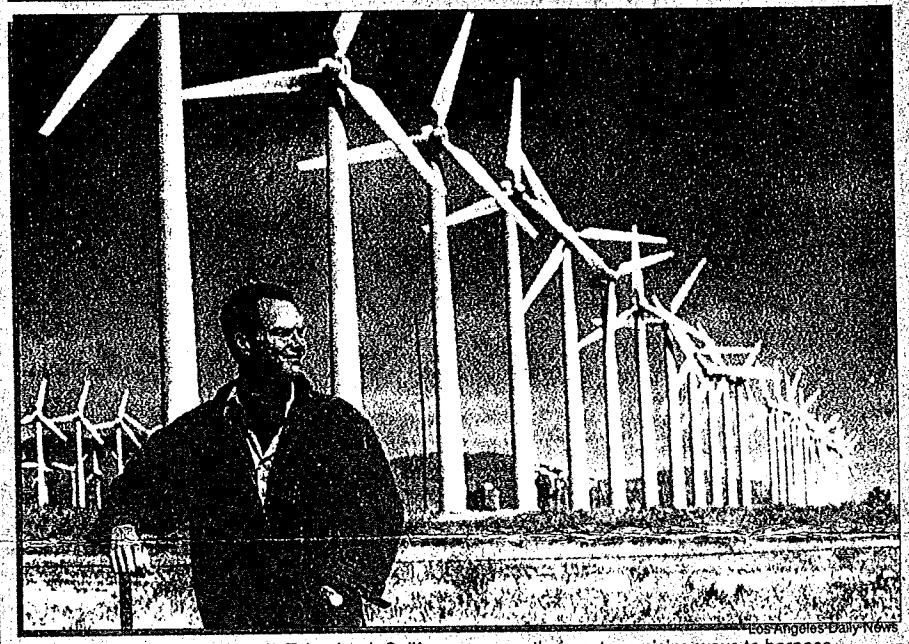
In recent years, however, the economic importance of traditional energy fuels has declined, the report said. For example, Midwest coal mining employed 50,000 people in 1979. By 1990, the number had dropped to 30,000.

In addition, domestic gas reserves in the Midwest may be depleted in about 30 years.

The report contends that renewable energy resources can create jobs. In one scenario, it found that a utility investing in wood-fired power plants would create an average of 700 more permanent jobs than would result from building a new coal plant.

Farmers also could benefit. They could earn new income from growing "energy crops" and by leasing land to utilities for wind turbines, while barely disturbing their farming operations, the report said.

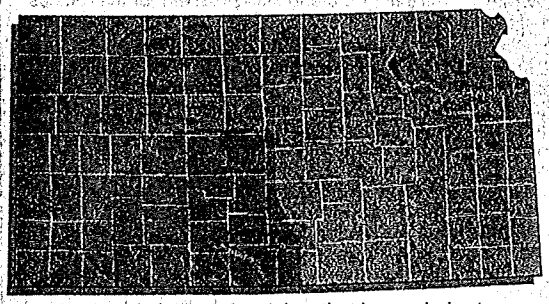
POWER FOR THE PLAINS



Los Angeles Daily News

Wind turbines such as these in Tehachapi, Calif., are among the most promising ways to harness renewable energy. In foreground is Paul White of the Kern Wind Energy Association.

Kansas wind crop

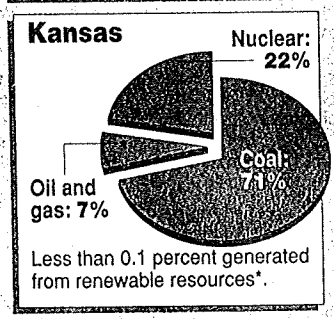


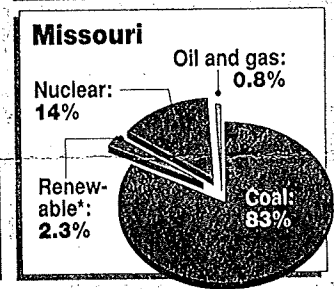
- **The dark blue areas** show sites that have winds strong and frequent enough to generate electricity as cheaply as coal-fired power plants.
- **Most sites** are concentrated in southwest and northwest Kansas, but suitable areas dot the rest of the state.
- **Wind power** is the least expensive renewable energy resource in the Midwest.
- **The main constraint** on wind power development is transmission capacity, not a shortage of windy sites.

*Renewable resources include hydropower and solar power.

Source: Union of Concerned Scientists

Electricity sources





MARK BLACKWELL/The Star

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REMARKS OF JACK GLAVES
BEFORE SENATE TRANSPORTATION AND UTILITIES COMMITTEE
ON SENATE BILL 381, MARCH 16, 1993

I appear in support of Senate Bill 381 in behalf of the Bowersock Mills & Power Company of Lawrence, of which Mr. Stephen Hill is President.

Senate Bill 381 expresses a very laudable public policy statement that compensation to the small power producer or cogenerator will approximate the utilities, total costs, including capacity costs, which it would otherwise incur in producing or purchasing the energy. The legal issue centers on whether or not "capacity costs" are appropriate for consideration in the utilities' total cost, particularly when the utility has surplus generating capacity.

The Bowersock mill is a "qualifying facility" within the meaning of 18 CFR 292.203(a)(b) i.e. it is a small power producer under PURPA. The Public Utilities Regulatory Policies Act of 1978 was adopted by Congress to provide for conservation of fossil fuels, the development of hydroelectric potential at existing small dams; to provide needed hydroelectric power, and to increase the efficiency in the use of facilities by electric utilities and equitable retail rates for electric consumers. Per the PURPA regs "avoided costs", which is the standard for compensation, "..means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility..such utility would generate itself or purchase from another source." 18 CFR 292.101(b)(6).

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A utility is obliged under Section 292.302 to maintain for public inspection data relating to the estimated avoided costs on the utilities system, with respect to the energy component for various levels of purchases from qualifying facilities and, among other things, the utilities plan for the addition of capacity by amount and type for purchases of firm energy and capacity, and for capacity retirements for each year during the succeeding ten years. The electric utility is required to purchase any energy and capacity, which is made available from a qualifying facility, under Section 292.303.

In 1979 the Kansas legislature, recognizing the need for energy conservation and cogeneration, responded to PURPA by enacting K.S.A. 66-1,185, which gave the KCC such jurisdiction as is required to provide compliance with and carry out the requirements of PURPA. The legislature also enacted 66-1,184, which requires every electric utility to enter into a contract for parallel generation service with a customer upon request of the customer. Under this statute, if the parties cannot agree on the terms of the contract, the KCC is given jurisdiction to settle any dispute. The U.S. Supreme Court has interpreted PURPA and the FERC regulations to mean that a state regulatory authority in implementing PURPA and the federal regs, must apply the "avoided cost" rule in the absence of a waiver granted by FERC or a specific contractual agreement

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setting a price that is lower than the avoided cost rate. (American Paper Inst. v. American Electric Power, 103 Sup. Ct., 1921, 76 Law Ed 2nd 22 [1983])

The Kansas Supreme Court in Kansas City Power & Light v. State Corporation Commission, 234 Kansas 1052; 676 P. 2nd 764 (1984) held that the KCC was preempted from acting under the state statutes in determining a rate on a different basis than "avoided cost", i.e. that the KCC could not require KCPL to purchase electricity from cogenerators at a rate greater than the federal regulated rate based on "avoided cost" unless, of course, the KCC obtains a waiver from FERC for a different rate. I do not believe that case is authority for holding that capacity cost, per se, cannot be included in "avoided cost".

The constitutionality of PURPA was upheld by the Kansas Supreme Court in a 1986 case, Kansas City Power & Light Company v. State Corporation Commission, 238 Kan. 842; 715 P. 2nd 19. The KCC order that was the subject of the KCPL appeal had provided for an incentive payment for capacity to cogenerators, which should be fifty percent (50%) of the per unit authorized rate of return on the utilities production plant. In response to the Supreme Court decision, the Commission issued its order of October 15, 1984 recognizing that the capacity credit they had found in that case was beyond "avoided cost" and found

> "..that a capacity credit shall not as a matter of course, be included in the purchase tariff. Clearly, this determination is only applicable to utilities which, in fact, are in excess capacity situation; and at such time as any utility becomes in need of additional capacity this determination would no longer apply. If

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> it can be determined that a utility, in fact, can avoid capacity costs by purchasing power from a cogenerator or small power producer, clearly, a capacity payment shall be made."

Essentially the Commission concluded from the Supreme Court decision that the issue of capacity credits should be determined on an individual case basis.

It is my opinion that Senate Bill 381 does not violate PURPA nor the regs promulgated under it, which are admittedly paramount on the issue of compensation to cogenerators and small power producers. Senate Bill 381 does not mandate that capacity costs be credited to the cogenerator or power producer, but simply states clearly that the compensation will approximate the utilities total costs, including capacity costs, which it would otherwise incur in either producing the energy itself or purchasing it from another source. Obviously, if the utility does not have plans for expanding its generating capacity, and is in a surplus position, a capacity credit would not be required to be paid by this Bill.

What then is the practical affect of this legislation? In my opinion, it sends a clear message to regulators and to existing and potential cogenerators and small power producers that it is the policy of Kansas to encourage environmentally beneficial projects such as the Bowersock Mills. Cogenerators and other such efficient power producers are encouraged to participate in supplying electric cogeneration for the benefit of Kansas, sending a clear signal that they will be compensated for capacity costs, as well as, fuel costs if the supplying of such energy, in fact, will serve to avoid the

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construction of additional capacity by the utilities. It would seem to be a laudable purpose without detriment to electric utilities, benefiting the environment and Kansas consumers.

Respectfully submitted,

Jack Glaves

Attorney for Bowersock Mills & Power Company

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Western Resources

818 Kansas Avenue
P.O. Box 889
Topeka, Kansas 66601
Phone (913) 296-6300

TESTIMONY

TO

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

SENATE BILL 381

MARCH 16, 1993

BY EARNIE LEHMAN, DIRECTOR OF ELECTRIC AND GAS RATES

WESTERN RESOURCES, INC.

Mr. Chairman, Members of the Committee:

Thank you for providing me an opportunity to testify on this bill. Western Resources' interest in this legislation is very straightforward. If passed into law, it will lead to a proliferation of new power plants, and it will require us to raise rates to our customers. For these reasons, we oppose this bill.

Let me explain our concern about new power plants first. Under current law, only customers are guaranteed the right to sell electricity they generate back to the utility. While utilities can and do buy electricity from other utilities, and increasingly from so-called Independent Power Producers (IPPs), these noncustomers cannot force the utilities to buy their electricity. They can make a sale only if they offer a better deal in terms of price or other terms of service than other sellers.

The current requirement that utilities buy electricity from customers makes sense because customers may have the ability to provide at least a portion of their electricity requirements more cheaply than the utility can supply them. Additionally, some customers

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require both thermal (heat) and electrical energy in proportions that make cogeneration desirable. It would be unreasonable to deny a customer the right to hook up with the utility simply because the customer generates some of his own electricity. We do not interpret our obligation to serve customers to mean that customers cannot provide their own electricity where it is more efficient to do so. This philosophy is at the root of the existing Parallel Generation Act and federal law in this area.

Senate Bill 381 goes beyond efficiency by expanding the utility's obligation to purchase electricity from customers to "private entities." Any corporation, any business person, any equipment manufacturer could decide to generate electricity by any means, at any location, and require the utility to buy it. Third parties who are not customers would construct and connect generating facilities to the utility for the sole purpose of selling power. The utility would lose its ability to coordinate the supply of electricity to maintain reliable service. It would have to buy all that was provided by these "private entities" regardless of how much electricity was needed to serve its customers or when the electricity was available.

There is nothing wrong with a utility buying electricity it needs to serve its customers from someone else if that electricity is cheaper (or at least no more expensive) than the electricity the utility could generate itself. In 1991, for example, KPL bought a net 733 million kWhs. Unfortunately, Senate Bill 381 would raise the cost of the electricity purchased from "private entities" to a level " which will approximate such utility's total costs, including capacity costs, which it would otherwise incur in either producing such energy itself or purchasing such energy from another source, whichever is the greater amount." This language will have the effect of causing a utility to pay more for electricity sold by "private

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entities" than it would pay to buy electricity on the open market. Ultimately, this means rates will rise above the level they are at now.

There are two reasons why the quoted language will cause a utility to overpay and have to raise rates. First, a utility's "total costs" include not just power plants but also transmission lines, transformers, substations, other equipment, and the people to maintain them as well as the people and facilities to assist customers. The "private entity" will not provide these facilities and people. The utility already has them and is required to have them to provide service. By including these costs in the rate paid to "private entities," customers will, in effect, be paying twice for the same service--once for the utility's existing facilities and again as a subsidy to the "private entity."

The second reason why the bill will raise rates is the requirement that a utility pay the price it would be charged if it purchased electricity from another source if that cost is higher than the utility's total cost of producing the electricity itself. A utility is unlikely to buy electricity from someone else if it could produce it more cheaply itself. No business would normally buy what it can make more cheaply. The effect of this purchase requirement is to add another layer of artificially high prices for electricity purchased from "private entities." Once again, an artificially high price for buying electricity translates to artificially high rates when that electricity is sold to the customers. And once again, the "private entity" is subsidized.

Western Resources encourages the development of new economical and reliable sources of electricity. Senate Bill 381 encourages the production of electricity without regard to its value or reliability and does not merit your support.

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TESTIMONY PRESENTED TO THE
SENATE TRANSPORTATION AND UTILITIES COMMITTEE
re: SB 381

March 16, 1993

by: Pat Parke
Director of Customer Services and Marketing
Midwest Energy, Inc.

Thank you Mr. Chairman and members of the committee. I appear before you today to express Midwest Energy's opposition to Senate Bill 381. I have five specific comments regarding the language changes proposed in this bill:

1. Page 1, Line 31: *"...whichever is the greater amount"* contradicts the utility's obligation to provide reliable service at the least possible cost. The higher cost of this power would flow directly through to customers, for the sole benefit of the so-called *"entity"* set forth in this bill. If those costs were indeed higher than what a utility would otherwise generate or purchase, the utility would not agree to, and should not be forced to enter the wholesale power contracts contemplated by these amendments.

2. Page 1, Line 43 through Page 2, Line 3: The portions struck out would allow the *"entity"* to produce an unlimited amount of this high priced electricity, regardless of whether or not it is needed.

3. Page 1, Line 28: *"...approximate..."* opens the door for the *"entity"* to demand greater compensation than is merited.

4. Page 1, Line 26: *"..monthly..."* would take away a utility's discretion to use sound business judgment. We have wind generators on our system whose monthly reimbursable output is less than the cost of a postage stamp. The utility should be allowed the latitude to pay such generators on a more reasonable quarterly or annual basis.

5. Page 2, Line 38 : Insertion of the phrase *"...any court of proper jurisdiction..."* invites litigation of issues already addressed by the state corporation commission and well within its powers.

Furthermore, Midwest Energy submits these general comments about SB 381:

1. SB 381 would conflict with the Integrated Resource Planning (IRP) regulations now being developed by the state corporation commission. In general, a utility's IRP for energy supply and demand side management will have to pass several strict cost-effectiveness tests. Any requirement for utilities to buy the most expensive electricity would make a sham of meaningful energy resource planning in Kansas.

2. SB 381 flies in the face of HB 2420 and the latitude it would give the state corporation commission to encourage cost effective energy production and use.

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3. The amendments cleverly avoid use of the term "avoided cost", an important phrase in the Public Utility Regulatory Policy Act, which is used by the Federal Energy Regulatory Commission to set appropriate buy-back pricing guidelines.

4. SB 381 deceptively leads one to believe that cost is the only measure by which to evaluate electric generation sources. It ignores the reliability benefit afforded by a power producer with multiple generating units compared to an *"entity"* which may have only a single generator. In addition, no consideration is given to power plant design, construction standards, operator competence, fuel price or availability, or any other factor which would impact system reliability.

   Incredible as it may seem, Midwest Energy has been approached by a potential independent generator who readily admitted he did not have enough fuel to run his generator at all times. At the very least, in addition to charging competitive prices, these *"entities"* should be required to comply with the reliability guidelines of the Southwest Power Pool and the MoKan Power Pool, as do all other generating utilities in Kansas.

5. If a utility is required to enter a long term purchase contract such as that contemplated here, the *"entity"* should be held to the same power plant siting guidelines set forth by K.S.A. 66-1, 158 et seq. and 66-1, 177 et seq.

6. Midwest Energy is a consumer owned utility. There are no absentee investors who can supply the deep pockets for these proposed changes. The economic impact would fall directly on the electric rate payers of our service area in central and western Kansas.

In summary, Mr. Chairman and committee members, the state corporation commission already has the prerogative, through the powers the legislature has given it, to take all these factors into consideration. To dilute and confuse that power through the passage of SB 381 will only cost Kansas rate payers more money. To date, Midwest Energy has spent over $130,000 for legal fees in response to one individual who has attempted to circumvent the regulatory process. The utility and its rate payers are not the only ones to shoulder this burden. The state corporation commission must also divert its resources to resolving ill-conceived grievances in court instead of focusing on substantive customer issues.

Thank you, Mr. Chairman, for allowing me to appear in opposition to this legislation.

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Testimony
of
J. LEE SIPPEL
Manager, Operating Planning and Budgeting
KANSAS CITY POWER & LIGHT COMPANY

Before the Senate Committee on
Transportation & Utilities

On Senate Bill 381

On behalf of Kansas City Power & Light Company, I am pleased to share with you our thoughts and concerns regarding the Bill presently before the Committee. Senate Bill 381 deals with parallel generation services.

Let me begin by emphasizing that KCPL is looking at, and will continue to look at, electric generating options that are economical and which will serve the long-term interests of our customers. This Bill, however, would expand existing Kansas law too broadly when it changes "customer" to "entity," for instance on page 1, line 18, and throughout the Bill. This change could lead to absurd results. For example, S381 would give KCPL the right to force another Kansas utility to purchase electricity from KCPL (and vice versa) regardless of whether the purchase would be fair to the purchasing utility's customers.

The bill eliminates KCC jurisdiction. Under the Public Utility Regulatory Policy Act (PURPA) of 1976, the rates and conditions of parallel generation between a utility and its customers (who have "qualifying facilities" under the wording of that Act) are regulated by state utility commissions. S381

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proposes to eliminate the current provision of the PURPA law which states that the KCC will establish the terms of the contract. The reasons for this change are quite unclear. The Bill states that if the parties cannot agree to the terms of the contract, the courts will decide; the KCC's role is limited to making recommendations to the court. I disagree with this. The KCC has been set up to be the expert in utility matters. The KCC should retain its jurisdiction of parallel generation contracts and not be bypassed.

In addition, the Bill neglects the role of the Federal Energy Regulatory Commission (FERC) in wholesale power sales (which are all of the sales under this Bill). FERC already has jurisdiction over all wholesale power sales, except for parallel generation contracts regulated by state commissions under PURPA. The amendment on page 1, lines 35-40, should be deleted as being contrary to Federal law, which has preempted this area.

This Bill also limits utility flexibility in responding to emergencies. The law as currently written allows utilities to reduce parallel generators' production in times of emergency. S381 would eliminate this flexibility and require the utility to either accept the full output of the entity or disconnect the entity's generator. Why is this flexibility being eliminated?

On a final note, on line 29 of page 1, the Bill states the purchase price "including capacity costs". Under PURPA, parallel generation rates are

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established by FERC and/or state regulators. Under KCC regulations, these rates are capped at avoided cost or the generation costs avoided by the utility by parallel generation. Changing the costs which are recoverable in rates charged by parallel generators would serve to increase utility costs and eventually the rates they must charge to the retail customers of Kansas. Lines 28-31 should be deleted.

Thank you for the opportunity to provide written comments to the Committee.

March 16, 1993

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STATE OF KANSAS

DIVISION OF THE BUDGET
Room 152-E
State Capitol Building
Topeka, Kansas 66612-1504
(913) 296-2436
FAX (913) 296-0231

Joan Finney
Governor

Gloria M. Timmer
Director

March 9, 1993

The Honorable Ben Vidricksen, Chairperson
Committee on Transportation and Utilities
Statehouse, Room 143-N
Topeka, Kansas 66612

Dear Senator Vidricksen:

SUBJECT: Fiscal Note for SB 381 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 381 is respectfully submitted to your committee.

SB 381, as introduced, would amend the statute that implements the federal Public Utility Regulatory Practices Act with regard to the purchase of electricity from "parallel generators" by electric utilities. The bill would add language requiring the compensation for the electricity to "approximate such utility's total costs, including capacity costs, which it would otherwise incur in either producing such energy for itself or purchasing such energy from another source, whichever is the greater amount."

The bill includes several technical amendments to the statute and several amendments specifying details of the operating relations between the entities. For example, the bill would establish the right of the utility to disconnect the generator of the parallel generation service entity from its system until the entity's generator has been restored to within industry standards of safety and quality or when the utility's system has been restored to normal operating conditions. SB 381 also would provide that the utility "shall" (rather than the current "may") install, own, and maintain a disconnecting device between the utility's system and any electric meter (rather than the current "disconnecting device located near the electric meters").

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Finally, the bill would remove the resolution of disputes between the entities from the Corporation Commission. SB 381 would provide that the recommendations of the Commission may be requested when the entity and the utility cannot agree to any terms or conditions not specifically in statute or cannot agree on the appropriate compensation to the entity.

No fiscal impact from SB 381 is anticipated.

Sincerely,

Gloria M. Timmer

Gloria M. Timmer
Director of the Budget

cc: Tom Day, KCC

381.fn

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