

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Pat Apple at 1:30 p.m. on March 9, 2011, in Room 548-S of the State Capitol.

All members were present except:
Senator Emler, excused

Committee staff present:

Matt Sterling, Assistant Revisor of Statutes
Mary Torrence, Revisor of Statutes
Cindy Lash, Kansas Legislative Research Department
Heather O'Hara, Kansas Legislative Research Department
Ann McMorris, Committee Assistant

Conferees appearing before the Committee:

Jason Fizell, Kansas Land Trust
Kimberly Svaty, Wind Coalition
Tom Day, Kansas Corporation Commission
Wes Ashton,, Black Hills Energy
Paul Ling, Kansas City Power & Light Co.

Others attending: See attached list.

Approval of Minutes

Moved by Senator Bruce, seconded by Senator Masterson, to approve the minutes of the meetings of the Senate Utilities Committee held on February 21, 22, 23, 24, March 2 and 3, 2011. Motion carried.

Chair opened the hearing on:

HB 2141 – Concerning property; requiring wind and solar agreements to run with surface estate

Matt Sterling, Assistant Revisor of Statutes, briefed the committee on the intent of **HB 2141**.
(Attachment 1)

Proponent:

Jason Fizell, Executive Director, Kansas Land Trust (KLT), stated KLT supports the bill as amended by the House Energy & Utilities Committee to clarify that conservation easements are not affected by **HB 2141**. (Attachment 2)

Neutral:

Kimberly Svaty, representing The Wind Coalition, testified that The Wind Coalition takes a neutral, yet supportive position on **HB 2141**. (Attachment 3)

Written testimony was provided by Erik Nordling, Southwest Royalty Owners Association.
(Attachment 4)

Chair closed the hearing on **HB 2141**.

Chair opened the hearing on:

HB 2267 – Utilities; electric supply and demand reports

Matt Sterling, Assistant Revisor of Statutes, briefed the committee on the intent of **HB 2267**.
(Attachment 5)

Proponent

Tom Day, Kansas Corporation Commission, reported on the requirements stated in **HB 2267** that KCC issue a report on electric supply and demand for all electric utilities in Kansas biennially beginning February 1, 2013. (Attachment 6)

Chair closed the hearing on **HB 2267**.

CONTINUATION SHEET

Minutes of the Senate Utilities Committee at 1:30 p.m. on March 9, 2011, in Room 548-S of the Capitol.

Chair opened the hearing on:

HCR 5009 – Urging the EPA to develop regulations that minimize adverse impacts

Matt Sterling, Assistant Revisor of Statutes, briefed the committee on the intent of the **HCR 5009**.
(Attachment 7)

Proponent

Paul Ling, Kansas City Power & Light, spoke on behalf of KCPL, Westar Energy, and the Kansas Power Cooperative, in favor of the goal of **HCR 5009** to urge the U.S. Environmental Protection Agency (EPA) to adopt a flexible rule allowing consideration of site-specific factors to avoid the unnecessary installation of cooling towers at all existing electric generating plants that currently use once-through cooling.
(Attachment 8)

Chair closed the hearing on **HCR 5009**.

Chair opened the hearing on:

SB 224 – Gas safety and reliability surcharge; extension of deadline for rate schedule

Matt Sterling, Assistant Revisor of Statutes, briefed the committee on the intent of **SB 224**. (Attachment 9)

Proponent

Wes Ashton, Black Hills Energy, spoke in support of **SB 224** on behalf of Atmos Energy, Black Hills Energy and Kansas Gas Service, a division of ONEOK. (Attachment 10)

Written testimony was submitted by David Springe, Citizens' Utility Ratepayer Board. (Attachment 11)

Chair closed the hearing on **SB 224**.

Chair asked for action from the committee on bills heard.

Moved by Senator Kultala, seconded by Senator Petersen, to move **SB 224** out favorably. Motion carried.

Moved by Senator Taddiken, seconded by Senator Masterson, to move **HCR 5009** out favorably. Motion carried.

The meeting was adjourned at 2:00 p.m.

Respectfully submitted,
Ann McMorris, Committee Assistant

Attachments - 11

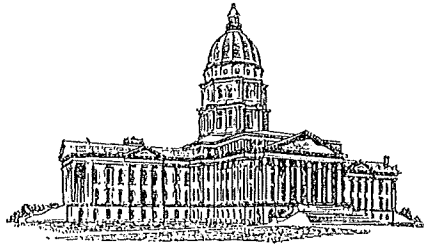
**SENATE UTILITIES
COMMITTEE GUEST LIST
MARCH 9, 2011**

NAME	REPRESENTING
Kimberly Sraty	Weed Coalition
Jon Skarab	Northern Natural Gas Co.
Nelson Krueger	U.S. C
Jim Bartling	ATMOS
Mike Reesett	ATMOS
DAVE Dittmore	KUS
Phil WAGES	KEPCo
Scott Jones	KCPK
Mark Schreiber	Western
Steve Johnson	ONEOK
Whitney Dunn	KS Gas Service
Dane Haldeman	KCC
Melissa Ward	Hein Low Firm
TOM DAY	KCC
Tam Slaughter	Capital Strategies
Paul Sprague	LUB
Carol McDowell	Tallgrass Ranchers
Doug Smith	SWKROA

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



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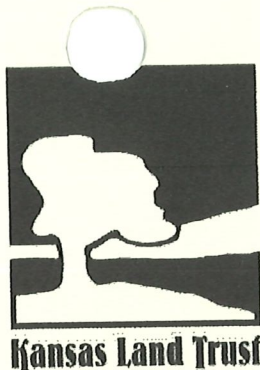
MEMORANDUM

To: Chairman Apple and members of the Senate Utilities Committee
From: Matt Sterling, Assistant Revisor of Statutes
Date: March 9, 2011
Subject: House Bill 2141

HB 2141 amends K.S.A. 58-2272 concerning conveyance of property for generation of electricity from wind resources. The statute lists requirements for any instrument conveying an interest or a lease involving wind resources. The bill would include any conveyance concerning solar resources.

The bill also prohibits the use of land for the production of wind or solar resources to all persons other than the surface owner unless granted such a right by the surface owner by lease or easement. The bill would not apply to any lease or easement filed prior to July 1, 2011 and would not limit the enforceability of any restrictions on the use of land for production of wind or solar energy, such as a conservation easement.

Senate Utilities Committee
March 9, 2011
Attachment 1 -1



Senate Utilities Committee

March 9, 2011

House Bill 2141

Testimony on behalf of the Kansas Land Trust (KLT)

Jason Fizell, Executive Director

*Protecting & preserving
lands of ecological,
agricultural, scenic,
historic & recreational
significance in Kansas.*

16 East 13th Street
Lawrence, Kansas
66044-3502

ph (785) 749-3297
fax (785) 842-3039
www.klt.org

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donna luckey
Chad Voigt
Mike Wildgen
Beverly Worster
Valerie Wright

Staff

Jason Fizell
Executive Director
jfizell@klt.org

Jerry Jost
Director of Land Protection
jjost@klt.org

Carol Huettner
Office Manager
chuettner@klt.org

**We help people
protect their land.**

KLT works with *willing, private landowners* who wish to *voluntarily donate or sell* a conservation easement (CE) on their land. In doing so:

*Landowners retain legal title to the property itself and reserve certain rights:
current agricultural and related land uses are maintained and protected.*

*KLT holds other rights in trust: future development and non-agricultural
commercial uses are limited under terms of the easement.*

Since the 1992 passage of K.S.A. § 58-3810, the *Kansas Uniform Conservation Easement Act*, KLT has protected 45 properties totaling over 16,000 acres in Kansas. The Flint Hills Legacy Conservation Area, recently announced by the U.S. Fish and Wildlife Service, will also utilize voluntary easements with willing landowners.

KLT does not take a position on wind development generally. In fact, we often work with landowners who wish to reserve the right to build or maintain non-commercial wind turbines on their protected property for on-farm or residential use.

However, other landowners—particularly of property with particular habitat, scenic, or other site considerations—do choose to limit future wind development. An example is the nearly 7,000 acre native prairie Moyer Ranch southeast of Fort Riley's airfield, southwest of the Konza Prairie, and scenically viewed from I-70.

Fort Riley was concerned that a proposed 100-turbine wind farm on this property would interfere with its new radar system and ongoing training mission. Instead, KLT worked with the landowner, using *Army Compatible Use Buffer (ACUB)* program funds, to purchase a conservation easement as a win-win alternative. The landowner was compensated, Army mission maintained, and beautiful native prairie habitat and working agricultural ranchland in the heart of the Flint Hills protected.

Broadly interpreted, conservation easements can be considered to have severed commercial development rights from the property—to be held in trust, by a land trust or other qualified entity, for their non-use. Given this, KLT was initially concerned that HB 2141, as originally introduced, could have an unintentional negative effect on conservation easements.

However, thanks to Chairman Holmes, the House Energy and Utilities Committee amended the bill to clarify that conservation easements are not affected by this legislation. With this change, KLT supports the passage of HB 2141 in order that landowners have a say over development on their land and so that agricultural uses are maintained.

Senate Utilities Committee
March 9, 2011
Attachment 2-1



The Wind Coalition

Testimony Provided to the

Senate Utilities Committee - March 9th, 2011

Kimberly Svaty , Representing The Wind Coalition

House Bill 2141

Chairman Apple and Members of the Committee,

Thank you for the opportunity to provide testimony on HB 2141. The Wind Coalition respectfully takes a neutral, yet supportive position on HB 2141.

As an industry, we have generally not weighed in on legislative matters relating to wind and surface rights. Last session, both Nebraska and Oklahoma enacted legislation similar to the bill pending before you. In both cases, The Wind Coalition took a neutral position.

Wind and surface rights are at the crux of the private property right debate. When the wind rights are tied to the surface, the landowner has the ultimate control over the use of his/her land both now and in the future. When the rights are severed, the landowner can lose control over what will or will not occur on his/her land going forward.

The wind industry works hand in hand with our landowners in order to responsibly develop and site wind projects that have the full support of landowners as well as broad community support. As such, we try to look out for the best interest of our landowners. We believe that HB 2141 provides landowners with the ultimate control over their land from a surface and wind rights vantage point.

Thank you for the opportunity to provide neutral, yet supportive comments on to HB 2141.

Senate Utilities Committee
March 9, 2011
Attachment 3-1

SWKROA

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION

209 East Sixth Street
Hugoton, Kansas 67951

Telephone: 620-544-4333
Email: erickn@swkroa.com
erick.nordling@nordlinglaw.com

Testimony before the Senate Committee on Utilities
HB 2141 – an act relating to instruments conveying interests in wind or solar resources

March 9, 2011

Chairman Apple and Members of the Committee:

My name is Erick Nordling. I would like to submit written testimony on behalf of SWKROA in regard to HB 2141, as amended by the House Committee. I am from Hugoton and serve as the Executive Secretary of SWKROA. I also am an attorney with the law firm of Kramer, Nordling, and Nordling, LLC. In my law practice, and as Secretary for the Association, I regularly advise mineral and royalty interest owners, as well as surface owners and farm tenants, with regard to issues relating to access to their lands for oil and gas operations and from damages resulting from such access and use of the land for oil and gas operations. In my practice, I have also reviewed a number of wind lease agreements for several wind farm projects. I have prepared deeds severing and reserving the (undeveloped) wind rights for owners who sold their surface rights. However, we haven't had much experience on the development of solar rights.

We provided written remarks on this Bill to the House Committee on Energy and Utilities. At that time we commented that we weren't sure of the need for this legislation. And, although the House amended the bill, we are still uncertain what problem this Bill is designed to 'solve.' So, if it's not 'broken,' why fix it.

It is unclear if subsection (b), as amended, (beginning at line 30), would limit a farm tenant from using a solar panel to operate a fence charger, or an oil and gas lessee from having a solar panel to provide power for remote telemetry would be prohibited from using such solar devices. Or, whether a farm tenant who installs a windmill to pump water for livestock would be prohibited from doing so under this bill.

We would respectfully suggest that Section 1(a)(3) of the bill be revised as follows: "all terms or conditions under which the lease or easement is granted or may be terminated, ~~except that if the instrument is recorded under K.S.A. 58-2221, and amendments thereto, any compensation received by the owner of the real property may be excluded; and~~". K.S.A. 58-2221 should also be amended to require wind and solar leases or easements, as well as oil and gas leases to be filed of record with the local Register of Deeds.

Senate Utilities Committee
March 9, 2011
Attachment 4-1

While the development of wind and solar resources in Kansas is still in its infancy, the right to own, lease and transfer such rights is not a new concept. When such resources are initially developed, the same person generally owns the ‘whole bundle of sticks,’ meaning that the owner owns the land, and all that is in, under, or above the land, including oil and gas, wind, as well as the surface rights. As ‘value’ is discovered and developed from the exploitation of such oil, gas, water, wind or solar rights, it is fairly commonplace for such interests to be carved away from or severed from the surface estate by deed or by probate transfers.

Thank you, for your consideration of our remarks.

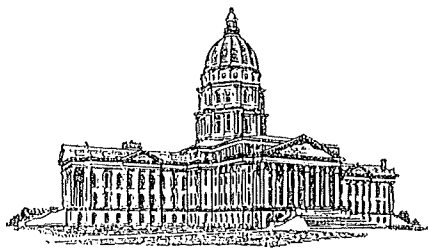
Respectfully submitted,

Erick E. Nordling
Executive Secretary, SWKROA

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



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MEMORANDUM

To: Chairman Apple and members of the Senate Utilities Committee
From: Matt Sterling, Assistant Revisor of Statutes
Date: March 9, 2011
Subject: House Bill 2267

HB 2267 would require the Kansas Corporation Commission to compile a report every two years concerning electric supply and demand for all electric utilities in Kansas. The report would include generation capacity needs, system peak capacity needs and renewable generation needs. These reports originated from the Kansas Energy Council and the commission has been preparing these reports, but there is no statutory requirement for the reports. This bill would require the commission to submit the report to the Senate Utilities Committee and the House Energy and Utilities Committee.

Senate Utilities Committee
March 9, 2011
Attachment 5-1

1500 SW Arrowhead Road
Topeka, KS 66604-4027

Thomas E. Wright, Chairman
Ward Loyd, Commissioner



Corporation Commission

phone: 785-271-3100
fax: 785-271-3354
<http://kcc.ks.gov/>

Sam Brownback, Governor

Before the Senate Utilities Committee
Comments of Tom Day
On Behalf of the Kansas Corporation Commission Staff
House Bill 2267
March 9, 2011

Senator Apple and Committee Members:

House Bill 2267 requires the Kansas Corporation Commission to issue a report on electric supply and demand for all electric utilities in Kansas biennially beginning February 1, 2013. The report shall include, but not to, generation capacity needs, system peak capacity needs, and renewable generation needs associated with the 2009 Kansas renewable energy standards. The Commission shall submit the report every two years to the House energy and utilities and Senate utilities committees.

For many years, Utilities Division staff compiled a report detailing electric generation capacity in Kansas and forecasting the capacity needs of the utility companies for their consumers. When the Kansas Energy Council was created by Executive Order, one of the duties of the KEC was to compile a report on electric generation capacity, supply and demand. After the Energy Council was abolished, the KCC staff once again began compiling the report. House Bill 2267, if passed and signed into law, will simply codify the requirement for the KCC to compile a supply and demand report every two years and make the report available to the Legislature's standing committees on utilities.

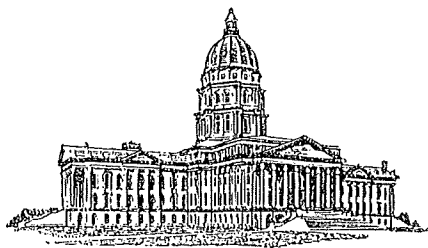
Thank you for the opportunity to testify on House Bill 2267 and I will answer questions at the appropriate time.

Senate Utilities Committee
March 9, 2011
Attachment 6-1

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

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MEMORANDUM

To: Chairman Apple and members of the Senate Utilities Committee
From: Matt Sterling, Assistant Revisor of Statutes
Date: March 9, 2011
Subject: House Concurrent Resolution 5009

HCR 5009 is a concurrent resolution that would urge the Environmental Protection Agency to continue to work to develop regulations and standards under section 316(b) of the Clean Water Act that minimize adverse impacts to the aquatic environment using site specific considerations and cost-benefit analysis. The resolution would also urge the EPA to continue to let state permit writers use a meaningful site specific approach that focuses on determining the best available technology for that site.

Section 316(b) of the Clean Water Act (CWA) requires that cooling water intake structures reflect the best technology available (BTA) for minimizing adverse environmental impacts. The EPA is expected to finalize a proposed revised 316(b) rule by July 2012. It is uncertain whether EPA's new rule will require closed-cycle cooling, *i.e.*, cooling towers, for most generation facilities or some subset of facilities and whether the agency will accommodate consideration of cost-benefit analyses as a means to determine the most effective cost of compliance.

Senate Utilities Committee
March 9, 2011
Attachment 7 -1



**Testimony of Paul Ling
On Behalf of Kansas City Power & Light,
Westar Energy, and Kansas Electric Power Cooperative
Before the Senate Utilities Committee
Regarding HCR 5009
March 9, 2011**

Chairman Apple and members of the committee, thank you for the opportunity to address this important issue for our industry. The goal of this concurrent resolution is to urge the U.S. Environmental Protection Agency (EPA) to adopt a flexible rule allowing consideration of site-specific factors to avoid the unnecessary installation of cooling towers at all existing electric generating plants that currently use once-through cooling.

EPA is revising its previously adopted cooling water intake structure (CWIS) rule under Clean Water Act (CWA) section 316(b) for existing steam-electric power plants pursuant to a court order. The 316(b) rule seeks to reduce fish impingement issues as small fish get caught in water intake filters. EPA appears likely to propose a revised rule that will require many existing once-through plants to retrofit cooling towers. This is a costly proposition that would have negative environmental, energy, rate and reliability impacts. KCP&L believes La Cygne Generating Station and Wolf Creek Nuclear Generating Station are two Kansas plants that may be impacted by the proposed rule.

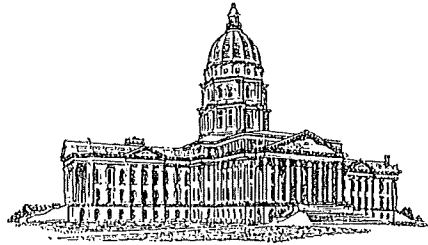
According to the Electric Power Research Institute a cooling tower mandate would impose significant costs on utility operations (2-4% energy penalty and a conservative capital expenditure of approximately \$215-\$220/kW or a capital expense of over \$64 billion nationally) and create a variety of adverse environmental impacts. These include increasing air emissions; decreasing capacity caused by premature plant closures; and increasing evaporative water loss, noise, drift, and icing; plus a variety of other effects.

Thank you for the opportunity to voice our support for this resolution urging a flexible rule which is protective of the environment but does not come at an unreasonable cost in terms of energy reliability, consumer rate increases, and ill considered environmental implications.

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

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MEMORANDUM

To: Chairman Apple and members of the Senate Utilities Committee
From: Matt Sterling, Assistant Revisor of Statutes
Date: March 9, 2011
Subject: Senate Bill 224

SB 224 amends K.S.A. 66-2203 concerning the Gas Safety and Reliability Surcharge. Under current law, a natural gas public utility providing gas service may file a petition and proposed rate schedules with the commission to establish or change GSRS rate schedules to allow for the recovery of costs for eligible infrastructure system replacements. Current law provides that the commission shall not approve any GSRS for any natural gas public utility that has not had a general rate proceeding decided or dismissed by the commission and that the utility may not collect a GSRS for a period exceeding 60 months unless the utility has filed or is the subject of a new general rate proceeding.

This bill provides that upon motion by a natural gas public utility, the commission may extend these 60-month deadlines for a period of up to 12 months.

Senate Utilities Committee
March 9, 2011
Attachment 9-1



Wes Ashton
Government Affairs Manager

M: 785.764.2359
wes.ashton@blackhillscorp.com

Legislative Testimony on SB 224 Before the House Energy and Utilities Committee March 9, 2011

Good afternoon Chairman Apple and members of the committee, my name is Wes Ashton with Black Hills Energy. Thank you for the opportunity to testify in support of SB 224 on behalf of Atmos Energy, Black Hills Energy and Kansas Gas Service, a division of ONEOK.

This bill simply adds one sentence to the existing statutory language of the Gas Safety and Reliability Policy Act, often referred to as the GSRS. This legislation originally passed the Kansas Legislature in 2006. GSRS provisions allow for a regulated natural gas company like Atmos, Black Hills or Kansas Gas Service to make an annual filing for recovery of capital investment in our natural gas system for the purpose of system integrity, safety and reliability, or costs to move our existing mains and services pursuant to government mandated road relocation projects.

The current law allows natural gas utilities to make filings to recover such capital expenditures for a period of five years after the utilities' most recent rate case and to collect such recoveries for a period of five years. The proposed legislation simply extends such filing and recovery periods by 12 months, and only upon the approval of the Kansas Corporation Commission.

The language contained in SB 224 was drafted working with representatives of the KCC and CURB. If a natural gas utility filed for a motion for a 12 month extension, CURB and Commission Staff would still have the opportunity to argue the motion if so desired, and the ultimate decision for an extension would rest with the KCC.

Thank you for the time to address the bill, and we would ask you to consider voting favorably for this legislation. I would be happy to stand for any questions the Committee may have and appreciate your consideration of this issue.

Senate Utilities Committee
March 9, 2011
Attachment 10-1

Citizens' Utility Ratepayer Board

Board Members:

Nancy Jackson, Chair
A. W. Dirks, Vice-Chair
Carol I. Faucher, Member
Stephanie Kelton, Member
Kenneth Baker, Member



State of Kansas
Sam Brownback, Governor

David Springe, Consumer Counsel
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: (785) 271-3200
Fax: (785) 271-3116
<http://curb.kansas.gov>

SENATE UTILITIES COMMITTEE S.B. 224

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
March 9, 2011

Chairman Apple and members of the committee:

Thank you for this opportunity to offer testimony on S.B. 224. The Citizens' Utility Ratepayer Board supports this bill for the following reasons:

SB 224 amends the existing gas safety and reliability surcharge (GSRS) law, K.S.A. 66-2201 *et seq.* The GSRS allows natural gas distribution utilities in Kansas the opportunity to create a line item charge on customer bills to begin rate recovery of capital spent on certain types of projects as set forth in the GSRS law. The natural gas utility can update the line item charge each year, with a 40 cent per month limit each year for residential customers. As originally passed, the GSRS law requires a natural gas distribution utility with a GSRS charge on customer bills to come before the state corporation commission at least every 60 months for a full rate review.

CURB opposed the implementation of the GSRS law when it was originally passed. Traditional ratemaking practice does not favor this type of capital recovery scheme between full rate case reviews. That said, the GSRS is the law in Kansas and CURB does participate in the cases creating the line item charge and updating the annual charge for current year expenditures.

SB 224 allows a natural gas utility with a GSRS to file a motion with the state corporation commission requesting a 12 month extension to the 60 month rate case review requirement. Effectively, if SB 224 is passed, the utility can avoid a full rate case review for a total of 72 months. CURB worked with the natural gas utilities on the language contained in SB 224. Of importance to CURB is that the extension be no more than 12 months, that the utility must file a motion asking for the extension, allowing CURB the opportunity to object if CURB believes the extension is unwarranted, and maintaining the 40 cent cap on GSRS annual increases for residential customers. As drafted, SB 224 meets these important objectives and CURB does not therefore object to providing an opportunity for a 12 month extension in the rate case filing requirement of the GSRS law.

CURB supports passage of SB 224 as currently drafted.

Senate Utilities Committee
March 9, 2011
Attachment 11-1