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**Testimony of
James Ludwig
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On House Bill 2220
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Chairman Emler and members of the committee, my name is Jim Ludwig. I am the Vice President of Regulatory and Public Affairs for Westar Energy. Westar Energy and Midwest Energy support HB 2220 because it provides clarification for the use of a transmission delivery charge (TDC).

During the 2003 legislature session, HB 2130 was introduced and passed. The resulting statute allowed the initiation of a TDC, which would be a separate line item on a customer's bill. This charge represented the transmission costs, which have been historically bundled within the customers' electric rate.

Westar used this statute for the first time in its 2005 rate case. The KCC applied the statute as we believe the legislature intended and implemented a TDC. However when the KCC's rate order was appealed, the Kansas court of appeals reversed the KCC's decision.

There are two issues in the statute that need greater clarification to address the court of appeals objections to the implementation of the TDC.

- (1) Although not explicitly stated by the court, its ruling made implementation of a TDC in the context of a general rate case nearly impossible. Most utilities and regulators would argue that implementing a TDC during a general rate case is the best time to do it because all costs and allocations are updated and audited at that time. In the context of a general rate case, the component of rates attributable to transmission can be identified and 'unbundled.' The revisions to the statute in HB 2220 explicitly address implementation of the TDC in the context of a general rate case, permitting the KCC to determine transmission-related costs to be recovered through the TDC. The revisions allow the KCC to identify and unbundle transmission costs that were already embedded in retail rates and also to deal with changes in transmission costs since retail rates were previously set.
- (2) The court also ruled that the transmission-related charges in the TDC must be set based upon a 'final' order from the authority with jurisdiction over transmission. The FERC is the authority with primary jurisdiction over transmission. FERC's process of putting rates into effect is a bit different than the KCC's, but the end

result is no different. When the FERC receives an application from a utility to change its transmission rates, the FERC puts those rates as filed into effect subject to refund. By contrast, the KCC typically suspends implementation of the filed rates until it has gone through a process to determine what the approved "final" rate will be. Since the FERC's process provides for refunds with interest in the event the filed and final rates differ, in the end there is not any practical difference between the FERC and the KCC approaches to implementing rates. The revisions in HB 2220 acknowledge that the TDC can be based on filed rates at FERC and directs that any refunds and interest be returned to the appropriate customers in the event the filed FERC rate is higher than the final approved rate.

We would suggest one change to the bill. We would like the effective date of the bill to be when published in the Kansas Register rather than in the statute book. By changing the effective date, it ensures the statute will be available when the Kansas Corporation Commission revisits this issue.

Westar Energy and Midwest Energy believe HB 2220 supports the original legislative intent envisioned in HB 2130 in 2003. We urge your support of HB 2220 and the proposed change.

Thank you for the opportunity to provide testimony this morning. I will be glad to stand for questions at the appropriate time.