Approved: March 6, 2001
Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson David Corbin at 10:45 a.m. on March 1, 2001, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Don Hayward, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Walker Hendrix, Citizens Utility Ratepayer Board
Senator Stan Clark
Charles Gregor, Jr., Leavenworth-Lansing Area Chamber of Commerce
Jim Ludwig, Western Resources
Jack Glaves, Duke Energy North America
Shannon Green, Jr., Kansas City Power & Light

Others attending: See attached list.

**SB 177–Concerning certain electric generation facilities; relating to regulation and taxation thereof.**

Chairman Corbin noted that **SB 177** was heard and amended by the Senate Utilities Committee and was referred to the Senate Assessment and Taxation Committee because it contains provisions concerning property taxation. For informational purposes, he called upon Walker Hendrix, Citizens Utility Ratepayer Board (CURB), who represents residential and small business customers.

Mr. Hendrix explained that **SB 177**, as amended, exempts all new coal fired and natural gas generating facilities as public utility facilities if the owner or lessee elects to have the facility not included in rate base. In essence, the bill establishes a statutory exemption for newly constructed facilities and allows for unregulated merchant power plants. In addition, **SB 177** changes the assessment rate from 33 percent to 25 percent for property tax purposes and changes the appraised tax basis of the new generation facility from "fair market value" to a residual value basis. Mr. Hendrix noted that the bill creates a tax incentive to invest in new generation facilities rather than investing in upgrades to existing utility plants. He discussed several public policy issues the bill raises as to whether it is desirable to have the generating capacity of the state outside the jurisdiction of the Kansas Corporation Commission and the protections afforded to ratepayers under the Public Utilities Act. In conclusion, Mr. Hendrix said, without more information, CURB has some doubts about the passage of the bill. It is the consensus of CURB that residential and small business customers are better protected by the traditional regulatory model which requires efficient and sufficient service at just and reasonable rates. In his opinion, shifting to an unregulated supply concept will subject ratepayers to price volatility and possible reliability concerns. He said the implication over time of the tax incentives in the bill is unknown, and he recommended that an independent study be conducted to determine the future generation needs in Kansas before considering passage of the bill. (Attachment 1)

Senator Stan Clark, explained that **SB 177** would allow newly constructed independent producer properties placed in service after January 1, 2001, to be classified for property taxation purposes as commercial and industrial property rather than public utility property, and he itemized five tax implications of this provision. He pointed out that, essentially, the bill would allow electrical generation to separate from electric transmission and electric distribution. He noted that, currently in the natural gas industry, the producing gas wells are classified as commercial and industrial property as well as the processing plant, and the transmission pipelines and distribution systems are public utility properties. In his opinion, electric transmission corresponds with the gas transmission pipelines, and the electric distribution system corresponds with the gas distribution system. He observed that Kansas is at a crossroad, and it can either be dependent on electric
power generated from other states or it can encourage the construction of generating plants that will produce

power for the utilities that serve Kansans. He noted that most Kansas utilities will need additional base load generation within the next seven years, and the Senate Utilities Committee recognized that **SB 177** is a crucial first step in establishing a sound public policy foundation to compete for new electric generation. In his opinion, passage of the bill will not negatively impact the current state budget, and it will generate positive fiscal notes in the future because, without the policy changes contained in the bill, electric generation will be built elsewhere. He itemized other policy issues in the bill and noted that it does not seek to change the assessment rate in the Kansas Constitution for public utilities. (Attachment 2)

Senator Lee observed that a new merchant power plant would not have a retail customer base and would have the ability to sell wholesale to anyone outside Kansas. She expressed her concern that the bill contains no provision which would guarantee that power generation from a new merchant plant built in Kansas will go to Kansas consumers. In response, Senator Clark reasoned that new plants will be built in Kansas; therefore, the power more likely than not will be sold to Kansans. Senator Pugh suggested that it would be better to give retail power generators the same tax benefits and continue to have the same safeguards in place for small businesses and individuals as are currently in place. In response, Senator Clark said he feels a utility will create an affiliate to take advantage of the tax incentives.

Charles Gregor, Jr., Leavenworth-Lansing Area Chamber of Commerce, testified in support of **SB 177**, stating that there is a need to encourage private capital investment in electrical generation facilities that will serve the growing demand for power from sources within the state. In addition, he pointed out the bill will make it possible to create new industrial facilities and jobs within Kansas. He noted that Kansas' 33 percent assessment rate is noncompetitive. He believes that, when "retail wheeling" becomes common place, Kansas will most likely become highly dependent on electrical power generation from outside the state if **SB 177** is not passed. He emphasized that electrical power generation plants built elsewhere provide no property taxes to support Kansas cities, counties, and school districts. (Attachment 3)

Jim Ludwig, Western Resources, testified in support of **SB 177**, which he contends will encourage investment and jobs in Kansas. Although there is no way to guarantee that new generation facilities will be built in Kansas, he believes the bill is a good step to remove a competitive tax disadvantage. Mr. Ludwig also contended that the enactment of **SB 177** would not erode the current property tax base. (Attachment 4)

Jack Glaves, Duke Energy North America, testified in support of **SB 177**. He explained that Duke Energy is in the business of constructing merchant power plants. Duke currently has ten operating plants, nine are under construction, and an additional ten are in the development phase. He noted that Duke is currently evaluating a prospective location for an additional plant in northeast Kansas. That evaluation takes into consideration all the economic factors in building in Kansas. Mr. Glaves feels it is necessary that Kansas recognize that the wholesale market has been deregulated, and plants are, in fact, being built all over the country. He noted that there is a need for more generation plants in Kansas. In his opinion, if Kansas wants plants to be built in Kansas, it is essential that **SB 177** be passed.

Shannon Green, Jr., Kansas City Power and Light (KCPL), gave final testimony in support of **SB 177**. He said it is very clear that, if new electric generation is to be developed in Kansas, changes must be made to reduce the extremely high property tax burden that is currently imposed on electric generation in the state. He noted that a number of electric generation projects have begun in nearby states with significant long-term tax abatements and minimal payment-in-lieu-of-tax provisions. He believes that **SB 177** provides a vehicle to allow the taxation of new electric generation property sited in Kansas to be more competitive with other states in the region. (Attachment 5)

Chairman Corbin called attention to written testimony in support of **SB 177** submitted by Max Sherman, Aquila Energy in Kansas City, Missouri. (Attachment 6)

J.C. Long, Utilcorp United, stood in support of **SB 177** and to comment on Mr. Sherman's written testimony. Mr. Sherman notes that taxation is a critical issue when considering construction of new merchant power plant projects. One of the reasons that Aquila Energy does not build in Kansas is because taxes for merchant power plants are treated just like utilities, which puts Kansas out of the market. Kansas is at a locational disadvantage, and the bill is needed to help compensate for that. With this, the hearing on **SB 177** was closed.

The meeting was adjourned at 12:00 p.m.
The next meeting is scheduled for March 5, 2001.