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BEFORE THE SENATE UTILITIES COMMITTEE

Presentation of the Kansas Corporation Commission March 5, 2007

HB 2220

Thank you, Chairman and members of the Committee. I am Don Low, Director of the Utilities Division for the Kansas Corporation Commission. I appreciate the opportunity to testify for the Commission on HB 2220. The KCC does not oppose the bill.

In general, the Commission supports the concept of a separate transmission charge on electric bills so that retail customers are aware of the transmission related electricity costs, just as they are informed of the costs of the generation of electricity through the Energy Cost Adjustment (ECA).

We believe that the bill will correct the problems with implementing a Transmission Delivery Charge (TDC) in strict accordance with the current statutory language in K.S.A. 66-1237, as interpreted by the Court of Appeals.¹ Under the construction of K.S.A. 2005 Supp. 66-1237 given by the Court, the “revenue neutrality” requirement in the statute means that a TDC cannot be implemented in the context of a rate case since rate cases result in a change in revenues. However, the Commission's initial unbundling of transmission related costs from other costs and approval of a TDC is most efficiently and logically done in the context of a rate case when transmission costs can be fully and most easily determined, rather than in a separate proceeding when the KCC may be forced to rely on outdated data.

¹ See *Kansas Industrial Consumers Group, Inc. v. State Corporation Commission*, 36 Kan. App. 2d 83, 98-105, 138 P.3d 338 (1996) (*Kansas Industrial Consumers*).

Further, the Court found that the Commission cannot rely on a FERC authorized transmission rate that is “interim” and subject to refund, reasoning that K.S.A. 66-117 Kansas requires KCC determination of a final permanent rate within the deadline for rate case decisions. We believe the Court erred since there are prior court decisions finding that the Commission has authority to fix interim rates. In any event, we suggest that it is generally desirable for the TDC to reflect the costs actually being paid by the utility under the FERC interim rate rather than adjust the TDC after the year or more lag period before the FERC rates are permanent.

I would note that when K.S.A. 2005 Supp. 66-1237 was first proposed and enacted in 2003, the KCC opposed it. At that time, the KCC suggested that the Commission already had authority to allow a TDC and that the bill did not provide sufficient flexibility, given the evolving nature of FERC regulation of transmission. The Court of Appeals decision confirms the potential problems of enacting statutes that are too detailed in prescribing how the KCC is to regulate and determine rates. If this were a blank slate, the Commission might prefer different or no legislation. However, given the possible court interpretation of a repeal of K.S.A. 66-1237 entirely, our current knowledge of the FERC procedures for determining transmission charges, and the desirability of allowing appropriate procedures to implement a TDC, the Commission is comfortable with HB 2220.

Thank you for consideration of this bill. I will be happy to answer any questions.