

Approved: March 19, 2010
Date

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:15 a.m. on January 12, 2010, in Room 785 of the Docking State Office Building.

All members were present except:
Mike Burgess-Excused.

Committee staff present:
Matt Sterling, Office of the Revisor of Statutes
Mary Torrence, Office of the Revisor of Statutes
Cindy Lash, Kansas Legislative Research Department
Iraida Orr, Kansas Legislative Research Department
Renaë Hansen, Committee Assistant

There were no Conferees appearing before the Committee.

Others attending:
24 including the attached list.

Chairman Holmes welcomed everyone to the 2010 session of the House Energy and Utilities committee.

Chairman Holmes reminded the committee that we will have a hearing tomorrow on **SB 298**. Additionally, the committee will have a hearing on the E911 bill on Tuesday the 25th of January and the Senate Bill that came to our committee on E911 last year.

Introductions by all committee members and staff members were made.

Cindy Lash, Kansas Legislative Research Department, (Attachment 1), reported to the committee topics discussed in the: Joint Committee on Energy and Environmental Policy, and Special Committee on Utilities. The Joint Committee on Energy and Environmental Policy focused on: Carbon Dioxide Emissions Reductions Policy, Water Use in Energy Production, American Recovery and Reinvestment Act of 2009 Energy Funds, State Liability under the Kansas Carbon Dioxide Reduction Act, and an Independent Administrator for Energy Efficiency Programs. The Special Committee on Utilities focused on: Next Generation 911, Federal Grant for 911, Kansas Wireless Enhanced 911 Advisory Board, Statewide Interoperable Communications System, and Continuation of the Funding for the 911 System. Each of the topics are elaborated on in Cindy's presented document.

Questions were asked and comments made by Representatives: Mike Slattery, Vern Swanson, Forrest Knox, Tom Sloan, Gail Finney, Joe Seiwert, Tom Moxley, and Don Myers.

The next meeting is scheduled for January 13, 2010 at 9:30 a.m.

The meeting was adjourned at 10:31 a.m.

HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

DATE: January 12, 2010

NAME	REPRESENTING
Shirley Allen	KRITC
Jim Bartner	DTAT
Troy's Love	Little Galt Relations
Glenn Kenner	KMLHA
Joe Dick	KCBPU
Matt Hickam	KCP+L
Tom Day	KCC
Michelle Peterson	Capital Strategies
Mick Urban	Kaiser Gas Serv
Lon Stanton	NORTHERN NATURAL GAS CO.
PAUL WAGES	KEPCO
Doug Smith	KLPG
Melissa Wangerman	KAC
Scott Jones	KCPCL
Wes Ashton	Black Hills Energy
Mike Reeder	Apurist
Chris Cardinal	Karsai Sierra Club
Kimberly Spady	GBPA
David Whitcomb	KEC

HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

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NAME	REPRESENTING
Mark Schreiber	Westar
Nelson Krueger	PAR Electric

**Interim Committee Highlights:
Joint Committee on Energy and Environmental Policy
Special Committee on Utilities**

Joint Committee on Energy and Environmental Policy

The Committee was established in 2008 as an 11-member bipartisan, joint committee whose members serve two-year terms. The Committee has a general responsibility to study Kansas energy and environmental policy.

- 2009 HB 2369 added a specific charge requiring the Committee to study and make recommendations regarding the use of energy-related moneys received under the ARRA.
- The LCC directed the Committee to review the possibility of moving energy efficiency programs from regulated utilities to an independent administrator, including consideration of 2009 SB 284 which would create a not-for-profit organization the sole purpose of which would be to achieve reductions in energy use by increasing the level of cost effective energy efficiency, conservation, and education available to Kansas citizens.
- At the request of the Joint Committee on Administrative Rules and Regulations (JCARR), the Committee also received a briefing on proposed rules and regulations to implement the Kansas Carbon Dioxide Reduction Act. That briefing included discussion of a bill that would amend the Act. The bill will be introduced to the 2010 Session by the JCARR.

Committee Activities

The Committee met for five days during 2009, including one meeting during the 2009 Session (January 13, September 29-30, and October 28-29).

Carbon Dioxide Emissions Reduction Policies

At the Committee's January 2009 meeting held in Memorial Hall, Dan Chartier from Edison Electric Institute provided an overview of cap and trade emissions control programs. He explained that under a cap-and-trade program the government's focus is on setting emissions goals and ensuring results. This stands in contrast to the approach generally used under the federal Clean Air Act which requires each emissions source to implement specific technology in

order to reduce emissions of particular substances. Examples of cap and trade programs that are in effect include the:

- European Union Emissions Trading Scheme (EU-ETS);
- Regional Greenhouse Gas Initiative (RGGI);
- Midwest Greenhouse Gas Reduction Accord (MGGRA);
- Western Climate Initiative (WCI); and
- Chicago Climate Exchange (CCX).

Federal Climate and Energy Legislation

NCSL provided a discussion of three bills under consideration in Congress that address climate and energy, typically referred to by the names of their sponsors: Waxman-Markey, Boxer-Kerry, and Bingaman. The Committee received testimony from many industry and environmental groups. Concerns voiced about pending federal proposals included:

- Potential additional costs that would be passed on to consumers;
- Inappropriate mechanisms for allocating emissions allowances (creating inequities among emissions sources and potentially failing to adequately control emissions);
- The absence of proven technology for carbon capture;
- Changes in state-federal regulatory responsibilities;
- The disparate impact on the Midwest and on certain industries (*e.g.*, petroleum refining, cement production, agriculture); and
- Absence of emissions credit market controls that will prevent price distortions (including concerns about administration of international offsets program).

The Water-Energy Nexus: Water Use in Energy Production

The Committee reviewed Kansas water law and discussed the need for efficient use of water resources in energy production processes. Among the issues discussed under this topic was the need for additional water to support construction of a new unit at the Wolf Creek nuclear power plant.

The Committee received information on this topic from professors at Kansas State University, the Division of Water Resources, the Kansas Water Office, and representatives of utilities, refineries and environmental groups.

The Committee learned that thermoelectric power plants in the State (which can include coal, natural gas, oil, and biomass combustion plants as well as nuclear facilities) divert about 2,530,000 acre-feet per year of water for cooling. About 67,000 acre-feet per year (3%) evaporates; the rest is returned to the source.

The Wolf Creek plant consumes an average of 26,097 acre-feet per year. The Kansas Water Office is exploring a number of options for providing the required additional water if a second nuclear unit is constructed at the Wolf Creek site. Those options focus on capturing and

storing water for that purpose, including raising lake levels, dredging John Redmond reservoir, or constructing a new reservoir.

Representatives of various segments of the energy industry made the following points regarding the relationship of water to energy:

- Electric power producers in Kansas obtain and utilize water under existing water law;
- Electric power producers engage in a number of water conservation practices including recycling of water used for some processes;
- Electricity generation competes with other uses for available water;
- Water availability and quality affect siting and type of new electric generation;
- Oil refineries may use air rather than water cooling in their production processes resulting in significant reductions in water use;
- Recycled waste water is appropriate for and is being used in certain oil refining processes;
- Ethanol producers are able to recycle water used in production processes to limit the amount of wastewater discharged;
- Research has resulted in plant varieties (including crops used for energy production) that may be grown successfully in dry land conditions; and
- Research has identified efficient farming practices that can maximize yield with reduced irrigation

American Recovery and Reinvestment Act of 2009 Energy Funds

The Committee learned that the Kansas Corporation Commission (KCC) received more than \$50 million from the Department of Energy under the ARRA. The Commission has designated those funds for use in five major programs:

- Efficiency Kansas -- \$37.2 million
- Comprehensive Rate Design -- \$1 million
- Energy Efficiency and Conservation Block Grant --\$9.5 million
- Technical Staff -- \$821,422
- Appliance Rebates -- \$2.68 million (administered by the Kansas Housing Resources Corporation)

In addition, the KCC has established an Energy Efficiency Building Codes Working Group to develop recommendations for the Legislature and outline a plan to achieve compliance with ARRA requirements related to adoption of statewide building codes for energy efficiency. The specific ARRA language follows:

The state building code authority (or local building code authorities) will adopt a building code that achieves energy savings equivalent to the latest IECC (Residential) and ANSI/ASHRAE/IESNA 90.1-2007 (Commercial) and a plan to achieve compliance;

A plan is developed for the jurisdiction achieving compliance to do so within 8 years of the date of enactment in at least 90 percent of new or renovated residential and commercial building space.

Then-Governor Sebelius communicated with leadership of the House and Senate committees that handle energy matters, encouraging the Legislature to take steps necessary to ensure compliance with the federal Act. Members of the Joint Committee noted that the issue of statewide energy efficiency building codes has been considered by the Legislature a number of times, but has never obtained the necessary support to be enacted.

The largest portion of the ARRA energy funds received by the KCC will be used in the Efficiency Kansas program which provides loans to finance cost effective energy-efficiency improvements in existing commercial and residential buildings. Efficiency Kansas is a revolving loan program that Kansans can access through partner banks and utilities. All energy efficiency projects financed through the program must be based on results of an energy audit. Those results are assigned priority based on cost effectiveness.

The Kansas Housing Resources Corporation received \$56 million of ARRA funds for weatherization of homes occupied by low income individuals and families. US Department of Energy (DOE) regulations establish program eligibility at or below 200 percent of the poverty level (\$20,800 annually for a single person or \$42,400 annually for a family of 4 in Kansas).

In an agreement with the KCC, the Housing Resources Corporation also received approximately \$2.7 million of ARRA funds to continue an existing appliance replacement program. The program enables income-eligible homeowners and renters to replace old, inefficient and unsafe appliances with new, energy-efficient models.

State Liability Under the Kansas Carbon Dioxide Reduction Act

The Committee received a briefing on proposed rules and regulations that would implement the Kansas Carbon Dioxide Reduction Act. The Rules and Regulations Committee previously expressed concern about proposed KAR 82-3-1117 that would have placed CO2 storage facilities in the possession of the State at some point in the future, raising concern about the potential financial liability associated with those storage facilities. Subsequently, the KCC decided not to proceed with the proposed regulation regarding long-term possession of the CO2 storage facilities. The Rules and Regulations Committee will introduce a bill in the 2010 Session to amend the Carbon Dioxide Reduction Act to clarify that the State will not assume ownership of storage facilities in the future.

Independent Administrator for Energy Efficiency Programs

The Committee reviewed 2009 SB 284 which would require the KCC to establish an independent not-for-profit corporation to develop, implement, and monitor natural gas and electrical energy efficiency, conservation, and education programs. The Committee heard a

summary of testimony presented to the Senate Utilities Committee during the 2009 Session, and received testimony from a representative of the Vermont Energy Investment Corporation, an independent energy efficiency agency in Vermont, as well as from a number of utilities and interested parties.

The Committee requested clarification of the Division of the Budget's fiscal note on SB 284, which showed the impact of the bill would be an expenditure of \$3,560 from Public Service Regulation Fund in 2010. Those costs were simply the cost to establish the not-for-profit agency required by the bill. Because the not-for-profit entity would not be a state agency, none of its expenditures or revenues would be included in an estimate of State fiscal impact. Based on the introduced version of the bill, the KCC estimated that annual revenue for the not-for-profit entity would be approximately \$14,700,000 (representing ½ of 1 percent of 2007 gross operating revenues of investor-owned electric and natural gas utilities which totaled \$2,940,051,000).

The Corporation Commission has examined utility-based energy efficiency programs on a number of occasions. The Commission concluded it has the authority to approve utility-operated energy efficiency programs, that most utilities were conducting energy efficiency programs and that the most effective way to expand the number of energy efficiency programs would be to encourage voluntary collaboration with utilities playing a strong role.

The KCC established a policy framework for review and evaluation of energy efficiency programs and established parameters for determination of costs and benefits prior to program implementation and for evaluating the program effectiveness after implementation. Most recently, the Commission determined that energy efficiency program costs could be recovered through a bill rider mechanism. The Commission intends to use approximately \$1 million of ARRA funds redesign utility rate structures to encourage energy efficiency.

Conclusions and Recommendations

The Committee's activities regarding the water-energy nexus, including the need for additional water for any expansion of Wolf Creek, cap and trade proposals, pending federal energy legislation, and State liability under the Kansas Carbon Dioxide Reduction Act, all were undertaken in order to provide background information for future work of the Committee and the Legislature. The Committee does not make any recommendations on those issues at this time.

In regard to creation of an independent energy efficiency agency, the Committee recognizes a connection between the programs instituted with the ARRA funds and the issues connected with establishment of such an agency. The Committee does not make any recommendation at this time regarding the need for an independent agency, but recognizes the possibility that the Senate Utilities Committee may work 2009 SB 284 during the 2010 Session.

The Committee concludes that additional information is required regarding use of ARRA funds and regarding implementation of other energy efficiency programs before final recommendations can be made to the 2010 Legislature. In order to obtain that information and formulate any resulting recommendations to the Legislature, the Committee will hold a joint

meeting with the Senate Utilities Committee and the House Committee on Energy and Utilities. The information requested for presentation at that meeting includes:

- Clarification of federal requirements for accepting federal stimulus money for energy and energy efficiency programs;
- Suggestions regarding how to extend the KCCs Efficiency Kansas program beyond the availability of ARRA funds;
- Suggestions regarding how to capture the money being currently spent by utilities for energy efficiency;
- Suggestions regarding how to increase the weatherization of homes occupied by recipients of Low-Income Home Energy Assistance Program support;
- Suggestions for increasing landlord involvement in energy efficiency programs;
- Suggestions for standardizing utility programs for energy efficiency if there is not an independent energy efficiency administrator;
- Identification of methods for determining the appropriate level of utility funding for energy efficiency with a verifiable means of measuring the saving we are achieving;
- Identification of a means of identifying achievable and measurable energy conservation goals and energy demand growth rates;
- Identification of a means of verifying measurements of the benefits of energy efficiency programs so that accurate savings numbers are recorded and can be attributed to the appropriate program/effort;
- An explanation of how consumer education and buy-in programs will work to modify consumer behavior passively if not directly and the direction being pursued by the KCC to develop and implement programs that will modify consumer behavior regarding energy efficiency; and
- A summary of federal requirements for use of ARRA funds and commitments the State has made regarding use of those funds.

Special Committee on Utilities

The Special Utilities Committee was created by the LCC with two charges:

- to review the new 9-1-1 emergency system technology that would allow text, pictures, video and data to be transmitted to emergency 9-1-1 centers in Kansas; and
- to review the possible extension of grant funding that currently is scheduled to sunset in July, 2010 for 9-1-1 emergency services for counties with a population of less than 75,000.

The Committee held two days of meetings. The first meeting addressed Next Generation 9-1-1, a federal 9-1-1 grant received by the state, the role of the Kansas Wireless Enhanced 9-1-1 Advisory Board, and digital communication tower access for public safety answering points (PSAPs). The second meeting focused on the funding structure for 9-1-1.

Next Generation 9-1-1

The Committee heard from representatives of the National 9-1-1 Office in the U.S. Department of Transportation (DOT) and from the National Emergency Number Association. They learned that the basic infrastructure of the original 9-1-1 system has been jury-rigged to accommodate enhanced 9-1-1 (which provides for automatic identification of the caller and location), wireless telephones, and VoIP. The infrastructure is not capable of receiving useful, actionable information generated by text, pictures, and video that could improve emergency response, nor does the analog technology used promote sharing of operations. With digital technology, calls can be transferred seamlessly between answering points.

NG9-1-1 is a digital, Internet Protocol (IP) based 9-1-1 system. Some characteristics of such a system include:

- ability to receive voice, text, or video information, from many types of devices;
- Advanced data sharing, automatically performed; and
- Enhanced "long distance" capability, so the physical location of the PSAP is immaterial.

U.S. DOT is working with the National Conference of State Legislatures on model legislation for NG9-1-1, which should be available in the next year or so.

The transition to NG9-1-1 will be an evolutionary process, probably beginning with the ability to accept text messaging, then video. Prerequisites to transition include assured funding, a complete set of standards, and coordination between jurisdictions. The National NG Migration Plan estimates that implementation will take ten years, after the funding, standards and coordination are in place. States are preparing now by looking at ways PSAPs can access the Internet Protocol backbone and establishing planning groups.

In an NG9-1-1 environment, a state-level mechanism is required for developing and managing system architecture, implementation, coordination and funding. Local jurisdictions, however, retain primary responsibility to receive calls and information, and to provide emergency response.

Federal Grant for 9-1-1

The Committee heard from a representative of the Governor's Grants Office, which operates the State 9-1-1 grant program under an agreement with the Department of Administration. The Grants Office recently applied for and received a grant under the federal ENHANCE 9-1-1 Act of 2004. The grant amount is \$770,990, with half the funding provided by federal sources, and half provided by state match.

The grant calls for the formation of a multi-jurisdictional governing body to provide oversight of the project. The governing body will hire a consultant who will be responsible for establishing an ESINet in Kansas, implementing industry-based standards, addressing funding issues, and implementing Next Generation technologies at three PSAPs on a pilot basis in the final year of the grant. Approximately 70 percent of project funds will be spent on equipment, with the remainder used primarily for expenses associated with the consultant.

Committee members expressed serious concerns that the project will develop and implement significant state policy under the jurisdiction of a non-elected governing body with no input from the Legislature.

Kansas Wireless Enhanced 9-1-1 Advisory Board

The Chairperson of the Advisory Board reviewed the history, activities, and long-range goals of the Board. The Board's focus has been on awarding state grants. They have attempted to use the grant process to encourage sharing of resources within a county or region, but do not believe they have statutory authority to use grant funding to force consolidation. The Board has focused its long-range planning on ensuring that public safety answering points can maintain their current systems when the funding structure changes in July 2010.

Statewide Interoperable Communications System

The Committee heard from representatives of the Kansas Department of Transportation (KDOT) and from the Statewide Interoperability Executive Committee. The goal of the Statewide Interoperable Communications System is to facilitate seamless communications in critical events for public safety-related officials operating on different radio systems. The P25 wide-area trunk radio system, which allows multiple users to communicate simultaneously, has been installed in many counties across the

state. Approximately the western one-third of the state will receive the Motobridge Interoperability solution, which allows one person to talk at a time, rather than the P25 wide-area trunk system.

The Department also operates a leasing program, under which it leases 800 MHz radio equipment to public safety agencies (nine leases to-date) and leases space on its communication towers (seven leases to-date). A Committee member expressed concern that groups that request access to the towers are being turned down, or are quoted prices that make leasing unfeasible. The Department was asked to provide a list of people who requested access and were denied or did not go forward, including the reason why, if known. The list was received and distributed to Committee members.

Continuation of funding for the 9-1-1 System

State law calls for the current funding structure to sunset in July 2010. At that time, the wireless enhanced 911 grant fee is discontinued, the advisory board is abolished, any unobligated balance in the grant fund is distributed to PSAPs based on the population served, and the grant fund is abolished. A new fee structure is established, as follows:

- In counties with a population of 125,000 or more, the tax on wireline cannot exceed \$0.25 per month per access line, and the local fee on wireless and VoIP must be an equal amount; and
- In counties with a population less than 125,000, the tax on wireline cannot exceed \$0.50 per month per access line, and the local fee on wireless and VoIP must be an equal amount.

The Public Safety Answering Points, represented by the League of Kansas Municipalities and the Kansas Association of Counties, and the telecommunications industry presented a joint statement containing their proposal for ongoing funding of the 9-1-1 system.

The Committee reviewed and discussed the proposal at length. Members expressed their conceptual support for many elements of the proposal, but did not conceptually endorse other points. The list below contains their direction regarding elements to be included in legislation presented to the 2010 Legislature.

Customer Fees

The customer fee for both wireless and wireline devices would be set at \$0.55 per access line per month. The fee for prepaid wireless service would remain at the current level, one percent of the retail price. The Legislature would review these fees at least every five years.

Administrative Fees

Administrative fees would be capped at four percent of receipts, with the wireless companies and the local collection point administrator each allowed to retain an amount equal to two percent of receipts.

Collection Point

The current local collection point administrator would serve as the single collection point for all E 9-1-1 fees, including fees for wireline, wireless, VoIP, and prepaid services. The current

statutory language would be retained regarding the method of collection.

Distribution

Of the \$0.55 fee,

- \$0.45 (less the administrative fees) would be remitted directly to the PSAP from which the fee was generated, and;
- \$0.10 (less the administrative fees) would be redistributed to PSAPs with a population less than 75,000.

Fees on prepaid service (less the administrative fees) would be placed in a newly-created grant fund.

Grant Fund

The new grant fund would be administered by the local collection point administrator. All PSAPs would be eligible to apply for grants. Grant money could be used to incent sharing of equipment or services, support planning and implementation for Next Generation 9-1-1, cost sharing, and other statutorily allowed purposes. The balance in the current grant fund (which is administered by the Governor's Grants Office) would be transferred to the new grant fund administered by the local collection point administrator.

Use of Fee Moneys

Current statutory limits on the use of 9-1-1 fee moneys would be retained. In addition, there would be a specific prohibition on using this money to purchase subscriber radio equipment, with the definition of "subscriber" to be determined later.

Statewide Committee

The LKM, KAC, and industry were asked to firm up this proposal to address the number and type of members, how the members would be appointed, the duties of the committee, and possible reimbursement for committee members.

Point of Sale for Prepaid

Current statutory language would be retained, but language would be added to clarify that the 9-1-1 fee is to be charged over and above the amount of the prepaid card or device.

Audits and Reviews

The local collection point administrator would have an annual financial audit conducted by a Certified Public Accountant, which would include administrative fees. The current statutory authority to audit industry would be retained.

Legislative Post Audit would audit one-third of PSAPs annually, in accordance with a scope statement spelled out in statute. The costs of those audits, whether conducted by Legislative Post Audit or contracted under its authority, would be funded from grant moneys. Audit reports would be provided to the Legislative Coordinating Council; to the Chairperson, Vice-Chairperson, and Ranking Minority Member of the House Energy and Utilities Committee and the Senate Utilities Committees; and to the statewide committee.

Effective Date

The current system would be extended through December 31, 2010; the new system would begin January 1, 2011. Thereafter, it would operate on a calendar year. No collection penalties would be assessed in the first 12 months for companies acting in good faith to remit data and moneys.

The bill would take effect upon publication in the *Kansas Register*.

The LCC will be requested to allow introduction of the bill in both the House and the Senate, and the chairpersons of the House Energy and Utilities Committee and the Senate Utilities Committee will be requested to hold hearings on the bill as soon as possible after the start of the session.

Other Elements of the Proposal

Elements of the proposal which were not conceptually endorsed by the Committee, but which may be considered during the Session include the following:

- Requiring point-of-sale collection of 9-1-1 fees on prepaid services (rather than collection from the wholesaler);
- Cost recovery for carriers;
- Language modifications addressing such issues as “place of primary use” and the definition of subscriber; and,
- Expansion of liability coverage to include VoIP providers if they provide actual location information.