

**BEFORE THE SENATE UTILITIES COMMITTEE
PRESENTATION OF THE KANSAS CORPORATION COMMISSION
FEBRUARY 5, 2004**

SENATE BILL 310

Thank you, Chairman, and members of the Committee. My name is Susan Cunningham, General Counsel for the Kansas Corporation Commission (Commission). I appreciate the opportunity to testify on behalf of the Commission on Senate Bill 310.

In the past few years, certain external and internal factors have caused many public utilities with non-regulated affiliates to experience financial difficulties, up to and including loss of investment grade rating, delisting from the NYSE and potential insolvency. The purpose of this proposed legislation is to prevent regulated public utilities from using their regulated operations to subsidize their non-regulated operations or to impair the financial integrity or creditworthiness of the public utility, as well as to protect ratepayers from the financial burdens and related risks associated with non-regulated affiliates.

There is an inherent tension between regulated public utilities and their non-regulated affiliates: that is, through the process of regulation, the regulated utility is given the opportunity to recover its public utility-related costs and earn a fair rate of return, while at the same time its non-regulated affiliate is seeking opportunities and sources of funding to bolster its finances and gain a competitive advantage. Senate Bill 310 is intended to eliminate the tension on regulated operations and ratepayers by expressly clarifying the Commission's authority to develop comprehensive rules and regulations which would establish standards of behavior between regulated entities and their unregulated affiliates. The envisioned rules and regulations would address the primary issues of cost allocations and pricing guidelines between regulated utilities and their affiliates. An initial set of rules applying to electric and natural gas public utilities has

already been drafted by Commission Staff and the Commission has held a roundtable discussion on those proposed rules. Comments were received by industry participants and Staff is in the process of incorporating many of those comments into its next round of proposed rules.

Joint comments submitted by a group electric cooperative utilities involved whether cooperatives should be subject to certain affiliate rules. The argument was made that incentives for affiliate abuse do not exist when the owners of the public utility are one and the same as the consumers. Electric cooperative representatives met with us to discuss the possibility of revising Senate Bill 310 in a way which recognizes the cooperatives' unique corporate governance and structure while at the same time preserving the Commission's authority to protect ratepayers. The Commission and the coops ultimately agreed upon the revised language which appears on Attachment A to this testimony.

The Commission certainly has general authority to do all things necessary to protect ratepayers as evidenced by its exercise of that general authority in significant dockets pertaining to Westar and Aquila. After lengthy investigations and hearings to determine whether Kansas ratepayers have suffered from corporate actions attributable to affiliates, the Commission ordered remedial actions. The Commission believes that specific express language articulating the public policy that ratepayers will not pay for or suffer from the effects of investments in non-regulated businesses will clarify Commission expectations. This is especially important in light of the proposed repeal of certain historic federal protections such the Public Utility Holding Company Act. For the reasons described in this testimony, the Commission respectfully requests that you favorably pass out Senate Bill 310, as amended in Attachment A to this testimony.

Unless there are questions from the Committee, I have no further comments on Senate Bill 310. Thank you for the opportunity to appear before you this morning.