

Citizens' Utility Ratepayer Board

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SB 279 Testimony
Citizens' Utility Ratepayer Board
Before the House Energy, Utilities and Telecommunications Committee
Testimony in Opposition

I am David Nickel, Consumer Counsel for the Citizens' Utility Ratepayer Board (CURB), which is a five-member voluntary board appointed by our Governor. The Kansas legislature created CURB as an independent state agency in 1989, to represent residential and small commercial ratepayers in utility cases filed with the Kansas Corporation Commission (KCC), Kansas Courts and the Kansas legislature.

CURB opposes SB 279. It circumvents the Commission's decision in Docket No. 15-GIMG-343-GIG. In that docket, the Commission granted Kansas gas utilities an opportunity to file for an accelerated pipeline replacement program, subject only to certain conditions. It was a lawful and reasonable order. Indeed, no gas utility appealed that decision to the district court; utilities typically appeal when they perceive that an order of the Commission is either unlawful or unreasonable. Yet, the Commission's order did not give the gas utilities everything they wanted. Their response: Get from the Kansas legislature that which the evidence in Docket No. 15-GIMG-343-GIG would not support.

The gas utilities are attempting to convince the legislature that SB 279 meets the public interest upon the sheer basis of three or four pages of unsworn testimony versus the extensive evidence heard by the Commission in Docket No. 15-GIMG-343-GIG. In contrast, the Commission undertook a lengthy review and analysis of a substantial record consisting of the testimony of several witnesses, many exhibits (including physical exhibits of obsolete pipe) and legal briefs filed by all parties in Docket No. 15-GIMG-343-GIG. In establishing an accelerated pipeline replacement plan in that docket, the Commission balanced the interests of the parties. The gas utilities want to usurp the authority of the Commission that has existed under the Public Utility Act and worked well for over one hundred years.

SB 279 goes well beyond the intended scope of the Gas Safety and Reliability Policy Act (GSRA). The Kansas legislature intended the GSRA to allow surcharges against customers for pipeline replacements necessitated by state or federal requirements. Yet, SB 279 allows surcharges for pipeline replacements and other capital investments regardless of whether or not state or federal safety rules require them. In fact, as broadly as SB 279 is written, it is hard to conceive a capital expenditure that could not be surcharged to customers under SB 279. It even adds cybersecurity and other like measures to the list of capital expenditures for which gas utilities are going to be able to surcharge their customers. If SB 279 is enacted, regulatory control over utility capital investments will materially be diminished, to the detriment of Kansas citizens.

It is noteworthy that when the Kansas legislature initially enacted the GSRA, the gas utilities applauded it as sufficient for its intended purposes. It was then and is now a workable resolution that allowed gas utilities to make safety-required investments collectable through a surcharge. Nothing has changed in these regards. Neither federal nor state governments have significantly changed safety requirements in such a manner as would require additional surcharges. Rather, the utilities want to change the GSRA so that nearly all of their investments are collected from ratepayers through a surcharge.

Importantly, the GSRA clearly envisioned a surcharge to customers for investments that are required by state or federal governments. In essence, these surcharges are fair because those investments are government imposed, and the gas utilities have little discretion over those investments. Under SB 279, however, the gas utilities have substantial control over when and where capital investments are made. SB 279 imposes those discretionary expenditures upon the backs of consumers. Many of those consumers are low income or fixed income residential ratepayers who struggle to pay their utility bills.

Moreover, the KCC staff and CURB can give no more than a cursory review (60 days from the filing date with the KCC) of the propriety of these investments. Albeit these investments will be reviewed when the utility files a rate case, the utility can delay that review up to six years under the GSRA. By that time, information on investments could be very stale, making it very difficult to prove that these

investments are imprudent. In short, SB 279 in its present form does not adequately protect residential and small commercial ratepayers from unjust or unreasonable rates.

SB 279 virtually eliminates the public utility regulatory compact, which is vital to cost-of-service regulation of utilities. Under the compact, the government authorizes a public utility to provide utility services to customers within a service territory in exchange for governmental regulation of the utility's rates and practices. Furthermore, amendments to the GSRA are not necessary to allow utilities to replace or modernize pipelines for safety purposes; they can do so under current law. Utilities can still seek surcharge mechanisms through the KCC that are beyond the amount of the GSRA cap or beyond the scope of the GSRA, when they deem necessary. As SB 279 is proposed, practically all utility investments will simply be flowed through the surcharge mechanism proposed by SB 279 and collected from the ratepayer through the customer charge. The only real benefit of SB 279 is to utility shareholders.

The legislature should also note that there is no sunset to the ability of the gas utilities to continue to add capital expenditures to the surcharge against consumers. Prudent businesses budget capital projects such as pipeline replacements. Capital projects have a beginning and an end; they have a generally definite cost. SB 279 does not require the utilities to prudently plan their capital expenditures. It simply allows the gas utilities to continue to build plant at ratepayers' expense, with little regulatory control.

CURB has been available to discuss and negotiate a mutually agreeable amendment to the GSRA. However, SB 279 was thrust at CURB merely a couple of days before it was introduced in the Senate. There is no reason why gas utilities cannot afford the time to make reasonable amendments to the GSRA.

Gas utilities may urge quick passage of SB 279 out of the alleged necessity to avoid danger to Kansas citizens. Yet, the truth of the matter is that these Kansas utilities have waited for years to repair or replace their pipelines. Indeed, the utilities boast that their pipelines are safe and that there is no known immediate danger to persons or property emanating from the condition of these pipelines. Thus, there is no reason to hurry legislation when additional time could yield very reasonable amendments.

The GSRA has worked well for over ten years. It certainly will continue to work for, at least, the next year or two. In short, there is no need to ignore the time and effort necessary to amend the GSRA in a manner that is protective of the ratepayer. For the above reasons, CURB opposes SB 279.