

Citizens' Utility Ratepayer Board

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HOUSE UTILITIES COMMITTEE Sub. S.B 104

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
March 20, 2003

Chairman Holmes and members of the committee:

Thank you for this opportunity to appear before you today and offer testimony on Sub. S.B 104. CURB did testify as an opponent of this bill before the Senate Utilities Committee. CURB also participated in Sub-committee that redrafted the language of this bill. However, the substance of this bill remains the same as the original bill and CURB still opposes this bill.

This bill allows a utility to seek a binding determination from the KCC of the "ratemaking principles and treatment" to be accorded transmission and generation projects, and for power purchase contracts. Once an order is issued those "ratemaking principles and treatment" can never be revisited or changed by any Commission at any time in the future. While this concept is presented as providing regulatory certainty, what this bill does is take away the ability of the Commission, CURB and even the utilities to adjust to changing facts and circumstances over time. The transmission and generation facilities that this bill will impact can last up to 40 or 50 years, and yet for that entire time period, every Commission will be bound to regulatory treatments decided before the first shovel was turned on the project.

Conceptually, what this bill does is no different than suggesting to you that "legal certainty" is needed, and therefore, once the legislature has passed a law, the legislature is forever after precluded from revisiting or amending that law, regardless of whether facts and circumstances have changed, and regardless of whether changing the law would be beneficial. Precluding the Commission's ability to amend regulatory principles for the

sake of providing regulatory certainty makes no more sense than precluding your ability to amend laws for the sake of providing legal certainty.

In reality, things change over time. Regulation, like the law, is a dynamic process that adjusts itself to facts and circumstances as they change over time. What was appropriate 10 or 20 years ago may not be appropriate now. What is appropriate now may not necessarily be appropriate 10 or 20 years from now.

For all the drafting changes made in the Senate Sub-committee, this bill still creates an absolute preclusion from adjusting the regulatory principles and treatments accorded these facilities regardless of what may be appropriate based on current facts and circumstances. CURB believes this is poor public policy and therefore remains opposed to this bill.

Conservation Measures:

I would further note that the Senate Utilities Committee added the language in Section 1(c)(2) to the bill that requires the utility to submit, as part of its filing “a description of the public utility’s conservation measures” and a “description of the public utility’s demand side management efforts”. However, this language does not actually require the utility to practice conservation efforts or have a demand side management program. The utility could simply state “none” in response to these questions in its application. CURB believes this is a short-sighted energy policy for Kansas. This bill provides an incentive to the utility to build power plants, but does not require the utility to implement practical conservation policies that would help avoid the need to build more power plants. If this bill progresses, CURB suggest that you strengthen this language to require conservation and demand side management programs actually be implemented by the utilities that seek the regulatory the guarantees this bill offers. Perhaps it is time we look at conserving energy as a long term sustainable energy policy rather than a policy that simple incents the building of power plants and transmission lines.