

Citizens' Utility Ratepayer Board

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SENATE UTILITIES COMMITTEE **S.B 51**

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
February 12, 2003

Chairman Clark and members of the committee:

Thank you for this opportunity to appear before you today and offer testimony on S.B 51. The Citizens' Utility Ratepayer Board is a proponent of this bill for the following reasons:

I will preface this testimony by noting three things. First, executive compensation is an issue that CURB, and other parties can and do review in every utility rate case. Second, the Kansas Corporation Commission has the discretion to deny any level of compensation it deems excessive and therefore not prudent. Third, it is possible that a utility, at the time of a rate case, may ask for less than the total compensation it pays its executives to be placed into consumer rates. Based on these three comments, it can be expected that some parties may suggest to the Committee that this bill is simply unnecessary. CURB would disagree with that assessment and suggests that the bill is necessary and provides a level of specific guidance that will benefit consumers.

S.B 51 does three things that CURB believes are important to the process of determining just and reasonable rates for public utilities, and therefore provide a benefit to consumers.

1) S.B 51 provides a specific definition of what is “excessive” when evaluating the appropriate level of executive compensation to place in consumer rates. Without a specific definition, the determination of whether executive compensation levels are excessive is solely within discretion of the Commission. Legally, it is virtually impossible for a party, like CURB, who disagrees with the Commission’s determination in a case, to overturn that determination in court.¹ While S.B. 51 reduces the Commission’s discretionary powers by providing a specific definition to follow, the proposed language is not so strict as to eliminate the Commission’s discretion entirely. S.B 51 provides an appropriate balance between restricting the level of executive compensation allowed in consumer rates while allowing the Commission the flexibility to address the specific facts of each case.

2) S.B. 51, at Section (c) requires the Commission to make specific findings of fact as set forth in (c)(1) – (c)(6) before allowing the public utility to recover executive compensation in consumer rates. CURB believes that requiring these affirmative findings of fact by the Commission, when combined with the specific definition of what is considered “excessive” in Section (a) will provide a level of consistent review that is beneficial to consumers. The bill provides a specific template that must be followed in terms of findings of fact by the Commission. As such, this language provides a template for the utility to follow in making its request, a template for CURB or other parties to follow in reviewing the utilities request and a template for the Commission to follow in making its findings of fact in an order. CURB believes the template created in S.B. 51

¹ “Hence a court may not set aside an order of the commission merely on the ground that it would have arrived as a different conclusion had it been the trier of fact. It is only when the commission’s determination is so wide of the mark as to be outside the realm of fair debate that the court may nullify it” *Midwest Gas Users Association v. Kansas Corporation Commission*, 3 Kan. App. 2d. 376, 595 P.2d 735, review denied 226 Kan. 792 (1979)

will be beneficial to all parties by providing some level of certainty about how the review of compensation will be conducted, and by providing specific guidance as to what evidence will be necessary to support the specific findings of fact that must be made by the Commission.

3) S.B. 51, at Section (d) places the burden of proof squarely on the utility. Legally the burden of proof is always on the utility if the utility is seeking to change its approved tariff rates. However, in practice, the burden of proof often subtly shifts to the party arguing that certain costs should be disallowed. It becomes incumbent upon the party seeking to disallow certain costs to meet a high evidentiary burden, to convince the Commission to deny some level of what is contained in the utility's application. It often appears that there is a presumption that what the utility originally files is reasonable and prudent. By placing the burden squarely on the utility, providing a specific definition of what is to be considered "excessive" and requiring specific findings of fact by the Commission, this subtle shifting of the burden of proof should be minimized. By keeping the burden of proof squarely on the utility, consumers should benefit by preventing the Commission from being able to shift the evidentiary burden onto the parties opposing the utility rate increase.

In summary, when read together, these three components of S.B. 51 provide a specific structure with respect to the review of executive compensation that if followed will be beneficial to the utilities that come before the Commission, the parties, like CURB, that participate in the review of utility applications, and ultimately to the consumers who will pay in rates and cost of executive compensation allowed by the Commission.