

Citizens' Utility Ratepayer Board

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HOUSE UTILITIES COMMITTEE **S.B 51 (as amended)**

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
March 14, 2003

Chairman Holmes 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 several 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, as amended by the Senate Utilities Committee allows the Kansas Corporation Commission to adopt rules and regulations to implement the provisions of this bill. CURB believes that a KCC process that defines what is to be considered “excessive” compensation, combined with the consistent application of this definition, is a positive step for consumers. Having a definition of “excessive” compensation, when combined with the other parts of the bill discussed below will provide a level of certainty to the utility and its shareholders, to consumers, and to the Commission that is called upon to make these determinations. Functionally, this will narrow the scope of issues that must be addressed in any case where compensation becomes an issue. Importantly, this process will also provide notice to the board of directors of the utilities regarding what type of compensation, and what level of compensation is likely to be allowed in utility rates. This type of notice will provide guidance and hopefully some level of consistency between utilities as they make compensation decisions.

2) S.B. 51, at Section 1 (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” 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

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 not be allowed in consumer rates. 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. 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.

4) CURB also supports the public disclosure of executive compensation as required in Section 1 (e). Compensation paid to officers of the utility should be available to consumers that pay the compensation in rates and to the public generally.

In summary, when read together, these 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 the cost of executive compensation allowed by the Commission in rates. For this reason CURB supports S.B. 51 as amended.