

Citizens' Utility Ratepayer Board

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SENATE UTILITIES COMMITTEE **S.B 80**

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. 80. The Citizens' Utility Ratepayer Board is a proponent of this bill for the following reasons:

CURB was certainly disturbed to hear the recent public announcements by Aquila that it intended to issue debt on its utility properties to help pay for financial losses in its unregulated activities. What was more distressing was that Aquila also announced that it did not have to seek approval from the Kansas Corporation Commission to issue this debt. While the Commission does have plenary jurisdiction over Aquila's utility properties in Kansas, and could certainly initiate an investigation of its own accord, Aquila's announcement pointed out a large problem with the Kansas statutory framework that S.B. 80 will address. For that reason, CURB supports the language contained in the bill.

It is CURB's belief that regulated utility properties in Kansas, and the rates consumers pay for utility service, should not be used to fund unregulated activities by utilities. CURB has spent the last two years fighting Westar Energy over this very issue.

Ultimately, increasing the debt on utility properties, and at the company level in general, may impair the Kansas utilities ability to provide sufficient and efficient service at just and reasonable rates in the future. This is certainly a situation CURB, and the consumers it represents, would hope to avoid.

S.B. 80 will require public utilities to seek approval of the Commission before selling, assigning, leasing, transferring, mortgaging, pledging or otherwise disposing of or encumbering the utility's assets with a book value greater than \$500,000. CURB believes that it is imperative that the Commission have this review authority so that public utilities in Kansas are not able to mortgage their utility assets to the detriment of Kansas utility customers.

I would note that there may be a potential conflict with the statutory language in K.S.A. 66-125. While the language in S.B 80 would apply to all utilities with a certificate to operate in Kansas, K.S.A 66-125 does provide an exemption for investor owned electric public utilities *incorporated* in Kansas, allowing these specific utilities to avoid filing for approval at the Commission before issuing debt if “the issuance requires a registration statement to be filed with the securities and exchange commission or such utility obtains an authorization or approval of such issuance from another state or federal agency”. If the utilities addressed in K.S.A. 66-125 receive approval from any other agency, they merely have to file the information with the Commission, without seeking specific approval from the Commission. This exemption for certain utilities may run counter to what appears to be the intent of S.B. 80.

In summary, CURB supports S.B. 80 as a reasonable protection for Kansas consumers against the harm of unregulated utility activities.