

Citizens' Utility Ratepayer Board

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HOUSE UTILITIES COMMITTEE H.B. 2033

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
January 23, 2007

Chairman Holmes and members of the committee:

Thank you for this opportunity to offer testimony on H.B. 2033. The Citizens' Utility Ratepayer Board is opposed to this bill for the following reasons:

HB 2033 amends K.S.A. 66-128 to change the statutory framework from a permissive "may" to a mandatory "shall" statute. CURB believes that this simple word change has the effect of repealing the entire statutory framework created by K.S.A. 66-128 through K.S.A. 66-128p and removes that last vestige of any protection for consumers left in this statute.

A touchstone consumer protection in the regulation of public utility rates is that the cost of utility plant is not allowed into consumer rates until that plant is finished and operational. K.S.A. 66-128 through K.S.A. 66-128p establish the Kansas statutory framework implementing this basic protection. These sections also set forth the Kansas Corporation Commission's duties and obligations in valuing utility plant and determining what costs can be placed in consumer rates. K.S.A. 66-128(b)(1) is specific in that ***"property of any public utility which has not been completed and dedicated to commercial service shall not be deemed used and required to be used"*** in the public utility's service to the public.

The exception to this touchstone rule appears in K.S.A. 66-128(b)(2), which allows that certain property ***"may"*** be deemed ***"completed and dedicated to utility service"*** if certain requirements are met. This exception allows the cost of certain facilities to be placed into consumer rates when the facilities are not yet used and useful, but are under construction. This is generally known as the "construction work in progress" exception, or "CWIP".

Historically, CWIP was used on those projects that would be completed within the very near term after a utility had filed a rate case. The rationale is that the utility should not have to file a second rate case to recover costs that were just outside of the test year in a rate case. And since the statute contained the word "may", consumers still had some level of protection as the Commission is required to balance the interest of consumers in determining whether or not to allow the proposed CWIP costs into rates.

Over time the CWIP exceptions have grown so broad that there is no longer a linkage in time to a current rate case proceeding. For example, in K.S.A. 66-128(b)(2)(D)

all that is required now to meet CWIP is that the costs are for “an electric generation facility or addition to electric generation facility” place in service after January 1, 2001. There is no restriction on when that generation facility begin operation and actually supply power to consumers. K.S.A 66-128(b)(2)(E) has similar language for transmission lines, K.S.A 66-128(b)(2)(B) has similar language for a 100 MW renewable resource and K.S.A 66-128(b)(2)(C) has language that would allow the cost of a nuclear plant sited pursuant to K.S.A. 66-1,158 to be placed into consumer rates long before that plant ever comes online. This last provision is of interest in that much of Commission duties and consumer protections in K.S.A. 66-128 relate to and are a result of the Wolf Creek nuclear power plant.¹

The single remaining protection for consumers in this statute is the word “may”. The Commission retains some level of discretion to balance the interest of ratepayers and the utility. Utilities cannot automatically pass costs onto consumer bills without convincing the Commission that consumers should pay those costs. Consumers have an opportunity to be heard by the Commission on those costs. Replacing “may” with “shall” removes even this protection for consumers.

Read literally, if this change is approved, K.S.A. 66-128 will now say that a generation plant that is not completed and dedicated to commercial service shall not be deemed used and required to be used in the public utility’s service to the public, except that the same generation plant shall be deemed completed and dedicated to commercial service and shall be deemed used and required to be used in the public utility’s service to the public. This seems rather nonsensical.

It may be argued that making CWIP mandatory will reduce the regulatory risk faced by utilities. This is true, but only because the risk has been shifted to consumers. The legislature passed K.S.A 66-1239 to provide additional certainty to utilities with regard to the regulatory process. Making CWIP mandatory, in conjunction with K.S.A. 66-1239 gives the utilities regulatory certainty and direct access to the consumer’s checkbook. Further, once the Commission allows (or is required by this proposed statutory change) costs into utility rates, the Commission is legally precluded from ordering a refund if at a later date the utility is found to have been imprudent. This does not represent a fair balance between consumers and the utility shareholders.

CURB respectfully urges the Committee to read carefully each section of in K.S.A. 66-128a through K.S.A. 66-128p² before voting on this bill. It is clear that making CWIP, as set forth in K.S.A. 66-128(b)(2) mandatory rather than permissive goes against the entire framework of this statutory section. Consumers will lose the little protection left in this statute, and the balance of the public interest will fall to the utility shareholders.

¹ For an interesting discussion of this law as applied to Wolf Creek, see *Kansas Gas and Electric v. Kansas Corporation Commission*, 239 Kan. 483, 720 P.2d. 1063 (1986)

² For example: K.S.A. 66-128b....The Commission may require a public utility to defer inclusion of all or any portion of the reasonable value of property determined not currently used and required to be used... or K.S.A. 66-128c...In the event the state corporation commission determines that a portion of the costs of acquisition, construction or operation were incurred due in whole or in part to a lack of efficiency of prudence.....it shall have the power and authority to exclude all or a portion of the revenue requested by the utility...