

Citizens' Utility Ratepayer Board

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HOUSE UTILITIES COMMITTEE H.B. 2143

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
February 15, 2011

Chairman Holmes and members of the committee:

Thank you for this opportunity to offer testimony on H.B. 2143. The Citizens' Utility Ratepayer Board is opposed to this bill for the following reasons:

Section 1 of H.B. 2143 greatly expands the existing regulatory preapproval statute, K.S.A. 66-1239. This statute was originally proposed based on the premise that large, capital intensive investments were now too risky for Kansas utilities to take on absent some level of regulatory certainty about what rate treatment would be allowed now and into the future. As designed, the statute applies to generation and transmission investments and requires the state corporation commission to make a decision on an application within 180 days. The regulatory principles set forth by the commission in that decision "shall" apply to every ratemaking proceeding thereafter. H.B. 2143 adds "*distribution facilities*" and "*energy storage devices*", as defined in the bill, to the statutory preapproval framework.

CURB opposed the bill that created the preapproval framework in K.S.A. 66-1239. CURB argued that preapproval moved financial risk from utilities to ratepayers without an adjustment to compensate ratepayers for accepting that risk. Further, requiring that preapproved rate principles be used in every future proceeding involving the generation or transmission facility at issue removed from future commission's all regulatory flexibility to adjust rates, as needed, to address current facts and circumstances. For example, 25 years after the Wolf Creek nuclear plant was put into consumer rates, the commission, based on current day evidence, changed the depreciation schedule on Wolf Creek from 40 years to 60 years. This change was appropriate based on contemporary evidence and saved ratepayers millions of dollars every year. This type of change could be precluded by a pre-approval order.

If the basis of the preapproval statute is to provide regulatory certainty when a utility is faced with a large, long-term capital expenditure, then CURB does not believe distribution facilities or energy storage devices fit into this category of resource. Nor do they carry the same level of financial risk. Where generation or transmission may cost more than a billion dollars, by comparison distribution resources and energy storage devices cost very little. If a Kansas utility needs regulatory preapproval for the level of expenditures necessary to upgrade distribution facilities or invest in energy storage devices, there are probably larger questions that should be asked by both the legislature and regulators. As such, CURB does not support the amendment proposed in this section of the bill.

Section 2 of H.B. 2143 adds “*energy storage devices*” to the definition of “*appurtenances*” in K.S.A. 66-1240. Energy storage devices thereby become eligible for Kansas development finance authority bonds (K.S.A. 66-1241), cost recovery over 15 years (K.S.A. 66-1242) and state corporation commission oversight over the sale and lease to an independent transmission company (K.S.A. 66-1244). As noted above, energy storage devices cannot be considered large long-term capital investments. Adding energy storage devices to the types of assets that may be funded by Kansas development finance bonds seems misplaced, as does setting rate recovery arbitrarily over 15 years. As such, CURB does not support the amendment proposed in this section of the bill.

Section 3 of H.B. 2143 adds “*energy storage devices*” to the definition of “*appurtenances*” in K.S.A. 66-1247. Energy storage devices thereby become eligible to be included in the cost recovery mechanism for transmission created therein. To date, this statute has never been used. Nor does CURB anticipate this statute ever being used given the current cost recovery mechanisms established through the Southwest Power Pool with FERC approval. As such, while CURB does not support the amendment proposed in this section of the bill, it is neutral on whether the Committee chooses to make this amendment at this time.

For the above reasons, CURB does not support the proposed changes in existing law set forth in this bill and recommends the Committee vote against passing this bill at this time.