

House Committee on Energy, Utilities, and Telecommunications
Testimony of Citizens' Utility Ratepayer Board
Written Only Testimony
Neutral Testimony on HB 2109
February 4, 2025

Chairman Delperdang and members of the House Committee on Energy, Utilities, and Telecommunications, thank you for this opportunity to testify regarding House Bill 2109. My name is Joseph Astrab. I am the Consumer Counsel for the Citizens' Utility Ratepayer Board (CURB). CURB is the advocate for residential and small commercial ratepayers before the Kansas Corporation Commission (KCC) and the Kansas Legislature. My testimony reflects the interests of these utility ratepayer classes regarding HB 2109.

HB 2032 creates rules that requires public utilities to enter into "pole attachment agreements" with law enforcement agencies who requests the opportunity to attach and maintain equipment on any utility pole located in a public right-of-way. The bill provides a list of provisions required in these agreements, including several indemnification clauses to address liability stemming from these agreements.

CURB is presenting neutral testimony on HB 2109 because it believes that the bill aims to improve law enforcement resources and expand surveillance capabilities. CURB believes that enhancing law enforcement's ability to perform its duties is an important goal and that the Legislature has a role in setting policies to promote this goal. However, CURB has concerns whether the bill provides benefits regarding the duty of utilities to provide safe and reliable service in light of potential issues arising from the bill's mandates. CURB analyzes the bill in terms of utility costs and risks that may be passed along to ratepayers through increasing rates to recover those expenses. CURB offers its observations for the Committee to consider when reviewing such a policy.

The first paragraph of HB 2109 makes it clear that a utility must enter into a pole attachment agreement whenever a law enforcement agency requests it. The bill defines a "public utility" to include jurisdictional utilities under Kansas Corporation Commission (KCC) regulation as well as municipalities and cooperatives in Kansas. However, it appears that only electric, cable and telecommunications entities with infrastructure subject to a right-of-way interest for city, county, or state entities are impacted. CURB presumes that utilities are already free to enter into these kinds of agreements, but without statutory pressure to ultimately reach a deal. The bill would require utilities to reach an agreement for each request. This is problematic to CURB because it creates a risk that utilities must acquiesce to unfavorable terms that increase costs to comply with installing and maintaining equipment. Subsection (c) indicates that a utility may assess reasonable fees and charges to recover costs incurred by the utility for handling law enforcement equipment, but not for use of the space required to attach the equipment. CURB is concerned that preventing the utility from being compensated, and thus offsetting any additional costs, for use of its property may implicate the Takings Clause of the Kansas Constitution. This would likely involve a closer

examination of the terms of pertinent right-of-way agreements to understand the relation and any costs.

Further, CURB is concerned about the benefits for ratepayers with this bill. Additional costs and expenses arising from the establishment of a new relationship between utilities and law enforcement may have indirect impacts. By agreeing to install and maintain equipment, such as cameras, the utility may unwittingly be inserting itself into the criminal justice process. For example, in a case involving video footage from a camera installed by a utility company, utility personnel may be subpoenaed to testify regarding the chain of custody for the equipment. The bill provides that law enforcement agencies must indemnify and pay for claims and actions under Subsection (e)(1) and (2) and implicates Kansas rules around civil actions and liability under K.S.A. 75-6101 et. seq. However, there is the risk of disagreement for what counts as "reasonable" costs and expenses and whether the utility is at fault for damages or claims, thus exposing the utility to liability. This would create new costs for utility customers that are not necessarily related to the provision of efficient and sufficient service.

CURB notes the potentially conflicting interests of maintaining the integrity of the utility system and the needs of law enforcement to install equipment. It is unclear how this tension is resolved and whether the KCC has a role regarding the utilities it regulates. Jurisdictional utilities are required to file associate contracts with the KCC and the bill's language does create a new relationship between law enforcement agencies and utilities as instrumentalities of a state actor. Utilities may feel pressured to accept unfavorable terms or to undertake significant investments to ensure that infrastructure can handle new equipment. Unfavorable terms or unreasonable costs for the utility may burden ratepayers and their bills with no improvement to service.

CURB also has concerns about cost increases for ratepayers associated with the safe installation and maintenance of law enforcement equipment on utility poles. The bill contemplates provisions to facilitate the safe installation and use of equipment and poles along with protecting the utility's system. The bill would likely increase the number of utility poles that must have new equipment attached to them. If pole modifications or repairs are needed to perform under the agreement, it may conflict with utility plans and incur new expenses. Further, while utility infrastructure has its own concerns about vandalism, adding law enforcement equipment to poles exposes them to a new risk of damage related to criminal behavior. CURB believes that there may be alternative means to improve law enforcement capabilities without endangering utility infrastructure.

For the reasons stated above, CURB submits neutral testimony on HB 2109 for the Committee's consideration.