

House Committee on Energy, Utilities, and Telecommunications
Testimony of Citizens' Utility Ratepayer Board
Written and Oral Testimony
Testimony in Opposition of HB 2435
January 22, 2026

Chairman Delperdang and members of the House Committee on Energy, Utilities, and Telecommunications, thank you for this opportunity to testify regarding House Bill (HB) 2435. My name is Joseph Astrab and 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 (Commission or KCC) and the Kansas Legislature. I am furnishing testimony in opposition to HB 2435.

HB 2435 creates new language to allow natural gas public utilities (as defined in K.S.A. 66-1,200 referring to utilities under KCC jurisdiction) to defer to a regulatory asset all depreciation expense and carrying costs associated with "qualifying natural gas plant" after July 1, 2026. Section 1 of the bill establishes the "Natural Gas Infrastructure Availability act" and defines key terms. Section 1 (a)(3) defines "qualifying natural gas plant" as *all* plant, facilities or equipment that has been put into service by a natural gas utility, but whose costs have yet to be included in the utility's rates or previously deferred to the regulatory asset, including allocated corporate costs.

Section 2 of the bill establishes the procedure and treatment of the regulatory assets and associated balances. In Section 2 (b)(2), the bill provides that the balance of the asset must be included in the utility's rate base without "any offset, reduction, or adjustment" following a general rate case, subject to traditional prudence disallowances ordered by the Commission. Regulatory asset balances that are not being recovered through base rates or an interim rate adjustment mechanism pursuant to Section 3 would accrue carrying costs at the utility's most recently approved weighed average cost of capital.

Section 3 of the bill sets out the regulatory procedure to authorize use of an interim rate adjustment mechanism to recover the balance of the regulatory asset in between rate cases. The utility must file a petition to open a docket with the Commission for review and approval of proposed rate schedules for such a mechanism. If approved, the utility may elect to recover the balance from ratepayers through the fixed monthly customer charge or as a separate surcharge on bills.

CURB is presenting testimony in opposition of HB 2435. There are three areas of concern for CURB: 1. The lack of provisions to mitigate customer bill impact; 2. The existence and use of other rate adjustment mechanisms; and 3. The circumstances and need for enhanced rate recovery mechanisms for natural gas utilities differing from electric service. HB 2435 can be compared to similar Plant In Service Accounting (PISA) statutes for electric utilities and other cost recovery

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programs for natural gas utilities. K.S.A. 66-1293 establishes a similar regulatory asset for “qualifying electric plant” to defer 90% of depreciation expenses and associated carrying costs to be later included in the utility’s base rates. K.S.A. 66-1294 provides a formula to determine a “revenue requirement impact cap” that limits the amount that the regulatory asset balance from 66-1293 can add to a KCC-approved retail revenue requirement and penalties for exceeding the cap. Kansas law further provides for a separate rate mechanism for natural gas utilities to recover investments on reliability and safety through the Gas Safety and Reliability Surcharge in K.S.A. 66-2201 through 2204 (“GSRS”).

To CURB, bill impacts and affordability are one of the most important issues facing the residential and small commercial ratepayers that we represent. As such, additional surcharges and other non-bypassable line-item increases compound the burden that rising utility bills place upon customers. In that regard, such rate mechanisms should be utilized sparingly and to serve identifiable and specific goals and policies, such as customer safety. Mechanisms like the electric PISA statutes and HB 2435 claim to achieve customer benefits from reduced financing costs and improved credit ratings for borrowing. In other words, the benefits for these programs only arise when the utility makes an investment now versus in the future. In turn, this provides additional incentive for the utility to look ahead at potential new growth to plan for additional expenditures today, such as to serve new large use customers, instead of projections of current customer growth.

In order to prepare for new large electric customers, the Kansas Legislature worked to implement new tools to spur investment and enhance cost recovery in the electric system. Rate adjustment mechanisms designed to shorten the regulatory gap between time of the expenditure and approval of recovery through rates were created to incentive new infrastructure expenditure and ease inflationary pressures. To balance customer interests and to recognize the risk that projections fall short, CURB believes it is prudent to include customer safeguards for such recovery mechanisms. K.S.A. 66-1293 and 1294 are examples of legislation that resulted in provisions to lessen the impact of alternative accounting treatment on customers.

The decision to allow for enhanced rate recovery mechanisms can be viewed as a policy matter aimed at incentivizing economic development. In CURB’s view, the decision to implement enhanced cost recovery for electric utilities was driven, in part, by information about potential new customers and projected energy needs from large industrial entities and data centers. As a result, efforts were made to identify these needs and the extent of system requirements. I am unaware of whether similar circumstances exist for the natural gas side at this time. Current rate structures and tariffs may not be adequate to account for the needs and burdens associated with massive users of natural gas. Even if there are similar projections for increased retail natural gas usage by new industrial customers, it would not justify implementing HB 2435 as it is presented.

First, HB 2435 covers a broader range of expenditures that can be deferred to the regulatory asset compared to the electric side. HB 2435 authorizes 100% of eligible costs to be booked to the regulatory asset without reference to the type or purpose of the infrastructure. In contrast for the electric side, K.S.A. 66-1293 allows 90% of eligible costs to be deferred, subjecting the remainder

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to traditional ratemaking. Allowing 100% of these costs to be set aside from a general rate case takes away a portion of KCC authority to review these expenditures and, when appropriate, implement cost-sharing mechanisms or other reductions. Although the difference may be considered slight, the deferral of all eligible costs is not warranted when compared to the circumstances facing each type of utility.

Further, 66-1293(a)(3) defines “qualified electric plant” as all rate base additions by the utility but does not include transmission facilities or new generation units. That limitation narrows the scope of expenditures subject to deferral and acknowledges other mechanisms, such as the Transmission Delivery Charge, that address cost recovery of other types of assets. In HB 2435, qualified gas plant includes all plant, facilities or equipment that is in service but not yet reflected in rates with no qualifications on the use or purpose of the asset. The broader definition in HB 2435 may result in an overlap or even conflict with choice of the recovery mechanism between that and the GSRS. Although there are similarities in how HB 2435 and the GSRS are structured in treating cost recovery, there is little guidance on their interaction with one another or even limitations on how a utility could use both.

The enhanced recovery treatment of the regulatory asset balance and use of the interim rate adjustment mechanism in HB 2435 is vague on the process to review new plant and determination of cost recovery and risks additional regulatory costs. With the electric statutes, the regulatory asset is reviewed and resolved during each general rate case based on a “rate base cutoff date” to clearly identify which expenses will be collected through fixed and volumetric charges and which are to be included in the next rate case. HB 2435 goes a step further and creates an interim rate adjustment mechanism to recover costs in between rate case filings. Under Section 3 of the bill, a utility must give 30 days’ notice to the Commission of the intention to use the mechanism. The Commission would have 120 days from filing of the petition and rate schedules to issue an order. The bill does not place a limitation on how frequently the utility may request changes to this adjustment mechanism, but rather a floor for how often the utility must file a general rate case to qualify for use of the mechanism. In theory, a utility could file for changes outside of rate cases twice a year. If new plant is booked to the regulatory asset after a rate case and then included in a subsequent rate adjustment mechanism filing, does the utility need to provide a new depreciation study covering the new plants? If so, stakeholders, such as CURB, would necessarily have to employ subject matter experts to review those filings in addition to general rate cases. If not, does the Commission need to determine depreciation rates to be applied to the regulatory asset without knowledge of what will be included in the asset? Such procedural questions would need to be raised and established at the regulatory level. In any event, the inclusion of the new mechanism would introduce uncertainty into the process.

The bill further allows the utility to put this bill increase within the fixed customer charge portion of the bill or as a separate line-item. This presents transparency and rate certainty issues for customers. If the adjustment is added to the fixed customer charge, customers may be unaware of the impact of the adjustment on their bill without previously knowing about the interim rate adjustment. If it is added as a separate surcharge, customers may be surprised to start expecting

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additional rate increases despite a final order in a general rate case. Neither effect is beneficial for ratepayers and will create bill confusion and stir animosity.

Both the electric legislation and GSRS have provisions to mitigate the revenue and bill impacts from enhanced cost recovery. HB 2435 appears to draw from the other statutes, such as the use of a surcharge to recover costs and caps on revenue impacts. However, HB 2435's provisions do not adequately protect ratepayers. The GSRS uses a monthly fixed surcharge for customers to recover eligible investments and limits raises to the surcharge at \$0.80 per month. GSRS filings are only made once a year to update the surcharge. Further, 66-2203 provides the Commission with authority to reject a GSRS if GSRS revenue levels go below or above specific levels. HB 2435 has no cap on the monthly bill impact for its adjustment mechanism. Section 3 (d) of HB 2435 adopts a limitation on the adjustment mechanism that would prevent its use if the total annual revenues it would produce exceed 20% of the utility's base revenue level from the most recent rate case. However, there is no limitation in HB 2435 for how much the surcharge may be set initially or increased with subsequent update filings. CURB is concerned that this would allow the utility to establish a rate adjustment mechanism at the upper end of the base revenue level limit early on and maintain that level until the next rate case. Review of Kansas natural gas utility GSRS filings illustrates how such alternative recovery mechanisms are being utilized. The tables below summarize the last four GSRS filings and surcharge increases for each major Kansas gas utility:

GSRS Increases for last 4 years			
Atmos Energy			
Docket No.	Incremental Increase	Cumulative GSRS Residential Charge	Annual Increase
26-ATMG-064-TAR	\$ 1,948,875	\$ 2.40	\$ 0.80
25-ATMG-133-TAR	1,998,440	1.60	0.80
24-ATMG-132-TAR	1,752,432	0.80	0.80
22-ATMG-203-TAR	2,280,905	1.60	0.80

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Kansas Gas Service			
Docket No.	Incremental Increase	Cumulative GSRS Residential Charge	Annual Increase
25-KGSG-386-TAR	\$ 7,213,949	\$ 0.71	\$ 0.71
24-KGSG-215-TAR	7,984,002	3.61	0.80
23-KGSG-281-TAR	7,676,805	2.77	0.79
22-KGSG-112-TAR	7,635,957	1.98	0.78

Black Hills Energy			
Docket No.	Incremental Increase	Cumulative GSRS Residential Charge	Annual Increase
24-BHCG-727-TAR	\$ 1,390,930	\$ 2.27	\$ 0.75
23-BHCG-800-TAR	1,457,527	1.52	0.78
22-BHCG-503-TAR	1,373,409	0.74	0.74
21-BHCG-434-TAR	2,187,467	3.19	0.80

In each of these dockets, each utility had requested and received over 90% of the total allowed increase for the monthly GSRS charge in each of their respective filings during that timeframe. It is important to note that the GSRS only includes investments made towards the modernization and integrity of the system's safety and reliability and the replacement of existing infrastructure. Atmos Energy also utilizes a secondary surcharge program, called the System Integrity Plan, to recover costs that are not covered by the GSRS up to an established program budget amount.

To CURB, this narrowed scope of projects means that accelerated rate recovery serves a specific function and provides system benefits for ratepayers. The cap on monthly surcharge increases helps to rein in substantial impacts on customers' bills. HB 2435 does not provide context of a particular goal it is working towards beyond guaranteed additional revenue for the utility company and an open-ended rate adjustment mechanism for all future plant. If the discussion is that HB 2435 seeks to spur infrastructure investments in anticipation of large usage growth like with the electric side, then CURB believes that the caps established in HB 2435 will be viewed as a target rather than a ceiling. This issue is further magnified in conjunction with the absence of eligibility requirements compared to the GSRS, leading to more projects being eligible for deferral and pulled out of traditional ratemaking processes. If HB 2435 is meant to address the inability to keep up with projects to maintain safety and reliability, then the solution should be to review existing programs like the GSRS for modifications, rather than create a new alternative accounting treatment.

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On the electric side, K.S.A. 66-1293 and 1294 contain provisions and formulas to limit the impact on ratepayers. First, the ability to defer costs under the statute is set to expire at the end of 2030, with the ability to request an extension until 2036. Instead of using a separate filing to determine which expenses can be deferred to the asset or recovered in rates, the "rate base cutoff date" establishes a brightline for which expenses are included in base rates and which remain in the regulatory asset between rate cases before recovery. Second, 66-1294(a)(5) establishes a formula to calculate the cap on how much the utility's revenue requirement can be increased by deferred assets. If the full balance booked to the regulatory asset would exceed the cap, not only is the excess removed from rate base, but the regulatory asset balance is reduced by the excess amount as a penalty.

HB 2435 does not contain such provisions to limit ratepayer impacts or to control utility spending. Without similar limitations from other rate adjustment accounting, HB 2435 risks creating incentives for the utility to significantly increase spending and to pursue rate recovery at a much higher pace than provided for in other mechanisms. The sunset provision is uniquely beneficial for all stakeholders because it provides for a transparent review of the program and whether it produces tangible benefits for the system. Given the uncertainty for significant natural gas usage growth, being able to review the special accounting treatment at a later date is an important safeguard to deal with an uncertain future. In light of the protections on the electric side and the existence of other surcharges, CURB does not believe that the more permissive provisions of HB 2435 are necessary or in the best interests of Kansas ratepayers.

For the reasons stated above, CURB submits opponent testimony on HB 2435 for the Committee's consideration.