

Senate Committee on Utilities
Testimony of Citizens' Utility Ratepayer Board
Written Only Testimony
Neutral Testimony on SB 439
February 10, 2026

Chairman Fagg and members of the Senate Committee on Utilities, thank you for this opportunity to testify regarding Senate Bill (SB) 439. 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 here to furnish neutral testimony on SB 439.

SB 439 creates new language to establish the Utility Railroad Crossing Act. The purpose of the Act is to bring consistency to the process for regulating utility facilities that cross or parallel a railroad right-of-way. Section 2 details the requirements a utility must follow to receive a permit from an affected railroad, including standardized permitting fees. The bill sets the total permit cost at \$1250 unless the utility siting reduces the value of the railroad's property. The bill adjusts the \$1250 permit cap yearly based on the producer price index. The bill also allows the railroad company to demand proof of insurance from the utility, and the insurance coverage is set depending on the type of utility. The bill authorizes the KCC to resolve complaints between the utility and the railroad.

CURB generally supports the public policy goals of SB 439 to standardize the process of evaluating the siting of utility facilities along railroad operations. The bill lays out detailed reporting and permitting requirements. CURB cannot comment on the appropriateness of the criteria as it relates to railroad companies and requirements. Infrastructure of any sort can certainly affect the regular operations of railroads, and thus CURB understands the interests at play. Enhanced coordination between entities may help avoid undue public safety issues. CURB reviewed SB 439 for the bill's effects on Commission authority and potential impacts on residential and small commercial ratepayers. At a high level, any changes that cause a utility, regulated or not, to incur additional costs will likely lead to those costs being passed onto ratepayers. To the extent that such costs must be incurred, there should be good public policy support and explanation for the changes.

One aspect of the bill that may affect utility costs is the fees paid to railroads by utilities. Railroad companies can charge different permit fees, some of which are above the proposed \$1,250 cap. For example, BNSF Railway requires a \$2,000 application fee that does not include additional license or permit agreement fees. Union Pacific Railroad charges a \$2,055 crossing application fee, a \$4,055 encroachment fee, a \$1,545 right of entry fee, and a \$4,505 mitigation review fee for certain electric applications. Utility companies typically recover these costs from the ratepayers. Reducing costs for the utility lowers bills, which CURB supports. However, these fees are set by individual entities who may be more aware of their needs and incorporate that knowledge into the rates. While there are some exceptions to this fee (including an automatic adjustment for inflation), consideration should be made for specific rates that account for an entity's particular needs. If parties are able to reach private agreements on that issue, delays to projects can be avoided.

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SB 439 introduces additional procedures for a wide variety of entities engaging in the ownership of facilities that involve a railroad's right-of-way. Section 2(e) defines a "utility" as "any person, firm, corporation or municipality and any contractors or agents thereof that provides services to the public," which includes more than just public utilities regulated by the KCC. CURB believes it is a policy decision for the Legislature to determine who must be regulated. SB 439 does provide authority for the Commission to review disagreements between However, the broad reference to utility combined with the definition of "facility" in Section 2(b) raises the question of whether the Commission will have authority over *anyone* who owns infrastructure that provides one of many types of services, including television cables and hazardous liquids transportation. Section 9 allows either party to file a complaint with the Commission to resolve disagreements. It is unclear how many of these complaints would arise and whether this would also include complaints involving municipal and cooperative utilities. This provision may have an impact on their own authority in such matters, such as if a project is not an electric transmission line or gas pipeline.

The Committee could consider narrowly exempting distribution assets located near a railroad within incorporated areas served by a cooperative or municipal utility. State law authorizes the KCC to have jurisdiction over transmission wiring for cooperatives and municipalities but no jurisdiction over distribution assets. *See* K.S.A. § 66-104d(f)(2,4); 66-104f(c). Some cities in Kansas are served by municipalities and cooperatives but have railroads located within incorporated areas. Narrowly exempting distribution assets located near a railroad within incorporated areas would preserve local control for cooperative and municipal utilities.

The Committee should also consider clarifying Section 15's liability provision as it relates to injuries involving third parties. Under K.S.A. § 60-258a(d), a party would be liable for up to its proportional share of the harm and damages. If a plaintiff seeks to sue both the utility and the railroad, Section 15 reads as if to open the utility to additional liability. If Section 15 imposes joint and several liability with respect to third parties, then a plaintiff could sue and recover from one defendant (here, the utility) for 100% of the damages. The utility would then have to sue the railroad for its share of the liability. If the utility cannot recover the railroad's share of the liability, then the utility (and in turn, the ratepayers) would be saddled with additional costs.

For the reasons stated above, CURB submits neutral testimony on SB 439 for the Committee's consideration.