Citizens' Utility Ratepayer Board

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SENATE UTILITIES COMMITTEE
S.B 104

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
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Chairman Clark and members of the committee:

Thank you for this opportunity to appear before you today an offer testimony on S.B 104. The Citizens' Utility Ratepayer Board is an opponent of this bill for the following reasons:

A. Ratemaking treatment:

It appears that S.B. 104 is intended to bring some regulatory certainty to the investment decisions that a utility must make. It is certainly understandable from the utility's perspective, and not in all instances bad for consumers. However, on balance, the scope of what is contemplated by language in S.B.104 simply goes to far to be good public policy. S.B. 104 appears to require all ratemaking decisions to be made in advance of a facility being built or contract signed and then precludes the ability of both the Commission and the utilities to adapt to changing circumstances at a later date. It is simply impossible to have the type of perfect foresight that is contemplate by this bill.

CURB believes that the language in Section 1 of the S.B. 104 is extremely vague. The term "ratemaking principles and treatment" is used consistently throughout the bill, but is never defined. A general reading of the bill seems to indicate that this language means more than a simple determination about whether it is prudent for the utility to invest in a proposed facility or whether the general level of proposed cost is within a range of reasonableness. However, it is unclear from reading the bill whether this language should be read to include every conceivable ratemaking issue related to the facility. To the extent that this language would require deciding every conceivable ratemaking principle and treatment related to a facility before the facility is even built, it represents a substantial change to the existing regulatory framework. And to the extent that this initial determination of the ratemaking principles and treatment would preclude the ability of CURB, the Commission and even the utilities to adjust to new developments at a later date, the concept embodied in this bill becomes unworkable.

Section 1 (b)(2) and (b)(3) binds all future Commissions, the utility and future ratepayers to decisions made before a project is ever built or a contract is ever entered into. In reality, things change over time. What was appropriate 10 or 20 years ago may

not be appropriate now. What is appropriate now may not necessarily be appropriate 10 years from now. For example, technologies change[1], the FERC uniform system of accounts changes periodically[2], return on equity changes in every rate case[3], depreciation lives can change as well as many other variables that can impact how a utility's investment in its facilities are recovered from consumers in rates. A recent example of this principle is the Westar Energy rate case. In the Westar Energy rate case, the Commission determined that the existing 40 year depreciation life of the Wolf Creek generating station (initially set in 1987) was too short, when compared to other similar nuclear facilities and current data. The Commission changed the depreciation life of Wolf Creek to 60 years for ratemaking purposes. Given the expected longer life of the Wolf Creek facility, at the pre-existing 40 year depreciation figure adopted in 1987, ratepayers were paying millions of dollars every year in excess depreciation expenses. The ability to adapt rates to current knowledge and existing circumstances is precluded by the language in S.B. 104, and would have precluded the Commission's ability to eliminate these excess depreciation expenses from consumer rates had the Commission been locked into a predetermined ratemaking treatment.

I would also note that, as written, S.B. 104 could be read as precluding the Commission from making changes in ratemaking treatment for a facility that may be of benefit to the utility. For example, suppose a utility proposes to build a coal fired generating plant, and receives the pre-determined ratemaking order contemplated by S.B. 104. The utility builds the plant, but 10 years later, the federal government changes the environmental laws, requiring the utility to add millions of dollars of pollution control equipment. Reading Section 1 (b)(2) literally, CURB would be within its rights to argue that the utility is precluded from recovering from consumers the costs of the new pollution control equipment, since in "all proceedings" in which "the cost of the public utilities stake in the facility" is considered, the Commission "shall" use the ratemaking principles and treatment applicable to the facility. The initial pre-determination order could not have contemplated the specific environmental control costs because these particular environment laws were not in effect at that time. Therefore the Commission is precluded from including these costs in rates at a later date.

While this may be an extreme example, and one that would work to the benefit of consumers, it does point out that inherent public policy problem in attempting to eliminate the ability of the Commission to address changing circumstances through the

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[1] Computer technology is making the control of generation more efficient, allowing utilities to pool generation resources more efficiently, trade excess power and reduce excess generation capacity held for reliability purposes.

[2] For example, The Federal Energy Regulatory Commission has proposed changing the Uniform System of Accounts all utilities use in response to changes by the Financial Accounting Standards Board pursuant to rule 143. FASB 143 impacts how the cost associated with future removal obligations for long-lived assets are accounted for on the books of a company. As written, would S.B 104 preclude the Commission from making changes consistent with the Uniform System of Accounts once a ratemaking treatment order has been issued?

[3] Return on equity is determined in each rate case based on existing market conditions at the time. As written, would S.B. 104 require the Commission to set the return on equity before the plant is built, and preclude the Commission from changing the return on equity at a later date even if market conditions change?

type of pre-determined ratemaking treatment contemplated in S.B. 104. It also points out that, however well intentioned S.B. 104, it is virtually impossible to write certainty into the regulatory process by statute. The simple fact is that Kansas has never had the type of pre-approval contemplated by the language of S.B. 104, and yet we don't lack generation in Kansas. Kansas public utilities have an obligation to maintain sufficient and efficient service. They have always met that obligation in the past and they will continue to do so. S.B. 104, at least in its current form should not be adopted.

B. Transmission Issues:

CURB does have a concern about what is contemplated in Section 2 and Section 3 of S.B. 104 related to transmission. Section 2 requires the Kansas Corporation Commission to conduct annual evaluations of the state's transmission facilitates to help ensure "highly reliable delivery" of electric power to the citizens of Kansas. There is certainly nothing inherently objectionable about conducting this survey, or seeking to ensure highly reliable delivery of electric power to the citizens of Kansas. However, transmission is a regional issue, with transmission facilities in Kansas being impacted by decisions that may not originate in Kansas and may not benefit Kansas consumers. With that knowledge, CURB is concerned with the language in Section 2(b) when combined with the language in Section 1 (b)(1) and Section 3(b) may result in Kansas consumers being required to pay for transmission system upgrades that do not result from action of Kansas utilities and may not benefit Kansas consumers.

Section 2 (b), as written, allows a public utility to file for a ratemaking treatment order, as discussed above, to eliminate any transmission constraints identified in the annual survey. This language does not limit the public utility that can apply for the ratemaking order to being the one whose facilities are constrained. Nor does the language provide any required nexus between whether the constraint is being cause by the actions of Kansas utilities or whether relieving the constraint will actually benefit Kansas consumers. Further, Section 3 (b) allows the issuance of Kansas revenue bonds to pay for the cost of construction of the needed transmission facilities, again with no nexus to the cause of the transmission constraint or the beneficiary. If this bill proceeds, CURB recommends that safeguard be put in place that protect Kansas consumer from having to pay for transmission upgrades that are not caused by Kansas consumers.