Citizens' Utility Ratepayer Board

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SENATE UTILITIES COMMITTEE
S.B.360

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 360. The Citizens' Utility Ratepayer Board opposes this bill for the following reasons:

First, this bill is unnecessary. There is nothing that prohibits a utility from proposing this type of mechanism under the current statutory scheme. While CURB would likely oppose this type of mechanism regardless, there is no need to statutorily codify this type of recovery mechanism. Codifying a capital recovery mechanism removes the Commission's authority and flexibility to design a fair and balanced approach to capitol recovery, if it chooses to implement such a mechanism.

Second, providing this type of adjustment certainly favors the utility by decreasing utility risk for recovery of capital expenditures. However, what do consumers get out of this type of adjustment, other than higher rates? For example, a natural gas utility already passes all gas costs through to consumers. The majority of other costs for a gas utility are in distribution plant. This bill has the effect of eliminating virtually all risk of cost recovery for a majority of gas utility costs. At minimum, if this type of utility centric adjustment in implemented, consumers should be guaranteed a reduction in the

return on equity granted in a utility rate case. This reduction in return on equity is an appropriate adjustment reflecting the reduction in utility risk, and provides a more balanced approach to this type of adjustment mechanism from a consumers prospective.

Third, allowing a utility to implement single-issue adjustments between rate cases is one sided without allowing a review of all changes that may affect rates. While requiring an "earnings report" looks good on its face, the reality is that a utility's view of its level of earnings may differ greatly from CURB's view of the utility's earnings given all of the factors that may affect rates. This is the fundamental basis of the rate case process. By requiring the annual earnings report, in fact a mini rate case must take place each year to evaluate the whether the utility is in fact earning excess returns. CURB will actively participate each year, as required by this bill, in a thorough review of utility earnings. However, this type of process on an annual basis is not efficient or good policy.

Fourth, for electric utilities, section (g)(7) of the bill states the investments subject to recovery under this subsection "shall be limited" to transmission and distribution. This language ignores the potential conflict with federal transmission recovery schemes, and based on the definition of "value of invested capital" in (g)(2) may result in transmission charges that would not otherwise be allowed to be recovered from Kansas jurisdictional customers being placed in the surcharge. Also, House Bill 2130, passed last year already allows the creation of a transmission surcharge to pass through to ratepayers any FERC ordered transmission charge changes. Restricting the surcharge to only transmission and distribution, while not including generation also eliminates large depreciation reductions in generation accounts that would otherwise accrue to ratepayers between ratecases by this type of adjustment mechanism.

Fifth, and perhaps most importantly, this bill will minimize, or even eliminate the incentive to reach settlement among the parties in a rate case at the Commission. Section (g)(3) requires that the "return on investment, depreciation and incremental state and federal income tax factors used in the computation *must* be the same as the factors reflected in the utilities latest effective rates approved by the Commission". However, many cases are settled at the Commission in a manner referred to as a "black box settlement", where a total dollar figure is agreed upon, but the specific adjustments used by each party to arrive at the figure are not known. In a black box settlement there is no reference return on investment, or tax factors that form the basis of the adjustment in this bill. This bill will force parties to fully litigate every case at the Commission, because the rate case results will have important implications between rate cases. There will be no incentive to settle cases, which is certainly not beneficial to the process.

I would also add that many settlements at the Commission also have provisions for a rate moratorium, or a period of time that the utility cannot file for another rate increase. Rate moratoriums provide certainty in rates to consumers. Again, if a utility can increase rates between rate cases with the mechanism proposed in this bill, CURB will have no incentive to engage in settlement talks with the utility. I would note that one of the utilities promoting this bill is currently under a rate moratorium agreed to in settlement of its recent rate case.

Recommendation: *New (g)(8): The Commission shall decrease the allowed return on equity by 300 basis points, in any rate case, for any utility that implements a tariff as allowed by this subsection.*

This return on equity reduction serves to compensate ratepayers for the reduction in risk the utility receives though this mechanism.

Recommendation: Add to (g)(3): *In not event shall the recovery under this tariff be greater than 3% of base rates.*

This recommendation places a hard cap on the level of overall increase in rates consumers would see in any year.

Recommendation: Add to (g)(3): *The provisions of K.S.A. 66-128(b)(2) do not apply when calculating the value of invested capital for the purposes of this act.*

The bill allows recovery of "new investment placed in service for utility services" (p.4, lines 8-9). However, K.S.A. 66-128(b)(2) allows utility plant to be placed in rates even though it has not yet been placed in service under certain circumstances. The recommendation removes this apparent conflict.