# Citizens' Utility Ratepayer Board



**State of Kansas**
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## HOUSE UTILITIES COMMITTEE
## S.B. 586

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

Thank you for this opportunity to offer testimony on S.B. 586. The Citizens' Utility Ratepayer Board opposed this bill for the following reasons:

Senate Bill 586 deals with regulatory cost recovery for utility expenditures related to nuclear power plant feasibility studies and nuclear plant construction.

Section 1 requires that the state corporation commission "shall" authorize an electric utility to recover the utility's prudent expenditures for study and feasibility costs for a new nuclear generation facility by an adjustment to the utility's rates. CURB would not be opposed to allowing these costs to be gathered under an accounting order such that the costs can be considered in the next general rate. This would be a more traditional means of handling these types of costs. To the extent that the existing bill has been amended to remove "in an expedited manner", and therefore the implication that these costs would be required to be dealt with on a single issue ratemaking basis between rate cases, CURB's concern with this section has been addressed.

Section 2 removes the commission's discretion to set appropriate depreciation rates for new nuclear plants by requiring that the utility "shall be allowed to use a book depreciable remaining life of not more than the amount of time remaining" on the operating license of the facility. Normally, the regulatory process attempts to set the depreciable life of a facility equal to the actual life of the facility. In this way, customers in each year over the life of the facility pay equally for the depreciation of the facility. If a facility is expected to last 40 years, you would want to depreciate that facility over 40 years such that each year an equal amount of depreciation expense is charged to customers. Conversely, if you depreciate a 40 year facility over 20 years, the customers in the first twenty years pay twice as much deprecation expense in rates, forcing rates higher, while the customers in the second twenty years pay nothing for depreciation expense. This forces up rates to customers in the early years of the plant and has always been considered inequitable. The customers in the second 20 years get a free ride at the expense of the earlier customers.

Restricting the commission's authority to set an appropriate depreciable life for facilities removes an important protection for consumers. In the Westar Rate case (01-WSRE-436-RTS) the commission extended the depreciable life of Wolf Creek to 60 years, from 40 years. This was based on the expectation that Westar, and the other owners of Wolf Creek, would seek a license extension on the plant and that the license extension would be granted. The Commission adjusted the depreciable life such that it was consistent with the expected life of the plant. By doing so, customers saw a reduction in rates due to a lower level of depreciation expense in rates. The Commission actions were consistent with good regulatory practice and provided a substantial benefit to consumers. The language contained Section 2 of the bill would have prevented the commission from acting to benefit customers in the Westar case. The legislature should not restrict the commission's authority to set depreciation rates in an appropriate manner. To do so may force rates up to the customers in the early years of the plant.

Section 3 of the bill deletes section (b)(3) of K.S.A. 2007 Supp. 66-128. Section (b)(3) in current law precludes the cost of a nuclear generation facility under construction from being placed in consumers rates prior to being completed and dedicated to commercial service.

K.S.A 66-128(b)(1) is specific in that "***property of any public utility which has not been completed and dedicated to commercial service shall not be deemed used and required to be used"*** in the public utility's service to the public. However the legislature functionally gutted this law last year in passing HB 2033, such that K.S.A. 66-128(b)(2), now states "any public utility property described in (b)(1) ***shall*** be deemed ***completed and dedicated to utility service*** if:….(C) the property is an electric generation facility or addition to an electric generation facility."

The cost associated with generation facilities that are being constructed can be put in consumer rates, even though the faculties are not finished and not providing power to the customers that must pay for the facility. The only remaining exception to this rule is for the cost of nuclear plants under construction. CURB does not believe it is a good policy to make customers pay for a generating plant that is not operating and providing those customers power. CURB also does not believe that customers will accept paying for a nuclear plant before it is operational.

For the above reasons, CURB recommends that this bill not be passed by the committee.