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Kansas Senate Utilities Committee
Testimony of Citizens' Utility Ratepayer Board
Opponent's Testimony
SB 339
February 12, 2020

Mr. Chairman and members of the Senate Utilities Committee. My name is Todd E. Love. I am an attorney for the Citizens' Utility Ratepayer Board (CURB). I am furnishing testimony in opposition to Senate Bill (SB) 339.

SB 339 focuses on the Kansas Corporation Commission's evaluation and approval of economic development rates (EDRs) under certain conditions. Two different concepts comprise the bill. In section 1 of SB 339, the Kansas Corporation Commission (KCC or Commission) may approve contract rates that are not based upon the pertinent electric utilities' cost of service for a facility (as defined in the bill) under either of two conditions. The first condition is if the facility would not continue operations or would reduce operations in Kansas without the contract rate; the second condition is if the facility would not expand or commence operations in Kansas without the contract rate. Under the second concept included in SB 339, the Commission can authorize utilities to implement EDRs under certain conditions.

The Study of Retail Rates of Kansas Electric Public Utilities prepared by London Economics International, LLC (LEI), and presented on January 8, 2020 (LEI Study) posits EDRs as potentially beneficial under certain conditions. CURB is not opposed to EDRs that have proven benefits to all ratepayers and meet additional conditions. However, in its response to the LEI study, CURB warned that "EDR eligibility should be evaluated on a case-by-case basis." In these regards, CURB notes that the Commission already has authority under the Public Utility Act to meet both goals set forth in SB 339. If any change to that authority is to be made, those changes should be thoughtfully evaluated and carefully structured.

CURB opposes SB 339 because it is contrary to the interests of ratepayers. Indeed, a myriad of problems in SB 339 need to be corrected. First, SB 339 too heavily benefits the utility at the cost of ratepayers. Secondly, SB 339 does not have any of the ratepayer safeguards recommended by the LEI Study. Thus, CURB believes that SB 339 needs additional study, input from stakeholders, and substantial revision in order for Kansas to adopt best practices for EDRs.

Regarding the fact that SB 339 rewards the utilities' shareholders at the cost of ratepayers, decision-makers must remember that the obvious problem that gives rise to SB 339 is that Evergy's rates are not regionally competitive. These rates chase industrial consumers out of the State. In fact, the LEI study acknowledges that stakeholders have noted that Evergy's high utility rates discourage industrial customers from building or expanding business in Kansas. Importantly, Evergy's ratepayers, who pay these high utility rates, did not cause that problem.

Yet, SB 339 places all of the costs associated with the potential loss of industrial customers upon Evergy's ratepayers, including residential ratepayers. Under the plain provisions of the bill, none of the risk or costs associated with the potential loss of industrial customers are borne by Evergy's shareholders. In fact, if the Commission approves a deep discounted rate for an industrial customer under SB 339, and the customer subsequently increases its electricity purchases from Evergy, then Evergy's shareholders get the benefit of additional sales and ratepayers bear the full cost of the discount. It is unfair that Evergy could cause the problems associated with Kansas high utility rates, force ratepayers to pay for these problems and then reap the rewards generated by this bill.

It is imperative that decision-makers correct this fallacy in SB 339. The Commission should have authority to split the reduced revenues caused by the discount contemplated by SB 339 between the shareholder and the ratepayer. Sharing those reduced revenues between the shareholder and the ratepayer is fair since shareholders stand to gain through increased sales. Moreover, it provides some safeguard against a utility's potential use of Ramsey pricing (which is pricing a product which is inelastic in nature with a higher markup component) to increase its profits while unduly increasing rates for residential and small commercial ratepayers.

Moreover, SB 339 is contrary to the recommendations made in the LEI study. Kansas paid LEI a substantial sum of money to study EDRs, among other matters, and to provide recommendations with respect to the same. By every reasonable person's judgment, the LEI Study provided very worthwhile suggestions. Indeed, in its response to the LEI study regarding EDRs, CURB agreed with LEI's concerns:

- Is the EDR necessary and sufficient to secure the load?
- Does the EDR exceed the marginal cost of providing service?
- Does the EDR benefit *all* ratepayers?
- Who pays for the discount?
- Should there be additional eligibility requirements?
- Are mechanisms in place to ensure load is maintained once the EDR has ended?

It makes little sense to retain a well-respected and knowledgeable source such as LEI to study and provide recommendations concerning EDRs in Kansas, and then ignore these recommendations. Yet, that is what SB 339 does.

Regarding LEI's first concern, which centers on preventing free-ridership, SB 339 does not expressly require proof that the EDR is necessary and sufficient to secure the load. Rather, the Commission must consider potential economic benefits such as employment activities in Kansas, tax ramifications and general economic development.

SB 339 would have the Commission determine the need for contract rates upon the basis of economic development, retaining the tax base, employment opportunities and other like benefits. The Commission is not a Chamber of Commerce. The Commission's rate obligations under the Public Utility Act have always been confined to determining cost of service and fairly apportioning that cost among all ratepayers through rate design. Now, under SB 339, the ratepayer

(including low-income ratepayers) will bear the cost of economic development (like a tax) as part of their rates. These considerations belong solely to governments. Importantly, ratepayers do not elect utilities or industrial customers. Under SB 339, these ratepayers would have no choice in paying for economic benefits that may not impact them at all.

Moreover, EDRs could be granted to industrial or commercial ratepayers for up to ten years. That time period is significantly longer than other EDRs used by other states. A limit of five years (with an option for renewal upon Commission review) is more appropriate than a ten-year limit, since it provides more opportunity to the Commission to deal with inevitable changes in the Kansas economy. In these regards, it is critical to note that SB 339 prohibits the Commission from modifying or eliminating any contract rate after it is approved, subject to unspecified (and unknown to CURB) conditions. If the contract rate turns out to be a terrible result for Kansas ratepayers due to changing economic conditions, the Commission cannot modify the contract rate.

Regarding the second LEI concern, it is significant that under SB 339, EDRs can be below the incremental cost (which is undefined) to serve the industrial or commercial customer to which the favorable contract rate is offered. No business would ever sell its products below incremental cost. However, since SB 339 passes all costs onto the ratepayer, a utility stands to gain by increasing sales and the ratepayer bears the loss of the difference between the discounted rate and the normal tariff.

Regarding the third LEI concern, SB 339 does not require that all ratepayers benefit from an EDR. There is no criterion in SB 339 that requires the Commission to weigh the decrease in fixed costs caused by increased industrial sales to the discount subsidized by the ratepayer. LEI's chief point as to the benefits of EDRs is that EDRs may result in fixed utility costs being borne by more ratepayers. Yet, SB 339 does not sufficiently address this essential matter.

In fact, the clear provisions of SB 339 limit the Commission's ability to determine a fair and reasonable contract rate. Moreover, there is no provision for return of the discount to ratepayers if the industrial customer fails to live up to its bargain to increase power usage in Kansas. Further, monitoring sales levels will require additional KCC hours and any hearing on these matters will increase rate costs. These costs will likely be collected from ratepayers, further exacerbating the problem of regionally uncompetitive rates.

With respect to LEI's fourth concern, concerning which stakeholders pay for the discount, SB 339 clearly requires the ratepayer to bear all cost, with the shareholder to retain the difference between the discounted rate and the tariff rate. The lopsidedness of such a concept has already been discussed. However, it is worthwhile to note that LEI states that "Jurisdictions across the country have either: (1) required shareholders to absorb the discount, or (2) required this responsibility to be shared between both the utility's customers and its shareholders, as both parties benefit from the EDR indirectly…." As noted in its response to the LEI Study, CURB would be hard-pressed to support an EDR design wherein no portion of the discount was absorbed by the utility's shareholders, particularly when the utility stands to benefit from the additional load, increased utilization of capacity and a broadened customer base. CURB would hope that Kansas legislators would share this concern for the residential ratepayer.

Regarding LEI's fifth caveat, SB 339 does not have extensive eligibility requirements as suggested by LEI. All that SB 339 requires is that the facility (as defined in the bill) will not either continue or increase its electric load in Kansas. SB 339 does not require that the pertinent customer meet any particular threshold. It does not require any of the other considerations listed by LEI as potential additional eligibility requirements.

Section 1 of SB 339 applies to facilities with existing or expected load equal to or in excess of 50 megawatts per month, but such load can represent multiple meter accounts. It is unclear to CURB how far a reach this qualification may have. CURB believes it is incumbent upon Evergy to be transparent on this issue and to quantify and qualify those customers that would be eligible for a rate discount under Sections 1 and 2 of SB 339.

Finally, regarding LEI's sixth concern, SB 339 has no mechanisms to ensure that the pertinent industrial customer's load is maintained after the EDR terminates. LEI provides an example of such a mechanism with Coffeyville, Kansas. SB 339 has no like mechanism. In fact, SB 339 contemplates just the opposite. SB 339 contemplates a 10-year contract rate, continued by an indefinite amount of renewals, for any industrial customer that alleges that it will not continue to purchase as it has historically if it is not granted a rate discount. To a well-educated observer, SB 339 could subsidize industrial customers so that they could allow other costs to rise faster and higher than their competitors do, since these costs for the pertinent industrial customer will be subsidized by other Kansas ratepayers through EDRs. In this respect, SB 339 is bad public policy.

It bears reiteration that EDRs could fall into the category of Ramsey pricing, that is, decreasing prices for the most elastic customers on the grid while increasing prices for the most inelastic customers. In this case, the most inelastic customers on Evergy's system are residential and small commercial ratepayers. Monopolies can use Ramsey pricing to increase sales to benefit their shareholders. In the absence of regulation, utilities would be free to price electricity lower for customers having elastic demand and charging higher prices to the remaining customers.

Kansas enacted rate regulation to counter Ramsey pricing. That is a key purpose of cost of service ratemaking. Kansas courts have required the Commission under the current regulatory statutes to compose rates upon the basis of various customer classes' cost of service. For the Commission now to be required to approve these pricing schemes under the EDRs proposed under SB 339 would be to turn back rate regulation substantially without any guaranteed benefits to ratepayers. At the very least, there should be a sunset for SB 339, requiring that there be substantial benefit to the state of Kansas and to Kansas ratepayers caused solely by the provisions of SB 339.

To sum up, CURB would support an appropriate EDR, once adequate stakeholder input is gathered and considered, and the EDR addresses the recommendations made by LEI. CURB does not believe that the Kansas legislature would take the wise path of retaining LEI to address such issues as EDRs, but then simply ignore those findings. SB 339 does not contain any of the safeguards posited by LEI as necessary in an EDR that benefits all ratepayers. Rather, SB 339 unfairly benefits utility shareholders while burdening ratepayers with additional costs. CURB recommends that the Kansas legislature allow all pertinent stakeholders to continue their study of EDR best practices, and then after such study is concluded, that legislation meeting proper criteria be formulated and introduced before the Kansas legislature.