Kansas
Citizens' Utility Ratepayer Board

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Senate Committee on Utilities
Testimony of Citizens' Utility Ratepayer Board
Proponent Written Only Testimony
Senate Bill 456
February 15, 2024

Chairman Fagg and members of the Senate Committee on Utilities, thank you for this opportunity to testify regarding Senate Bill (SB) 456. My name is David Nickel. I am the Consumer Counsel for the Citizens' Utility Ratepayer Board (CURB). CURB is the advocate for residential and small commercial utility ratepayers before the Kansas Corporation Commission (KCC or Commission) and the Kansas Legislature. My testimony principally reflects how these Kansas utility ratepayers may be affected by SB 456.

SB 456 amends K.S.A. 66-1239 to create a rebuttable presumption against the abandonment or retirement of a fossil fuel-fired electric generating unit. In order to overcome that rebuttable presumption, the KCC must make findings upon the evidence entered in a pertinent KCC proceeding, as follows:

> (1) The utility will replace the abandoned or retired electric generating unit with new electric generating capacity that:
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> > (A) is dispatchable by either the utility or the regional transmission organization or independent system operator responsible for balancing load within the utility's service area;
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> > (B) maintains or improves the reliability and resilience of the electric transmission grid; and
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> > (C) maintains the minimum reserve capacity requirement established by the utility's reliability coordinator;
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> (2) the abandonment or retirement will not harm the utility's ratepayers or decrease the utility's regional rate competitiveness by causing the utility to incur any net incremental costs to be recovered from ratepayers that could be avoided by continuing to operate the electric generating unit proposed for retirement in compliance with applicable law;
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> (3) the abandonment or retirement is for economic purposes and for the benefit of ratepayers and not solely based on achieving environmental, social, or governmental goals, laws, rules or regulations; and

> (4) cost savings to customers as a result of the abandonment or retirement of the electric generating unit will occur.

In addition, SB 456 requires the KCC to prepare and submit an annual report to the legislature by December 1 of each year detailing:

> (1) The number of requests by utilities to retire electric generating units in the state, the nameplate capacity of each of those units and whether the request was approved or denied by the commission;
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> (2) the impact of any commission-approved retirement of an electric generating unit on the:
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> (A) utility's and state's generation fuel mix;
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> (B) required capacity reserve margins for the utility;
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> (C) need for capacity additions or expansions at new or existing facilities as a result of the retirement; and
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> (D) need for additional power or capacity reserve arrangements; and
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> (3) whether the retirement resulted in stranded costs for ratepayers that will be recovered by the utility through securitization or through some other charge on the customer bill.

SB 456 also increases the determination time allowance under K.S.A. 66-1239, once a petition for a determination of rate-making principles and treatment is filed, from 180 to 240 days.

CURB supports SB 456 because CURB believes that it attempts to protect residential and small commercial utility ratepayers from abandonment of a fossil-fuel fired electric generating unit that would result in less reliability and/or resiliency in the utility's system or result in higher utility rates. Regarding any environmental benefit that may occur from the retirement of fossil fuel-fired generating units, CURB earnestly believes that Kansans always need to be good stewards of the earth. However, in CURB's view, practicality with respect to environmental practices must be observed. Furthermore, CURB recognizes that, as to the abandonment of fossil fuel-fired generating units, SB 456 essentially urges a state policy which is a matter for the Kansas Legislature to determine. Therefore, CURB's testimony is not intended to recommend a particular policy decision in this matter, but only to make a few suggestions regarding the workability and feasibility of some provisions in the bill.

The proposed increase in the time allowance for the KCC to determine applications filed with it under K.S.A. 66-1239 is the same proposal made in HB 2597. CURB supports HB 2597 because CURB believes that the extension of time for a determination of rate-making principles and

treatment will allow a better evidentiary record to be created by KCC staff and any potential intervenors and allow more time for the Commission to more carefully consider and meet the public interest. Therefore, CURB supports this proposed amendment as it is contained in SB 456.

Furthermore, CURB supports the provisions of the proposal in SB 456 requiring an annual report to the legislature. CURB believes that this report will add transparency concerning retirement requests made by utilities and approved by the KCC on an annual basis. Moreover, the information is important to the policy makers in the Kansas Legislature.

However, as to the requirements that must be met in order for a utility to retire a fossil fuel-fired generating unit, CURB has some general reservations about the workability of the bill. These concerns do not make CURB an opponent of the bill. CURB stands as a proponent for the reasons described above. Yet, CURB believes that these concerns may be worthy of additional discussion and consideration. Therefore, CURB would suggest that its concerns and other stakeholders' suggestions be considered and, if prudent, that SB 456 be amended accordingly.

First, CURB notes that a dispatchable generation unit must replace a fossil fuel-fired generating unit as a condition of the abandonment of the fossil fuel-fired generating unit. However, it is foreseeable that when a fossil fuel-fired generating unit is intended to be retired, there may be adequate capacity in a utility's system such that replacement is not necessary. In other words, under certain conditions, simple retirement of a fossil fuel-fired generating unit may result in lower costs but not sacrifice reliability or resiliency of the system.

Secondly, SB 456 may not adequately consider that federal rules and mandates can significantly affect the economics of fossil fuel-fired generating units. Indeed, the federal government could simply prohibit fossil fuel-fired generating units from being used to generate electricity. Further, federal law can change the price dynamics of fossil fuel-fired generation versus other types of generation. It is unclear, under the language employed in SB 456, how the requirements of price stability and reliability and resiliency assurances would be measured in such an event. As SB 456 stands, CURB could foresee litigation and appellate court review to resolve this issue while system resiliency and reliability are placed in danger. The utility needs some discretion to handle these situations, which do not appear to be sufficiently contemplated as SB 456 stands.

Third, in CURB's view, the only feasible dispatchable electric generating unit, other than coal, is natural gas. Large scale battery storage is not yet feasibly available. The successful and cost-effective construction of small modular reactors (SMRs) has not been modeled so far in the United States in a manner that utilities would not entail significant economic and regulatory risk in constructing the same. Thus, Kansas utilities may deem it unwise to replace a fossil-fuel fired electric generating unit with anything other than a natural gas-fired generating unit. However, that scenario has significant risk to the utility consumer. Natural gas can be highly volatile, subject to wide price swings. Consider that during Winter Storm Uri, natural gas prices were upwards of

$600/mcf. Moreover, nobody can safely assure Kansans that the federal government will not severely restrict production of natural gas, leading to generally higher prices. In short, availability of a reasonably-priced fuel supply is necessary to assure reliability/resiliency and reasonably priced energy in the utility's service territory. Utilities should have the discretion to select a resource mix that provides reliability at reasonable costs; SB 456 seems to restrict that discretion.

Fourth, with respect to Evergy Kansas Metro and Evergy Kansas Central, the KCC now requires these utilities to file an Integrated Resource Plan (IRP) on a triennial basis, with annual updates. The filing is accomplished in a docket open to the public and invites stakeholders to file comments regarding the filed IRP. Although the IRP requirement is fairly new in Kansas, and it could be improved as to KCC oversight, it provides an avenue by which stakeholder input, including the necessity of fossil fuel-fired electric generating units, can be expressed to these utilities. Indeed, upon information, CURB believes that, for the sake of reliability, Evergy Kansas Central changed its plan for its Lawrence generating plant to keep a coal-fired generating unit operating versus abandoning the same. Importantly, tying the hands of a utility too tightly with respect to retirement of fossil fuel-fired generation may be imprudent, in view of the fact that the IRP filing and stakeholder involvement seem to provide an avenue to address any issue that may arise regarding abandonment of fossil-fuel fired electric generating units.

Fifth, electric generation is evolving. CURB does not believe that any entity can perfectly predict where the economics and reliability/resiliency of electric generation will be in the next few years. No entity can know how much economic development will take place in Kansas in the next few years and whether that development may be tied to the presence of renewables. CURB believes that there must be some flexibility in meeting new electric demand through a balanced energy portfolio. The requirements of SB 456 may unduly impinge upon any necessary discretion.

Sixth, the requirement that a retired fossil fuel-fired generating unit must be replaced by new dispatchable electric generating capacity appears to suggest that the utility should own such replacement facilities. However, in CURB's view, substituting a purchase power agreement (PPA) for construction of new generation may be beneficial in terms of lower costs to the consumer. Moreover, a PPA may provide nimbleness toward meeting economic and regulatory changes that may loom in the future.

While CURB's testimony is intended only to be helpful regarding the workability SB 456, CURB shares the concerns for system reliability at reasonable costs that are addressed by the bill. Therefore, CURB would appreciate a timely opportunity to discuss with the author of the bill CURB's concerns as expressed above. However, for the reasons set forth above, CURB is a proponent of SB 456.