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Kansas House Energy, Utilities and Telecommunications Committee
Testimony of Citizens' Utility Ratepayer Board
Opponent's Testimony
SB 339
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Mr. Chairman and members of the House Energy, Utilities and Telecommunications Committee. My name is David Nickel. I am the Consumer Counsel 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 filed testimony in opposition of SB 339 before the Senate Utilities Committee because it is contrary to the interests of ratepayers. There were a number of concerns that CURB expressed regarding SB 339, but principal among them was that SB 339 does not contain any sharing mechanism of the costs associated with EDRs between shareholders and ratepayers. CURB had some additional concerns that it will address later in this testimony, but CURB believes that the lack of a cost sharing mechanism should result in SB 339's failure to pass favorably from the House Energy, Utilities and Telecommunications Committee.

SB 339 places all of the costs associated with the potential loss of industrial customers upon the utilities' 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 the utilities' 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 the utility, then the utility's shareholders get the benefit of additional sales and ratepayers bear the full cost of the discount. It is unfair that electric utility companies could cause the problems associated with Kansas's 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.

As to CURB's other concerns, CURB testified before the Senate Utilities Committee that SB 339 appeared to be contrary to other recommendations made in the LEI study. These recommendations included evaluating the following:

- 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?

CURB was concerned that SB 339 did not expressly address these recommendations. A number of the above considerations appear to be left open in SB 339. Thus, when CURB testified before the Senate Utilities Committee, it stated its preference that SB 339 expressly address those recommendations in order to adequately protect ratepayers' interests.

However, it is clear that under SB 339, the Commission cannot approve of any contract rate proposed by any utility unless the Commission considers "the interests of the customers of the electric public utility." The bill clearly grants the Commission discretion to define customer interests and to balance the same relative to other benefits and costs that may derive from a contract rate proposed by an electric utility. CURB believes that the Commission certainly should consider all of the above LEI recommendations when and as appropriate to determine whether EDRs and contract rates proposed by any electric utility protect the interests of customers of the pertinent electric public utility. In protecting the public interest, it is incumbent upon the Commission to consider all appropriate issues and evidence, including those issues properly raised by the parties.

Importantly, CURB recognizes that the Kansas legislature would not retain a well-respected and knowledgeable source such as LEI to study and provide recommendations concerning EDRs in Kansas, only to entirely ignore these recommendations. Therefore, CURB does not perceive that the Kansas legislature would have the Commission ignore appropriate best practices outlined in the LEI study in implementing SB 339. Rather, CURB believes that the Commission's consideration of pertinent LEI recommendations as set forth above, among other relevant factors, is inherent in the approval process for EDRs and contract rates proposed by utilities under SB 339. Legislative intent that contract rates and EDRs must benefit all ratepayers and be in the public interest as conditions for Commission approval should be reflected in the record.

To sum up, CURB would support an appropriate EDR. However, SB 339 unfairly benefits utility shareholders while burdening ratepayers with additional costs. CURB believes that SB 339 should be amended to include an appropriate sharing mechanism between ratepayers and shareholders with respect to the costs associated with contract rates and EDRs. Without that amendment, CURB recommends that SB 339 not be favorably passed from the House Energy, Utilities and Telecommunications Committee.