

Kansas Senate Financial Institutions and Insurance Committee  
Testimony of Citizens' Utility Ratepayer Board  
Testimony Opposing SB 245  
(Written Only)  
February 18, 2021

Mr. Chairman and members of the Senate Financial Institutions and Insurance Committee. My name is David W. Nickel. I am Consumer Counsel of the Citizens' Utility Ratepayer Board (CURB). I am furnishing testimony in opposition to Senate Bill (SB) 245.

SB 245 creates the Kansas Grid Resiliency, Innovation and Dependability Act. It prescribes the use of ratepayer-backed bonds for utility purposes, known broadly as securitization, as a regulatory tool to finance the retirement or abandonment of electric utility generation facilities as approved by the Kansas Corporation Commission (KCC). CURB generally supports the concept of securitization.

As this testimony will explain, SB 245 appears to provide the KCC with sufficient authority and legislative guidance to ensure that the securitization is used for appropriate purposes and that financing terms are reasonable. CURB has been assured that the provisions of SB 245 have been reviewed by attorneys who regularly review securitization legislation and who have assisted in drafting SB 245 to protect the bonds from utility creditors, including a trustee in bankruptcy (should that be necessary). CURB does not possess expertise in that area and cannot speak to the efficacy of the various provisions in SB 245 designed for such protection.

However, CURB notes that SB 245 is lacking in one key aspect. As CURB interprets SB 245, it does not appear to provide expressly that ratepayers will enjoy immediate rate reductions flowing from the retirement or abandonment of electric utility generation facilities. Because that provision is not set clearly forth in the proposed legislation, CURB opposes SB 245 in its current form. Notwithstanding that objection, CURB will outline its perspective on other key aspects of SB 245, starting with a general description of the concept and key aspects of securitization.

In its Public Utility Commission Study, M.J. Bradley and Associates, LLC (2011) provides a good general description of a utility securitization pertaining to the financing of pollution control equipment, as follows:

“Securitization as an alternative financing mechanism is the practice of paying for a capital project outside of the utility financing model by selling bonds that are directly backed and paid for by ratepayers. The bonds are “secured” by the pollution control equipment and an

irrevocable promise that ratepayers will make the payments on the bonds through a dedicated charge on their bills. Utility shareholders provide no separate guarantee. The ratepayer guarantee, enforced by statute and the terms of the financing, minimizes the risk of default, and the resulting interest rate should be significantly lower than either the interest on debt incurred by utilities or a utility's return on equity.”

Rather than using it for pollution equipment, SB 245 contemplates the use of securitization to retire or abandon certain electric utility generation facilities, likely coal-fired electric generation plants. However, the general description provided by M. J. Bradley applies.

Securitization is an alternate financing technique accomplished by the sale of bonds (securities) to investors. Securitization differs from financing accomplished through the use of traditional corporate bonds in two respects: First, payment of principal and interest of the security derives from the underlying asset in securitization versus the earnings and cash flow of the corporation in the case of traditional corporate bonds. Second, corporate bonds typically have established maturity terms upon the date of which all principal and interest are repaid, whereas securitization returns cash flow to the investor when received. These aspects of SB 245 are important reasons to ensure that the benefits brought about by the retirement or abandonment of generation facilities are immediately enjoyed by the ratepayers.

Securitization is a highly complex process involving several steps and safeguards. The process of securitization may involve several parties, including the pertinent utility, the KCC, ratepayers, other stakeholders, investment banks and others. Not surprisingly, SB 245 is 25 pages long and involves several complicated definitions and provisions.

Importantly, the Kansas legislature must pass some form of legislation if Kansas will use securitization to facilitate the retirement or abandonment of certain generation facilities. Indeed, many states have already enacted laws that allow their utilities to use securitization to finance certain capital projects. However, before Kansas legislation is enacted, care should be taken to ensure that the legislation protects the rights of all parties involved, particularly ratepayers who are irrevocably required to pay the financing costs involved.

SB 245 involves the following general procedure. Essentially, the process begins when the utility files with the Kansas Corporation Commission (KCC) an application for an order from the KCC, pursuant to K.S.A. 66-1239, predetermining that the retirement or abandonment of a generation facility is reasonable. If that predetermination is made by the KCC, the utility may then apply to the KCC for a financing order that allows the utility to issue “energy transition bonds.” The utility must include in its application for a financing

order several details pertaining to the issuance of energy transition bonds. These details appropriately allow the KCC to determine whether the issuance of the bonds and the imposition and collection of "energy transition charges" are expected to provide net quantifiable benefits to customers relative to traditional methods of financing or through mitigation of rate impacts. SB 245 provides an expedited but appropriate notice and procedure by which the issuance of energy transition bonds are approved, approved with conditions or denied by the KCC. It is CURB's understanding that Evergy drafted SB 245 in such a manner that the KCC has very broad discretion to determine whether to approve, approve with conditions or deny an application for a financing order.

If the KCC approves the issuance of energy transition bonds, the KCC will approve an "energy transition charge" payable by existing and future utility customers to provide a source of revenue to be used solely to repay, finance or refinance "energy transition costs." Energy transition costs are pre-tax costs incurred by the utility in connection with the retirement or abandonment of a generation facility. If the KCC approves the issuance of the energy transition bonds, existing and future ratepayers cannot avoid energy transition charges approved by the KCC.

Before the energy transition bonds are issued, the utility will transfer the rights to collect the energy transition charges, dubbed "energy transition property," to an entity generally referred to as a special purpose entity (SPE). Before the energy transition property is transferred to the SPE, the KCC's financing order must be effective, the utility must execute documents evidencing the transfer of energy transition property, and value must be received by the utility for the energy transition property to be transferred. Once either the energy transition property is transferred to the SPE or energy transition bonds are issued, whichever first occurs, the KCC's finance order becomes irrevocable.

These provisions, among several others in SB 245, contemplate a procedure whereby energy transition property is protected from the utility's creditors and the financing costs associated with the retirement or abandonment of generation facilities are as low as reasonably possible. Essentially, securitization attempts to finance the retirement or abandonment of a generation facility at a much lower cost than retirement or abandonment of a generation facility by traditional finance methods. The provisions of SB 245 appear to be generally appropriate in those regards.

In its study of Kansas electric rates, London Economics Inc. (LEI) noted that "the securitization process is, in essence, a risk and time reallocation process, achieved by deliberately carving out a part of the rate base and packaging it with higher credit legal arrangements, possibly amortized over a longer period of time." LEI noted a number of tradeoffs to the lowering of finance costs. For example, LEI pointed out that securitization may trade lower finance rates for higher overall payments by ratepayers over time. In

addition, LEI noted that regulators have less control over rates once securitization is approved through an irrevocable financing order. Importantly, ratepayers bear the risks of these tradeoffs.

Securitization does not necessarily entail the full faith and credit of a governmental entity such as the State. However, securitization often includes some form of guarantee, loss reserve or other means to enhance the credit rating of the securitization transaction. In utility securitizations, non-by-passable surcharges paid by ratepayers, including residential ratepayers, can form that guarantee. Notably, SB 245 does not entail the full faith and credit of the State of Kansas to enhance the credit rating of the energy transition bonds. Rather, it contemplates non-by-passable surcharges paid by ratepayers to enhance the credit rating of the energy transition bonds issued thereunder.

SB 245 provides that ratepayers back the energy transition bonds. Under the provisions of SB 245, ratepayers may not avoid the energy transition charges aimed at paying the energy transition bonds. CURB believes that energy transition bonds should not be issued unless there is an immediate and quantifiable benefit to the ratepayer. That benefit should come in the form of savings accompanied by reduced rates.

In these regards, CURB would support any amendment offered by the KCC staff or others designed to ensure that ratepayers enjoy reduced rates immediately upon the issuance of energy transition bonds. Because this aspect of the securitization process is essential to the fundamental fairness of the process, CURB opposes SB 245 unless such an amendment is adopted. Moreover, CURB is aware of several other concerns that other stakeholders have expressed with respect to SB 245. CURB has not had time to fully evaluate those concerns and would ask to be able to address those if this bill proceeds through the Kansas Legislature. Thank you for the opportunity to present CURB's perspective on this important bill.