

# Citizens' Utility Ratepayer Board

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SB 279 Testimony  
Citizens' Utility Ratepayer Board  
Testimony in Opposition

I am David Nickel, Consumer Counsel for the Citizens' Utility Ratepayer Board (CURB), which is a five-member voluntary board appointed by our Governor. The Kansas legislature created CURB as an independent state agency in 1989, to represent residential and small commercial ratepayers in utility cases filed with the Kansas Corporation Commission (KCC), Kansas Courts and the Kansas legislature.

CURB opposes SB 279 because it practically eliminates the public utility regulatory compact, which is vital to cost-of-service regulation of utilities. Under the compact, the government authorizes a public utility to provide utility services to customers within a service territory in exchange for governmental regulation of the utility's rates and practices. With respect to the utility's rates, the regulatory agency (KCC) determines among other matters what utility business costs are reasonable for repayment by the ratepayers and it authorizes a reasonable rate of return on the utility's capital investments. Thereby, the KCC provides the utility with a reasonable opportunity for profit.

In this respect, the regulatory compact mimics a competitive environment with respect to utility services, since public utilities are natural monopolies that could exact exorbitant prices for their utility services in the absence of governmental regulation. The compact utilizes a concept known as "regulatory lag" in order to mimic a competitive environment. The concept of regulatory lag is simple: A public utility that is highly capital-intensive makes expensive investments in its business upon which it could reasonably earn a return on (through the authorized return on equity) and a return of (through depreciation collected from ratepayers through rates), all as determined by the KCC in rate cases. The time lag between when the utility makes the capital investment and when the KCC authorizes (as part of the rate case) a return on and return of investment is known as regulatory lag. Thus, regulatory lag operates to

make a utility as cost-efficient as it would be in a competitive environment: The utility economizes (just as private businesses do in a competitive environment) to keep costs low in between rate cases – in order to make or exceed its authorized rate of return on investment. Only through regulatory lag is a competitive business environment emulated.

SB 279 is so overbroad that gas utilities can collect practically all of their capital investments through surcharges. Moreover, the KCC staff and CURB can give no more than a cursory review (60 days from the filing date with the KCC) of the propriety of these investments. Albeit these investments will be reviewed when the utility files a rate case, the utility can delay that review up to six years under the Gas Safety and Reliability Policy Act (GSRA). By that time, information on investments could be very stale, making it very difficult to prove that these investments are imprudent.

Moreover, merely requiring that utilities prove that their utility investments are prudent does not provide ratepayers adequate protection. Investments can clearly be cost-inefficient but not proven to be imprudent. In short, SB 279 in its present form does not adequately protect residential and small commercial ratepayers from unjust or unreasonable rates.

It is noteworthy that the pipelines proposed to be replaced, upgraded or modernized under SB 279 have already been subject to depreciation allowed by the KCC to be collected from ratepayers through the utilities' rates. This return of the utility's investment was certainly available to replace, upgrade or modernize equipment for several years past. Yet, the utilities chose not to timely make those replacements, and now bemoan the capital investments that may now be necessary. CURB's constituents may not fully understand how the KCC sets utility rates, but they know that utilities could have made pipeline replacements and upgrades long ago, using traditional rate cases to recover their investments.

The utilities may point out that, given the low cost of natural gas, now is an opportune time to replace pipelines because consumer's bills will still be at somewhat historic lows. CURB is unaware of any low-income or fixed-income ratepayers who would agree that this is a great time to raise their rates. These consumers often have to choose between heat and food or medicine. Indeed, these ratepayers depend upon CURB and the KCC to make sure their rates remain just and reasonable. SB 279

significantly hinders the ability of CURB and the KCC to protect residential and small commercial ratepayers against unreasonable or unjust utility rates.

It is also important to note that, when the GSRA was initially enacted, the gas utilities applauded it as sufficient for its intended purposes. It was then and is now a workable resolution aimed towards its intended goal to allow gas utilities to make safety-required investments collectable through a surcharge. Nothing has changed in these regards. Neither federal nor state governments have significantly changed safety requirements in such a manner that requires additional surcharges. Rather, the utilities now want to change the GSRA so that practically all of their investments are collected through a surcharge.

Importantly, when state or federal government requires safety investments, those investments are government imposed. The GSRS contemplates these types of investments. Utility investments are government regulated when the KCC has reasonable time to determine whether investments are just and reasonable in rate cases. Traditional ratemaking principles contemplate these investments. SB 279 significantly weakens important and fair governmental safeguards, adversely to the ratepayer.

Furthermore, amendments to the GSRA are not necessary to allow utilities to replace or modernize pipelines for safety purposes; they can do so under current law. Utilities have kept their pipelines safe under traditional ratemaking principles for decades. Moreover, utilities can still seek surcharge mechanisms through the KCC that are beyond the amount of the GSRS cap or beyond the scope of the GSRA, when they deem necessary. This is significant because it allows utilities to make whatever accelerated safety-related investments they deem prudent, subject to only to proving that the investments are just and reasonable. As SB 279 is proposed, there will be no reason to seek extraordinary relief from the KCC. Rather, practically all utility investments will simply be flowed through the surcharge mechanism proposed by SB 279 and collected from the ratepayer through the customer charge. As it is proposed, the only real benefit of SB 279 is to utility shareholders.

In fact, as it is proposed, SB 279 is antithetical to good utility regulation. Therefore, CURB opposes it in its current form. However, CURB has worked with the utilities to ascertain if there is some common ground on the issue, and CURB will continue reasonable discourse with Kansas gas utilities.