

Kansas Senate Utilities Committee
Testimony of Citizens' Utility Ratepayer Board
Neutral Written and Oral Testimony
SB 349
February 15, 2022

Mr. Chairman and members of the Senate Utilities Committee, thank you for this opportunity to testify regarding Senate Bill 349. 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 ratepayers before the Kansas Corporation Commission (KCC or Commission) and the Kansas legislature. My testimony reflects the interests of these utility ratepayer classes regarding Senate Bill 349.

Senate Bill 349 would attempt to limit annual rate increases granted to an electric utility by the Commission. CURB does not disagree with the need to consider and address consumer impact of utility bills. Therefore, CURB does not oppose Senate Bill 349.

In fact, CURB advocates vociferously for the lowest reasonable rates in every rate case filed before the Commission. Generally, CURB's testimony in these rate cases stands in stark contrast to the utilities' on the question of whether a rate increase is justified. Moreover, CURB intervened in the merger docket (Docket No. 18-WSEE-095-MER) wherein Westar and Great Plains Energy merged to form Evergy. In that docket, CURB along with the KCC staff advocated for the most savings that could reasonably be passed on to consumers arising out of the approved merger. Further, CURB was an active stakeholder in KCC Docket No. 21-EKME-088-GIE, which investigated the Sustainability Transformation Plan filed by Evergy in connection with its dealings with Elliott Management, LLC. In that docket, CURB urged the Commission to require strict proof that any increase proposed by Evergy in its next rate case must be both necessary to serve Evergy customers and prudently incurred. In short, CURB steadfastly works to limit the impact of rate cases upon residential and small commercial ratepayers.

Therefore, CURB appreciates that Kansas Industrial Customers Group (KIC) and Kansans for Lower Electric Rates (KLER) continue to bring electric utility rates to the public eye. In CURB's view, public transparency on rate increases and the competitiveness of electric utility rates is beneficial to Kansans. Moreover, CURB appreciates the creative thought of KIC and KLER to attempt to keep electric utility rates regionally competitive and affordable for all Kansans.

However, CURB cannot support the bill. CURB believes that Senate Bill 349 only defers but does not reduce consumers' energy bills. Moreover, CURB believes that the bill has a few flaws. Below, CURB will outline its thoughts on this bill.

First, Senate Bill 349 may impermissibly limit recovery of transmission delivery charges under K.S.A. 66-1237. That statute recognizes that transmission delivery charges are approved by the Federal Energy Regulatory Commission (FERC); K.S.A. 66-1237 merely provides an expedited manner for an electric utility to recover those expenses. CURB questions whether deferral of those expenses could be accomplished without interfering with matters under exclusive federal jurisdiction. Although CURB has not had time to look thoroughly into that legal question, CURB believes that Senate Bill 349 could lead to unnecessary and costly litigation, at a cost to ratepayers, on the issue.

Second, Senate Bill 349 could result in rate shock and additional costs for consumers. The bill calls for deferral of unrecovered costs for up to ten years. At the end date of all potential unrecovered costs deferrals (July 1, 2032), an electric utility's ratepayers may suffer a substantial rate increase, which is carried at a substantial interest rate. CURB believes that ratepayers would not likely prepare for that type of increase and could be detrimentally affected by the same. Moreover, the long deferral period of up to 10 years may lead to generational inequity. Costs caused by consumers in 2022 but not collected until 2023 could result in customers paying for utility costs they did not cause.

Third, Senate Bill 349 effectively does little to lower utility rates. Subsection A of the bill prohibits the inclusion of costs in rates if those rates would exceed an average of 1% per year from the last rate increase granted to an electric utility. However, under subsection B of the bill, the Commission shall not limit any prudent costs that are necessary to protect reliability or would affect an electric utility's credit rating. The need for utility expenditures in order to provide safe and reliable service, as well as the ability of an electric utility's rates to reasonably attract capital, are issues that are determined by the Commission in every rate case. In short, the Commission can neither legally allow an electric utility to bill consumers for costs that are not necessary for safe and reliable service, nor allow an electric utility to earn a rate of return that is outside of the zone of reasonableness (which considers a utility's credit rating). Thus, it appears that Senate Bill 349 only defers rate increases, but does not ultimately lower utility rates.

Fourth, Evergy agreed to a rate case moratorium as part of the merger docket referenced above (Docket No. 18-WSEE-095-MER). Now that the moratorium is about to end and Evergy would be able to recover costs that it agreed to defer until 2023, Senate Bill 349 could limit and defer a substantial amount of anticipated cost recovery. Although CURB is sure that it was unintended, Senate Bill 349 effectually blind-sides Evergy with respect to its decision to agree to the rate moratorium in Docket No. 18-WSEE-095-MER.

CURB agrees that all stakeholders need to work together to help keep electric utility's rates competitive and affordable. CURB would welcome working with KIC and KLER, along with other stakeholders, which should include the Commission staff and electric utilities, to find ways to resolve this issue. In these regards, CURB is mindful of the regulatory compact that exists under Kansas law and its importance. Senate Bill 349 was introduced before any input from CURB, who obviously should have a say in how residential consumers will be affected by legislation.

Although CURB does not support Senate Bill 349, CURB does not oppose Senate Bill 349 because CURB believes that it provides an opportunity for stakeholders to find mutually advantageous ways to keep electric rates affordable for all Kansans. Therefore, CURB files this testimony as neutral with the suggestion that further work be done to address utility rates in Kansas.