



# Liberty Utilities<sup>®</sup>

EMPIRE DISTRICT

## **OPPOSITION TESTIMONY**

### **Senate Committee on Utilities**

#### **SB 437**

**An Act concerning electric utilities; relating to the state corporation commission;  
Authorizing the approval and issuance of K-EBRA bonds;  
financing costs of electric utility property**

**Whitney Damron  
On behalf of Liberty Utilities – Empire District**

**March 12, 2020**

Good afternoon Chairman Masterson and Members of the Committee:

I am Whitney Damron and I appear before you today in opposition to SB 437 on behalf of Liberty Utilities – Empire District.

SB 437 would introduce a complex financing mechanism with unproven merit into the realm of cost-recovery financing of utility infrastructure and we believe this will not be beneficial to our customers or the company. Liberty presented similar testimony to this Committee exactly one year ago today in opposition to SB 198. Liberty's position on securitization has not changed and we are opposed to SB 437 as well.

Securitization of an asset is not new or unique to utilities. However, legislative initiatives introduced throughout the country in the past few years similar to SB 437 not only would create an ability for a utility to decide whether securitization made economic sense for the company and its customers (voluntary securitization), but would also create a process where securitization could be imposed upon a utility irrespective of its financial condition, investment strategy, financing options, energy mix and any number of other factors that a utility must factor into any decisions for investment and asset management (involuntary securitization). A forced securitization would disrupt the regulatory compact between utilities, regulators and rate-recovery mechanisms and discourage utility investment in the state.

There are instances where a utility might seek to utilize securitization as a financial tool and current law would allow for regulatory consideration of such a proposal. For example, a utility might seek authority for the bonding of a particular transaction or finance a stranded cost on a more efficient and customer-beneficial manner than traditional cost-recovery mechanisms. Such a transaction should be developed through an open process before the state corporation commission and voluntary on the part of the utility.

Under SB 437, a utility could have a securitization obligation placed upon it by the State through a complex bonded indebtedness scheme, yet the utility remains responsible for all financial risk involved with the transaction, not the State. Terms and conditions imposed under a forced securitization could negatively impact a utility's financial stability.

Current law and regulatory processes do not show a need for such a drastic change. Utilities work with their regulator to plan for load requirements and investments must be made in a prudent manner. Regulatory lag in the imposition of cost recovery allows the KCC to review the prudence of investment and allow for recovery as appropriate with input from KCC staff, CURB, intervenors and the public.

To be specific, we offer these comments:

- The use of K-EBRA bonds should be voluntary for a utility only. SB 437 allows for a voluntary securitization filing as found in Section 5 by anyone. Section 5 states a securitization plan can be brought forth "upon motion by the commission or at the request of an electric utility or any other person,..."
- Cost recovery should not be limited or negatively impacted should a utility choose to not utilize a K-EBRA process.
- If a utility chooses to not utilize a K-EBRA mechanism, they should be allowed to continue to recover costs as previously approved by the KCC.
- A utility should be allowed to negotiate terms for a K-EBRA securitization program with KCC approval, but not "oversight and control."
- The Legislature should be concerned, as we are with allowance for "transition assistance costs" to "Kansas communities and electric generation facility workers that are directly impacted by the retirement of electric generation facilities."

SB 437 contains many other issues far too challenging to cover in a legislative hearing.

SB 437 is a complex piece of legislation and deserves significant scrutiny by all parties concerned – State Corporation Commission, investor-owned utilities and impacted third parties as well as input from competent (and disinterested) bond counsel, experts in utility finance and others. On its face, SB 437 could have a substantial impact on Kansas electric IOU's and impact current and future investments in generation as well as destabilize the financial condition of affected companies.

Last year Liberty testified in support of SB 69, the comprehensive electric study commissioned by the Kansas Legislature. As of last week, electric utilities were still providing comments to legislative committees on the findings of that study by London Economics and to date, we have yet to see concrete recommendations emanating from that study and as the Committee is aware, a second part to that study is due to be completed by July 1, 2020.

Statutory changes to the electric industry should be developed in cooperation with regulatory agencies, the utilities and with all customers given consideration. Piecemeal legislation such as SB 437 should not be considered until all aspects of electric regulation are given appropriate consideration and we believe this bill and related proposals are premature, at best, absent completion of the studies contemplated in SB 69 and a thorough evaluation of its findings.

SB 437 is a part of an agenda by special interests who want to impose a national agenda for utility investing practices, generation and operation that ignore specific requirements and needs of Kansas investor-owned electric utilities in order to serve their customers.

We would ask the Committee to not advance this legislation forward.

Thank you. I would be pleased to stand for questions at the appropriate time.

Whitney Damron

*About Liberty Utilities:*

Liberty Utilities' Central Region is headquartered in Joplin, Missouri and provides electric, natural gas, water and wastewater service to nearly 320,000 customers across six states, including Missouri, Kansas, Oklahoma, Arkansas, Iowa and Illinois. The company has approximately electric 10,000 customers in Kansas in the southeast corner of the state.

In Kansas, Liberty Utilities – Empire District owns and operates a 286-megawatt natural gas power plant in Riverton, Kansas and has purchase power agreements with two Kansas windfarms: Elk River Wind Farm in Butler County and Meridian Way Wind Farm in Cloud County. In addition, the company has contracted with Apex Clean Energy to purchase an approximately 300-megawatt renewable wind energy project in Neosho County, Kansas, once the project is operational (scheduled for late 2020).