Citizens' Utility Ratepayer Board

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SENATE UTILITIES COMMITTEE
H.B. 2033 (as amended)

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
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Chairman Emler and members of the committee:

Thank you for this opportunity to offer testimony on H.B. 2033. HB 2033 amends K.S.A. 66-128 to change the statutory framework from a permissive "may" to a mandatory "shall" statute. The Citizens' Utility Ratepayer Board opposes this change.

A touchstone consumer protection in the regulation of public utility rates is that the cost of utility plant is not allowed into consumer rates until that plant is finished and operational. Utilities have not historically been allowed to charge consumers for facilities that are not providing services to those consumers. K.S.A 66-128(b)(1) is specific in that "***property of any public utility which has not been completed and dedicated to commercial service shall not be deemed used and required to be used"*** in the public utility's service to the public.

The exception to this touchstone rule appears in K.S.A. 66-128(b)(2), which allows that certain property "***may"*** be deemed "***completed and dedicated to utility service***" if certain requirements are met. This is generally known as the "construction work in progress" exception, or "CWIP".

Historically, CWIP was used on those projects that would be completed within the very near term after a utility had filed a rate case. The rationale is that the utility should not have to file a second rate case to recover costs that were just outside of the test year in a rate case. And since the statute contained the word "may", consumers still had some level of protection as the Commission is required to balance the interest of consumers in determining whether or not to allow the proposed CWIP costs into rates.

Over time the CWIP exceptions have grown so broad that there is no longer a linkage in time to a current rate case proceeding. For example, in K.S.A 66-128(b)(2)(D) all that is required now to meet CWIP is that the costs are for "an electric generation facility or addition to electric generation facility" placed in service after January 1, 2001. There is no restriction on when, or if, that generation facility will begin operation and actually supply power to consumers.

It can be argued that using CWIP to place construction costs into consumer rates as the plant is being constructed, rather than waiting until the plant is operational, will save consumers money over the long term. From a utility perspective that may be true. Paying as you go rather than capitalizing interest over the construction period may result in a slightly lower rate increase when the plant comes on line. It also results in lower risk to utility shareholders.

From a ratepayer perspective, the time value of money is also important. It may be more valuable to a consumer to have lower utility rates today and be able to spend the extra money on other items, than to have higher utility rates today and less money to spend elsewhere, just so they can save a little on their utility bill later. Paying a slightly higher utility rate later, when the plant is actually providing service, may be preferable to paying higher utility rates today for something that is not providing service. Also, from a ratepayer perspective, if we are again being forced to accept financing risks that have traditionally been shouldered by the utilities, there should be a benefit for consumers from a commensurate reduction in shareholder profits built into consumer rates. Lower risk usually means lower return, yet the regulatory process rarely applies this concept to consumer rates.

Legally, mandatory CWIP is also a concern. Once costs are put into filed consumer rates, consumers cannot get a refund of any money paid under those rates if, at a later date, the costs are found to be imprudent, or the plant never comes on line. Those costs can be removed from rates going forward, but no refund of past payments can be ordered. Generally this is why the costs were not put into consumer rates until the plant was operational and costs had been reviewed.

The single remaining protection for consumers in this statute is the word “may”. The Commission retains some level of discretion to balance the interest of ratepayers and the utility. Utilities cannot automatically pass costs onto consumer bills without convincing the Commission that consumers should pay those costs. Consumers have an opportunity to be heard by the Commission on those costs. Replacing “may” with “shall” removes even this basic protection for consumers.

HB 2033 was amended to include the language on page 2, lines 6-10, to make clear that nothing in the statutory changes are to preclude the Commission from reviewing whether expenditures were efficient and prudent. It is interesting that the Commission is trusted to perform this complex and difficult task, but not trusted with the discretion (“may”) to know when CWIP is proper based on all the facts and evidence and balancing consumer interests against utility interests.

CURB respectfully urges the Committee to not pass this bill. It is clear that making CWIP, as set forth in K.S.A. 66-128(b)(2) mandatory rather than permissive goes against good regulatory practice. Consumers will lose what little protection is left in this statute.