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Before the Senate Committee on Utilities

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Opposition Testimony (Section 2 only)
On Senate Bill 69

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On Behalf of
The Staff of the Kansas Corporation Commission

Chair Masterson, Vice Chair Petersen, Ranking Minority Member Francisco, and members of the Committee, thank you for the opportunity to provide testimony to your Committee today on behalf of the Staff of the Kansas Corporation Commission (Commission).

The Staff of the Commission (Staff) is taking a neutral position regarding Section 1 of Senate Bill 69 (SB 69). However, Staff would like to take this opportunity to explain and highlight some of the issues we see with the rate study outlined in Section 1.

Staff anticipates that the rate study envisioned in SB 69 could be very expensive due to the depth and breadth of the individual issues to be evaluated. Staff's fiscal note estimates the rate study as proposed under the bill will cost approximately $1 million to complete by the December 31, 2019 deadline. Per Section 1 of the bill, the utilities subject to the rate study are to pay for the study through an assessment of expenses pursuant to K.S.A. 66-1502. However, the ratepayers of the utilities included in this study will ultimately pay the cost of the study. The primary reason the rate study could be expensive is due to the wide-ranging scope of subjects to be evaluated, some of which could justify their own discrete study. For example, the following subjects could justify their own discrete studies:

1. Whether allowing Kansas electric cooperatives and municipal utilities to set rates and recover costs without a traditional ratemaking process has contributed to rising electricity prices. [Section 1(b)(7).] In order to answer this question, a separate rate study similar to the one performed by Staff and evergy should be performed prior to considering whether to reinstate rate regulation.

2. Whether any performance-based regulation, economic development initiatives, price-cap regulation, or other non-traditional ratemaking methods should be considered to reduce retail electric rates or the level of increase of any rates. [Section 1(c)(2).] From Staff's

perspective, performance-based regulation, price-cap regulation, or other non-traditional ratemaking methods should be considered in a separate study. Due to the complexity of these methods and the number of variations under which they are implemented, a general overview could not provide much value or meaningful insight. More specifically, the concepts for alternative ratemaking methods are well-know, but any guidance from the study that would validate a transition will require a detailed analysis.

3. Whether competitive markets for retail electricity could benefit Kansas consumers. [Section 1(c)(3).] Retail choice is a highly complex issue that has been implemented in many different ways. Again, a general overview could not provide any meaningful insight. The Kansas Industrial Consumers Group (KIC) states in its testimony that "KIC has not and is not pursuing any discussion to move Kansas towards deregulation." [1] In addition, the Citizens' Utility Ratepayers Board was even more narrowly focused when it stated, "To summarize, CURB's recommendation is that Kansas needs further independent study regarding how, if at all, to revise or supplement the current utility regulatory scheme in Kansas."[2]

Staff is opposed to Section 2(b) of SB 69. Section 2(b) requires the Commission – *in determining just and reasonable rates* – to evaluate the competitiveness of any *proposed* electric rate with those of comparable public utilities in surrounding states. It also requires every order approving an increase in base rates of an electric or gas public utility to include *findings of fact* regarding the impact of the rate increase on the Kansas economy. In order to address these new requirements, the most efficient procedural process would be for the Commission to issue a non-final or interim order with its revenue requirement increase or decrease decision along with its rate design decision. Staff would then need to perform a rate comparison analysis to comparable utilities in surrounding states and conduct an economic impact study for Kansas for any increase in rates. Both of these steps will require additional time, but the economic impact study will require two to three months to complete. This effectively means that the current requirement for the Commission to issue an order within 240 days pursuant to K.S.A. 66-117(c) would need to be extended to between 330 and 360 days. Moreover, this additional regulatory lag will have a negative impact on Kansas' investor-owned utilities ability to earn their Commission authorized return. And, if riders and surcharges are eliminated in the future, the utilities' ability to earn their authorized return will be further eroded, which will lead to more frequent rate cases.

Staff believes these statutory changes are premature. The rate study outlined in SB 69 contemplates a large number of potential changes, including transitioning the rate case process in Kansas to alternative ratemaking methods or retail choice. If a transition to a different form of ratemaking is legislatively mandated, some alternative forms of ratemaking or retail choice will most likely make the requirements included in Section 2(b) unnecessary. However, if the ratemaking process in Kansas remains the traditional rate base/rate of return method[3] currently in

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[1] Testimony of Jim Zakoura dated January 24, 2019, Regarding the KCC Rate Study, Before the Senate Utilities Committee, January 30, 2019.
[2] Citizens' Utility Ratepayer Board, Testimony Regarding KCC Staff's Rate Study, January 30, 2019.
[3] Staff notes that several alternative ratemaking methods rely on traditional rate base rate of return ratemaking, which would also most likely make using rate comparisons or economic impacts to set rates illegal.

use, any adjustment based solely on making electric rates more competitive or adjusting the rates to avoid any negative impact(s) on the Kansas economy would violate the Takings Clause of the Fifth Amendment.[4] These issues raise a question as to the value in the rate setting process of evaluating the competiveness of proposed rates with those comparable utilities and evaluating the impact on the Kansas economy. Staff also notes that addressing these issues in a rate case will increase rate case expenses, which are ultimately paid by ratepayers.

Staff notes that Section 3 of SB 69 includes a requirement that the Commission include an assessment of the regional competitiveness of electric and natural gas rates compared to certain states as part of the Commission's annual report to the legislature. Staff believes this is the most relevant and useful venue to provide not only an evaluation of the competiveness of Kansas' rates, but also an evaluation of the impact of the electric and natural gas rate changes on the Kansas economy.

[4] *See* Kansas Corporation Commission Staff's Rate Study of Kansas City Power & Light and Westar Energy for the Years 2008 to 2018 at p. 13 for an explanation of the Takings Clause and its applicability to setting rates.