

Kansas House Energy, Utilities and Telecommunications Committee
Testimony of Citizens' Utility Ratepayer Board
Neutral Written Testimony (Only) on
HB 2180
February 11, 2021

Mr. Chairman and members of the House Energy, Utilities and Telecommunications Committee. My name is David Nickel. I am the Consumer Counsel for the Citizens' Utility Ratepayer Board (CURB). I am furnishing neutral testimony regarding House Bill (HB) 2180.

HB 2180 appears to amend K.S.A. 66-1237 to change prospectively the manner in which electric utilities recover changes in costs associated with the transmission of electricity from its retail customers. Under current law, utilities may file an application with the Kansas Corporation Commission (KCC) to recover changes in these costs through a transmission delivery charge (TDC). The TDC is a separate line item on each retail customer's bill. HB 2180 appears to provide that changes in costs associated with the transmission of electricity can be recovered only after the pertinent utility files for a general retail rate change ("general rate case").

In evaluating the potential benefits and costs of HB 2180, one should note that K.S.A. 66-1237 merely prescribes the manner in which the KCC authorizes the recovery of costs associated with the transmission of electricity by Kansas utilities. The statute neither lowers nor raises the amount to be recovered by utilities in association with their electric transmission costs, as these amounts are approved by the Federal Energy Regulatory Commission (FERC). K.S.A. 66-1237 recognizes that under exclusive federal jurisdiction afforded to the FERC by the Federal Power Act, the FERC determines the amount of the costs associated with the transmission of electricity to be recovered by the pertinent utility. While the KCC may intervene in the FERC proceedings where these costs are determined and permitted to be recovered from ratepayers, the KCC does not have authority to determine whether the utility can recover these costs. In short, if the FERC approves the recovery of costs associated with the transmission of electricity by a utility, those costs are recoverable from ratepayers. In fact, K.S.A. 66-1237 conclusively presumes the prudence of these costs. HB 2180 does not change this dynamic.

In order to ensure that the TDC would not result in an over-collection of costs by a utility, K.S.A. 66-1237 currently provides that if a utility chooses to recover electric transmission costs from its retail customers through a TDC, the utility must unbundle its retail rates. The process of unbundling retail rates ensures that the sum of the revenue recovered from the initial TDC and the non-transmission-related retail rates are consistent with the revenue that would be recovered from the retail rates in effect immediately prior to the effective date of the initial transmission delivery charge. Thus, changing the provisions of K.S.A. 66-1237, as contemplated by HB 2180, would not lower electric bills for consumers but it would delay recovery of electric transmission costs, since HB 2180 provides that such costs can only be recovered by a utility through the time-expensive filing and KCC determination of a general rate case.

Indeed, as it currently exists, K.S.A. 66-1237 contemplates a separate application and expedited proceeding regarding changes in costs associated with the transmission of electricity. K.S.A. 66-1237 currently expedites the KCC's review and approval of the changes in costs and recovery through the TDC. Under K.S.A. 66-1237, the KCC reviews the TDC application made by the utility and determines whether the costs are consistent with the FERC proceeding and then spreads those costs in an equitable manner to the utility's retail customers.

In contrast, CURB understands HB 2180 to provide that changes in costs associated with the transmission of electricity incurred by a utility can be recovered only upon the filing of a general rate case pursuant to K.S.A. 66-117. That statute allows the Commission up to 240 days from the date of filing to determine rates prospectively for ratepayers. K.S.A. 66-117 requires the filing of a substantial number of documents pertaining to matters of utility expenditures, capital investments, rates of return, and rate design. These are expensive undertakings. Under K.S.A. 66-1237 currently, these matters are not addressed whenever a utility seeks a change in its TDC.

As it currently exists, K.S.A. 66-1237 shortens the regulatory lag (the amount of time between the time when a cost is incurred by a utility and the time when it is allowed to begin to recover the same from its ratepayers) associated with recovery of electric transmission costs. Regulatory lag is an important aspect of utility regulation. Ostensibly, regulatory lag incentivizes utilities to monitor expenses strictly in order to maintain profitability in spite of the delayed recovery of and on capital expenditures. HB 2180 would increase regulatory lag associated with the recovery of electric transmission costs, thereby incentivizing utilities to keep other expenses to a minimum.

Moreover, HB 2180 may increase the transparency of TDCs through general rate case proceedings. General rate case proceedings are highly publicized; they involve public hearings in which ratepayers express their views on Kansas utility rates. Further, general rate cases involve the consideration of all changes in utility revenues and expenses in determining rates. Generally, single-issue ratemaking is avoided when practical as a matter of sound regulatory policy.

Significantly, when K.S.A. 66-1237 was enacted, the legislature determined Kansas policy concerning recovery of electric transmission costs by utilities in view of the benefits and costs associated with recovery of transmission costs by utilities. As it exists, K.S.A. 66-1237 meets its apparent and intended purpose. HB 2180 seeks to reverse that policy. In these regards, it is very important to note that Kansas utilities incur costs associated with the transmission of electricity that are not associated with their own transmission projects, but are costs associated with transmitting electricity over other utilities' transmission facilities. The utilities incur these costs in order to deliver energy to Kansas ratepayers by their utilities. Causing a delay in the recovery of these expenses that a utility cannot avoid is an issue of fundamental fairness.

Moreover, requiring the filing of a general rate case to recover costs associated with the utility's transmission of electricity may increase the frequency of general rate case filings. General rate cases are very expensive, and ratepayers bear those costs. Thus, HB 2180 could result in additional costs to be borne by the ratepayer, through increased rate case filings.

CURB has attempted to posit what it sees as potential benefits and costs associated with HB 2180 from the perspective of residential and small commercial ratepayers. Importantly, CURB views HB 2180 to involve a policy judgment for the Kansas legislature to make. HB 2180 would reverse legislative policy underlying K.S.A. 66-1237 as it currently exists. That judgment lies within the exclusive province of the Kansas legislature. Therefore, CURB is neutral on HB 2180.