

Kansas Senate Utilities Committee
Testimony of Citizens' Utility Ratepayer Board
Neutral Testimony (Written Only)
Senate Bill 124
February 25, 2019

My name is David Nickel, Consumer Counsel for the Citizens' Utility Ratepayer Board (CURB). While CURB supports the sentiment of Senate Bill 124, it has reservations concerning its implementation. Therefore, CURB is neutral on the bill.

CURB believes that Senate Bill 124 is being proposed because of perceived unfairness of demand charges being placed upon solar distribution customers on the utility systems of Westar Energy, Inc. (Westar) and Kansas City Power & Light Co. (KCP&L). CURB absolutely understands and supports the need to protect residential, small business and other consumers who take steps to lower their electricity bills through energy efficiency, solar or other means. There is a reasonable frustration when a consumer takes costly measures in hopes of reducing their electricity bills, but finds that due to a tariff change their bills may actually increase. CURB generally supports energy efficiency and solar. Yet, there is no easy answer to this issue.

The Kansas Corporation Commission (KCC) approved demand charges for residential distributive generation customers was approved by in Docket No. 18-WSEE-328-RTS (the Westar rate case) and Docket No. 18-KCPE-480-RTS (the KCP&L rate case). The KCC approved these demand charges after deciding to adopt a three-part rate design for solar distribution customers in Docket No. 16-GIME-403-GIE the general investigation concerning rate design for distribution generation (16-403 Docket). In each of these cases, the KCC held evidentiary hearings and all sides were allowed to present evidence in accordance with all due process requirements.

In Docket No. 16-GIME-403-GIE, CURB presented evidence that there should be a three-part rate; however, the KCC should measure benefits in the form of avoided costs caused by distributive generation as a supplement to cost of service analyses pertaining to the distribution generation class of service. CURB's evidence urged that these benefits would be measured using the Ratepayer Impact Measure test and the Total Resource Test (both of which are used in measuring utility-sponsored energy efficiency proposals). However, the KCC decided: "...A class cost of service study provides sufficient support for design of a residential private DG tariff and no further study is necessary for the purpose of this docket because the class cost of service study takes into consideration benefits in the form of avoided costs." The KCC determined in the 16-403 Docket that "DG customers should be uniquely identified within the ratemaking process because of their potentially significant different usage characteristics." Upon this premise, the KCC determined that rate design for distributive generation should be a three-part rate consisting of a service charge, demand charge and energy charge. That decision formed the basis of the rate design proposals made by various parties in the Westar rate case and the KCP&L rate case.

In both the Westar rate case and the KCP&L rate case, CURB presented evidence supporting a different rate design than was presented by the utility applicants and the KCC staff. CURB also supported testimony that proposed no increase in the customer service charge for all residential consumers, including distributive generation customers. The cases were hard fought, and CURB saw an opportunity through a negotiated settlement to prevail on the issue of the customer service charge and a significant rate reduction, both of which benefited all of the residential rate class. By settling the Westar rate case, CURB was also able to secure a favorable pay mechanism for handling energy generated by a new wind plant. Because these positions had a greater benefit to the residential class as a whole than potentially prevailing on CURB's distributive generation rate design, CURB approved the settlements offered by the utility applicants and accepted by most other parties. Therefore, CURB supports the settlements reached in the Westar rate case and the KCP&L rate case as just and reasonable.

Sierra Club and Vote Solar, two parties in the Westar rate case, did not approve the settlement; they have appealed the KCC's Order. Regarding that appeal, if the Court finds that the KCC did not follow the law in Kansas as enacted by the Kansas legislature or did not have substantial and competent evidence to support the KCC's Order, the Kansas appellate courts will reverse the KCC's decision. That appeal is now pending. In short, these statutory and constitutional safeguards surrounding KCC decisions are ensuring the satisfaction of due process in the Westar rate case.

If the Kansas legislature determines that cost of service analysis unduly disincentives solar development, such that doing away with that analysis is justified, that is a policy decision. However, such a decision may pave the way for some interest groups to lobby for preferential treatment in rate design. In these regards, it is important to note that cost of service analysis has historically been an essential element in determining rate design in rate cases before the KCC. The Kansas Supreme Court has spoken to the "fairness" and necessity of determining rate design upon a cost of service basis. In *Jones v. Kansas Gas & Electric Co.*, 222 Kan. 390, 401 (1977), the Court has held, "the touchstone of public utility law is the rule that one class of consumers shall not be burdened with costs created by another class."

Clearly many may disagree with the findings of the KCC in the referenced cases. As indicated earlier, the appeal will provide an answer to those concerns. While CURB sympathizes with the concerns underlying Senate Bill 124, CURB has reservations that it may actually result in very strident reversal of established law pertaining to the fairness of rate design in rate cases.