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Before the House Committee on Energy, Utilities, and Telecommunications

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Neutral Testimony
On House Bill 2154

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On Behalf of
The Staff of the Kansas Corporation Commission

Chair Delperdang, Vice Chair Turner, Ranking Minority Member Ohaebosim, 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 neutral on House Bill 2154 (HB 2154). HB 2154 would require statewide elections of Kansas Corporation Commission (KCC) Commissioners and establish a utilities regulatory division within the office of the Attorney General (AG). The newly created AG's utility regulatory division would represent and protect the collective interests of all utility customers in any rate-related proceedings of the KCC and in any other state or federal judicial or administrative proceedings and would be staffed by transferring all current KCC utilities staff to the AG's office. HB 2154 would also exempt the KCC from the open meetings act (K.S.A. 75-4318).

While Staff is neutral, we do have concerns with the bill's requirement to create a utilities regulation division in the AG's office that represents the interests of all utility customers in the state. Staff also has some context and information for the committee's consideration regarding the bill's intent to move to electing Commissioners.

Staff's Concerns Related to the Creation of a Utilities Regulation Division in the AG's Office:

Staff questions whether the creation of a utilities regulation division within the AG's Office is in the best interests of the public because it is highly likely to weaken overall utility regulation rather than strengthen it. Staff has numerous reasons for its concerns and they are as follows:

- HB 2154 will create an additional consumer advocate that is duplicative of existing consumer advocates. The bill states, among other things, that the newly created AG's utility regulation division's purpose is to "[r]epresent and protect the collective interests of all utility customers of this state in public utility rate-related proceedings" and to "balance the interests of residential, business, and industrial customers when advocating for utility

customers”. The bill ignores the fact that there are a number of consumer advocates that already participate in rate-related proceedings. For example, the Citizen’s Utility Ratepayer Board is statutorily mandated to represent residential and small commercial ratepayers. In addition, Kansas Industrial Consumers and a host of other entities represent various commercial and industrial consumer interests as indicated in Evergy Central’s last rate case (Docket No. 18-WSEE-328-RTS) where there were over twenty intervenors representing various consumer interests.

- HB 2154 requires “the staff of any division of the state corporation commission that litigates, argues or participates in public utility rate proceedings ...shall be transferred to the [AG] division subject to the discretion of the attorney general.” However, HB 2154 does not relieve the Commission from its public interest duties as mandated in Kansas statutes and case law. Therefore, the Commission will need to replace the Staff positions transferred to the AG’s office in order to meet its public interest mandates. This will significantly increase the costs of utility regulation that will be paid by utility customers since the AG’s regulatory division and the KCC’s regulatory division will be assessed to regulated utilities.
- As a practical matter, if some Commission Staff resign, retire, or apply to rejoin the Commission’s Utility Division, the State could face a situation whereby both the AG’s office and the Commission will be forced to pay higher salaries than are currently in place in order to incent existing staff to join either the AG’s regulatory division or the open positions at the Commission.
- The ramifications of a portion of the current Commission staff moving to the AG’s office, a portion being rehired by the KCC, and a portion resigning or retiring from both, will effectively weaken both entities’ ability to regulate utilities. Utility regulation is a highly complex endeavor that requires years of experience and constant collaboration to be effective. When the KCC has to recruit for open positions, we can generally hire recent college graduates. However, if we have a senior position open that requires experience, we generally have to hire someone with experience from a non-utility field. In other words, the ability to recruit someone with experience in utility regulation is virtually non-existent. This is why utilities recruit from KCC staff.
- The bill’s mandated staff transfer will be disruptive to the other divisions within the Commission creating regulatory uncertainty with motor carriers, the oil and gas industry, and pipeline safety industries. The KCC is not an agency with divisions that are siloed. The attorneys, accountants, engineers, economists and financial experts that would be transferred to the AG’s office assist and advise the other divisions within the KCC. These divisions include the Conservation Division, Energy Division, and Transportation Division. The Utilities Division is also not siloed. For example, the Utilities Division’s Chief Engineer is responsible for Energy Operations Section that works on rate-related issues and he is responsible for pipeline safety issues which does not work on rate-related issues. Similarly, auditors, rate analysts, and finance staff also work on telecommunications dockets.

- The conversations regarding regionally competitive rates also need to begin weighing the impact of lowering rates on system reliability. To-date, system reliability has not been part of the conversation, most likely because Kansas currently has a reliable system. A recent report by the Citizens Utility Board (CUB) of Illinois on electric utility performance ranked Kansas 8th best in the nation in terms of reliability^{1 2}. Notably, the report ranked Oklahoma – whom Kansas is often compared to – at 47th for reliability.
- Should a future commission place its jurisdictional electric utilities on an austerity program with the primary goal of lowering rates to achieve “regional competitiveness,” utilities will be forced to react by dramatically cutting capital expenses and operating and maintenance costs at the expense of reliability. Staff has direct evidence of this potential from its investigation into the old Aquila electric system that was acquired by Sunflower/Mid-Kansas Electric due to Aquila’s severe financial distress.
- The Illinois CUB report also ranked Kansas 29th in affordability, 28th in electricity cost per kWh for residential customers, 29th in electricity costs per kWh for all customers, and 25th for average annual residential electricity expenditures. In terms of overall electric utility performance – accounting for both reliability and affordability – Kansas was ranked 8th.

Considerations for Elected Commissioners:

As noted previously, Staff recognizes that whether to elect Commissioners is a policy decision for the legislature. However, Staff does have some context for the committee to consider.

- The Kansas Corporation Commission is considered a “consumerist” ratemaking body, as compared to other states. Regulatory Research Associates (RRA)³ evaluates state public utility commissions from an investor perspective and the rankings indicate the relative regulatory risk associated with the ownership of securities issued by the public utility’s commission. The RRA’s currently ranks the Kansas regulatory risk as below average/1, which is in the bottom nine of all state commissions (least investor friendly). RRA also notes that its ranking reflects Kansas’ gradual shift toward a more “consumerist” approach to ratemaking. See the table below.

¹ Electric Utility Performance, A State-by-State Data Review, Second Edition, Produced by the Citizens Utility Board (CUB) of Illinois, January 19, 2023. <https://www.citizensutilityboard.org/wp-content/uploads/2022/09/Electric-Utility-Performance-Report-Second-Edition-final.pdf>

² The Illinois CUB report data is from 2020 and the report notes that reliability rankings have been volatile in the two years the report has been produced.

³ S&P Global jointly owns SNL and RRA. SNL is sometimes referred to as S&P Global Market Intelligence. S&P Global is a subscription-based data service that covers the utility industry as well as banks, investors, and government agencies.

RRA State Regulatory Evaluations — Energy*

(By category, jurisdictions to watch highlighted)

Above Average/1	Above Average/2	Above Average/3	Average/1	Average/2	Average/3	Below Average/1	Below Average/2	Below Average/3
Alabama	Florida	Iowa	Arkansas	Hawaii	Delaware	Alaska	Dist. of Columbia	Arizona
	Georgia	Michigan	California	Idaho	Louisiana — NOCC	Connecticut	New Mexico	
	Pennsylvania	Mississippi	Colorado	Illinois	Maine	Kansas	West Virginia	
	Wisconsin	North Carolina	Indiana	Kentucky	Maryland	Montana		
		Tennessee	Nebraska	Louisiana — PSC	Missouri	New Jersey		
			North Dakota	Massachusetts	Ohio			
			Texas — RRC	Minnesota	South Carolina			
			Virginia	Nevada	Texas — PUC			
				New Hampshire	Vermont			
				New York	Washington			
				Oklahoma				
				Oregon				
				Rhode Island				
				South Dakota				
				Utah				
				Wyoming				

Data compiled Dec. 28, 2022.

NOCC = New Orleans City Council; PUC = Public Utility Commission; RRC = Railroad Commission.

* Within a given subcategory, states are listed in alphabetical order, not by relative ranking.

Source: Regulatory Research Associates, a group within S&P Global Commodity Insights.

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- Elected Commissioners may not be the answer that the proponents to HB 2154 are seeking. The table below provides the rankings from the Illinois CUB report for elected commissions compared to Kansas’ rankings. Note that only four of the eight ranked elected commissions have a higher affordability ranking than Kansas. Also note that Kansas has the 3rd best ranking for reliability, and has the 3rd best ranking for overall performance.

Illinois CUB Electric Utility Performance Review						
Elected Commissioner States	Affordability Ranking	Reliability Ranking	Overall Performance	Electricity Cost Per kWh for Residential Customer	Electricity Cost per kWh for All Customers	Average Annual Residential Electricity Expenditures
Alabama	44	45	45	29	27	49
Arizona	32	1	7	23	33	47
Georgia	43	36	44	25	32	42
Louisiana	12	51	47	6	7	28
Mississippi	28	48	49	16	19	40
Montana	7	32	15	9	18	9
Nebraska	N/A	N/A	N/A	N/A	N/A	N/A
North Dakota	17	5	11	4	4	24
Oklahoma	19	47	28	22	8	16
Kansas	29	8	12	28	29	25

Nebraska is a public power state with no state electric PUC.

From Staff’s perspective, the main point of the table above is that elected commissions do not guarantee either low rates or high reliability. Moreover, any commission – elected or appointed – has to adhere to its public interest mandates, statutes, and case law which all serve to limit the ability of a commission to meet any predetermined rate goal. Stated differently, a commission cannot overreach its legal bounds to goal seek a desired rate outcome. To do so will subject the commission’s ratemaking decisions to legal appeals.

- At least one elected Commission has been noted by SNL/RRA as having high executive level turnover.
- The current appointment process seeks qualified individuals with some relevant experience for commissioner appointments. Moreover, there is a Senate approval process that ensures legislative oversight for all appointments. Altogether the current Kansas selection and appointment process balances the important attributes of responsible regulation. Enhancing the probability that the Commission will remain apolitical in deciding substantive matters.

Thank you for the opportunity to offer our perspective on the proposed bill and the opportunity to appear before your committee.