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Opponent ORAL in-person Testimony on HB 2154
For the House Committee on Energy, Utilities & Telecommunications
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I want to thank the Chairman and the Committee for allowing Evergy to respond to this proposal.

Evergy opposes this bill as unnecessary and ineffective at achieving the proponents' ostensive goals. Furthermore, it is utterly unfair to nearly all Kansas electric consumers. Kansas, like the vast majority of states, appoints commissioners to the Kansas Corporation Commission (KCC). The Governor, who is elected by the people, chooses an individual based on the merits and then submits the name to the Kansas Senate. The Senate, which is chosen by the people, then vets the nominee and either approves or rejects that nominee. Thirty-nine out of 49 states with commissions regulating electric service are appointed, not elected.

This legislation is an unfounded and direct attack on the regulatory system in Kansas, the appointed commissioners at the KCC, the independent regulatory staff and the Kansas State Senate, who confirmed as qualified every single commissioner on the KCC today. Despite the unsupportable musings of a select few representatives of the largest energy users in Kansas, there is no evidence that the KCC is not consistently fair, balanced and unbiased in their decisions. Rather, the evidence shows exactly the opposite:

- Over the last decade, the KCC has consistently authorized some of the lowest returns on investments in electric and natural gas infrastructure in the United States.

- The KCC is currently ranked as the 9th least investor supportive regulatory jurisdiction in the country, by Regulator Research Associates. Kansas receives this rating for consistently awarding utilities with low returns on investments in Kansas; because the state lacks many of the modern regulatory tools available in other states; and because of overall adverse decisions for utilities. If anything, their current history is weighted more heavily to consumer outcomes.

- In multiple decisions over the last decade, the KCC and the KCC regulatory staff have taken multiple adverse positions and issued multiple adverse decisions to Evergy and other regulated utilities in Kansas. Most notably for Evergy, in 2017 the KCC rejected the proposed acquisition of Westar Energy by Kansas City Power and Light, citing that there were not enough direct ***consumer benefits*** in the transaction. Ultimately, the transaction was only approved as a merger, keeping Westar's Topeka office open, creating a sharing mechanism and up-front savings that have generated hundreds of millions for Kansas consumers and requiring a five-year freeze to base electric rates.

- And, over the last five years, electric rates in states neighboring Kansas have gone up 3-14 times more than in Kansas. According to Energy Information Administration (EIA) data, Kansas electric rates increased .7% between 2018 and July of 2022. This is well under inflation during that time period, which was more than 18%. Conversely, during the same time period, electric rates in Oklahoma increased approximately 9% and around 11% in Colorado.

Despite the rhetoric from the proponents of this legislation, the KCC has done its job. Nearly 80% of U.S. states, including Kansas, appoint commissioners to their corporation commissions. This approach reduces the politics of an appointment but allows different elected officials to express the will of the electorate. The approach allows for knowledgeable public servants to serve their state without having to subject themselves to the business of politics, i.e., raising money, making promises or making decisions based on anything but the merits of the cases that come before them. Commission decisions on regulated utility issues have financial impacts on customers and utility shareholders for decades to come. Such long-term implications are not well suited to the influence of the political party in charge. Commission decisions also have direct impact on state policy, including issues like what the state's energy mix should look like. Does Kansas really want to open up such decisions to influence by out-of-state tech companies and large energy interests by allowing them to contribute millions of dollars to commission elections like they do in other states?

The proponents of this bill would turn the current regulatory paradigm on its head. Because they cannot find support for their arguments in fact, reason or logic, they desire a system that instead relies on money, passion and demagoguery. They want a system they can disproportionately influence to their advantage. This is the legislative equivalent of forum shopping.

The proponents are or mostly represent deep pocketed corporations. They are not advancing this proposal out of some sort of altruistic reason. They are advancing it because they think they can elect enough Commissioners to give themselves yet another financial break.

With an elected Commission, it most assuredly will be small businesses and individuals who lose out. The proponents must believe an elected Commission can be influenced through campaign contributions. How do we know that? Why else would they specifically bar an electric utility from participating in the electoral process? It is highly likely that this is unconstitutional and would be overturned in the courts. But even if it were legal, it is a naked attempt to tilt the regulatory system in Kansas to their favor. Any time rates on large consumers go down, rates on small businesses and residential customers go up. This would advantage the few large consumers, most of whom already have special discounted rates, and hurt the rest of Kansas consumers.

If this proposal were genuinely aimed at improving the regulatory system and not tilting it in favor of large corporations and special interests, it would seek to bar campaign contributions on ANY entity with business in front of the Commission. A fair proposal would bar any intervenor, organization or representative of an organization with business before the Commission from making a contribution in Commission elections. But proponents aren't looking for fair. They want to win, and that means the rest of Kansas consumers lose.

Luckily, we don't have to wonder how this proposal would work out. There are 10 states that elect commissioners. Of those, 80% have higher average monthly electric bills than Kansas. Six of those states are in the fourth quartile of highest monthly bills. And, most recently, New Mexico passed legislation changing from elected commissioners to an appointed commission.

Recent polling shows that electing partisan politicians to the KCC instead of appointing non-partisan experts is wildly unpopular in Kansas. A total of 53% believe we ought to leave the KCC as is. After learning more about the proposal, 67% of Kansans oppose making a change.

We have become more competitive on rates -- the data shows it. The results show it. The state landed the largest economic development industrial customer in Kansas history after going head-to-head with Oklahoma – a state frequently cited by the proponents of this bill for having lower electric rates. Our economic development pipeline is overflowing with large and power-intensive industries looking to locate in Kansas. Many members of the organizations proposing this legislation have chosen to expand their operations here in Kansas over the last five years.

Mr. Chairman, we oppose this proposal as a transparent attempt to tilt the regulatory system in favor of a few large companies and special interests and hope the Committee and the legislature see this legislation for what it is.