James L. Mullin II, Chair
Henry Hungerbeeler, Vice-Chair
Mary Treaster, Member
Clint Patty, Member
Melody McCray-Miller, Member

Kansas
Citizens' Utility Ratepayer Board

1500 SW Arrowhead Road
Topeka, KS 66604-4027
Phone: (785) 271-3200
http://curb.kansas.gov

David W. Nickel, Consumer Counsel

Laura Kelly, Governor

Kansas Senate Utilities Committee
Testimony of Citizens' Utility Ratepayer Board
Neutral Testimony
SB 437
March 12, 2020

Mr. Chairman and members of the Senate Utilities Committee. My name is David Nickel. I am the Consumer Counsel for the Citizens' Utility Ratepayer Board (CURB). I am furnishing neutral testimony regarding Senate Bill (SB) 437.

SB 437 authorizes the use of securitized ratepayer-backed bonds that are designated as Kansas energy bill reduction assistance (K-EBRA) bonds to lower electric bills for Kansas consumers, and to provide transition assistance to Kansas communities and electric generation facilities workers, among other purposes. Under SB 437, the use of K-EBRA bonds are not mandated for any purpose. The Kansas Corporation Commission (Commission) is authorized to approve, modify or deny any application filed by an electric utility to issue K-EBRA bonds.

The Study of Retail Rates of Kansas Electric Public Utilities prepared by London Economics International, LLC (LEI), and presented on January 8, 2020 (LEI Study) defines securitized ratepayer-backed bonds as "financial assets created for the purpose of lowering utility rates by financing part of the utility's rate base using a lower cost of capital financial and legal structures." LEI notes that the process for creating securitized ratepayer-backed bonds is well known. Indeed, according to the National Association of Regulatory Utility Commissioners (NARUC) approximately one-half of states in our nation have legislation authorizing the issuance of securitized ratepayer-backed bonds.

CURB believes that securitized ratepayer-backed bonds could provide Kansas utilities a means of meeting their regulatory obligations at low interest costs, thereby providing avenues toward lowering Kansas electric utility ratepayer costs. However, as noted below, CURB has not determined that SB 437 meets the best practices outlined in the LEI Study. Moreover, CURB is aware that the Commission may have a number of additional concerns that are not met by SB 437. Therefore, CURB is neutral regarding SB 437, asking that these issues be resolved before any process for the issuance of securitized ratepayer-backed bonds is enacted into Kansas law.

CURB has not been able to study comprehensively the specific features of securitized ratepayer-backed bonds as processed by other states, but it notes that SB 437 has some similar features. These similarities include that ratepayer obligations under K-EBRA bonds are non-bypassable, that Kansas pledges not to take any action that impairs the value of K-EBRA bonds or reduces, alters or impairs K-EBRA charges, and that K-EBRA bonds are not guaranteed by Kansas government. SB 437 does not appear to mandate a true sale of K-EBRA property to a special property vehicle (that handles the issuance of K-EBRA bonds), but allows the Commission to require a true sale as a condition to granting a K-EBRA bond application. K-EBRA bonds are not affected by a utility's bankruptcy. These features are important because they lend themselves to low financing costs.

Furthermore, SB 437 requires a maturity of K-EBRA bonds to be no longer than 30 years with a legal maturity date that is not longer than 32 years from the issuance date, and shall be rated AA or AA2 by a major independent credit rating agency. Under SB 437, the Commission is granted broad discretion to determine that any issuance of K-EBRA bonds will result in lower electric rates and costs to ratepayers relative to traditional methods of financing. Moreover, the Commission is expressly authorized by SB 437 to retain experts in the field of securitized ratepayer-backed bonds to assist the Commission in its decisions pertaining to K-EBRA bonds. CURB believes that these features are essential to a fair and thoughtful process of issuing K-EBRA bonds.

Indeed, the issuance of securitized ratepayer-backed bonds is a very complex and transaction-costly process; missteps can be costly. Most important to CURB, Kansas ratepayers back K-EBRA bonds. This makes the purposes for the issuance of these bonds, the careful evaluation of the financial risks and costs associated with them, and perfecting the process for the issuance of such bonds to be extremely important. CURB will address these matters from a very high level below.

Regarding the purposes for which K-EBRA bonds may be issued, CURB noted in its response to the LEI study:

> "…Securitization is merely a tool used to lower borrowing costs to accomplish a beneficial goal, such as recovering stranded costs when necessary. In other words, if the goal would not benefit ratepayers, the use of securitization to lower the costs of accomplishing that goal will not transform the goal into a beneficial one."

CURB believes that the purposes for which K-EBRA bonds can be issued should be consistent with the Kansas energy plan. As noted in CURB's response to the LEI study:

> "CURB is mindful of its mandate to represent the interests of residential and small commercial ratepayers, both before the Kansas legislature and KCC. Thus, CURB believes that any securitization legislation should be part of a statewide energy plan, as recently proposed by Governor Kelly, that would encompass numerous concepts that could benefits the people of Kansas. Moreover, securitization must be understood to involve risk and time allocation regarding certain investments. Whether shareholders or ratepayers should bear the risks of uneconomic assets, and to what extent, should be considered in the process."

CURB believes that the Kansas energy plan will address the use of renewable energy in Kansas. Therefore, renewable energy issues should be resolved before SB 437 is enacted and the process of the issuance of K-EBRA bonds should be consistent with renewable energy goals since that is a purpose for which K-EBRA bonds may be issued. CURB also believes that the use of K-EBRA bonds should be linked to a utility's integrated resource plan. Indeed, this is one of the suggestions made by the LEI study.

Moreover, CURB notes that the LEI Study outlined a number of other concerns. CURB believes that it is imperative that all such concerns be addressed before SB 437 is passed favorably out of the Senate Utilities Committee. There appear to be other concerns that the Commission has with respect to SB 437. CURB believes that the Commission's concerns should be treated with all due deference considering that the Commission will be the governing entity that oversees the issuance of K-EBRA bonds.

Inasmuch as there does not appear to be any utility that is pursuing the use of securitized ratepayer-backed bonds now in Kansas, there does not appear to be any reason to rush legislation authorizing the use of such bonds. Rather, CURB would suggest that key stakeholders meet during the summer and attempt to work out any issues with SB 437 and to incorporate all best practices outlined in the LEI study. CURB thanks the Senate Utilities Committee for its consideration of CURB's remarks concerning SB 437.