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**OPPOSITION TESTIMONY – WRITTEN ONLY**

**Senate Committee on Utilities**

**SB 88**

**An Act relating to the regulation and oversight of public utilities.**

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**On Behalf Of**  
**Liberty Utilities**

**February 13-14, 2023**

Good Afternoon Chairman Olson and Members of the Committee:

On behalf of Liberty Utilities, we respectfully provide these written remarks in opposition to SB 88, which would introduce a political element into the decision making of the State Corporation Commission. We oppose the measure primarily because it creates avoidable risk with no apparent benefit. Experience in jurisdictions with utility regulators demonstrate that the effects of the measure's passage would be unpredictable but could be profound. At present, our State Corporation Commissioners are appointed on the basis of their experience and the expertise they bring to the complex arena of utility regulation. Asking voters to evaluate such qualifications in detail and to choose the most able of the available candidates is problematic, and the election process necessarily means that seated regulators will be susceptible to a complex network of patronage and influence from the various interests that helped them win their last election and could help them win their next. That leads to the potential for regulatory decisions to be based on political influences rather than the underlying facts and evidence before the Commission. If utilities, investors, and other market participants perceived that the State Corporation Commission had become less stable, the utilities' ability to raise the capital needed to serve their customers at competitive rates could be eroded, costs to consumers could increase, service levels could degrade, and the Commission's ability to implement policy objectives that benefit Kansas customers could be constrained.

Requiring a commissioner on the State Corporation Commission to stand for election statewide necessarily could require any successful candidate to solicit and spend millions of dollars to run a campaign. That also raises possible influences from financial contributors from within the State of Kansas and outside as well.

Candidates for office would run in partisan primary and general elections and could result in all three members being from the same political party.

The bill proposes to preclude State Corporation Commission candidates from soliciting or accepting campaign contributions from a public utility, a PAC created by a public utility or a PAC that receives contributions from a public utility, and the same prohibitions preclude a public utility from making contributions to such candidates. On its face, this provision has significant constitutional problems.

Further, proponents of this bill exclude such prohibitions, although they routinely intervene in rate cases and participate in other actions before the State Corporation Commission that can have a direct financial impact on their clients.

The proponents also seek to dismantle the current regulatory framework and personnel at the State Corporation Commission and move both personnel and proceedings to the Office of the Attorney General, a political office. This is yet another partisan maneuver.

The State Corporation Commission has a long history serving as a fair and independent quasi-judicial body with appeals taken to the state's district and appellate courts with appropriate jurisdiction. The actions of proponents in bringing forth SB 88 and a companion bill in the House, HB 2154, suggest what the proponents have not gained on merit and rule of law they now seek to obtain through a judicial process tainted by partisan and political maneuverings at the expense of other utility customers.

Legislation such as SB 88 will have a disruptive effect with the financial markets who will see this as effort to politicize the ratemaking process. Public utilities will find it challenging to make long-term plans for investment and serving their customers due to the threat of political change at each and every election.

### **Regulatory Research Associates (RRA) RRA State Regulatory Evaluations – Energy**

*Regulatory Research Associates, a group within S&P Global Commodity Insights, evaluates the regulatory climate for energy utilities in each of the jurisdictions within the 50 states and the District of Columbia — a total of 53 jurisdictions — on an ongoing basis. S&P Global Commodity Insights produces content for distribution on S&P Capital IQ Pro.*

*Commissioner selection process/membership — RRA looks at how commissioners are selected in each state. All else being equal, RRA attributes a greater level of investor risk to states in which commissioners are elected rather than appointed. Generally, energy regulatory issues are less politicized when they are not subject to debate in the context of an election.*

**RRA Regulatory Focus**  
**Quarterly State Regulatory Evaluations**  
**October 15, 2022**

Yes, there are states that have elected commissioners regulating public utilities. However, it is rare when change is made from longstanding regulatory methods. And when change is made, the kind of disruption I have described herein has occurred.

In our state's current process, the governor is provided the opportunity to select commissioners as their terms expire and the Senate is given the responsibility to confirm. We believe that is a process that has worked well for Kansas over the years.

This legislation is not well thought out and if passed would be of great disservice to both ratepayers and public utilities alike.

We respectfully request the Committee not advance SB 88.

Thank you.

WBD

Liberty Central Region serves approximately 180,000 customers in a six-state area composed of Kansas, Missouri, Arkansas, Iowa, Illinois, and Oklahoma with approximately 10,000 customers located in the southeast corner of Kansas. Liberty serves over 1 million customers in North America, Bermuda, and Chile.