



# CURBside News

NEWS FROM THE WATCHDOG FOR RESIDENTIAL AND SMALL COMMERCIAL CONSUMERS OF UTILITIES FEB., 2002

## KCC Increases KEPCO's Rates

The Commission has approved an agreement between Staff and the Kansas Electric Power Cooperative (KEPCO) that will increase rates to approximately 300,000 rural Kansans served by KEPCO's 21 member rural electric cooperatives.

In a July filing, KEPCO sought a rate increase of approximately \$6.2 million dollars. After review, the Staff of the Commission filed an unprecedented recommendation of a \$9.2 million dollar rate increase, believing KEPCO had not asked for enough money in its rate request. Several of KEPCO member cooperatives, believing that KEPCO's request was too high, recommended an increase of only \$2.5 million.

KEPCO's 6% ownership of the Wolf Creek Nuclear Generating Station was a chief concern of the case. In 1987, when Wolf Creek came on line, KEPCO's Wolf Creek costs were treated differently than Wolf Creek's other owners (KG&E and KCP&L) when the Commission set consumer rates.

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## Back to the KCC: Western Restructuring Plan Remanded

### *It's Not Final, Says Court*

The Shawnee County District Court recently ruled that Western Resource's appeal of last summer's KCC decision disapproving its restructuring plans must be remanded back to the KCC. Judge Eric Rosen determined that Western could not pursue an appeal of the KCC ruling in the district court while simultaneously seeking approval of alternative restructuring plans from the Commission.

The court found that the parties' actions in the case had demonstrated that the issue is not ripe for judicial review. It found that Western had demonstrated acquiescence in the KCC's judgment when it complied with the KCC's orders to resubmit another plan, and that it was inconsistent for the company to comply with a KCC order while denying that the KCC had jurisdiction to issue it.

Furthermore, the court found that the KCC's order to Western to resubmit another plan indicated that the issue was still under consideration by the Commission, although it had

termed its rejection of the original restructuring plan "final." Since the order was not final, ruled the court, Western had no right to appeal.

The memorandum opinion did not address Western's claim that the KCC has no jurisdiction over matters concerning its unregulated businesses. The remand, however, indicates that the court was not willing to say that the matter was improperly before the Commission.

### *KCC Orders Hearing*

Responding quickly to the remand of the restructuring case back to the KCC, the Commission issued an order on February 11, 2002, setting the case for hearing in May.

The Commission also gave Western 72 hours to provide explanations of all recent transactions affecting its utility business, including new loans and the sale or encumbrance of utility assets, and ordered the company to cooperate with discovery requests.

*Dist. Ct. Case No. 01-C-1190;  
KCC Docket No. 01-WSRE-949-01.*

## KEPCO Rate Increase

(Continued from Page 1)

Since KEPCO is funded by its member cooperatives, the Commission allowed KEPCO to depreciate its Wolf Creek costs over 30 years on a "sinking fund" schedule that matches KEPCO's mortgage payments. By using the sinking fund methodology, KEPCO's customer rates were kept as low as possible, while still allowing KEPCO to make its debt payments.

In the current case, KEPCO did not seek to change the sinking fund depreciation schedule. However, Staff recommended a depreciation change based on the Commission's recent decision in the Western Resources case. This depreciation change resulted in Staff's unprecedented recommendation of a rate increase 50% greater than KEPCO requested.

CURB objected to Staff's recommendation.

Not only did Staff summarily rewrite 15 years of Commission history related to KEPCO and Wolf Creek, Staff chose to implement a depreciation method totally inconsistent with the method used in the Western Resources rate case.

The effect of Staff's depreciation change is to increase rates far above current levels, which CURB suggested was inconsistent with the Commission's original intent of designing depreciation so that KEPCO's customers paid the lowest possible rates while

allowing KEPCO to make its debt payments.

KEPCO and Staff reached a Stipulation and Agreement that allowed the depreciation change, but did not raise KEPCO's rates above the \$6.2 million originally requested. The agreement was accepted by the Commission over the objections of CURB and the KEPCO members that were fighting the rate increase.

*KCC Docket No. 01-KEPE-1106-RTS*

## PNM and Western Sue Each Other Over Merger

Public Service Company of New Mexico has filed suit in New York, asking the court to declare that PNM is not obligated to proceed with its proposed merger with Western Resources. PNM also recently announced that it has no intention of attempting to consummate the merger, regardless of the outcome of the suit. Western has filed a countersuit against PNM, claiming it is owed damages for PNM's failure to pursue negotiations in good faith.

Each accuses the other of failure to meet conditions for the merger. PNM said that the KCC's recent decision to disapprove of a plan to spin-off Western's unregulated businesses made the merger impossible to carry out, and that Western refused to negotiate a workable alternative.

Western counters that PNM officials worked behind the scenes to influence the KCC to make rulings harmful to Western because it wanted to

use them as an excuse to back out of the merger deal.

## Western Resources Lays Off Hundreds, Imposes Salary Cuts

A cost-cutting program implemented by Western Resources has resulted in as many as 700 employees leaving the company, including numerous top executives. Many were laid off, but the executives are rumored to have been offered the Hobson's Choice of taking pay cuts or resigning. Apparently, many chose to resign.

Many employees left in recent weeks as the result of a "voluntary separation" program, intended to trim the ranks of union employees without violating their labor contracts with the company.

Board members have agreed to take a 20% cut in their cash retainer for 2002.

David Wittig, CEO and president, and Doug Lake, executive vice-president, also agreed to accept 20% salary "cuts" for their salaries in 2002—which, even with the cuts, are still markedly higher than the salaries they received in 2000. They retain the vast majority of their total compensation packages of several million dollars each, including stock options and numerous perks.

As one frustrated ratepayer wryly commented on Wittig's noble "sacrifice" in a recent letter to the editor, "It's hard to imagine how he will be able to scrape by..."

### **Western Rate Case Goes Before Kansas Court of Appeals**

Western Resources' recent rate case is now before the Kansas Court of Appeals. Western has raised five issues for review relating to the decision of the KCC to reduce Western's overall revenue requirement.

The Kansas Industrial Consumers also filed an appeal seeking review of several adjustments made by the KCC that were favorable to Western.

CURB filed briefs in both appeals. A court panel heard arguments on February 5 in Topeka. A decision is expected by mid-March.

*KCC Docket No. 01-WSRE-436-RTS*

### **Ice Storm Taxes Western's Resources**

Ironically, the devastating ice storm that hit eastern Kansas so hard in late January arrived just as numerous Western Resources employees were being terminated.

Several hundred thousand customers in Kansas and western Missouri lost electric power as a result of the storm. According to a spokesperson for the company, Western had to borrow crews from several states to cope with the widespread damage to power lines that were taken down by ice-laden tree limbs.

It took twelve days to reconnect all households in metro Kansas City. A few rural communities were without power for over a week.

### **Cold Weather Rule On Hold**

After accepting comments on revisions to the Cold Weather Rule proposed by several utilities, the KCC issued an order outlining the scope of its investigation and setting a procedural schedule. CURB will be an active participant in this docket.

The Commission found that a roundtable discussion of the revisions would be appropriate, but other parties, including CURB, believe that resolution of the disagreements over the proposed revisions will eventually require an evidentiary hearing. CURB advocated providing an opportunity for the public to comment at hearings around the state. The Commission rejected that suggestion.

The staff of CURB conveys our thanks to representatives of the American Red Cross, the Salvation Army, the AARP, and SRS for participating in the first meeting, and for providing comment on the proposed revisions. We appreciate their involvement.

*KCC Docket No. 02-GIMX-211-GIV*

### **Good News on Ad Valorem Refunds Cases**

Several cases challenging last spring's KCC decision to devote *ad valorem* refunds to relief from last winter's high gas bills for low-and moderate-income ratepayers have been resolved in favor of the relief program.

At the United States Court of Appeals in Washington,

D.C., Midwest Gas Users' Association lost its appeal of FERC's ruling that the agency has no jurisdiction to determine to whom the refunds should go.

MGUA's two appeals in Johnson County District Court were consolidated and transferred to the Kansas Court of Appeals, which then upheld the KCC decision.

The Kansas Court of Appeals also upheld the KCC decision in appeals filed by the Kansas Industrial Consumers, Kansas Energy Group, Farmland and Vulcan.

Thus far, only Farmland, Vulcan and KEG have filed for review with the Kansas Supreme Court.

Since so few cases are accepted for review, chances are very good that any petitions for review of the KCC decision will be denied.

In the most recent development, a class action suit filed on behalf of several industrial and residential consumers by the attorney for MGUA was dismissed from federal court in Kansas City on February 13.

The bulk of the funds cannot be distributed by the utilities until the courts issue mandates releasing the funds.

*KCC Docket Nos. 99-GRLG-405-GIG; 99-UNCG-406-GIG; 99-UTCG-408-GIG; 99-KGSG-477-GIG; 01-GIMT-082-GIT; Ks. Court of Appeals Case Nos. 01-87,485-A, 01-87,500-A, 01-87,861-A and 01-87,760; U.S. District Court, Kansas City, Ks. Case No. KS 01-2315-CM; Johnson County District Court Case Nos. 01-CV 03957 and 01-CV 04836; U.S. Court of Appeals Case, D.C. Circ. Case No. 01-1342.*

## Legislative Update

**HB 2606:** CURB supports passage of this bill designed to penalize fraudulent billing of unauthorized long-distance calls.

*Sponsor: Rep. Lana Gordon (Topeka).*

**HB 2644:** This bill would permit utilities to periodically pass on bad debt costs to their customers without filing a rate case. Since bad debt costs are already taken into account when setting rates, CURB opposes this provision as “single issue ratemaking.” All costs and revenues should be thoroughly reviewed before rates are adjusted.

*Sponsor: Committee on Utilities.*

**HB 2645:** This bill would require electric utilities to round up their customers’ bills to the next 50 cents. The excess amount would be applied to fund low-income energy assistance programs for electric and natural gas customers.

Water companies would also be required to round up their customers’ bills and contribute the excess to a clean water fund.

Also required to participate will be telephone and cable companies. The excess collected will be contributed to the KAN-ED program.

Customers who do not want their bills rounded up would have to contact each utility to opt out of the program.

CURB is disturbed by the requirement of customers to opt out, rather than making their participation voluntary.

Furthermore, CURB believes the manner in which the amount of the contribution is determined—rounding up to as much as 49 cents per bill—is unacceptably arbitrary. Customers will not know until they get their bill how much they will be required to contribute.

Most importantly, the burden of funding the programs will fall heaviest on residential customers, who far outnumber commercial and industrial customers. Not only do industrial customers use as much gas and electricity as all of the residential customers put together, they will no doubt be more informed about their rights and will be more likely than residential customers to opt out of the program.

CURB believes that if such a program is necessary, it should be funded in a manner that would spread the burden more equitably among the customer classes.

*Sponsor: Committee on Utilities.*

## Who’s Your Legislator?

**Find out *FAST!***

**On the Internet:**

<http://skyways2.lib.ks.us/ksleg/>

**By Telephone:**

1-785-296-2391

## “Do Not Call” Bill Introduced in Senate

On February 7, 2002, Senator David Adkins (R., Leawood) introduced legislation designed to provide consumers stronger protections from unwanted telemarketing calls. Rep. Dean Newton (R., Prairie Village) will lead the push for the bill in the House of Representatives.

With bipartisan sponsorship of 24 senators, SB 538 would create penalties for telemarketers who call Kansans who register with the state’s “Do Not Call” list, which will be maintained and administered by the state. Kansans will be able to register on the list by calling a toll-free number, by mailing a form, or by registering via the internet.

Telemarketers will be required to purchase quarterly updates of the list, and will be subject to stiff fines if they call someone on the list.

Exceptions to the “do not call” provisions will be allowed for nonprofit organizations and businesses that have an “existing business relationship” with someone on the list. For example, companies will be allowed to call customers who are on the “Do not call” list who owe them money, or to offer a warranty on a recent purchase.

CURB supports this legislation, and urges telephone customers to contact their legislators to express their support of the “Do Not Call” bill. It is essential that Kansans

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## Gas LDCs Request \$7.3 Million in Unpaid Balances

The state's three largest natural gas local distribution companies (LDCs) are asking the Commission to approve a \$7.3 million charge to customers to recover unpaid balances that resulted from last year's cold weather and high natural gas prices.

Kansas Gas Service Company, Greeley Gas Company, and UtiliCorp United (Peoples Natural Gas in the Wichita area, and Kansas Public Service in the Lawrence area) filed a joint request to implement a new charge to customers to recover the unpaid balances from last year.

The LDCs claim that cold weather and high natural gas prices last year left many customers unable to pay their gas bills. The LDCs want their current customers to pay additional charges this year to recover the unpaid balances.

CURB objected strongly to this request on several grounds. First, customer rates already contain approximately \$5.6 million to pay the LDCs for a normal level of unpaid balances. There is no provision for the LDCs to collect additional money when unpaid balances are above this level, and to CURB's knowledge, the LDCs have never refunded any of this money in years that unpaid balances were less than what is built into rates.

Second, while the LDCs liken last year's cold weather to

a disaster, such as a tornado, where the Commission allows companies to collect the costs of rebuilding the system, there was no such disaster here. Cold weather and high natural gas prices were a hardship to many last year, but only the LDCs think they should be immune from the hardship.

Staff of the Commission is also against granting this request. However, the Commission issued an order January 18, 2002 allowing the LDCs to book these costs in an accounting order. An accounting order allows the LDCs to claim these costs for recovery in their next rate case, although it does not guarantee the utilities will be allowed to recover the past due balances in rates.

In an interesting recent turn of events, someone on behalf of the LDCs introduced a bill in the Kansas legislature to collect the unpaid balances. House Bill 2644 seeks a state law allowing immediate recovery of the unpaid balances.

KCC Docket No. 02-GRLG-259-MIS

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### Consumer Counsel Testifies on CURB Budget at Capitol

Consumer Counsel Walker Hendrix testified at a budget hearing at the legislature on February 6.

The Joint Budget Committee is not only considering CURB's budget for 2003, but is reviewing the 2002 budget as well.

CURB is optimistic that it will escape major budget cuts.

## "Do Not Call" Bill

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speaking out and let the legislature know that they want this bill to pass. The bill will meet strong opposition from telemarketers and some influential business organizations.

In other states, such as Kentucky, opposition from business lobbies resulted in watered-down legislation that created so many exceptions to the "do not call" rules that they are virtually worthless as a protection against unwanted calls.

Don't let that happen in Kansas! Call, write or email your legislators and tell them you want strong "Do Not Call" laws in Kansas.

*Sponsors: Adkins (R., Leawood), Allen (R., Overland Pk.) Barnett (R., Emporia), Barone (D., Frontenac), Brungardt (R., Salina), Corbin (R., Towanda), Downey (D., Inman), Feleciano (D., Wichita), Gilstrap (D., KCK), Gooch (D., Wichita), Goodwin (D., Winfield), Haley (D., KCK), Hensley (D., Topeka), Jackson (R., Topeka), Lee D., Kensington), Oleen (R., Manhattan), Praeger (R., Lawrence), Salmans (R., Hanston), Schodorf (R., Wichita), Steineger (D., KCK), Teichman (R., Stafford), Tyson (R., Parker), Umbarger (R., Thayer), Vratil (R., Leawood).*

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## Citizens' Utility Ratepayer Board (CURB) Members

**Gene Merry** - Chair  
**A.W. "Bill" Dirks** - Vice Chair  
**Frank Weimer** - Member  
**Francis X. Thorne** - Member  
**Nancy Wilkens** - Member

## **KGS Files To Continue Gas Hedge Program**

Kansas Gas Service is requesting approval to continue its Gas Hedge Program for another year.

The Gas Hedge Program, began in 1998, is an effort to protect customers from spikes in the price of natural gas in the winter. Through the use of financial instruments such as call options, puts and swaps, KGS attempts to cap the price of some of its winter volumes to protect customers.

KGS has requested an annual budget of \$7.3 million to purchase these financial instruments.

KGS, CURB and the Staff of the Commission have submitted an agreement to the Commission that details what strategy KGS should employ in the upcoming year to hedge its supply of natural gas.

*KCC Docket No. 98-KGSG-475-CON*

## **Western Resources Rate Design Phase Begins**

The second phase of the Western Resources rate case, determining how to implement the rate increases and decreases order by the Commission, is underway.

In a recent scheduling order, the Commission ordered interested parties to begin discovery and prepare their cases. The Commission also ordered a series of technical conferences between the parties to facilitate data exchange and to prepare joint proposals for

allocating the rate increases and decreases among Western's customer classes.

In the first phase of the Western rate case, the Commission ordered rates to KP&L customers to increase by \$25.4 million annually, and rates to KG&E customers to decrease by \$41 million annually. The Commission also ordered these rate changes to be implemented on an interim basis under a formula submitted by Western.

In this second phase of the rate proceeding, class cost of service studies will be produced and new rates for each customer class will be evaluated. The end result will be changes in current customer charges and rates for electric service for each customer class.

A hearing on the matter is scheduled for May 13-14, 2002.

*KCC Docket No. 02-WSRE-301-RTS*

## **Empire Files Rate Case**

Empire District Electric Company has filed to increase its rates in Kansas by \$3.2 million, which is almost a 23% increase.

If approved, residential customers using 750 kilowatt hours of electricity per month, could see their monthly electric bills go up by \$11.70.

Empire provides service to approximately 150,000 customers in southwest Missouri and southeast Kansas. About 10,330 customers reside in Kansas.

Empire claims to have spent \$461,000,000 since 1994 upgrading its transmission and

distribution systems and building power plants. Empire seeks to recover these costs, as well as increased operational expenses through the rate case.

CURB has intervened and is evaluating Empire's request.

*KCC Docket No. 02-EPDE-488-RTS*

## **Midwest Energy Wants Increased Fees**

Midwest Energy has filed to increase surcharges to some of its natural gas transportation customers. The increased surcharges will be used to pay principle and interest obligations incurred to resolve FERC Order 636 gas supply restructuring obligations.

A trust was created in at the time of Midwest Energy's purchase of KN Energy's retail properties in 1998 to pay off certain ongoing above-market gas contracts. The Commission allowed Midwest to impose a surcharge on all customers, with the revenues from the surcharge going to pay down the principle and interest on the trust.

Midwest's residential and small commercial retail customers pay 40 cents per MMBTU in surcharge, but transportation customers have historically paid only 6 to 12 cents per MMBTU.

Increased transportation volumes and decreased retail volumes have resulted in insufficient revenue to pay down the trust obligation. Midwest is proposing to increase the surcharge on transportation customers up to 30 cents per MMBTU by the

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## Bell Denied Deregulation

On November 9, 2001, Southwestern Bell Telephone Company filed an application with the KCC requesting price deregulation and customer specific pricing for the several services.

If the application had been granted, the following services would have been affected: single line business (one party); multi-line business; business flat rate trunks (analog); direct inward dialing service; Plexar access lines (simulated facility); business call management services; and ISDN BRI (DigiLine).

CURB filed comments in this docket opposing price deregulation for single line business service. There simply is not enough competition to ensure that consumers have adequate alternatives to SWBT's service.

CURB suggested that the Commission could approve customer-specific pricing that would allow SWBT to charge non-tariffed prices if a specific customer's needs were significantly different from the norm.

The Commission issued an order on December 31<sup>st</sup> denying the SWBT application.

*KCC Docket No. 02-SWBT-358-MIS*

## Midwest Energy Increase

(Continued from Page 6)  
year 2006.

Midwest has not proposed increasing the surcharge for retail customers, but CURB is watching the docket closely.

*KCC Docket No. 02-MDWG-426-TAR*

## KCC Examines Distributions of Universal Service Fund

This docket is an on-going examination of the Kansas Universal Service Fund (KUSF). The current issue being considered by the Commission is how to distribute the KUSF funds when there are multiple competitive companies serving one area.

Staff has put forth two proposals. The first would divide the KUSF funds for an exchange by the number of supported lines to develop the KUSF per line.

Where a consumer is using more than one local carrier, Staff's proposal would require consumers to affirmatively choose which local carrier will receive the KUSF support.

Proposal two would determine the total KUSF dollars for an exchange, then each carrier that serves lines in that exchange would report the total lines it serves. The total dollars for the exchange would be split among the carriers, based on the number of lines served.

While CURB did not oppose the first option, we did endorse the second option as more administratively efficient and, because it would be transparent to end users, more consumer friendly.

The Commission's final decision on this matter is still pending.

*KCC Docket No. 99-GIMT-326-GIT*

## Bell is Bill Shopping

Southwestern Bell is currently circulating proposed legislation that would, among many other things, allow any "electing" local exchange carrier to become price deregulated for all services except basic residential local exchange and switched access service. Both of those services would become price deregulated after July 1, 2005.

The legislation also proposes virtually total deregulation of broadband services, a new definition of broadband services, and greatly diminished Commission authority over all telecommunications carriers.

At press time, the bill had not yet been formally introduced. We'll keep you posted on its progress.

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## It's Your Legislature: Working with The Committee Process

Kansas has an open legislative process. All committee action on bills and amendments is conducted in open session. The public is invited to attend any of the meetings.

All bills are identified by number upon introduction. If you do not know the bill number, to inquire by subject matter, you may call Legislative Hotline [1-800-432-3924].

Copies of each bill, in every amended version, are available in the Statehouse Document Room [145-N] on the first  
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## The Committee Process

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floor of the State House, or accessed as <http://www.kslegislature.org/bills/index.cgi>.

Committees meet on a regular schedule during the session. The regular meeting room and the name and telephone number of the committee secretary are listed in the Committee Agendas [<http://www.kslegislature.org/calendars/index.cgi>] in the House and Senate Calendars.

Most standing committees end deliberation on bills in the house of origin on March 2, 2002 and bills from the other house on March 30, 2002.

House Appropriations, Taxation, Federal and State Affairs and Calendar and Printing and Senate Federal and State Affairs and Ways and Means committees may continue to meet but the schedule may be flexible due to longer session hours.

Always check the Committee Agendas in the House and Senate Calendars for changes in meeting times.

### Testify before a Committee

To testify at a hearing on any bill, you should contact the committee secretary whose name and telephone number also appear with the Committee Agenda.

When making an appointment with the secretary, identify your concerns. You will be given instructions on:

- Time limitations;
- the number of

copies of testimony to provide;

- other guidelines;
- if others are also testifying on this bill, try to coordinate testimony prior to the hearing to avoid duplication.

### Be on time to the Meeting

Seating is limited. You will be asked to register at the door. If there is not time for all interested parties to be heard, you may submit written testimony.

- Begin your testimony by addressing the chair and committee members. Introduce yourself, declare who you represent, and state if you are a proponent or opponent of the measure.
- Be courteous in your language and address.
- Be brief--do not repeat what others have said.
- Do not be nervous--most hearings are informal. There may be questions from the committee members.
- There is to be no clapping, booing, cheering or disruption of any hearing.

There may be no decision made by the committee on the day of the hearing. Continue to watch the Committee Agenda in the Calendar for final action on the bill.

### Tips to be Effective

- If you wish to express your opinion to your legislator without appearing in

person, you may write or telephone.

- Use the bill number and status of the bill in your comments.
- Be brief--never write more than one page. Type or print for easy reading.
- Identify the issue at the top of the letter. Address one issue per letter.
- Identify yourself and your expertise.
- Offer to be of assistance in providing any information you may have.
- Be polite and reasonable.
- A short personal note is much more effective than organizing a telephone campaign or letter or post card campaign.

The above information and more on the legislative process is available at the Kansas Legislature's website at:

<http://www.kslegislature.org/cgi-bin/index.cgi>

## CURBSIDE

is brought to you  
by the Staff of CURB:

**WALKER HENDRIX** –  
CONSUMER COUNSEL

**NIKI CHRISTOPHER** –  
ATTORNEY

**DAVID SPRINGE** –  
CHIEF ECONOMIST

**BETH RUNNEBAUM** –  
OFFICE SPECIALIST

1500 S.W. ARROWHEAD ROAD  
TOPEKA, KANSAS 66604  
TELEPHONE: (785) 271-3200  
FAX: (785) 271-3116  
EMAIL: [Curb@kcc.state.ks.us](mailto:Curb@kcc.state.ks.us)