



CURBside News

NEWS FROM THE WATCHDOG FOR RESIDENTIAL AND SMALL COMMERCIAL CONSUMERS OF UTILITIES APR. 2008

Natural gas prices up

The price of oil isn't the only thing going up. The price of natural gas on the New York Mercantile Exchange is also much higher than it has been historically. As of this writing, not a single month this summer has natural gas priced below \$10.20 / MMBtu. Prices for next winter are above \$11.00 / MMBtu.

Historically, prices have been lower in the summer than in the winter, and have been in the \$6 to \$8 range over the last few years. Most Kansas natural gas utilities buy natural gas in the summer and put it into storage to use in the winter. The lower summer prices of the gas placed in storage helps offset the higher prices of gas purchased in winter, thus moderating customer bills.

While prices have spiked above \$10.00 / MMBtu on occasions—after devastating Hurricane Katrina, for instance—summer prices have never been this high across the board for so many months.

CURB is quite concerned: if the price of natural gas remains this high, consumers will face record-setting heating costs next winter. ♦

Westar plan: Spend \$3.2 Billion by 2010

Westar recently issued its comprehensive energy plan for the future. *Meeting Our Customers' Needs, A Strategic Plan for Uncertain Times* discusses Westar's view of the challenges faced in planning investments to meet the future power needs of Kansas customers. Given the financial and environmental challenges surrounding our energy choices, both at the state and federal level, and the uncertainty regarding carbon regulation in the future, Westar summarizes the trade-offs and decisions it will use to meet its obligations going forward.

Of significance to customers, Westar discloses that it is planning for capital spending of \$3.2 billion from 2007 to 2010. This does not include fuel costs and wind costs that are charged through the monthly fuel cost adjustment. There's no doubt about it: Westar customers will face significant rate increases in the near future.

The company's plan can be found at Westar Energy's web site under the news link. It's worth taking a look at it: <http://www.westarenergy.com>. ♦

Public hearing on Midwest Energy rate increase scheduled for May 13

The February issue of CURBside announced that Midwest Energy applied for a \$10 million increase in December 2007.

Since that time, the KCC has set a procedural schedule, and CURB and Commission Staff have sent numerous data requests to Midwest Energy to examine the basis for the company's request for the increase.

A public hearing has been scheduled for May 13 at 7:00 p.m. at the Fort Hays Ballroom, Memorial Union, Fort Hays State University, 700 College Drive, in Hays, Kansas.

This is the opportunity for Midwest Energy customers to tell the company and the Commissioners what you think about the \$10 million rate hike requested by the company.

A public hearing is comprised of two separate sessions. The first session provides customers with the opportunity to ask questions of representatives of CURB, Midwest Energy, and the KCC

(See Midwest hearing, at Page 2)

Midwest hearing

(Continued from Page 1)

Staff. The Commissioners do not attend this session of the hearing.

During the second session, the three Commissioners will hear formal statements from customers who wish to address the Commission.

Customers may also send written comments to the KCC through June 16, 2008. Written comments should reference Docket No. 08-MDWE-594-RTS and may be e-mailed to public.affairs@kcc.ks.gov or mailed to the Kansas Corporation Commission, Office of Public Affairs and Consumer Protection, 1500 S.W. Arrowhead Road, Topeka, KS, 66604.

Testimony responding to the company's \$10 million rate increase request is required to be filed by CURB and Commission Staff by May 9. Cross-answering testimony by Midwest is due on May 23, and rebuttal testimony by CURB and Commission Staff is due on May 28.

Docket No. 08-MDWE-594-RTS

Commission approves Black Hills agreement

The Commission has approved an agreement under which the Black Hills Corporation of South Dakota will acquire Aquila's natural gas distribution company in Kansas.

The acquisition is contingent on Kansas City Power & Light

winning approval in Missouri to acquire Aquila's Missouri electric assets.

Under the agreement, signed by Black Hills, Aquila, CURB, KCC Staff, KCPL and the Unified School District No. 259, Black Hills agreed that it would never seek to recover from Kansas ratepayers any transition costs, transaction costs or acquisition premiums, a significant bonus for consumers.

Black Hills paid Aquila approximately \$48 million above the book value of the Aquila assets and had originally proposed recovering this acquisition premium from consumers. CURB objected to customers paying the premium and insisted on adoption of this provision in the settlement.

Further, Black Hills will not be able to increase consumer rates through a rate case for three years. Passing through gas cost increases and certain other tariff changes will be permissible. Black Hills has the option not to file a rate case for up to eight years. The agreement also sets forth certain quality-of-service standards that Black Hills must meet during the rate moratorium period.

On balance, the agreement provides protections for Aquila customers and provides Black Hills the opportunity to benefit from the purchase, if it can attain the operating efficiencies it expects to attain.

The acquisition affects about 90,000 customers in Lawrence, Wichita and southwest Kansas.

KCC Docket No. 07-BHCG-1063-ACQ

KCPL program raises concerns

KCPL has filed for approval of a new energy-efficiency program aimed at new housing developments, entitled the "Energy Star New Homes Programs".

Under the program, KCPL will pay up to \$750 for inspections, and rebate up to \$800 to builders and developers who install high-efficiency electric water heaters and electric heat pumps in new housing developments.

KCPL proposes to spend \$6.1 million to reach 3500 houses over a 5-year period.

KCPL says that the program is designed to improve the energy efficiency of new residential construction.

The program is drawing opposition from the natural gas utilities, who question whether it is proper to allow KCPL to pay developers a rebate to incent them to choose heating equipment that uses electricity rather than natural gas—under the guise of promoting energy efficiency.

The Commission has yet to issue any decisions in its energy efficiency dockets that would indicate whether financing energy efficiency programs that encourage customers to choose one energy source over another is a permissible practice.

The propriety of the practice, sometimes called "fuel switching," is sure to be challenged by natural gas utilities. We'll keep you posted.

KCC Docket No. 08-KCPE-848-TAR

KAMO line upsets Cherokee Countians

On April 9, approximately 120 citizens expressed their opposition at a public hearing in Baxter Springs to a proposed transmission line that will run through Cherokee County.

The 345-kV line is being proposed by the KAMO Electric Power and the Associate Electric Cooperative of Missouri to move power for their customers from Missouri to Oklahoma. Neither KAMO nor AECI serve customers in Kansas, but the line will cross the southeast corner of Kansas.

To build the line, the KCC must grant a certificate of convenience to KAMO to operate as a public utility in Kansas. The KCC's staff believes that the KCC can grant the certificate only if KAMO can show a positive net benefit to Kansas.

The Commission will consider this question in an evidentiary hearing soon, but it was clear that the residents of Cherokee County do not see any benefits from the KAMO line.

Concerns about reduced land values, lack of property tax revenue from the line, view-scape damage, and possible health effects were raised as reasons the Commission should not grant the certificate.

CURB is monitoring the proceedings to insure that residential customers of the regulated utilities are not exposed to the risk of cost increases from the line.

KCC Docket No. 08-KMOE-028-COC

CURB's Bill Dirks honored by AARP

CURB Board Member A. W. "Bill" Dirks was recently recognized by AARP for his outstanding volunteer work over the previous year. Dirks, a resident of Wichita who is the CURB representative from the 4th congressional district, was awarded the AARP Kansas Sonny Freeman Award for Advocacy Service at the recent AARP Rally Day at the Capital.

Dirks, who is retired after a career in education, has volunteered for AARP at the state level since 1991. He is currently the AARP Volunteer Coordinator for Federal Affairs.

Sonny Freeman was a dedicated and tireless advocacy volunteer for AARP Kansas for many years. In his memory, AARP Kansas created this award to annually honor an outstanding AARP Kansas volunteer who has worked to positively impact the way state and federal policy makers regard AARP Kansas.

We at CURB are proud that Bill Dirks has been honored for his service to the seniors of Kansas.

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CITIZENS' UTILITY

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Legislative Update: How the 2008 Session may affect you

Here's a roundup of this session's legislation that may affect utility customers. As of this writing, the legislature is on hiatus, but will be back to wrap things up beginning April 30.

If you are interested in reading CURB's legislative testimony, please visit CURB's web site at www.curb.kansas.gov.

HB 2632: Originally proposed by KCP&L, this bill dictates how the KCC must account for utilities' expenditures for energy efficiency. The bill allows, at the option of the utilities, the "capitalization and addition to rate base of investments in and expenditures for commission approved energy efficiency, conservation and demand management programs". In short, the bill turns energy efficiency expenditures into another profit center for utility shareholders.

Treating normal accounting expenses (labor, advertising) as rate base capital and paying shareholders a profit return on the "capital" is the most expensive way to acquire energy efficiency. CURB testified against this bill, noting that capitalization is not a common accounting treatment for energy efficiency. We noted that, of the states that have used this type of accounting treatment, all but one have abandoned it, due to rapidly rising costs for consumers.

The Staff of the KCC noted that an energy efficiency program that will cost consumers \$5 million under normal accounting would cost \$9 million under the proposed accounting treatment.

A late amendment also requires the Secretary of the Kansas Department of Health and Environment to apply the same standards applied to the Holcomb decision to any application for air permit renewal.

Status: passed the House; remains under General Orders in the Senate. However, the language of this bill is also included in the Sunflower bills that have been vetoed by the Governor, and is included in SB 586, as well.

SB 555: This bill requires a water utility over which the KCC has jurisdiction to provide notice to customers, in the customers' next bill, of any

increase in rates proposed by the water utility due to capital improvements, rate of return or cost of service. The bill sets forth how the utility may provide such notice.

Status: passed both houses; awaiting Governor's signature.

HB 2682 and HB 2881: Both of these bills approve "net metering" rules and rates. Both bills provide that small power producers, for energy they place on the electric grid, shall receive compensation equal to the full retail rate charged by the small producer's electric company. This can be accomplished by a meter that nets the energy received from the electric company with the energy provided to the electric company by the small producer. HB 2632 applies only to power produced from solar. HB 2881 applies to both solar and wind power.

CURB testified against these bills, because the net metering framework under the bills creates a subsidy for customers who can afford to invest in small scale solar and wind technologies that will be paid for by customers on the system who cannot afford to invest in those technologies for their homes.

CURB also argued that if the legislature was going to create this subsidy, then we should also create a third party, non-utility, non-profit entity to provide energy efficiency, weatherization and other support for low income customers.

Status: neither bill made it out of committee. However, similar "net metering" language is in the Sunflower bills that have been vetoed by the Governor.

SB 580: As originally proposed, this bill would have added \$2 million a year to the Kansas Weatherization program. CURB supported this bill. The bill was amended through the committee process, and now simply requires that 15% of any supplemental and emergency block grant money received under the LIEAP program be used for weatherization.

Status: in conference committee; may be addressed in the wrap-up session.

SB 586: This bill prescribes recovery in consumer rates of expenditures concerning nuclear power plants.

The bill dictates that the commission shall allow recovery in rates of prudent expenditures for feasibility cost studies related to nuclear plants, regardless of whether the nuclear plant is ever built.

It also amends K.S.A. 66-128, the construction work in progress statute, to require that the commission shall allow recovery in rates of any expenditure on a nuclear plant while the plant is being built and before it is operational.

Finally, the bill restricts the commission from amortizing depreciation for a period longer than the duration of the plant's operating license.

CURB opposes this bill because the commission will no longer have the discretion to make the rate adjustments it deems appropriate when dealing with the cost of a nuclear plant. Under the bill, the utilities can place billions of dollars of construction costs into consumer rates long before a plant is operational.

Furthermore, limiting depreciation amortization to the duration of a plant's current license ignores the fact that a nuclear plant may receive approval to extend its operating license—as Wolf Creek recently did. It is now known that a well-maintained nuclear plant may last much longer than initially believed, and can be safely run for many years beyond the expiration date of its initial operating license.

If consumers aren't allowed to amortize the cost of the plant over its entire foreseeable life, the generation of ratepayers under the initial operating license ends up paying for most of the plant, leaving later generations of ratepayers to enjoy the benefits without paying the costs.

Status: in conference committee; may be addressed in wrap-up session.

The Sunflower bills: Much of the legislative session centered around energy legislation related to the proposed 1400 MW expansion of the Sunflower coal plant at Holcomb and the recent denial by the secretary of the Kansas Department of Health and Environment (KDHE) of an air permit for the proposed expansion. The following two bills have passed both houses, but

both have been vetoed by the Governor. These bills contain many sections addressing various energy issues.

House Sub. for SB 327:

- Establishes energy-efficiency standards in state buildings and equipment
- Establishes new net metering law
- Provides tax incentives for residential rental properties
- Establishes the Kansas Electric Generation Science and Technology Commission
- Establishes renewable resource portfolio standard: 10% by 2012, 15% by 2016, 20% by 2020
- Requires future implementation of carbon capture and storage
- Prohibits KDHE from establishing Kansas air permit standards that are stricter than federal standards.
- Prohibits KDHE from denying a permit under the act if the requirements of the act have been met.
- Requires KDHE to reconsider Sunflower's air permit application.
- Requires KDHE to adopt rules and regulations related to reductions in mercury emissions
- Allows rural electric cooperatives now rate-regulated by the KCC to vote to escape KCC oversight

Status: passed both houses; vetoed by the Governor; Senate has overridden 32-7; House has not yet voted to override.

House Sub. for SB 148: contains many of the same provisions as House Sub. for SB 327, but also includes the following:

- Establishes maximum nitrogen oxide and sulfur oxide emission levels for the Sunflower plant.
 - Requires utilities and co-ops to develop retail tariffs for electricity generated from wind
 - Requires utilities and co-ops to develop energy efficiency and load management programs
 - Requires utilities and co-ops to assist in development of greenhouse gas emission inventory
- (Continued on next page)*

House Sub for SB 148 (continued from P. 5)

-Requires Sunflower to work with SPP regarding transmission lines and cost recovery for municipal electric utilities.

Status: passed both houses; vetoed by the Governor; no override attempted yet.

HB 2618: CURB's interest in this bill was initially piqued by its provision that would have aligned the Kansas standard of judicial review of agency actions with that of the other 49 states.

The Kansas Supreme Court has developed a view—unique among the 50 states—of the obligation of courts to review the “entire” record of a decision on appeal. In 49 state courts and the federal court system, the court, in determining whether an agency decision was supported by substantial competent evidence, is obligated to review, in total, all the evidence in the record that detracts from the agency decision, along with all the evidence that supports it.

In Kansas, the court is only obligated to review the evidence that the agency cited to support its decision. This standard of review is considered overly deferential to agency decision making.

CURB and the Judicial Council of Kansas supported adopting this provision, noting that it was consistent with federal review standards and would bring Kansas into alignment with the rest of the nation. The KCC testified against this provision, claiming that it would be much harder for the Commission to write orders that could survive appellate review.

CURB told the House Judiciary Committee that the current standard in Kansas would require a court to affirm an agency determination that 2 plus 2 equals 5, even if the appellant could point to overwhelming evidence in the record that 2 plus 2 equals 4, so long as the agency found credible a sole bit of evidence that claimed that 2 plus 2 equals 5.

Although that's a simplification of what happens in real cases, we've seen similarly absurd appellate decisions made under this standard. CURB strongly believes that the current standard encourages shallow, sloppy decision making. It allows an agency to justify

its decision without going through the necessary balancing process. The agency can make a decision, throw a few supportive facts in the order, and completely avoid addressing whether, on balance, the entire body of evidence presented to the Commission supports its decision. The current Kansas standard makes it very difficult for an appellant to win an appeal, even when the appeal has merit.

This over-deferential standard has led some appellate courts to say that they felt obligated to uphold KCC decisions even when the evidence as a whole obviously supported a contrary decision. Although, admittedly, CURB has benefited from this standard on the occasions when we have supported the KCC on appeal, we could have won many more challenges to KCC decisions if the Kansas courts didn't have this skewed view of judicial review.

Although this provision has survived the committee process, other provisions in the bill generated quite a lot of amendments sought by various agencies. The original bill has suffered so many amendments that it is no longer, as a whole, a piece of legislation that CURB can support, which is why CURB declined to testify on the bill when it hit the Senate side.

Status: passed by the House; stalled in Senate Judiciary; doubtful it will survive the session.

HB 2637: Price caps have been eliminated for basic lines in price-deregulated telephone exchanges. AT&T again exercised its lobbying power in eliminating price-cap protection for basic residential telephone service and up to four business lines in exchanges that have been price-deregulated. While CURB failed to persuade the legislature to kill the bill, CURB was able to convince legislators that ongoing protection was needed to prevent unchecked price increases for basic local telephone service. Our efforts resulted in the adoption of an amendment limiting price increases in any one-year period to the consumer price index for urban consumers.

HB 2637 was an “everything but the kitchen sink” bill: several other bills were thrown together into one package to ensure their safe passage through the legislature. Other provisions of note included in the bill:

- Authorization of automatic enrollment of existing customers for the Kansas Lifeline Service Program (Lifeline) for customers of price-deregulated telephone companies who participate in programs that qualify them for the Lifeline discount. The Department of Social and Rehabilitations Services (SRS) will certify to the price-deregulated carrier persons who have consented to the release of their personal information to the carrier for the purpose of receiving the Lifeline discount. SRS must obtain consent of persons to be automatically enrolled, and the information must be kept confidential by the carrier.
- Requirement that the Kansas Corporation Commission approve cable telephone carriers as eligible telecommunications carriers for purposes of receiving federal universal service support for providing Lifeline discounts within the service area of the cable company.
- Authorization for CURB to contract for professional services to fulfill its mandate to advocate on behalf of ratepayers. This provision changes nothing we do; it simply formalized longstanding practice.
- Relief for local exchange carriers (LECs) from their responsibility as Carrier of Last Resort (COLR) to occupants of real property when the owner or developer enters into contracts with alternative providers to the exclusion of the LEC, or collects from the occupants or residents mandatory charges for local telephone service provided by an alternative service provider, including collection through rent, fees, or dues. CURB is pleased the Legislature listened to our concerns and amended the bill to require notice to renters and subsequent owners: (1) that the incumbent local exchange carrier does not have facilities installed to serve the property and has been relieved of its carrier of last resort obligations, and (2) of the name of the company that will be providing local telecommunications

service to the property and the type of technology that will be used. CURB is also pleased that the bill was amended to prevent LECs from being automatically relieved of their COLR obligation as a result of the LEC being denied access to provide internet services, as opposed to being denied access to provide telephone services.

Status: passed both houses; awaiting the Governor's signature.

SB 570: This is a bill proposed by Embark to eliminate review by the KCC of mergers and acquisitions of price-cap companies. The bill was significantly amended on the House side to simply limit the time for KCC review of mergers and acquisitions rather than eliminate KCC review altogether.

Status: in conference committee to resolve differences between the versions passed by the House and Senate.

SB 49: Legislation that requires interconnected Voice over Internet Protocol (VoIP) service providers to contribute to the Kansas Universal Service Fund (KUSF) to the extent not prohibited by federal law. Current law requires all telecommunications public utilities and wireless telecommunications service providers that provide intrastate telecommunications services to contribute to the KUSF on an equitable and nondiscriminatory basis.

Status: Passed by both houses and signed by the Governor.

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KCC tackles energy efficiency issues

The Kansas Corporation Commission hosted a workshop on Energy Efficiency on March 25 and 26. It was an educational workshop attended by CURB, KCC Staff, utility representatives and other interested parties. The goal of this workshop was to help the commissioners gain a better understanding of how to encourage Kansas utilities and consumers to become more energy efficient.

The workshop was moderated by Rich Sedano, the Director of the Regulatory Assistance Project (RAP). Mr. Sedano introduced panelists and answered questions during four separate discussions on energy-efficiency topics.

The first panel discussed benefit-cost tests and externalities. Three panelists, along with Sedano, introduced and discussed the various methods of measuring whether the overall investment of customer dollars in energy efficiency programs is cost-effective. The panelists offered their insights into the benefit-cost tests that are currently used by other states and organizations, and discussed how to pick the best group of tests.

The second panel talked about measurement and verification. Specifically, they discussed how states can measure the outcomes of the energy-efficiency programs that are put into place. Presenter

Marian Brown spoke of the difficult task of measuring the effectiveness of education and information programs. Ms. Brown, who is chairperson of the California Measurement Advisory Council, pointed out that not all programs have an immediate and noticeable impact on energy consumption, but that does not mean a commission should discontinue these efforts.

The third panel discussed dynamic pricing. Panelists described how consumers can adjust their demand based upon price signals and other alternatives. Time-of-use pricing, critical-peak pricing, and variable-peak pricing were all discussed as potential ways to encourage consumers to change their usage patterns. This discussion also touched on newly-available technologies in the energy-efficiency markets like "smart meters".

The fourth and final panel talked about quick start programs, which are programs that states can implement easily and affordably by following the path tread by other states. The message from the panelists was clear: anything is better than nothing. They pointed out that quick start programs, while not intended to be comprehensive energy-efficiency programs, can have a lasting and noticeable impact on energy consumption.

The workshop provided a lot of information regarding energy efficiency. The viewpoints of the panelists will be considered when the KCC is making decisions on energy-efficiency

programs for the state of Kansas.

Welcome Stacey!

CURB is pleased to announce that Stacey Harden joined our office in February 2008. She will serve as the technical analyst for CURB, providing in-house accounting and economic expertise for our attorneys.

Prior to coming to CURB, Stacey managed a rural water district in Shawnee County. She also teaches undergraduate courses for business students at Friends University. She is currently an instructor for courses on Small Business Management, Data Development, and Business Statistics.

Stacey is a lifelong Topekan who graduated from Topeka High School. She went on to graduate magna cum laude from Baker University in 2001 with a Bachelors Degree in Business Administration. She returned to Baker and received her Masters Degree in Business Administration in 2004.

In her spare time, Stacey and her husband Matt try to keep up with their always-energetic children, Cassidy (10), Brayden (6) and Austin (3).

Upon her arrival, Stacey quickly endeared herself to the CURB staff by demonstrating her prowess with statistics during the recent NCAA basketball tournament. She is a refreshing and talented addition to our team.

Please join us in welcoming Stacey to CURB!

Consumer Counsel's Corner

This May is a D-Day of sorts in Kansas. At least that's my assessment. I have taken every opportunity presented to tell Kansans that electric rates will be going up substantially. I've publicly put my guess at a 50% increase in your electric bill in the next five years. The process of increasing your bill starts in May.

In May, both KCP&L and Westar Energy will be filing rate cases with the Commission. I don't have exact numbers, but I expect the increase to be substantial. One million Kansas customers will be facing substantial increases in their electric rates from these two companies alone. I don't think this fact will go unnoticed.

Oh, as a side note: this summer the Commission will be finalizing rate increases for Atmos Energy, Midwest Energy and KEPCO . . . so throw in a few more customers facing increasing rates.

Have I mentioned that natural gas prices are at record highs for the summer, or that coal prices are also increasing rapidly?

Technically speaking, the increase has already begun to hit customers. KCP&L is in year three of a five-year \$2 billion resource expansion plan. Two KCPL rate cases have already been completed: KCPL's rates have increased about 20% in the last two years.

KCPL customers should also notice a new feature on their bills: a fuel adjustment clause

that was introduced to customer bills in January.

Troubling, however, is that the "\$2 billion" KCPL resource plan grew into a \$2.5 billion plan by the time of last year's rate case. I don't know what it will be this time. I am also hearing that construction costs at Iatan are running substantially higher than original estimates.

The cost of the environmental upgrades to Iatan 1 will be included in this KCPL rate case, so expect a substantial increase. And rate case number four under the KCPL resource plan is scheduled for next year. That one will include the cost of the new Iatan II coal plant: you get the picture.

Westar is another story. The Commission has already approved cost recovery for Westar's 600 MW natural gas plant being built near Emporia. The Commission has also already approved cost recovery for a large portion of the costs of the wind turbines that Westar is building. Costs for both of these facilities will be included in the May rate case.

But that's just the start.

According to Westar's recently-released comprehensive energy plan, Westar expects capital expenditures of \$3.2 billion between 2007 and 2010. A majority of these expenditures will relate to environmental upgrades at existing plants, but they also include transmission and distribution upgrades and refurbishing projects at existing plants.

All told, Westar is going to double in size financially in the

next four years . . . and your rates will follow.

Is this shocking? Well, no, it isn't. To a large extent, we in Kansas have been coasting along as the beneficiaries of decisions that were made in the 1970s to build plants in the 1980s. The rate increases we suffered then to pay for all of that construction are now distant memories. We now have comparatively low electric rates in Kansas because we haven't built power plants in 20 years and haven't built transmission lines in 30 years.

But consumers are demanding more energy every year, and we've stretched the existing system about as far as it can be stretched: we need new sources of power to meet growing demand.

Then there is the cost of carbon regulation. Of course, I don't know what the future will hold, but there's a lot of talk at the national level about implementing a carbon tax or a carbon cap-and-trade mechanism—either of which would have a substantial impact on customer rates.

The next few years will be a challenge for us here at CURB. Our best efforts won't be able to prevent consumer rates from climbing substantially higher in the near future.

It won't be long before we'll be looking back wistfully at the halcyon days of low rates in the 1990s and early 2000s. Enjoy them while they last.

May is the jumping-off point: D-Day if you will.

—Dave Springe

CURB opposes Atmos increase; Staff settles with company

It was “déjà vu all over again” when CURB recently found itself in the unenviable position of being the sole party to oppose a rate case settlement between KCC Staff and a utility.

About a week before the evidentiary hearing, Staff and Atmos Energy filed a request that the Commission approve a settlement that would allow the southeast Kansas utility to increase customer rates by \$2.1 million.

Additionally, if the KCC approves the settlement as-is, the company would be allowed to maintain current depreciation rates and to implement a gas safety and reliability surcharge, which would allow the company to pass through to customers its expenses incurred in moving mains for highway construction and in meeting safety and reliability mandates.

Otherwise, the settlement could be characterized as a “black box” settlement: rates would be increased without specifying the rate of return or providing an item-by-item accounting to justify the amount of the increase.

CURB supported a decrease in rates of more than a million dollars, and argued that Atmos’ depreciation rates are over-collecting millions each year from current ratepayers for future costs. CURB’s depreciation witness, Mike Majoros, also argued that customers are

at risk of losing the amounts collected for future costs until they are used for their intended purpose. He advocated creating a regulatory liability, which would prevent the company from using the money for any other purpose.

Majoros reminded the Commission that it had adopted his recommendation to create a regulatory liability to protect Westar customers in its 2005 rate case, and that Atmos customers deserve similar protection.

For several reasons, CURB requested that the Commission set an appropriate rate of return on equity for Atmos. As a result of a series of settled rate cases, the KCC has not determined an ROE for a gas utility in over seven years, and has not set a rate of return for Atmos or its predecessor companies in over a decade.

During the same period, the Commission and the legislature have created many surcharges and policy changes that have greatly reduced the financial risks for utility investors. Ratepayers were assured that these changes would result in lower rates for customers.

However, when cases are settled without determining the ROE, ratepayers receive no assurance that their assumption of more of the shareholders’ risk has paid off with lower returns.

CURB’s financial witness, Andrea Crane, urged the Commission to set a 9.4% ROE for Atmos. She said that returns for utilities should reflect the general reduction in returns in

today’s market. In CURB’s view, an ROE at that level would accurately reflect current economic conditions and the considerable reduction of risk for utility shareholders in the past decade.

Although there were differences in CURB’s and Staff’s positions, their positions were more closely aligned than those of Staff and the company. Furthermore, by the time of the hearing, Staff’s and CURB’s depreciation experts had reconciled most of their differences and acknowledged that the few differences remaining were inconsequential. Additionally, Staff and CURB recommended ROEs that were only a few basis points apart. But despite the similarity of their positions on these two big money issues, Staff chose to settle with the company.

So CURB once again was placed in the unfortunate position of opposing a settlement between Staff and a utility. It’s happened so often in the past few years that it shouldn’t be a surprise when Staff settles with the company instead of aligning with CURB, but in this particular case, with Staff and CURB’s positions so closely aligned, it was a real disappointment.

Settlements aren’t always bad. When we can negotiate terms that are more favorable to ratepayers than are likely to result from litigation, it is in our constituents’ interest for us to settle. However, CURB felt strongly that this settlement’s rate increase was far too high, and the terms that left current

depreciation rates in place and the ROE unstated were simply unacceptable. We felt we had no choice but to choose to litigate.

But it is quite difficult to litigate against a settlement. Most settlements contain a clause that provides that the signatories may back out of the settlement agreement if the Commission alters any of its terms. When two of the three major parties have reached an agreement in a rate case, it is simply easier for the Commission to go along and approve it than it is to make an independent determination to reject or modify the settlement and impose its own terms. Pleasing the majority of the parties is always a safe bet.

Approval of a settlement as it is proposed also serves to eliminate the possibility of further litigation by one or more of the settling parties who might be unhappy with modifications imposed by the Commission.

So being the lone opponent to litigate against a settlement is tough, but litigate we did, and we are now awaiting the Commission's decision. We hope that the Commission recognizes that two of the positions that CURB took in opposing the settlement could be adopted by the Commission without affecting the revenues of the company, even if the settlement's revenue requirement is adopted.

First of all, setting an ROE would simply be a determination of what portion of the rates paid by ratepayers represents the return on the

shareholders' investment, and would establish whether ratepayers are receiving the lower returns promised when they were burdened with more of the utility's risks. It would not change the amount of money that Atmos would receive.

Furthermore, the company is to receive a return on capital expenditures flowed through the gas safety and reliability surcharge: if no ROE is set in this case, then the return may be set based on rulings in previous dockets. Basing today's rate on yesterday's markets is going to set the rate too high.

Secondly, creating a regulatory liability to recognize the ratepayers' interest in contributions they make today toward the utility's future expenses would simply protect the ratepayers from the utility using the money for other purposes. This is an important issue: when telephone companies were moved from cost-plus to price-cap regulation, they took into earnings more than \$11 billion of ratepayers' contributions to future expenses. Creating a regulatory liability simply ensures that any money collected in rates for a future expense is credited to ratepayers if the regulatory regime changes.

Given the considerable changes in the regulatory regime that have occurred in the past decade, and that may occur in the next, ratepayers have good reason to be worried about the possibility of losing their contributions to future costs. Creating a regulatory liability as an addendum to this settlement

would not reduce the amount of money that Atmos would receive, but would simply protect ratepayers from the company using their contributions for future costs for any other purpose.

We'd prefer, of course, that the KCC reduce Atmos's rates instead, as we recommended, and adopt CURB's positions on all the major issues. However, if the Commission adopts any of CURB's recommendations in approving the settlement, ratepayers will be better off than if CURB had joined the settlement under the terms offered by Staff and the company.

The Commission has scheduled an open meeting to discuss this case on April 23. The decision is due out on May 12. We'll let you know how it turns out.

KCC Docket No. 08-ATMG-280-RTS

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Westar transmission line decision pending

Westar Energy has applied for approval of a 345 kV line that will run from Rose Hill south to its Sooner Plant in Noble County, Oklahoma. The 180-day deadline for the KCC decision in this siting docket is due out by April 25.

Approximately 50 residents of the area who were concerned about the proposed routing of the line attended a public hearing in Rose Hill on February 28. Most of the objections came from homeowners or developers who were concerned about having large transmission lines or supporting structures near residences.

Some of the property owners complained that they had not received notice of the meeting from Westar, or had received notice so late that they had little time to prepare for the hearing. Additionally, several alternative routes were proposed by attendees.

The proposals for alternative routes raised additional concerns. Several customers contacted CURB to complain that the land owners along the alternative routes had not received adequate notice of the proposed changes to the originally-proposed route. We urged them to take advantage of their opportunity to make comments to the KCC, and they followed our advice. Several landowners whose property would be affected by the alternative routes called, submitted a petition and sent letters

to the KCC opposing the alternatives. It appears that a majority of respondents preferred the route that Westar originally proposed.

Only one of the alternative proposals generated general support. That proposal would align the route along the path of another power line as it crosses the Arkansas River to minimize disturbance to riparian habitat.

Unfortunately, the KCC's decision isn't due until after the CURBside will be issued. Discussion of this case is on the agenda for an open meeting scheduled for April 23. We'll let you know the outcome of the Commission's decision in the next issue.

KCC Docket No. 08-WSEE-609-MIS

CURB Board members Bill Dirks and Carol Faucher reappointed by Governor Sebelius

On January 23, 2008, CURB board members Carol Faucher and Bill Dirks received news from Governor Kathleen Sebelius that they had been reappointed to serve another term on the board.

The CURB staff was delighted to learn that we will be able to continue enjoying our privilege of working with these fine representatives of the consumers for another four years.

Congratulations to you both!

ITC Great Plains transmission projects moving forward in Kansas

ITC Great Plains has been granted a certificate amendment to build a 345 KV transmission line from Spearville, Kansas to Axtell, Nebraska. This will be ITC's first project in Kansas.

The line was originally proposed by KETA—the Kansas Electric Transmission Authority. However, according to the KETA statute, if a private entity agrees to build a KETA-proposed project, KETA will not build the line.

ITC Great Plains received a certificate last year from the KCC to be a transmission-only utility and agreed to build the KETA line.

ITC has also filed three new dockets relating to a several transmission projects it wants to build in southwest Kansas.

The projects will be joined to form a 180-mile-long transmission line that begins near Spearville and runs southeast to Comanche County, where it will connect to a new switchyard that ITC will build. The line will then run northeast to just outside of Wichita.

KCC Docket Nos. 08-ITCE-544-COC; 08-ITCE-936-COC, -937-COC, and -938-COC.

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Governor creates new advisory council

With her issuance of Executive Order No. 08-03, Governor Sebelius has created the Kansas Energy and Environmental Policy Advisory Group.

According to the Governor, the Advisory Group "will explore opportunities in all sectors of our economy to accomplish the goal of reducing greenhouse gas emissions; and at the same time, continue to take advantage of the economic prosperity created by job growth throughout Kansas."

The advisory group will examine and make recommendations related to several topical issues, among them: federal and regional action on climate change mitigation; the adequacy of the state's capacity to generate electricity in the future; the economic impact of electric generation, transmission and distribution on economic development and energy costs for customers; the impact of electric generation and transmission on the state's environment, and measures to mitigate that impact; fuel balance of generation; impact of conservation on the need to expand generation; incentives for renewable energy investment; and the reports and recommendations of the Kansas Energy Council.

Jack Pelton, who is chairman, president and chief executive officer of Cessna Aircraft Company, will lead the advisory group. Twenty-five

members appointed by the governor will serve on the advisory group, as well as various members of the Sebelius administration.

The advisory group will be facilitated by the Center for Climate Strategies. The group will work independently of the existing Kansas Energy Council.

Commission approves KCP&L agreement

The Commission has approved an agreement which will allow Kansas City Power & Light to acquire Aquila's electric utility in Missouri.

The approval in Kansas is contingent on KCP&L winning approval for the acquisition in Missouri.

Under the terms of the agreement, KCPL's Kansas ratepayers will receive 100% of any Kansas-allocated savings or efficiencies achieved through the combination of the KCPL and Aquila electric facilities. Kansas ratepayers will pay \$2 million per year for five years to defray transition costs related to physically combining the two companies.

However, Kansas ratepayers will not be responsible for transaction costs related to attorney and financial advisor fees incurred by the company.

Further, none of the acquisition premium will be included in Kansas rates.

Finally, Kansas ratepayers will not be responsible for paying the cost of severance packages for Aquila executives.

In addition to taking on the purchase of a major utility, KCPL is also in the middle of a five-year, \$2.5 billion construction program, and expects to file its third rate case in May.

KCC Docket No. 07-KCPE-1064-ACQ

Who fixes what?

The tornado and hail season brings occasional power outages. Usually, the outage is due to a downed local distribution line or damaged transformer, which the utility will repair.

However, when the downed line is the service line that brings electricity to your house, it's useful to know who is responsible for the repair.

If the line has simply become disconnected, the utility will reconnect the line, at no charge to you.

However, if the pipe riser, the service hook or the weatherhead (sometimes collectively called the service mast) are damaged or torn loose from your house, you are responsible for arranging for the repair by an electrician, and must pay for the repair yourself.

Additionally, if the meter or the meter can is torn loose from your house, you are responsible for having the meter can repaired or replaced at your expense. The utility will then reinstall the meter, or replace it if it is damaged, at no cost to you. If repairs are required before reconnection, the utility will notify you of what needs to be fixed so you can order the appropriate repairs.

CURBSIDE

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