



# CURBside News

NEWS FROM THE WATCHDOG FOR RESIDENTIAL AND SMALL COMMERCIAL CONSUMERS OF UTILITIES MAY 2003

## New Faces at KCC

Governor Kathleen Sebelius has made several new appointments at the KCC.

Robert Krehbiel has been selected to replace Commissioner Cynthia Claus.

Krehbiel, a native of Pretty Prairie, is a former five-term member of the Kansas House of Representatives from the 101<sup>st</sup> District.

He most recently served as Executive Vice-President of the Kansas Independent Oil and Gas Association. He was sworn in on May 5.

Susan Duffy has replaced Jeff Wagaman as Executive Director of the KCC.

Duffy previously served as Chief Financial Officer for the Commission. She has served as a senior manager in several departments in Kansas government.

Marge Petty joins the KCC as Director of Public Affairs and Consumer Protection, filling a post that had been vacant for several years.

Petty is a former member of the Kansas Senate, and has held numerous leadership positions in state and local governments.

(See New Faces, page 2)

## Westar Investigation Report To Be Public

The board of directors of Westar Energy, Inc. plans to make public the report it recently received detailing the results of an internal investigation of executive and director activities at the state's largest electric utility. The report will be released on Thursday, May 15.

The board launched the investigation last fall in response to the arrest of then-CEO David Wittig on federal bank fraud charges. The investigators sought evidence of criminal or civil wrongdoing by directors or executives, including misuse of company aircraft and failures to comply with securities rules and regulations.

The KCC agreed not to conduct its own management audit of the utility when it learned of the internal investigation, which the company promised would be thorough.

In recent weeks, however, parties involved in Westar's restructuring docket had been told that some of the report might be withheld to preserve attorney-client privileges.

(See Westar Report, page 3)

## Cold Weather Rule Roundtable

The KCC is holding a roundtable on May 27 to discuss possible revisions of the Cold Weather Rule.

The meeting will be held at the Commission's Topeka offices at 1500 SW Arrowhead and will begin at 2:00 p.m.

The action was prompted by a request from the Senate Utilities Committee, which decided to delay consideration of HB 2186 until the next legislative session.

The bill, which proposed major revisions of the CWR, sailed through the House largely unopposed after several social service agencies testified in favor of the changes, but stalled in Senate Utilities when additional social service agencies appeared to testify in vigorous opposition to the bill.

Confounded by the conflicting views on the legislation, the Committee requested that the KCC revisit the CWR.

CURB has been instrumental in organizing opposition to efforts to weaken the protections of the CWR. Designed to protect the public's

(See Roundtable, page 2)

## Legislative Wrap-Up

### *Much Ado About Very Little*

Out of 21 bills introduced in the House and Senate Utilities Committees this year, only three have survived to be signed into law by Governor Sebelius:

**HB 2130**, which eases restrictions on improving transmission facilities in Kansas, and allows pass-through of certain costs between rate cases;

**Sub SB 104**, which allows utilities to seek predetermination of future ratemaking treatment on capital improvement projects; and

**HB 2374**, which permits utilities to pass through costs of enhanced security to ratepayers, after an expedited confidential review by the KCC.

HB 2374 is now in force, having been published in the Kansas Register. The other two bills will become effective when published in the statute book.

### *Bills that just won't die*

**HB 2473**: This late-session bill is the sixth version of this legislation concerning enhanced wireless 911 service to appear this session. Obviously, someone has a strong interest in pushing this bill through this session.

One version kicking around out there was added to **HB 2037**, which spent much of its life in conference committee because of numerous amendments made by both houses.

**HB 2037** is a combination of several other bills, including

provisions prohibiting ratepayer support of excessive utility executive compensation and the repeal of the sunset provision on the utilities security cost bill. Although it passed both chambers, neither chamber was happy with the other chamber's amendments; it is dead for now.

At the end of the session, it's tempting to breathe a sigh of relief when bills you oppose fail to pass, such as HB 2186, the bill to create harsher provisions in the Cold Weather Rule.

However, bills introduced in odd-numbered years that fail to pass during the session may be carried over to the next session. Thus, bills that seemed to whither and die during the 2003 session may mysteriously come back to life next year.

## Roundtable

### *(Continued from page 1)*

health and safety during the winter months, the CWR has been revised only three times since its inception over twenty years ago.

CURB estimated that well over 10,000 Kansas households would be without heat by the end of the 2004 heating season if HB 2186 had passed in 2003.

Social services agencies and organizations from around the state have been invited to participate in the roundtable.

If your organization is interested in participating, or you would like more information on the agenda for the meeting, please contact Marge Petty, Director of Public Affairs and Consumer Protection for

the KCC. Her phone number is (785) 271-3169, or you may call toll-free at 1-800-662-0027.

A brief statement concerning the roundtable is also available on the KCC web site at <[www.kcc.state.ks.us](http://www.kcc.state.ks.us)>.

## New Faces

### *(Continued from Page 1)*

Rosemary Foreman will remain the Public Information Officer for the KCC, serving as spokesperson for the Commission.

Larry Holloway, Chief of Energy Operations at the Commission, is currently serving as interim Director of Utilities until a replacement is announced for Joe White, the outgoing director.

Finally, the Commission selected Commissioner Brian Moline to serve as Chair.

CURB extends a warm welcome to the new appointees and congratulations to those moving up at the KCC, and wishes good luck to those who are going on to other things.

## Heartland Renewable Energy Fair

### Saturday May 17

The KCC is co-sponsoring the Heartland Renewable Energy Fair at Heartland Park in Topeka on Saturday, May 17. Presentation topics include, "The Zero Energy House," do-it-yourself advice on installing solar systems, and a legislative update. Alternative fuel vehicles and solar bicycles will be on view all day.

## Tornado Victims are Targets of SWBT Promotion

CURB has raised objections to a promotional offer that SWBT has begun offering to customers displaced by the recent tornados.

Under the promotion, SWBT is waiving the monthly fees for one month of call forwarding and other optional services to its customers living in the counties included in the State of Disaster Emergency Declaration.

The promotion runs from May 7, 2003, through June 7, 2003.

However, at the end of the promotion, the customer must contact SWBT to request discontinuation of the services, or SWBT will begin charging the usual monthly fees for the "extras."

Although CURB generally supports offering special deals to the victims displaced by the tornados, we object strenuously to the requirement that the customer must take the initiative to call and cancel the "free" services to prevent SWBT from billing them for the extras when the promotion ends.

Commission Staff also has the same concern about the current promotion.

CURB and Commission Staff met with a representative of SWBT to discuss our concerns. The parties agreed to work on new tariff language

that will address this issue for future disasters.

CURB also pushed SWBT to contact customers participating in the promotion to inform them of the negative contact requirement at the end of the promotion.

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## Solar Energy Symposium Thursday May 15

The KCC is hosting a one-day seminar on solar energy at its offices in Topeka on Thursday, May 15.

The Symposium will feature speakers offering advice and information on installing solar systems for a variety of home, farm and business applications. The focus will be on providing easy-to-understand information about solar technology.

Attendance is free and open to the public, but persons planning to attend are asked to notify Dr. Gale Simmons at 2395 Grandview Terrace, Manhattan, KS, 66502, or by email at <[solarsymposium@aolcom](mailto:solarsymposium@aolcom)>. The event will begin at 9 a.m. and run until 4 p.m.

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## Solar Excitement: Races in Topeka in Mid-May

The Formula Sun Grand Prix will be held at Heartland Park in Topeka beginning on

Wednesday, May 14.

The three-day race features over 20 solar cars designed and built by college and university students from all over the U.S. and Canada. Racers will also vie to qualify for the cross-country America Solar Challenge to be held later this summer.

Bicycles powered by the sun will race at Heartland Park on Sunday, May 18. The 100K race will feature solar-powered electric bicycles built by over 40 teams from high schools and other organizations nationwide.

The participating bikes will be on view at the Heartland Renewable Energy Fair the day before the Solar BikeRayce at Heartland Park.

For more information on any of these races, see <[www.formulasun.org](http://www.formulasun.org)>.

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## Westar Report *(Continued from Page 1)*

It was not clear whether the company intended to claim that the privilege attached to the board as an institution or to individual directors or executives, or whether various parties had waived the privilege.

The announcement of the board's intent to release the report did not explicitly state that the entire report, including the allegedly privileged documents, would be released. It is expected that some of the parties will file objections if the company withholds any part of the investigative report.

## **Power Restored to Most Customers After Rough Storms**

Tornadoes and high winds brought down power lines throughout eastern Kansas during the second week of May, but for the most part, utilities responded quickly to restore power.

Gina Penzig, spokeswoman for Westar Energy, said about 200 customers were without power the day after the tornadoes that hit eastern Kansas on Thursday May 8, mainly in rural areas of Anderson and Woodson counties. She said 2,900 customers were without electricity at one point on Thursday, with 1,800 of those being in the Lawrence area.

## **SWBT Behind On DSL Deployment: Admits Errors, Misreporting**

CURB has serious concerns with Southwestern Bell Telephone's recent admission that it will fail to meet the KCC's August 1, 2003, deadline for DSL deployment in several Kansas cities.

Under a stipulation and agreement entered into in January 2000, SWBT had agreed to deploy DSL "near ubiquitously" in 8 cities and "where technically feasible" in another 16 cities.

In negotiating the agreement, CURB had given up

several benefits to SWBT in exchange for the DSL deployment, including rebalancing of rates. SWBT has already reaped the benefits it gained under the agreement. Many consumers, however, are still awaiting the promised DSL in their area.

Although SWBT had almost three years to complete deployment, and had previously indicated to the KCC that DSL deployment was proceeding on schedule, SWBT recently reported that it could not complete the required deployment by August 1, and requested an extension through the end of the year.

Objecting to SWBT's request for an extension of time, CURB raised several concerns about SWBT's action in this docket. Commission Staff also objected to SWBT's request.

CURB argued that the stipulation and agreement reached in 2000 did not contemplate any extension of time to complete the required deployment.

Errors in SWBT's prior reporting in the docket also concerned CURB. In its most recent report, SWBT indicated that previous reports had significantly misreported the amount of DSL already deployed. More troubling was SWBT's inability to explain these errors.

CURB also questioned whether SWBT was deploying DSL "near ubiquitously" and "where technically feasible," according to the terms of the agreement.

CURB argued to the KCC that SWBT's inaccurate report-

ing and anticipated failure to meet its obligations under the stipulation justifies considering a variety of penalties, including rate refunds, rate rebalancing, requiring additional DSL deployment, and fines.

CURB and Commission Staff recently met with SWBT to discuss their concerns. SWBT committed to provide us with additional information to clarify or explain the extent of their deployment.

*KCC Docket No. 98-SWBT-677-GIT*

## **Westar Sale of Customers to Midwest Settled**

CURB has signed an agreement that protects consumers from rate increases in a proposed sale of Westar Energy customers to Midwest Energy.

Other signatories to the agreement are the KCC staff, Westar Energy and Midwest Energy.

Midwest Energy is currently seeking KCC approval to purchase about 10,000 of Westar Energy's customers and the facilities to serve those customers. The purchase would affect certain Westar customers located in Ellsworth, Rice, Pratt, Barton, Stafford, Pawnee and Edwards counties, and include certain assets in Reno county.

After reviewing the transaction, CURB filed testimony recommending that the KCC reject the transaction unless certain protections were provided for customers.

CURB's chief concern was that Midwest Energy is planning to pay a substantial premium above book value for the assets. Midwest had requested that it be allowed to collect that premium in rates from its customers.

CURB was also concerned that Westar customers would suffer rate shock if they were immediately required to pay Midwest Energy's current rates, which are significantly higher than Westar's current rates.

The agreement signed by CURB provides that Midwest Energy will not seek to recover the acquisition premium in customer rates.

Further, Midwest Energy will not increase the rates of former Westar customers for a period of five years.

After the initial five-year rate moratorium, Midwest agrees that any rate increases will be made gradually, easing the transition toward rate parity between the former Westar customers and Midwest's electric customers.

In addition, Midwest Energy will be allowed to institute an ECA mechanism after the first 12 months to recover purchased power costs.

CURB believes that the agreement provides adequate protections for the Westar customers, while allowing Midwest Energy and Westar to proceed with the transaction. The financially-troubled Westar Energy will use the proceeds of the sale to pay down debt.

The agreement has been submitted to the Commissioner.

A hearing is scheduled for May 19, 2003.

*KCC Docket No. 03-MDWE-421-ACQ*

## **Atmos Begins Weather Normalization Program**

The KCC has granted approval to Atmos Energy to begin a new program that will normalize Atmos customers' gas bills each month based on the weather. The goal is to levelize gas bills by eliminating steep peaks and valleys in gas bills throughout the year.

Atmos proposes to adjust customer bills based on the difference between actual weather conditions and normal weather. The program does not adjust the actual cost of gas.

When weather is colder than normal, customers use a higher volume of gas to heat their homes. Under the current system, when they use higher volumes, customers end up paying excess volumetric margin charges to the utility.

Atmos proposes to adjust customer gas bills so that the volumetric margin charge will be the same for the customer had the weather been normal and the customer's bill had been normal. This should result in a credit back to the customer when weather is colder than normal.

Under the current system, the reverse is true when weather is warmer than normal.

Customers use smaller volumes. Under its weather normalization proposal, Atmos will add a charge to customer bills during warmer-than-normal weather. Again, the purpose is make the bill the same for the customer as if weather had been normal.

While CURB did not sign the agreement that allowed this program, the Staff of CURB believes that this type of program will benefit customers when weather is very cold and customers are facing high bills.

CURB also believes that this type of program represents a reduction in risk for the utility by smoothing out utility cash flow. CURB will argue in Atmos' next rate case that this reduction in risk should result in lower rates for customers.

*KCC Docket No. 03-ATMG-539-TAR*

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**Thanks!**

## KCC OKs Aquila Hedge Program

The Commission has granted Aquila approval to begin the second year of its gas hedge program.

The gas hedge program uses customer money to purchase financial instruments that will help reduce the volatility of customer gas bills. CURB participated in the settlement agreement which allows this program to begin its second year.

Under the approved program, Aquila will spend approximately \$1.2 million this year, or about one dollar per customer per month, to purchase financial instruments, such as call options, that will reduce customer exposure to spikes in the price of natural gas next winter.

Under Aquila's hedging program, if the price for natural gas goes down, customer rates go down also.

However, when the price of natural gas spikes upward, the financial instruments purchased are used to place a price cap on the amount of gas covered by the instrument. Hedging is like a form of insurance that customers buy to ensure that gas prices don't go sky-high.

Aquila serves natural gas customers in Lawrence, Kansas (formerly Kansas Public Service Company) and the Wichita, Kansas area (formerly Peoples Natural Gas).

Other utilities with gas hedge programs include Kansas Gas Service Company, and Atmos Energy.

**KCC Docket No. 03-AQLG-697-ACT**

## KCC's Cynthia Claus: Moving On

One of the most thoughtful commissioners that the KCC has had in years is moving on.

Cynthia Claus, who was initially appointed to the commission in 1997 by then-Governor Bill Graves, was not reappointed for a third term by Governor Sebelius. Bob Krehbiel replaced her when he was sworn in on May 5.

CURB has always admired Commissioner Claus for being willing to ask questions until she is confident of her understanding of a matter. She has always seemed genuinely interested in understanding the ratepayers' point of view. And she always has a bright smile for everyone who appears before the Commission, no matter how contentious the hearing.

A teary-eyed farewell reception for Commissioner Claus was held on May 2 at the KCC offices, where many of her admirers gathered to say goodbye, including the staff of CURB.

We all wish her the best of luck in her next endeavor.

## Consumer Counsel's Corner

The legislative session is over, and I finally have a chance to catch my breath. While I have been at CURB for over four years, being in this "corner" is new territory for me.

I do want to take this opportunity to thank Walker Hendrix for the dedication he showed this agency and consumers in Kansas in his seven years at the helm of CURB. I look forward to the challenge of moving the agency forward in the years ahead.

At the legislature, we helped stop the Southwestern Bell Broadband bill, which we believe would have resulted in deregulation of telephone services in Kansas and eventually lead to high consumer telephone rates.

However, we were unable to defeat several other utility sponsored bills that will likely result in increasing utility rates for Kansas consumers.

Utilities can now line item electric transmission costs and raise the rates without KCC review. They can also pass on the increased costs of security, in secret, and hide it on your bill. I'd tell you to look out for that one...but you won't be able to see it.

The legislature also decided that utilities should have financial guarantees from you ratepayers before they turn a shovel on a new plant.

All in all, I'd say the utilities fared pretty well down-

town this year, which is unfortunate for those of us who must pay the bill when it comes due.

In the office, Westar seems to be winding down a bit after several years of fighting, but it looks like the financial troubles at Aquila will be keeping us busy now.

We have just reached a very favorable settlement for consumers on the sale of assets from Westar to Midwest Energy.

The Federal Communication Commission is in the process of rewriting rules that will likely keep our telecommunication section busy into next year, and the KGS rate case looks to be the major battleground throughout this coming summer. KGS serves about 80% of Kansas natural gas consumers, and fighting the proposed \$76 million rate increase is at the top of our priority list.

We are also working hard to get a CURB website up and running. We are excited about having this new way to get information out to consumers, and to provide a more convenient forum for consumers to provide feedback to the office. Stay tuned for our launch.

OK, I've caught my breath, time to run again.

(Left) The CURB crew gathered for a picture that was placed in a scrapbook for Cynthia Claus as a going-away present from the KCC. Pictured left to right, Niki Christopher, Dave Springe, Brent Getty and Beth Runnebaum. Not pictured: Audrey Bosley.

## Citizens' Utility Ratepayer Board (CURB)

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**Frank Weimer - Member**

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