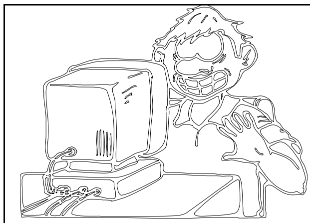

CURBside NEWS

A Newsletter of the Citizens' Utility Ratepayer Board

July 2001

Western Resources in the News: Rates and Finances under Commission Scrutiny

KCC Halts Western Resources' Restructuring, Says File New Plan

The Kansas Corporation Commission has ordered Western Resources to halt its current plans to restructure the company, and to file new plans for restoring financial integrity to the utility within 90 days. Finding that Western's management has taken a path that is inconsistent with the public interest, the Commission ordered the company to produce a plan that is more protective of Kansas ratepayers.

The order came as a result of an investigation the KCC opened in May to review Western Resources' financial dealings with its unregulated affiliate, Westar Industries. Western's high level of debt incurred on behalf of Westar and a pending rights offering in Westar were the focus of the investigation.

The Commission's investigation was prompted by concern for "the continued ability of the electric utility to provide efficient and sufficient electric service at just and reasonable rates."

The Commission wanted to know whether the mounting debt of Western Resources has impaired the financial condition of the electric utility, and whether the ultimate impact of the rights offering will be to saddle the utility's ratepayers with paying off the debt.

This has been of particular concern to CURB because the debt is primarily attributable to financial losses of Western's unregulated affiliate, Protection One, a monitored security company.

Western's unregulated operations consist mainly of Protection One and stock ownership in ONEOK, Inc, owners of the former KP&L natural gas utility operations. Although ONEOK has proven to be a successful investment for Western, Protection One's troubles threaten to drain the utility of its financial vitality.

As CURB's witnesses testified at a hearing in June, Western's efforts to pull itself out of a deepening financial hole have been largely unsuccessful. Its massive debt led analysts to lower Western's bond rating to "junk bond" status this spring.

Hopes for a financial rebound have diminished since they were buoyed by Western's announcement last November that it had agreed to sell its electric operations to Public Service Company of New Mexico.

As a preliminary step towards the PNM sale, Western filed a plan with the Securities and Exchange Commission on April 13, 2000, announcing its intention to separate its electric operations from its unregulated operations.

(*See* ***Investigation****, page 2)*

Western Ordered to Drop Rates $22.7 Million

On July 25, the KCC ordered an overall decrease in Western Resources' electric rates of $22.7 million.

The revenue requirement for KGE was reduced by $41.2 million, or roughly 6.6%.

However, the Commission ordered an increase for KPL's revenue requirement, primarily for new plant additions. The increase amounts to $18.5 million, or about 3.3%.

How the new rates will effect residential and small business consumers will be determined in the rate design phase of the case. Western has until September 20 to file its proposal for rates for each customer class.

The Commission's order made clear that CURB's arguments on several key issues in the rate case were instrumental in the decision to decrease rates. For example, the depreciation study conducted by CURB witness Michael Majoros convinced the Commission to extend the depreciation life of Wolf Creek by 20 years, resulting in considerable savings to ratepayers.

Furthermore, CURB's criticisms of Western's failure to develop an accurate method of tracking executive time so that it can be properly allocated to regulated activities versus activities of Western's unregulated businesses prompted the Commission to order Western to file a plan for tracking executive allocations within 90 days.

CURB also successfully convinced the Commission to recognize that if the projected costs of plants not yet on line are included in rates, then the projected profits from off-system power sales should be included in revenues. The credit goes to CURB witness Andrea Crane for a $19 million adjustment that will save ratepayers money.

While CURB is disappointed, of course, that KPL customers will be seeing an increase in rates, the overall decrease system-wide for Western is welcomed, and CURB is proud of its role in presenting evidence that supported the decrease.

It's not clear at this point whether the rate decrease will cause Public Service of New Mexico to back down on its proposed purchase of Western's electric utility business.

Documents previously made public indicated that PNM would have the option to back out of the deal if Western did not receive a rate increase.

Recently, however, PNM officials have been reluctant to discuss the potential impact of the rate case on its future plans, although Western officials have claimed that a rate decrease would destroy the deal.

CURB will be active in the rate design phase of the case, and will keep CURBside readers posted on the final disposition of the rate decrease.

(KCC Docket No. 01-WSRE-436-RTS)

A Reminder: KCC information is available 24 hours a day on the internet at: **www.kcc.state.ks.us**

Investigation
(continued from page 1)

Under the plan, Western Resources will retain the electric operations, and all of the unregulated operations will be "spun-off" into Westar Industries. According to Western, the deconsolidation of the company would occur simultaneously with the sale of the electric operations to PNM.

However, in May, Western raised eyebrows in the financial and regulatory communities when it sought accelerated approval from the Securities and Exchange Commission to offer stock in Westar to Western's shareholders.

The stock sale is expected to generate as much as $120 million.

While it was apparently Western's intention to alleviate concerns over its mounting debt – almost $3 billion – by using the proceeds of the offering to make a token effort to pay it down, the plan prompted protests by CURB and Commission Staff that a sale of stock in Westar would "freeze" the capital structure of Westar, and impair the ability of the Commission to protect ratepayers.

The Commission agreed with CURB witness Steven Hill that the sale would create minority shareholders in Westar, and consideration for their interests could prevent Westar from taking actions to help Western pay off debts incurred on behalf of Westar.

Western has borrowed heavily on behalf of Westar's Protection One, and through a series of complex financial transactions, has granted Westar substantial equity in Western.

When Westar is separated from Western, the vast majority of the debt will remain with the utility.

CURB witnesses testified that Western's actions to shift equity to Westar while retaining the debt incurred on behalf of Westar will ultimately result in higher electric rates, whether PNM buys Western, or Western becomes a stand-alone utility. The Commission indicated in its order that it agrees with CURB on this issue.

Although officials of PNM have indicated that they believe they can manage the debt load they'll acquire when they buy Western, experts at the recent hearing on the matter expressed doubt that PNM, which has bond ratings almost as low as Western's, would be able to service the debt without substantially raising rates.

Furthermore, the deal with PNM is apparently contingent upon Western receiving a rate increase. Neither Western nor PNM will say what the magic number is, but it is clear that the sale to PNM may never be consumated.

Whether the separation of Westar from Western will go forward even if the PNM deal falls through, and how that will effect ratepayers are unanswered questions to which CURB – and now the Commission – would like to have some clear answers.

Officials at Western claim that the Commission has no jurisdiction over the rights offering of Westar. The Commission argued in its order that it has jurisdiction to protect the utility from making decisions that harm the utility and will ultimately harm ratepayers.

The Commission in its order indicated agreement with the views of CURB, Staff and other interveners that the rights offering and ultimate spin-off of Westar are actions intended to make Westar more attractive to investors by leaving all the debt with the utility and all the equity with Westar. CURB also believes that the spin-ff was designed to provide an easy out for executives at Western, who qualify for handsome exit packages when Western changes hands.

Of immediate concern is that the shift of equity from Western to Westar cannot be undone once shareholders have purchased Westar stock in reliance on the balance sheets filed with the SEC that reflect Westar's equity in Western.

The Commission therefore ordered Western to suspend its plans to offer stock in Westar and come up with a new plan to improve Western's bond ratings.

Additionally, the Commission has barred Western from incurring any more debt until it issues further orders.

CURB filed arguments in support of these actions and in support of the Commission's jurisdiction over the rights offering.

The Commission heard evidence over two days of hearing on these issues in June. The order was issued on July 20.

(KCC Docket No. 01-WSRE-949-GIE)

KCC Orders Ad Valorem Refunds to Assist Low Income Ratepayers –But There's a Catch

CURB is proud to have been instrumental in convincing the Commission to order that refunds under a settlement of federal litigation be used to assist low income consumers pay their heating bills from this past winter.

In an order issued May 3, 2001 the Commission found that the extraordinary circumstances this past winter justified using the refund money from the federal ad valorem litigation to help lower income gas customers.

The gas utilities involved were ordered to file their proposals for distributing the refunds. All have filed plans with the Commission.

Unfortunately, it may be several months before the refunds are actually distributed, if at all.

The Midwest Gas Users Association, which opposed using the refunds for low-income programs, has gone "forum shopping"–looking for a court that will support its efforts to capture a share of the refunds for its mostly industrial members, some of whom are no longer sales customers of the utilities receiving refunds.

MGUA first filed a request for a temporary restraining order in Johnson County District Court in an effort to prevent the Commission from enforcing its order. CURB participated in the hearing. The court rebuffed MGUA and denied the restraining order.

Shortly thereafter, the attorney for MGUA, Ed Peterson, who is also the major of Fairway, filed a class action lawsuit in federal court in Kansas City against Kansas Gas Service Company.

He is now representing several residential and industrial consumers whom he claims would be entitled to ad valorem refunds had the Commission not ordered the refunds dedicated to low-income programs.

CURB believes that Mr. Peterson's latest filing presents a conflict of interest for him. He filed motions earlier in the ad valorem docket advocating the rights of the industrial customers over the residential ratepayers. He now claims to represent those same residential ratepayers–at least one of whom testified on behalf of industrial customers at the hearings in April.

CURB also believes this is a clear case of impermissible forum shopping by Mr. Peterson, who has doggedly opposed the use of the refunds for low-income relief.

CURB is confident that the federal courts will find this new lawsuit without merit and throw it out. However, KGS will have to fight this battle on its own. CURB may not be able to intervene in this lawsuit, as its mandate may limit us to working within the forum of the Commission and the Kansas courts.

A hearing on the issue is pending in federal court.

It is not clear at this point whether a ruling in this case would apply to the other utilities receiving refunds, Greeley Gas and UtiliCorp.

CURBside will keep you posted on further developments.

(KCC Docket Nos. 99-GRLG-405-GIG; 99-UNCG-406-GIG; 99-UTCG-408-GIG; 99-KGSG-477-GIG)

CURB Consumer Counsel Attracts Large Crowd at Lawrence CoC Meeting

On July 11, CURB's Consumer Counsel, Walker Hendrix, spoke at a meeting of the Lawrence Chamber of Commerce's Government Communications committee about the proposed rate hike for Western Resources and its restructuring plans.

Public interest in utility matters has reached an all-time high this year. Several persons who attended the meeting said it was the largest turnout for a Chamber of Commerce committee meeting that they'd ever seen.

Missouri OKs, then Nixes KCPL Restructuring

There's been an interesting development in KCPL's restructuring plans. The Missouri Public Service Commission approved the company's restructuring plans on July 12, only to vacate their approval later the same day when they heard the company's announcement that they were planning to build an unregulated merchant power plant near Weston, Missouri. According to a spokesperson for the Missouri Commission, KCPL never disclosed its plans to build the 500 to-900 megawatt plant to the Commission or its Staff. Objecting to the lack of "full disclosure and candor" on the part of KCPL, the Missouri Commission has chosen to postpone another ruling on KCPL's restructuring until it learns more about the Weston plant.

Southwestern Bell and Sprint Propose Raising Local Telephone Rates

Staff of the KCC, along with Southwestern Bell and Sprint, has decided that you are not paying enough for your local telephone service. In a Stipulation and Agreement filed with the Commission May 15, 2001, Staff, SWBT and Sprint propose to increase rates for local telephone service.

CURB thinks your monthly local telephone rates are high enough and is fighting this proposal.

The Agreement, also signed by AT&T and Sprint Long Distance, proposes to decrease access rates in return for increases in monthly local rates. Access rates are charged to long distance carriers like AT&T for access to the local network. Under the Agreement, while monthly local telephone rates will increase, Staff, SWBT, Sprint and AT&T argue that decreases in long distance charges will offset the local increases.

SWBT customers could see close to a $2.00 increase in their monthly local bill, and certain Sprint customers may see up to a $6.00 increase in their monthly local bill over three years.

While CURB would like to tell you which long distance plans will decrease rates, we can't. It's a big secret. The long distance rate reductions proposed in the Agreement are confidential. CURB is challenging the Commission to make this information public. If this proposal is such a good idea, CURB wonders why the Commission and the parties to the agreement don't want customers, who will pay the rate increases, to know what they are getting under this deal. It is an outrage!

While CURB is not opposed to reducing the access charges that long distance providers like AT&T pay to the local telephone companies, simply allowing local telephone companies to increase their local rates to make up for access reductions is wrong.

The only telephone customers who will benefit under this proposal are those who make several hundred minutes of long distance calls <u>in Kansas</u> each month, and who happen to be on the right long distance rate plan. This does not apply to long distance calls to other states. Only large users of in-state long distance could possibly save enough in long distance rate reductions to offset the increases in local rates.

A technical hearing before the Commissioner on the proposal is set to begin August 8, 2001, with a decision expected by early October.

(KCC Docket No. 01-GIMT-082-GIT)

CURB Needs Your Help!

CURB needs you and all your friends to write or call the KCC. Tell the Commission you don't want your local telephone rates increased. Consumer comments are critical to CURB's success in fighting these increases.

The KCC will accept written comments from Southwestern Bell and Sprint customers through Friday, August 24, 2001.

Comments should reference KCC Docket No. 01-GIMT-082-GIT and be sent to the KCC Office of Public Affairs, 1500 S.W. Arrowhead Rd., Topeka, Kansas, 66604.

Comments can also be submitted by email: *<u>public.affairs@kcc.state.ks.us.</u>* You can also call the Commission toll-free at 1-800-662-002. In Topeka, call 271-3140.

WestPlains Refunds Due

On June 27, 2001, the KCC approved a Stipulation and Agreement bringing to an end to nearly two years of litigation over WestPlains' rates, resulting in a refund to WestPlains customers.

Residential and small commercial customers should see refunds of close to $2 million, and a reduction in current rates.

In July of 2000, the Commission ordered WestPlains to reduce its electric rates by approximately $8.7 million per year. (99-WPEE-818-RTS). WestPlains unsuccessfully appealed the Commission's decision to the Kansas Courts.

The KCC opened the current docket to determine how the $8.7 million annual decrease in rates would be allocated to WestPlains' customer classes.

The Agreement approved by the Commission allocates $1.7 million annually to reduce residential customer rates.

The Agreement also increases the monthly customer charge for residential customers from $6.60 to $7.25. This increase is offset by decreases in the per KWH charge for customer usage.

The Agreement assumes that these new, lower rates have been in place since February, 2000. Consumers have been paying for electricity at WestPlains' old, higher rates during this period and are due a refund.

WestPlains' customers should see a credit on their monthly electric bills soon.

(KCC Docket No. 01-WPEE-533-MIS)

WestPlains Pleads for Rate Increase

Unhappy with the Commission's decision to decrease rates by $8.7 million annually, WestPlains immediately filed another request to increase its rates by $14.5 million. The majority of WestPlains' request was based on issues already decided in WestPlains' last rate case.

Staff of the KCC filed testimony that supported an increase of only $1.1 million, rejecting most of WestPlains' claims of higher costs.

The Commission held a technical hearing on the merits of WestPlains' request on June 19, 2001, and a decision is expected by early August.

Regardless of what decision the Commission makes in this case, it looks like the rates that were just put in place from the last WestPlains rates case will increase by some amount in the near future.

(KCC Docket No. 01-WPEE-473-RTS)

KCC Updates Gas Contract Review Standards

On June 21, the KCC issued an order revising the standards by which Staff is to review the gas purchasing practices of the gas public utilities.

The Commission eliminated the requirement that every gas purchase contract entered into by a gas utility be filed with the KCC within 15 days, along with a statement of alternatives that the company considered before entering into the contract. The provision, described as unworkable by the Commission, had been in place since 1977.

The Commission will now require that its Staff meet with representatives of the utility once a year, or more frequently upon Staff's option, to discuss its gas purchasing practices.

Before the meeting, the company will be required to file a report describing its past year's purchasing performance, its current situation, and its plans for the coming year.

Staff will file a memo with the Commission summarizing the annual meeting and the Staff's findings.

Additionally, the company will be required to file a monthly form summarizing the contracts entered into that month.

The Commission will also require the company to file with the KCC any contract not competitively bid, and require KCC review and approval before its effective date.

Greeley Gas has filed a petition for reconsideration, asking that the Commission allow reply memos from the utilities in response to Staff memos.

Until a ruling is issued on Greeley's petition, the order will not be considered final.

(KCC Docket Nos. 106, 850-U; 75-GIMC-009-GIG)

KGS Seeks Modifications of Cold Weather Rule

A new docket was opened at the KCC on July 9 when the Kansas Gas Service Company filed an application to modify provisions of its tariff that relate to the Cold Weather Rule.

As it stands today, the Cold Weather Rule protects customers who fall behind in their gas bills from being disconnected during the cold winter months. The customers may enter into a 12-month payment plan that helps spread the cost of heating over the entire year after meeting certain qualifications, such as applying for assistance programs.

However, KGS claims that a high percentage of customers are taking advantage of loopholes in the plan, which allows customers who only make one payment to continue to receive gas until the expiration of the Rule in the spring. They default on the balance while their gas is shut off during the summer, and then are eligible to be reconnected and begin a new 12-month plan when the Cold Weather Rule kicks in again.

KGS would like the Rule modified to deny customers the right to enter into successive payment plans after a default. The company also wants to limit payment plans to a six-month period.

CURB agrees with KGS that it is unfair to ratepayers who pay their bills in full to have to subsidize cheaters who take advantage of rules intended to protect honest but disadvantaged individuals from being disconnected.

However, CURB is not certain that the proposed changes will have the desired effect of eliminating cheaters from the system without harming those who occasionally have trouble meeting their utility obligations.

It is unlikely that the KCC will review the KGS tariff without reviewing the tariffs of other gas utilities in Kansas as well. CURB believes it is likely that if the KCC is willing to consider modifications of the Cold Weather Rule, a generic docket will be opened to address the tariffs as they apply to all gas utilities in the state.

(KCC Docket No. 02-KGSG-018-TAR)

CURB Staffer Honored for 30 Years with State

Beth Runnebaum, CURB's Office Specialist, was honored on July 26 for her 30 years of service to the State of Kansas.

Those of you who deal with CURB often know that Beth is the lifeblood of our office. We couldn't do without her, so we were greatly relieved to hear that she has no plans to retire for a few more years.

Please join us in congratulating her!

Citizens' Utility Ratepayer Board Members:

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Gene Merry
Vice Chair
Frank Weimer
Member
Francis X. Thorne
Member
Nancy Wilkens
Member

From the Staff at CURB:

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After a Long Day, We're Still Smiling

Late in the evening of June 26, CURB consultants and staffers joined other interveners and KCC attorneys to celebrate the end of a long 12-hour day of testimony on Western Resources' restructuring plans.

Front Row—(Left to Right) Niki Christopher and Walker Hendrix, both of Lawrence, CURB attorneys; Sarah Loquist, Wichita, attorney for USD 259**;** Andrea Crane, Ridgefield, CN, consultant for CURB; Tim McKee, Wichita, attorney for City of Wichita.
Back Row–Steve Hill, Hurricane, WV, consultant for CURB; Tom Stratton, Lawrence, KCC attorney; Susan Cunningham, Topeka, KCC Acting General Counsel; Jim Zakoura, Overland Park, attorney for Kansas Industrial Consumers; John Dunn, Overland Park, consultant for KIC; Dave Springe, Lawrence, CURB Chief Economist.

Special thanks to Dion Lefler, reporter for the Wichita Eagle, who obliged us by putting down his laptop computer for a moment to snap this photo.