



CURBside News

NEWS FROM THE WATCHDOG FOR RESIDENTIAL AND SMALL COMMERCIAL CONSUMERS OF UTILITIES MAY 2002

KCC Affirms Protections of Cold Weather Rule, Makes Minor Revisions

On May 8, 2002, the KCC issued an order making minor revisions to the Cold Weather Rule, but affirmed that the Rule would continue to provide protection to Kansans from utility disconnections during freezing weather for inability to pay.

The Commission rejected requests from several utility companies to increase the initial payment on Cold Weather payment plans, to reduce the duration of such plans, and to require progressively higher initial payments from customers who have defaulted on Cold Weather Plans in the past.

The Commission adopted a few minor provisions to correct ambiguities in interpretation and enforcement of the Rule. The majority of customers will not be affected by the changes.

Customers who have stolen utility service by bypassing their meters will be required to

(See Cold Weather Rule, p.6)

Commission Approves Western Resources Rate Design Settlement

The KCC has accepted a settlement that finalizes the rates consumers will pay for electricity after Western Resources' recent rate case.

CURB, the KCC Staff, Western Resources, the Kansas Industrial Consumers, Wichita School District 259, the City of Topeka, and Goodyear Tire Company, all joined together to submit the rate settlement to the KCC.

The City of Wichita did not oppose the Stipulation and Agreement.

The settlement on rate design is the final phase of Western Resources' rate case, decided by the Commission last year.

The Commission increased KP&L rates by \$25.4 million and decreased KG&E rates by \$41 million in September.

However, the Commission did not determine how the increases and decreases would be spread among the various customer classes.

(See Rate Design, p.3)

Watered-Down 'No-Call' Bill Awaits Graves' Signature

The Kansas Legislature recently passed a bill that would purportedly provide consumers more relief from unwanted telemarketing calls.

The bill's name, House Substitute for Substitute for Senate Bill 296, gives some indication of the gauntlet it went through before passage by the Senate late in the session.

As originally introduced in the 2002 session, the attorney general's office would have administered a state-wide "do not call" list, with strong penalties for telemarketers who call people on the list.

However, strong opposition from telemarketers, telephone companies, and businesses which profit handsomely by selling over the telephone, encouraged legislators to water down the protections in the bill.

The Direct Marketing Association will administer the "do not call" list for Kansas.

Kansans (and all other

(See No-Call Bill, p.5)

Empire's Rates Likely to Increase

Customers of Empire district Electric Company, in Southeast Kansas, should expect a rate increase sometime this fall.

Empire filed an application in December of last year to increase customer rates by \$3,239,741 or about 23%.

While we are still finalizing our numbers as this CURBside goes to press, it seems clear that rates will increase by some amount. Most of the requested increase is related to the costs of several new power plants that Empire built to serve increasing power needs on its system.

CURB and the Staff of the KCC are due to file their recommendations by Monday May 20, 2002. Technical hearings are scheduled for late June, with a Commission decision expected by mid-August. Stay tuned! ♦

(Docket No. 02-EPDE-488-RTS)

Staff Recommends Fine for KGS

KCC Staff has recommended that Kansas Gas Service Company pay a \$1.5 million fine for failure to meet certain quality of service standards imposed in 1997.

As a condition for KCC approval of Western Resources' 1997 sale to ONEOK of its natural gas distribution system (now Kansas Gas Service), KGS agreed to maintain certain quality of

service standards to insure that natural gas customers would not see diminished service as a result of cost cutting after the merger. KGS was to be subject to fines for failure to maintain service quality

In evaluating KGS's performance in 2000 under the quality of service standards, Staff determined that KGS had failed to meet the standard for answered call rates. Staff originally recommended a fine of \$100,000.

However, after further review of the data, Staff alleges that KGS removed certain important data from the calculations. After adding the data back in and recalculating the performance measure, Staff now is recommending a harsher fine of \$1.5 million

KGS acknowledges that it failed to meet the answered call rate measure a few times in 2000, but argues that the failures were due to conditions beyond the company's control.

KGS suggests that these failures were associated with several episodes of abnormally high numbers of calls from customers, who were in anguish over that winter's gas bills, which resulted from harsh winter weather and spiking gas prices.

Staff is currently reviewing KGS's performance for 2001, and has requested authority to re-review KGS's performance for 1998 and 1999.

The Commission has not made a decision in this case. CURB will continue to monitor this docket closely. ♦

(Docket No. 02-GIMG-700-GIG)

Western Resources Requests Ice Storm Accounting Order

Western Resources has received approval from the Commission to book its costs from the January ice storm. Western estimates its cost from the storm will be \$7.2 million for KP&L and \$13.3 million for KG&E.

The Commission granted approval for Western to accumulate and defer costs of \$4,977,314 for KP&L, and \$8,047,054 for KG&E, in addition to carrying costs at 9.0836%.

Western will be allowed to argue for recovery of these deferred costs from ratepayers in its next rate case. ♦

(Docket No. 02-WSRE-723-ACT)

KCPL Ice Storm Settlement

CURB, Kansas City Power and Light, and the KCC Staff have submitted a settlement agreement to the Commission that will shield KCPL's Kansas ratepayers from the cost associated with the devastating January ice storm, and which will also reduce rates for KCPL customers.

In cleaning up the damage caused by the ice storm in January and restoring service to its customers, KCPL spent close to \$50 million dollars.

Normally, the procedure for a utility to recover costs after a devastating storm is to petition

the KCC for the authority to book the costs to a special account. The amount can then be recovered in the utility's next rate case.

However, KCPL agreed to absorb the entire loss from the Kansas portion of the ice storm costs in exchange for a rate moratorium through 2006. During a rate moratorium, the Commission cannot review KCPL's rates even if it believes that KCPL is over-earning.

In addition to the ice storm costs, KCPL has recently been hit with the costs of rebuilding its Hawthorn power plant in Kansas City after an explosion.

However, after CURB and Staff reviewed materials submitted by KCPL, it was clear to all that KCPL was earning excessive profits.

Therefore, in exchange for the rate moratorium, KCPL agreed to reduce rates by \$12 million a year beginning in 2003.

Under the settlement, after KCPL charges the storm costs off its books, the company will enjoy rate stability through 2006.

Rate stability will allow KCPL to make progress in rebuilding its shareholder equity and reduce debt.

KCPL was unable to reach this same type of agreement in Missouri. Missouri customers may end up paying for the amortized costs of the storm, which KCPL plans to amortize over the next five years.

The Commission is considering the agreement, but has not yet given its approval. ♦

(Docket No. 02-KCPE-840-RTS)

Rate Design

(Continued from p. 1)

In the rate design case, CURB, Western Resources, Staff and the other parties participated in a collaborative process, exchanging cost-of-service models and rate proposals. As a result of this process, most KG&E residential customers should see an average rate reduction between 7% and 8%.

For most of the year, monthly customer charges will drop from \$7.50 to \$7.25, and Kwh usage rates will drop from 7.69 cents to 7.05 cents

Summer Kwh usage will decrease from 9.04 cents to 8.26 cents.

Most small commercial customers of KG&E should see an average rate reduction between 9% and 11%.

Monthly customer charges will remain at \$8.50, but Kwh usage charges will drop from 9.43 cents to 7.83 cents in Block 1, and 5.17 cents to 4.79 cents in Block 2.

Most residential customers of KP&L should see an average rate increase of between 4% and 5%.

Monthly customer charges will increase from \$4.00 to \$6.00 for urban customers, with rural customer charges remaining fixed at \$6.00.

For most customers, Kwh usage charges will increase from 5.78 cents to 5.88 cents in the winter months, and 6.34 cents to 6.45 cents in the summer months.

Most small commercial customers of KP&L should see

an average rate increase between 3% and 4%.

Monthly customer charges will increase from \$7.80 to \$8.50 for urban customers, while rural customer charges will decrease from \$9.80 to \$8.50.

Kwh usage charges will increase from 6.24 cents to 6.4 cents in summer and winter for Block 1, and from 3.63 cents to 3.77 cents in summer and winter for Block 2.

Because the Commission implemented similar rate increases and decreases on an interim basis right after the rate case, customers are unlikely to see much change from their current bills when the final tariff rates go into effect.

Overall, CURB is pleased with the rate design settlement, because most of our constituents fared well under its terms. The rates for KP&L's residential customers increased by only 4.7%, even though rates increased by 6.9% overall. Rates for small commercial customers only increased by 3.5%.

Small commercial customers of KG&E fared even better. While KG&E's rates decreased by 8.3% overall, small commercial customer rates decreased by 9.85%. The 7.4% decrease in residential rates was slightly smaller—but a decrease, nonetheless.

After the parties presented the settlement to the Commission, Chair John Wine personally thanked each of the parties for their efforts to settle the case. ♦

(Docket No. 02-WSRE-301-RTS)

UtiliCorp United Investigation

The KCC has opened an investigation into affiliate transactions at UtiliCorp United, Inc. In Kansas, UtiliCorp serves approximately 165,000 customers with its three regulated utilities: Peoples Natural Gas and Kansas Public Service, its natural gas distribution companies, and WestPlains Energy, its electric operations.

Additionally, UtiliCorp operates a variety of unregulated enterprises through its affiliates, principally Aquila, Inc., which buys and sells wholesale natural gas, electricity and other commodities. Aquila also sells a wide range of financial and risk management products and services throughout North America and Europe.

In April, 2001, UtiliCorp spun off the assets of Aquila in a public offering of stock. In November, the UtiliCorp board of directors determined that the spin off of Aquila was no longer in its best interest, and began repurchasing the Aquila stock.

Last February, Fitch Investment Services downgraded UtiliCorp's debt rating from BBB to BBB-, which, according to Fitch, is its lowest investment grading. Fitch stated that the downgrade reflected the cash flow drain from Aquila's energy business, and the reliance of Aquila on UtiliCorp for funding.

Since much of the financing for Aquila comes from UtiliCorp United, the KCC is concerned that the regulated utilities in Kansas could be harmed, much in the same way that Western Resources' investments in its unregulated subsidiaries has been detrimental to its regulated utility properties. The Commission noted that UtiliCorp has made no filings at the Commission pursuant to the KCC's affiliate regulations seeking approval of its restructuring activities.

Accordingly, the Commission ordered UtiliCorp to produce a report describing and explaining its standards and practices for affiliate transactions, and to explain why those transactions will not adversely affect the ability of UtiliCorp to provide efficient and sufficient service in Kansas.

The Commission also directed Staff to begin an investigation to determine what standards and practices are necessary to protect UtiliCorp's Kansas utility customers from subsidizing UtiliCorp's unregulated affiliates.

CURB has intervened in this docket and will actively participate. ♦

(Docket No. 02-UTCG-701-GIG)

Midwest Surcharge Increased

Customers who transport natural gas on Midwest Energy's system will soon see an increase in their monthly charges.

The KCC has approved increasing a surcharge that transportation customers pay.

The surcharge is assessed to all customers on Midwest's "K" system (formerly the KN Energy system). However, Midwest did not propose increasing the surcharge for residential and small commercial customers.

When Midwest bought the "K" system from KN Energy, it inherited a natural gas contract with prices considerably higher than current market prices for natural gas.

To minimize the uncertainty of how much this contract would cost over time, Midwest Energy reached an agreement to buy out the contract.

The Commission approved a surcharge on customers of the "K" system to pay the cost of this contract buyout.

Residential and small commercial customers pay a surcharge of 40 cents per mmbtu. Transportation customers pay a surcharge between 6 and 12 cents per mmbtu.

Midwest claims that residential and small commercial sales have been less than anticipated, while transportation sales have been greater than anticipated. The result is that Midwest is not receiving enough surcharge revenue to pay off the contract buyout costs.

To increase surcharge revenues, Midwest proposed increasing the surcharge on transportation customers, gradually increasing the surcharge to 30 cents per mmbtu over the next several years. The

Commission approved this proposal.

The Kansas Livestock Association and the Kansas Corn Growers Association have filed motions asking the Commission to revisit its decision. The Commission is currently considering their motions.

CURB will continue to monitor this docket. If the transportation customers are successful at reopening this issue, CURB will fight hard to insure that the surcharge on residential and small commercial customers does not increase. ♦

(Docket No. 02-MDWE-426-TAR)

Commission to Examine SWBT and Sprint Price Cap Formula

The Commission is set to hear a case that will determine the maximum prices Southwestern Bell and Sprint may charge under their current price caps.

Southwestern Bell and Sprint are no longer rate-of-return regulated. Pursuant to the Kansas Telecommunications Act of 1996, Southwestern Bell and Sprint were given the option of choosing to become price cap regulated.

Under price cap regulation, maximum prices are set, and the telephone companies can price their service at any level below the cap. The KCC is precluded from reviewing their earnings.

However, the 1996 Act does require the Commission to review the price cap formula every five years.

By making changes to the price cap formula, the Commission can effect changes in the prices charged to consumers. Ideally, the price cap adjustment mirrors what would happen in a competitive market. In a competitive market, cost increases are passed to consumers, unless changes in technology or increased productivity actually decrease costs per unit of output. In a competitive market, these cost decreases are passed to consumers through lower prices.

Two adjustments to the price cap formula are under review.

First, to account for cost increases over time, the Commission must determine an appropriate inflation rate, which will adjust prices upwards accordingly.

Second, the Commission must determine an appropriate productivity offset, often called the "X Factor". The "X Factor" offset recognizes increases in productivity in the telecommunications sector, such as improved technology and labor productivity.

Therefore, although inflation may cause costs to increase, better technology and labor practices offset such increases.

While reliable inflation information is readily available, the issue of the "X Factor" offset is quite contentious.

CURB and the Staff of the KCC believe that better

technology and increases in labor productivity have resulted in a large "X Factor" offset.

This large "X Factor" offset is actually greater than the inflation rate, suggesting that prices should decrease under the price cap.

Conversely, Southwestern Bell and Sprint claim that the "X Factor" offset is small, suggesting that prices should increase to consumers.

The parties are in discussions currently to determine whether these differences can be worked out. If not, the Commission is set to hear the case in mid-June. ♦

(Docket No. 02-GIMT-272-GIT)

No-Call Bill

(Continued from p. 1)

Americans) already had the option of registering with the DMA. (See Sept., 2001 CURBside). The bill adds little to the protections consumers already enjoy. CURB and the AARP, which worked closely together to get strong "do not call" legislation passed, were disappointed with the results, but are hopeful that consumers will take advantage of registration to reduce the number of unwanted calls.

Legislators who wanted stronger protections have expressed willingness to try again next year to pass amendments to strengthen the bill. CURB will be there! ♦

(House Sub. Sub. SB 296)

Cold Weather Rule

Continued from P. 1

reimburse the utility for the estimated value of the stolen service before becoming eligible for payment plans.

The "Good Faith Test" was renamed "Responsibilities of Customers," to make it clear that customers must take certain actions to qualify for utility service under the Cold Weather Rule.

The Commission determined that tendering an insufficient funds check does not meet the obligations of the customer under the Rule. However, it noted that the utilities must give a 10-day notice before disconnecting a customer, which should provide sufficient time for customers who have inadvertently bounced a check to resubmit payment and prevent disconnection.

In response to the utilities' request to eliminate the additional five days for bill payment under average payment plans, the Commission eliminated the provision. Giving such customers an extra five days to pay had resulted in many customers receiving bills that did not reflect their most recent payment, because their payments arrived too late in the billing cycle to be credited to their accounts.

Finally, the Commission agreed with the utilities that they should be allowed to negotiate Cold Weather payment plans that are shorter than the 11-month minimum plans to which customers are entitled.

However, to protect those customers who voluntarily agree to pay their arrearages off in less than 11 months, but fall behind, the Commission declared that so long as a customer's arrearage is no greater than it would have been if the customer had entered into an 11-month plan, the customer shall not be considered in default.

This provision ensures that well-meaning customers who attempt to do more than the minimum, but fail, aren't penalized for their efforts so long as they are doing as well as those who are only meeting minimum requirements under the Rule.

The Commission also affirmed the requirement that the utilities inform customers of their right to an 11-month plan, even if they are willing to enter into a shorter plan.

For the most part, CURB was satisfied that the Commission took our concerns into account in drafting the order, and was pleased that no major changes were made. ♦

(Docket No. 02-GIMX-211-GIV)

Investigation of Western Resources: A Never-Ending Story

The KCC's continuing investigation into Western Resources' financial health and its plans to restructure has entered its second year.

There's not a lot new to report, just a few added parties and several thousands more pages of documents to peruse.

Meanwhile, Western's financial picture looks grimmer than ever, according to documents recently filed by the company with the SEC.

The MBIA Insurance Corporation, insurer of millions of dollars' worth of Western's bonds, has intervened in the docket and has become a valuable asset to other intervenors in the case.

Represented by Glenda Cafer, former chief counsel for the KCC, MBIA's large pool of financial experts has been providing analysis that is proving quite illuminating in trying to sort out the sordid details of Western's finances, which most experts agree are in serious trouble.

Most of the disputes in the docket thus far have been over discovery matters. Numerous parties have had to file motions to compel Western to answer data requests.

Western's refusal to release documents claimed to be

highly confidential and/or irrelevant to the investigation led to the KCC ordering Western to produce the documents for *in camera* inspection.

This procedure allowed the Commissioners to examine each document in chambers, and determine whether treatment of them as “highly confidential” is justified by their content, and to determine their relevancy to the docket.

The Commission, after looking at several thousand documents, determined that the vast majority of them were relevant, and that they should be not be withheld from public scrutiny. Unsurprisingly, Western has filed for reconsideration.

Disputes continue over whether the remainder of the documents merit confidential treatment. Rulings are pending on numerous discovery motions filed with the Commission.

Western recently removed its proxy statement from the company’s website after the company was overwhelmed by calls from reporters asking questions about the statement’s references to huge exit packages paid to executives who “voluntarily” retired this year.

CURB is more convinced than ever that Western’s intention to separate its unregulated affiliates from its public utility operations is going to be disastrous for

ratepayers.

Because of the delays in discovery, hearings have been rescheduled to begin July 1. ♦

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

CURB Staff News Briefs

CURB’s Administrative Assistant, **Beth Runnebaum**, and her husband Jerry are enjoying a new grandson, Patrick Quinn, who was born healthy and happy on March 12, 2002.

Consumer Counsel **Walker Hendrix** will be celebrating a birthday on May 28. (We won’t say which one, but we suspect he’d rather it be his 21st than the one he’s having.)

Attorney **Niki Christopher** fulfilled a twenty year- old dream in April by attending Bob Wills Days in Turkey, Texas, where surviving members of Bob Wills’ Texas Playboys played in concert. She is now pressuring the docket clerk at the KCC to keep the calendar clear next April so that she can go back next year and “stay a little longer.”

Dave Springe, who wears two hats as an economist and an attorney for CURB, is now wearing a carpenter’s hat as he constructs a giant wooden swing set and monkey bars for his

three kids, Anna, Ellis and Isaac, in, as he wryly says, his “spare time.” At the rate he’s going, we figure that he’ll get it done in plenty of time for his kids to enjoy it: watching *their* kids play on it. ♦

CURBSIDE is brought to you by the Staff of CURB:

WALKER HENDRIX –
CONSUMER COUNSEL
NIKI CHRISTOPHER –
ATTORNEY
DAVID SPRINGE –
CHIEF ECONOMIST
BETH RUNNEBAUM –
OFFICE SPECIALIST

**1500 S.W. ARROWHEAD RD.
TOPEKA, KANSAS 66604
TELEPHONE: (785) 271-3200
FAX: (785) 271-3116
EMAIL:**

Curb@kcc.state.ks.us

**Help save.....
Paper! Toner!
The Planet!
Time! Energy!
Our Budget!**

**Why not receive your
CURBside by e-mail?**

**Call or contact Beth at
the e-mail address
above to switch to fast,
easy e-mail delivery.
Thanks!**

Consumer Counsel's Corner

We are about to close the books on another year here at CURB. As a state government agency, our year begins and ends in July.

As I sit here and look out over the piles of pleadings, testimony and research stacked on my desk, it seems appropriate to take a moment and take stock of the year just past. Unfortunately, a moment is all I have. We have more work to do.

We've had some big wins for consumers this year. The Western Resources rate case was a huge fight, but in the end, Western's rates were decreased by \$15 million, as opposed to the \$150 million increase proposed by Western.

So far, we have been successful in stopping Western's proposed spin off of its unregulated subsidiaries. Western intends to leave its electric utility mired in debt, while all the equity and cash are transferred to its unregulated affiliates. We are set to go to hearing on this case in July. It will surely continue to occupy a large amount of our time in the year ahead.

We have been successful in the appellate courts in protecting the Commission's decision to allocate *ad valorem* natural gas refunds

to low-income consumers. Unfortunately, our opponents continue to file new appeals, so the money has yet to actually help those consumers.

We were also successful at blocking an attempt by the utilities to change the State's Cold Weather Rule, which would have made it increasingly difficult for customers who were behind on their gas bill to get service in the winter.

We've had a few losses also. Southwestern Bell and Sprint were allowed to increase monthly customer charges between \$2.00 and \$6.00 per customer, over our strenuous objections.

Members of the Kansas Electric Power Cooperative will see a rate increase, partially for charges that the Commission historically said KEPCO could not collect. KEPCO's rates are now some of the highest in the country.

It has been a whirlwind of a year. Our case load is larger than it's ever been and the complexity of the cases continues to challenge us on a daily basis. This note can only scratch the surface of the cases we have taken part in over the course of this past year.

As we look ahead, we expect that Midwest Energy, Peoples Natural Gas, Kansas Public Service, and Kansas Gas Service will all file for rate increases before December. Western

Resources will continue to challenge us, as well as the Commission's investigation into UtiliCorp United's affiliate transactions. And those are only the cases we know about.

I'd like to take this opportunity to recognize and thank my staff. Beth, Niki and David bring a tireless effort to this task, working long hours, sweating every deadline, and making sure that all the little details of this type of litigation are attended to. CURB couldn't function without the energy and dedication they bring to the process.

I'd also like to thank you, the consumers. Your letters and phone calls keep us moving ahead, even when the task looks insurmountable. Your encouragement keeps us going, and your thanks make the wins worthwhile, the losses slightly easier to accept.

The Legislature and the Governor have approved our funding for another year. We believe that our long-standing request to add a secretary to the CURB Staff has survived the budget cuts as well. So, until next July, we'll be here, doing our best to make sure your needs are represented. Now, if I could just get these piles of paper on my desk to go away....

--Walker Hendrix