



CURBside News

NEWS FROM THE WATCHDOG FOR RESIDENTIAL AND SMALL COMMERCIAL CONSUMERS OF UTILITIES MAY 2012

KCC grants \$50 million increase to Westar; CURB is sole opponent

CURB is the only party who contested the settlement reached by Westar Energy with the KCC Staff, the Wichita Public Schools, and several large users of electricity to grant Westar Energy a rate increase. On April 18, the Commission approved the settlement without modification.

Shortly before the February evidentiary hearing, the settling parties agreed to grant Westar a \$50 million increase, and allow shareholders a 10% return on equity for capital items recovered through surcharges such as the Environmental Cost Recovery Rider.

CURB calculated that the specific terms of the settlement agreed to by the parties should have left Westar with no more than a \$43 million increase.

CURB also argued that several issues not included in the settlement would have been resolved against Westar at a full evidentiary hearing, and calculated that the increase should be somewhere between \$22.5

(See CURB Opposes Increase, p.2)

KCPL seeks rate increase – again

On April 20, 2012, KCPL filed a request for a 12.9% rate increase from its ratepayers, or \$63.55 million more annually. This latest rate case follows a \$21.8 million rate increase granted by the Commission on November 22, 2010.

KCPL's rate increase request includes a 10.4% return for shareholders, an amount CURB Consumer Counsel David Springe describes as, "excessive and unrealistic in these difficult economic times." Mr. Springe also noted that for the average KCPL residential customer using 1500 Kwh in a summer month, bills are about 50% higher than bills in 2006.

KCPL has had four rate increases in the last five years totaling over \$139 million.

CURB has intervened in the case and the Commission's order is required to be issued in December 2012.

A scheduling order has not yet been issued, but we anticipate that a public hearing will be held in July and an evidentiary hearing will be scheduled in early October.

KCC Docket No. 12-KCPE-764-RTS

Atmos files for 20%+ increase, wants guaranteed return

Atmos Energy, a natural gas utility that serves 128,000 customers in Kansas, has filed a request with the Commission to increase its rates by \$9.7 million per year.

Atmos is also requesting a 10.9% profit for shareholders. If approved in full, the increase would increase residential rates by almost 22% and commercial rates almost 20%. This increase only will only affect the commodity charge and the fixed facility charge. The cost of the natural gas consumed by customers will not be affected by this increase.

Atmos wants to increase the monthly facility charge for residential customers from \$15.50 to \$19.00. Commercial customers would get an increase from \$37.00 to \$44.00 if the request is approved. Commodity charges will also increase.

The company cites increases in wages, medical expenses and supplier costs, as well as investments in its system as reasons for needing the increase. One cost driver is a large project in

(See Atmos increase, p. 3)

CURB opposes increase

(Continued from p. 1)

million and the \$43 million agreed to in the settlement. So CURB decided to litigate rather than sign the settlement.

CURB is especially concerned that utility returns on equity awarded by utility commissions are not reflective of today's economy. Since recommendations on returns are often based on a comparison of the approved returns of similar utilities, commissions have been basing today's returns on returns approved as much as five or more years ago. As a result, utility returns haven't moved downward in tandem with other segments of the economy. Utilities often complain about "regulatory lag," but in this circumstance, they are benefiting from the lag in reductions.

In support of CURB's contention that shareholders should be awarded less than the 10% return requested in the settlement, we note that Bill Gross, the chief investment officer and founder of PIMCO, one of the biggest bond funds in the world, told *Barron's* magazine in January that he likes utilities as an investment because "They pay big dividends because they are continually granted a 10% return on equity by regulators in a world where returns are moving much lower." While it is in everyone's interest that our electric utilities remain financially sound, it is not in customers' interests to pay outrageous returns to shareholders. We're quite disappointed that the

Commission failed to take even a small step toward establishing fairer rates of return for the benefit of households and small businesses in Kansas.

We note that Westar has also filed requests to add about \$56 million in transmission and environmental costs to customer bills. These costs are passed through to customers in the TDC and ECCR surcharges that are separate from base rates.

So on top of the KCC award to Westar of the \$50 million increase in base rates, Westar already has its hand out asking for another \$56 million that will be recovered risk-free through surcharges. Ratepayers just can't get any relief, even in this economy.

Since January 2009, with surcharge increases and base rate increases, Westar will have had fourteen—count 'em: FOURTEEN—rate increases by the end of this year, adding up to a 40% increase in customer bills. The KCC order stated that the average \$3.79 increase in residential bills is "not unduly burdensome." One must wonder if the Commission is paying attention to all the other increases they've signed off on in the past three years.

Needless to say, the Commission's decision was a disappointment to CURB. The Commission's order barely mentioned all the evidence that CURB presented against the settlement and instead focused on areas where the settlement incorporated provisions consistent with CURB's positions. It's true that CURB's efforts in the settlement negotiations succeed-

ed in securing some concessions favorable to consumers, but CURB would have traded all of those concessions in the settlement for a reasonable return on equity commensurate with Westar's level of risk.

Rather than listen to CURB's concerns, the Commission stated in its order that "No evidence was presented that suggests that such increases would make service unaffordable for customers." The problem with statements like this is that the legal standard is "just and reasonable": rates don't have to be "unaffordable" to be unreasonable under the law. The question is not whether ratepayers can afford another \$3.79 a month (even if many can't), the question is whether that \$3.79 increase is the result of paying unreasonable profits to shareholders. The question is whether that \$3.79 a month added to the other thirteen rate increases over three years is a just and reasonable outcome for Westar customers. The question is whether this \$50 million increase is just and reasonable in light of the other \$56 million in increases coming later this year. These are the questions the Commission is failing to address in its deliberations.

To paraphrase Bill Gross, Kansas regulators are *still* granting 10% returns in a world where returns are moving much lower. That's great for Wall Street investors like Mr. Gross, but bad news for utility customers on Main Street in Kansas.

KCC Docket No. 12-WSEE-112-RTS

Atmos increase

(Continued from p. 1)

Overland Park along Pflumm Road, where Atmos is replacing eleven miles of eighty-year old pipe.

Atmos is also requesting that the Commission approve a "customer rate stabilization" tariff. Of course, the tariff's real purpose is to allow Atmos to increase rates annually to ensure the company is earning its authorized rate of return, but without full rate case review. Rather than stabilize customer rates, it would make rate increases an annual event.

Further, there would be less scrutiny of each increase request. Instead of 240 days to review the company's application, the company proposes that the annual review would be limited to 60 days. Such a short time frame in which to review the request would drastically limit CURB's and the Commission Staff's ability to scrutinize the application and make recommendations.

Tellingly, Atmos is reporting to investors that its regulated utility operations, which include utilities in several states, are collectively maintaining a return on equity of 10%—which is close to its authorized return in its last Kansas rate case.

So why does Atmos need a guaranteed return, when without one, it is doing just fine? How many companies are earning 10% for their shareholders in this economy? What kind of incentive would Atmos have to be prudent in its spending if it had a guaranteed return? If the

Commission approves this proposal, it would be surrendering most of its obligation to regulate rates on behalf of Atmos' customers.

Furthermore, natural gas utilities in Kansas already have at least 80% of their revenues guaranteed as it is; CURB does not believe that customers should bear all the burden of making sure that the other revenues are guaranteed, as well.

Certainly, if the Commission approves this tariff, CURB would expect the Commission also to award a lower rate of return for the company. If the company's risk of recovery is fully placed on customers' shoulders, then shareholders will be facing virtually no risk: risk-free investments should earn a much lower return than more risky investments.

Our consultants are looking into these and other issues in the case. CURB's testimony is due to be filed in early June.

A public hearing on Atmos' request was held Wednesday, April 25. About 25 people attended the hearing in Olathe City Hall, and video conferences connected customers in Independence, Hillsboro, and Ulysses to the hearing.

CURB discovered in the course of the hearing and its subsequent inquiries afterwards that e-billing customers of Atmos did not receive notice of the public hearing on the increase. At the hearing, one customer who receives her bill via email complained that she had not received notice of the hearing with her e-bill. Upon investigating, CURB learned

that the company had inadvertently omitted notice of the company's rate increase request and public hearing to roughly 18,000 e-billing customers. The company provides a link to its website so that e-billing customers can read the same information that is included on inserts included with the bills that customers receive by mail, but this time, had failed to include the notice on its website.

The company plans to notify these customers about the increase in a separate email, but that doesn't meet the Commission's requirement that all customers be notified individually about the hearing. At this writing, the Commission's decision is pending on whether it will require a second public hearing for e-bill customers who weren't notified.

KCC Docket No. 12-ATMG-564-RTS

**CURBside
is brought to you
by the Staff of
CURB:**

**CONSUMER COUNSEL
DAVID SPRINGE**

**ATTORNEYS
NIKI CHRISTOPHER
STEVE RARRICK**

**TECHNICAL STAFF
STACEY HARDEN**

**ADMINISTRATIVE STAFF
SHONDA SMITH
DELLA SMITH**

Legislative Update 2012 Session

CURB kills interim rates bill

Working with AARP, CURB has helped defeat **House Bill 2512**, which would have allowed a utility to begin charging new increased rates to customers before the Commission has approved the increase.

Under the proposed law, a utility would have been allowed to implement interim rates thirty days after filing a rate increase request with the Commission. The utility would be able to implement the full increase requested in the “interim” until the Commission issued its final order 240 days after the original case was filed.

If the Commission ultimately granted the utility a smaller increase than the utility had requested, then utility would have to make refunds to customers and pay them interest on the amounts over-collected in interim rates.

Currently, a utility cannot begin charging increased rates until the Commission issues its order approving the increase, which is generally issued about eight months after the request is filed.

CURB testified against the bill before the House Energy and Utilities Committee. CURB argued that it was unfair to charge customers higher rates the utility had not yet proved it needed. Further, since the Commission rarely grants the utility’s full request, the effect

of the bill would be to force utility customers to loan the utility money during the rate case, and to start paying rate increases about seven months sooner than they would under current law. And while the utilities argued that this law would reduce borrowing costs, they couldn’t produce any evidence to support the argument.

Several other states allow interim rates, including Iowa. However, the Iowa unclaimed property fund contains several million dollars of refunds owed to utility customers because of over-collections of interim rates charged during rate case proceedings. Iowa utilities are apparently having significant trouble getting the refunds back to the right customers.

Such difficulties making refunds aren’t unusual: when Kansas utilities were ordered to make refunds related to ad valorem overcharges several years ago, making refunds to individuals was complicated by several factors: customers move, they die, or change their names, and sometimes information on customers disappears when utilities’ computer systems are upgraded. It also costs money to calculate all those refunds and issue checks or bill credits. It’s a whole lot easier to keep that money in customer pockets in the first place than to refund it later on.

Had it passed, HB 2512 would have applied only to the regulated natural gas utilities—Kansas Gas Service Co, Atmos Energy and Black Hills Natural Gas—the utilities that introduced and argued for the bill.

However, CURB fully expects the electric utilities to request the same sort of legislation if interim rates are ever approved for the gas utilities.

CURB and AARP worked hard to raise public awareness of the bill. Articles about the bill ran in several newspapers and several editorials questioned the logic of the bill. CURB pushed constituents to ask their lawmakers to oppose it. The outcry from the public was enough to convince the utilities and lawmakers that the interim rate bill should not be approved in this year’s session.

While this was a big win for utility customers in this legislative session, the utilities are likely to be back again to try to get this same legislation passed next year.

Other legislative news

Passed this session, **HB 2489** allows natural gas cooperative utilities to opt out of being regulated by the KCC. This bill supplements previous legislation that allows electric cooperative utilities to opt out of regulation.

There is only one natural gas co-op in the state: Midwest Energy, based in Hays, which also operates an electric cooperative. With passage of this provision, Midwest is now in a position to opt out entirely from Commission regulation.

CURB expects Midwest will opt to deregulate sometime this summer. Once Midwest’s customer-members vote their approval, the only thing left for Midwest to do is to notify the

KCC of its members' decision to deregulate.

Three bills approved by the House and Senate utility committees were combined into **Sen. Sub for HB 2526** for passage on the floor. The new legislation is described below.

First, there's a new law that requires the Commission to act within 180 days when new businesses request a certificate of convenience to become a public utility in Kansas. CURB persuaded the utility committee to include language that allows the utility to waive the 180-day deadline for good cause shown.

Sometimes consideration of the fitness of a company to meet the standards required of a public utility takes slightly longer than anticipated; rather than having to stop and restart the whole process because it's going to take longer than the 180-day time limit, the waiver language provides some flexibility to continue beyond the deadline. CURB believes it is better to do it right than to simply do it fast.

Another provision in this bill allows utilities to credit the usage of "energy storage devices" towards meeting the Kansas renewable energy portfolio standard.

Additionally, the Commission will now be required to calculate the annual impact of the state renewable energy portfolio standard on retail electric rates in Kansas and submit the calculation to the legislature each year.

Finally, this bill contains a section that authorizes the Commission to promulgate rules and

regulations necessary for securing industry disclosure of the use of hydraulic fracturing on any well in Kansas and supervising "fracking" of wells.

KCC approves yet another Westar increase

The Commission has approved yet another rate increase for Westar Energy customers. The \$36.7 million increase was requested in Westar's 2012 transmission rate filing. Westar increases its transmission rates each year under a surcharge mechanism approved by the legislature called the Transmission Delivery Charge, or TDC. Westar also requested a change in the way it allocates transmission costs among customer classes. Several industrial customers have intervened in the case to fight Westar's proposed allocation change. The Commission allowed the increase to go into effect until it decides the allocation dispute. The rates will then be adjusted or refunds will be issued to reflect the increase approved by the Commission.

Westar is building several large transmission projects, so Westar customers should expect this transmission charge to continue to increase in the future. Westar is already predicting another \$17 million increase in 2013. The company is projecting \$534 million of capital spending on transmission between 2012 and 2014.

KCC Docket No. 12-WSEE-651-TAR

And there's more! Westar increase for environmental costs coming to you soon

Westar has filed its annual request with the Commission to increase its Environmental Cost Recovery Rider. Westar is requesting a 2012 increase in the ECRR of \$19.5 million. KCC staff has reviewed the request and has filed a memorandum recommending the Commission approve the increase.

Westar is projecting an additional \$27 million increase in the ECRR in 2013 and is projecting almost \$1 billion in capital spending on environmental projects between 2012 and 2014. The Commission has already pre-approved spending \$600 million on an environmental upgrade at the La Cygne coal plant.

KCC Docket No. 09-WSEE-737-TAR

**Subscribing to
CURBside is easy!**

**Call us at
785-271-3200,**

**email us at
ecurb@curb.kansas.gov**

**or visit our
website at
<http://curb.kansas.gov/>**

MKEC seeks rate increases for Southern Pioneer and Western customers

On December 20, 2011, and February 1, 2012, Mid-Kansas Electric Company, LLC (MKEC) filed applications for rate increases for the service territories served by Southern Pioneer Electric Company (Southern Pioneer) and Western Cooperative Electric Association, Inc. (Western), respectively. CURB has intervened in both rate cases on behalf of residential and small business ratepayers.

Southern Pioneer seeks steep increases

Under two alternative rate increase proposals, MKEC is seeking increases of either \$6.1 million or \$7.99 million for the Southern Pioneer service territory.

The \$6.1 million rate increase proposal involves a proposed alternative five-year regulatory plan, with annual rate adjustments over five years. While the alternative plan results in an initial overall rate increase of 10.5%, the plan would impose an initial 18.9% rate increase on general use residential customers and an initial 26% rate increase on residential space heating customers. Small business customers would also receive an initial 26% rate increase.

CURB is concerned that the alternative five-year regulatory plan proposed by the Company would result in higher rates over

the life of the plan and inadequate scrutiny by the Commission of the annual rate filings.

The Company's \$7.99 million traditional proposal would result in an overall rate increase of 13.7%. However, as applied to residential customers, this proposal would result in a 24.6% rate increase for general use residential customers and a 30% rate increase for residential space heating customers. Small business customers would receive a 30% rate increase under this proposal.

On March 20, 2012, the Commission held a sparsely-attended public hearing via video conference to Liberal and Haviland, Kansas. An evidentiary hearing is scheduled for May 29-31, 2012 in Topeka, and the Commission is required to issue its order by August 16, 2012.

Western seeks increases of 5% and 10.4%

For the Western service territory, MKEC is seeking an \$871,695 annual rate increase, or 5.2%, for retail ratepayers. As proposed, residential ratepayers will pay 5% more than current charges and small general service business will pay 10.4% more.

On April 9, 2012, over CURB's objections, the Commission determined that no public hearing would be required or scheduled for Western's ratepayers. An evidentiary hearing is scheduled for June 18-20, 2012, and a Commission order will be iss-

ued on or before August 24, 2012.

KCC Docket Nos. 12-MKEE-380-RTS and 12-MKEE-491-RTS

CURB appeals KCC's award of rate case expense to KCPL

CURB filed an appeal of the KCC's January 18, 2012, order on the rate case expense litigation that ensued following the Commission's November 2010 decision awarding KCPL \$21.8 million of the \$55.2 million rate increase requested by the Company.

KCPL originally sought \$2.1 million in rate case expenses, but ultimately amended its claim to over \$9 million after the November 2010 hearing concluded. To put the \$9 million that KCPL spent on attorney and consultant fees in perspective, CURB spent approximately \$188,000 in litigating against KCPL, and Commission Staff spent about \$1.2 million.

In its November 22, 2010 order, the Commission awarded KCPL \$4.5 million in rate case expense incurred by its own attorneys and consultants. After granting reconsideration and allowing discovery and a subsequent hearing in September 2011 on KCPL's rate case expense claim, the Commission again awarded recovery of \$4.5 million for KCPL-only rate case expense.

The KCC's decision contradicted its own findings that the evidence offered by KCPL

lacked the detail necessary to calculate rate case expense and rendered impossible the comparisons, analysis, and determinations necessary to determine just and reasonable rate case expense.

CURB is urging the Kansas Court of Appeals to reverse the Commission's \$4.5 million award and limit KCPL to its original \$2.1 million claim that was not contested by the parties. CURB's brief was filed on April 24, 2012, and can be accessed on the CURB website

*Kansas Court of Appeals Case
No. 12-107897-A*

Howison Heights files rate case

On November 22, 2011, Howison Heights, Inc. filed an application requesting Commission approval to raise its retail water rates \$41,652. Howison's proposed rates would increase the bill for an average customer from \$29.00 to \$65.16 – a 125% increase.

Howison Heights is very likely the smallest regulated utility in Kansas. The privately-owned Saline County water utility currently provides water to 62 residential customers. The sole owner and operator of Howison Heights is a lifelong resident of Saline County who is also a real estate agent and developer.

In January 2012, CURB participated in an audit of Howison Height's financial information. Along with Staff, CURB found several problems

regarding the financial management of Howison Heights.

Specifically, CURB noted that Howison Heights was commingling its revenues received from its residential water customers with revenues from the owner's other business ventures. The audit also revealed that the company is deeply in debt, and it isn't clear that all the loans were necessary to operate the utility.

Similarly, expenses for the water utility company were grouped together with the owner's other business expenses with little-to-no tracking. Howison Heights was unable to produce invoices supporting its expenses, proof that it is paying state and local taxes, and proof that it was carrying any form of insurance for its water company. In other words, all the evidence normally required from a utility when it files a rate case was lacking.

Therefore, CURB filed a report and recommendation with the Commission on February 9, 2012, recommending denial of Howison Heights' rate increase request because the company had failed to provide enough evidence to support its request for a rate increase. Based on the same paltry evidence, the Commission Staff determined that Howison Heights should be awarded a \$20,981 rate increase.

Unsurprisingly, Howison Heights was displeased with both recommendations. On March 19, 2012, the company requested an additional 60 days to file a written report in

response to Staff and CURB's recommendations. This report is expected to be filed with the Commission by May 29, 2012.

Don't get us wrong: CURB is sympathetic to the plight of Howison Heights – which has only 62 customers – likely making it one of the smallest regulated utilities in the State of Kansas. It goes without saying that regulating a company with only 62 customers under the same regulations that apply to much larger utilities appears anachronistic and burdensome to the owner of the utility.

However, Howison is a regulated utility under the law, and therefore its rate increase request must be judged under the same standard as any other utility. It would be totally without precedent if the Commission were to grant a 125% rate increase to a utility without sound evidence that the increase is justified.

In Howison's case, the financial statements paint a picture of its dire financial condition and need for higher rates, but there's not a shred of evidence to support those financial statements. We cannot support this request without evidence.

Perhaps Howison will come forward with more evidence in its filing in late May. CURB hopes so. We will continue to remain involved in this proceeding to represent the interests of Howison Heights's 62 residential customers.

KCC Docket Nos. 11-HHIW-742-RTS and 12-HHIW-382-RTS

Settlement would reduce Suburban Water's rates

On November 16, 2011, Suburban Water Company filed its second in a planned set of three rate increase applications. Suburban Water is a privately-owned water utility company that serves just over 1,500 Leavenworth County customers in the Basehor area.

In the first rate case in 2010, Suburban Water requested Commission approval of a purchased water adjustment. This adjustment would have allowed Suburban to pass on to customers the increased cost of the water it purchases from the Kansas City Board of Public Utilities, avoiding the regulatory expense and time associated with a general rate increase. The mechanism was comparable to the purchased gas adjustment or energy cost adjustment currently used by electric and natural gas utilities.

However, despite the unanimous agreement of the Commission Staff, CURB and Suburban that the purchased water adjustment was in the best interest of Suburban's customers, the Commission rejected the agreement and required Suburban to request cost recovery through a series of three rate increase applications.

The Commission approved Suburban's first rate increase request of \$44,913 on June 3, 2011, on an interim basis subject to refund. This rate increase reflected only the

increased cost of purchased water and the rate case expense that Suburban incurred during the proceeding.

Suburban's second rate increase request filed in November 2011, was a full rate case, where all of Suburban's expenses and revenues are scrutinized. Suburban requested a rate increase of \$296,280. If the full increase were to be approved, Suburban's request would increase the average residential customer's monthly bill from \$67 to \$86 – an increase of 29%.

CURB's investigation led to several startling findings. CURB was appalled to learn that Suburban water was allowing its employees to purchase personal items using the company's credit cards. The company would then just roll these costs into a loan that the employee would not be required to make a payment on.

Further, CURB discovered that Suburban was paying some of its employees' doctor and dentist bills, paying for prescription medication for some of its employees, allowing its employees to drive company-owned vehicles for personal use on a full-time basis, paying the cell phone bills of relatives of Suburban's employees, and even paying for cable television, HBO, and pay-per-view movies at the home of one of its employees.

CURB was also taken aback by increases in salary offered to Suburban's employees over the past five years. Some employees received as much as a 30% increase in their annual

pay, during a time when many Kansans are either out of work or have suffered through long periods of no pay increases.

After eliminating all the inappropriate expenses included in Suburban's application, CURB filed testimony on March 15, 2012, recommending the Commission deny Suburban's rate increase request. CURB's conclusion was that Suburban's current rates provide adequate revenues for the company to meet its true business expenses. Therefore, CURB requested the Commission deny Suburban a rate increase.

On April 23, 2012, CURB, Staff, and Suburban reached an agreement and filed testimony supporting a \$13,500 *reduction* in Suburban's current annual rates. This decrease will have only a small affect on Suburban's residential customer's bills – an average ratepayer can expect a monthly bill reduction of \$0.18. But considering the alternative, which was a \$19 monthly increase, CURB is satisfied that the result of this agreement will result in just and reasonable rates for Suburban's customers.

Further, the company has agreed to stop allowing employees to use Suburban's credit cards and vehicles for personal use, and the company has agreed to stop paying their personal expenses. Employees will be required to make regular payments on the loans still outstanding. The agreement provides for imposition of Commission fines if the

company fails to hold up its end of the bargain.

The Commission heard testimony on the agreement on May 7, 2012. If approved, the settlement will reduce Suburban's annual revenue requirement by \$13,500. A Commission order is expected in July 2012.

Then Staff, CURB and Suburban will start all over again: Suburban files its third and last of three planned rate increase requests later this year.

KCC Docket Nos. 10-SUBW-602-TAR, 11-SUBW-448-RTS, and 12-SUBW-359-RTS

Does your bill need another surcharge? KGS thinks so

Just when you think that the utilities can't possibly fit another line-item surcharge on their bills without printing them on a bigger sheet of paper, here comes Kansas Gas Service asking for another one: the "Infrastructure Replacement Program" surcharge, or IRP.

KGS filed this proposal with the Commission on March 28, requesting a new surcharge to cover the costs of replacing aging cast-iron mains in the KGS distribution system that have been targeted as safety hazards in the wake of recent natural gas explosions across the nation.

KGS stated that it has made an informal agreement with the KCC Pipeline Safety division to accelerate the normal replacement rate of these mains with

plastic pipe. According to KGS, if the company followed its current rate of replacement of these lines as they develop leaks, most would be replaced within the next twelve years. The informal agreement with the KCC pipeline folks would speed up the rate of replacement so that all would be replaced within eight years.

The "quid pro quo" for KGS agreeing to finish replacement earlier would be for the company to receive permission from the KCC to recover the costs of the project through a special surcharge that would be updated annually to ensure that costs are recovered sooner from customers. KGS wants the Commission to approve recovery of the costs, *plus* depreciation expense *plus* its authorized rate of return.

The legislature already created a surcharge for infrastructure replacement required for safety compliance and for projects mandated by public works projects (moving mains for highway construction and the like). It's called the Gas Safety and Reliability Surcharge. It appears to CURB that KGS is attempting an end run around the requirements of the GSRS. The GSRS requires that a utility requesting to use a GSRS for recovery of infrastructure replacement must file a rate case every five years; with approval of an extension from the KCC, a natural gas utility can delay filing for another year. This provision is designed to ensure that the KCC continues to have adequate oversight of the costs through

the typically thorough review accorded a rate case application every five or six years.

There is also a requirement that the costs reach a minimal threshold before a company can seek to place them in a GSRS. The companies argued at the legislature that when the government forces them to replace pipe or move it, they don't get any corresponding revenues to help cover the costs, like they do when they install new pipe to add new customers. Reasoning that unless the costs were a significant drain on the company, they weren't extraordinary enough to justify a separate surcharge, the legislature imposed a minimum to ensure that the GSRS could not be utilized unless the costs incurred were significant.

Additionally, the legislature limited the companies to increasing the GSRS no more than 40 cents per year, and requires that the surcharge be zeroed out and these costs be embedded in base rates during each rate case.

However, the proposed IRP surcharge would be a surcharge *in addition to* the GSRS. There's no sunset provision in the tariff, so we assume it won't be cycled into base rates every five or six years like the GSRS is. Further, the IRP would increase without limit each year, based on the company's expenditures for replacing cast-iron mains. AND (here's the good part), KGS wants to recover the money *up front*, based on its estimates of what it

(Continued on next page)

(Continued from p. 9)

will be spending in the coming year. Furthermore, the replacement of cast-iron mains at an accelerated pace will also increase the GSRS, because bare-steel distribution lines attached to those pipes will also have to be replaced with plastic.

KGS has not offered any explanation for not wanting to use the GSRS for the cost of the mains replacement. CURB believes if public safety requires replacement of the mains, then the replacement costs should be recovered through the GSRS. However, like Atmos' request for a so-called Customer Rate Stabilization plan, KGS' plan is simply another proposal designed to move dollars out of your pockets faster at lower risk to the company, but at the same rate of return that they are provided for taking greater risk. Not that natural gas utilities face a lot of risk, though: they have a guaranteed revenue stream for approximately 80% of their revenues.

It's important to look at how this surcharge will operate: KGS will estimate what it's going to spend, then put a charge on customer bills to cover that estimate. At the end of the year, the company will make a true-up filing to adjust the surcharge to actual costs. This means that the IRP surcharge will be yet another guaranteed revenue stream for KGS, and will provide a guaranteed profit level for shareholders on every dollars that flows through it. Ratepayers will be loaning this money to KGS—and

paying interest on that money, as well.

KGS is posturing this proposal for the IRP surcharge as a fair trade for the company agreeing to accelerate replacement of old cast-iron pipes. KGS hints that it won't undertake the accelerated replacement plan without approval of the IRP.

However, the utilities are *required* by statute to provide safe and reliable service. If the mains are truly unsafe, then KGS is obligated to replace them and ensure the public's safety. Likewise, the customers are obligated to pay for the replacements—but only after the company files a rate case so that *all* its costs and *all* its revenues can be reviewed. Fact is, the KCC could—and should—order accelerated replacement of these mains if they are truly unsafe, but without providing any quid pro quo to KGS at all. Why in the world should customers have to provide additional perks to KGS in exchange for public safety? Customers are entitled to it by law, and the KCC's mandate is to provide it.

We will urge the Commission to reject the notion that customers must provide money in advance to KGS in a separate surcharge in order to ensure the public safety. At the very least, the KCC should deny the application and require KGS to utilize the GSRS for this project until such time as the company can demonstrate that its costs are exceeding the maximum amount it is allowed to recover

CURB
Citizens' Utility Ratepayer Board

Meet our Members:

**NANCY JACKSON**
– CHAIR
EUDORA

**STEPHANIE KELTON**
– VICE CHAIR
LAWRENCE

**KENNETH BAKER**
– MEMBER
HUTCHINSON

**ELLEN JANOSKI**
– MEMBER
PECK

**ROBERT L. HARVEY**
– MEMBER
TOPEKA

from customers through the GSRS.

KCC Docket No. 12-KGSG-721-TAR

Energy-efficiency docket opened: again

On November 9, 2011, the Commission opened a new general investigation docket to investigate the need for further clarification into energy-efficiency policies.

A bit of background: You may remember reading in previous editions of CURBside that beginning in 2007, the Commission also spent nearly two years on two general investigations into energy efficiency. These two dockets, referred to as the 441 and 442 Dockets, established Commission policy goals on energy-efficiency programs, provided guidelines for utilities to recover their costs, and discussed the availability of performance incentives for utilities offering energy-efficiency programs.

The KCC held a prehearing conference on energy efficiency on November 29, 2011. At the conference, parties spent hours discussing a variety of energy-efficiency topics, including decoupling, performance incentives, and program cost recovery. Following the conference, the parties were directed to file comments on a list of proposed topics. Altogether, seven parties filed corrections and changes to Staff's proposed list of energy-efficiency topics that the Commission needed to clarify.

Fast-forward to April 4, 2012: the Commission issued another order listing the energy-efficiency topics that *still* need to be discussed and further

clarified. After reviewing all the comments and topics submitted by the parties, the Commission concluded that only the following questions and issues are relevant:

1. What uncertainties or ambiguities in the Commission's orders, rules and regulations, if any, inhibit the offering of energy-efficiency or demand-side management programs?

2. What Commission orders, rules and regulations, or practices, if any, inhibit the offering of energy-efficiency or demand-side-management programs?

3. What conditions are necessary for successful energy-efficiency and demand side-management programs in Kansas?

The Commission went on to indicate that it views this proceeding as a docket to further determine its energy-efficiency policies, "*if necessary*", and to provide clarity to issues raised by the parties that appear to inhibit the utilities from offering energy-efficiency or demand-side management programs. The Commission intends this to be a narrow and focused proceeding, rather than a wide-ranging proceeding.

CURB wonders why this proceeding is necessary. Both Staff and CURB have utilized the policy goals and directives from the 441 and 442 orders to develop positions in at least five different proceedings to consider various energy-efficiency program proposals. We didn't find them ambiguous.

However, in most of those cases, the utilities interpreted the Commission's orders with

an entirely different slant. Facing opposing views from Staff and CURB, most of the utilities withdrew their applications before the Commission issued a ruling rather than risk not getting everything they wanted from the Commission.

To give credit where credit is due, Westar Energy is an exception: Westar successfully guided its application to approval from the Commission to participate in the Efficiency Kansas program, and also succeeded in obtaining recovery of lost revenues—a recovery mechanism of which the Commission had expressed disapproval in the generic dockets.

The Commission's questions certainly imply that the Commission is still seeking ways to eliminate the obstacles to making more energy-efficiency programs available in Kansas.

But why now? Natural gas is abundant and prices are low, the past two winters have been mild, and there's no lack of surplus capacity in Kansas: what's the motivation? Could it be motivated by recent grumbling around the state that the American Council for an Energy Efficient Economy has ranked Kansas 48th out of 50 states in adopting pro-energy-efficiency policies and programs? If so, then this could be purely a political exercise intended to quiet the grumbling. But we'd prefer to believe this renewed effort to clarify the policies of the Commission is a sincere effort to remove the remaining obstacles to developing cost-effective programs to help customers.

We see the main obstacles as the lack of clear-cut goals. The Commission hasn't defined what "successful" means in regard to energy-efficiency programs: Successful in saving energy, regardless of cost, or successful in being cost-effective, as well? Successful in attracting the utilities to offer them, or successful in attracting customers to participate? Since the state doesn't have any mandates for efficiency, and the Commission has been reluctant to adopt them, the primary goal that has emerged is the goal of the utilities to make as much money selling less energy as they make now. Establishing some sort of statewide goal for achieving a certain level of performance might be more effective than dealing with each proposal on a case-by-case basis.

Consistently, CURB's goals for energy-efficiency programs are that they should be affordable, cost-effective, simple to access, and provide measurable benefits. We know that customers want these programs, but they don't want to pay for unproven benefits, and certainly don't like the idea of paying the same price for *not* using gas or electricity that they pay for using gas or electricity. Customers want to save money through the process of being energy-efficient. Within those parameters, we believe that there's a way to provide energy-efficiency programs to customers that are cost-effective.

CURB will continue to be actively involved in this investigation and will continue

to report its progress—or lack of it—in future CURBside editions.

KCC Docket Nos. 12-GIMX-337-GIV, 08-GIMX-441-GIV, and 08-GIMX442-GIV

Consumer Counsel's



CORNER

We just got a whole lot smarter here in the Corner. I live in Lawrence, so I now have my new Westar Energy "smart" meter.

Westar is using Lawrence to test its new digital smart meter technology. To date, they've installed over 40,000 digital meters that read customer usage every fifteen minutes and transmit that data back to Westar headquarters.

If everything works as promised, the smart meters may result in cost savings for Westar, which hopefully will trickle down to us Westar customers.

A big potential savings in Lawrence is the ability to read a meter at any point of the day, and automatically shut it off or turn it on by a computer keystroke. In a college town like Lawrence, at least twice a year there is a large migration of students moving between apart-

ments, moving to Lawrence and moving home. Every change of tenant requires a meter reader to come out and read the meter and to connect or disconnect the meter. That is a pretty labor-intensive process. With these new meters, the whole process can be completed remotely from headquarters via computer. That should create substantial savings in labor costs.

Additionally, the new meters should help Westar become more proficient at finding and repairing outages, since the computer will know exactly which houses still have power and which don't. They can go directly to the spot needing the repair. Right now it's a trial and error sort of process done by lots of workers in trucks.

For the customer, there is a slick new website where your usage and cost is shown in fifteen-minute increments. The information is delayed a few hours, but it is informative. If you have kept track of what you were doing in your home at any given time, like doing laundry, you can see how much energy you used and what it cost.

For example, it costs between one to two cents every fifteen minutes to run everything in my house in the middle of the night while we are sleeping. It would probably be even lower if I changed out my 35-year old refrigerator. We are pretty careful about minimizing phantom loads. Phantom loads are generated by appliances and electronic devices that draw power even when they are turned off, like televisions, cable boxes, toasters, micro-

waves, coffee pots and computers. Our television and computers are on power strips that shut everything off completely, and we make sure everything else is unplugged.

Our usage tends to jump in the morning and then again around dinner time. Pretty typical, I suppose, since that's when we are using our appliances and lights and television. During these hours, it costs between three and five cents every fifteen minutes.

The biggest spike in our usage comes when we turn on our electric clothes dryer. That costs about ten cents every fifteen minutes it runs. If we cut two or three loads of laundry out each week, that could turn into another \$5 in savings over a month. And I can't wait to see what happens when I flip the switch on our air conditioner.

Westar's web site allows you to set up personalized alerts. If you are concerned about high electric bills, you can arrange for a text or an email when your bill hits a preset level. It can also alert you if there are unusual spikes in your usage.

There are good energy saving tips on the web site, too. Based on a tip from the website, I now set our dishwasher to the air-dry setting, rather than using the heating element.

A few cents every fifteen minutes doesn't sound like much, but our bill is over \$80 a month (*without* the air conditioner running), so little savings do matter.

Of course, now that I know what my usage patterns and costs look like, I don't really need to go back to the Westar website very often. I wonder whether other customers will find it a useful tool over time.

And while there should be cost savings in college towns like Lawrence because of the large number of students who move frequently, that doesn't necessarily mean that smart meters will provide equivalent savings in other towns.

But this smart meter project is an experiment. Westar needs more evidence of how much smart meters cost versus how much they save before it making a decision to install smart meters on the rest of its system.

Technology always moves forward, but there are technologies other than "smart" meters that Westar can install on its system that may prove to produce more savings than these meters. And technology is only as good as the back-office systems that intake all of the data, analyze it, and put it into a form that Westar and its customers can use. We have a lot yet to learn.

In the meantime, I'm soliciting ideas on how to sell my wife on the idea of installing a clothes line in the back yard. I don't think I'm quite smart enough to pull that one off yet...

—*Dave Springe*

What CURB does for you

Every now and then a customer complains to us that CURB never succeeds in stopping rate increases. We have to admit that it's true, but there's more to what CURB does than meets the eye. We rarely succeed in eliminating a rate increase entirely, but our participation in rate case dockets often results in smaller increases and other decisions favorable to customers. Since customers are paying for representation by CURB in utility proceedings through their utility rates, let's talk about what you are getting for the money.

How about some examples? Atmos Energy, which is currently seeking a rate increase from the Commission, came in to request three rate increases between 2003 and 2010.

In 2003, Atmos requested a \$7.4 million increase. Because of CURB's and Staff's testimony and efforts to work out a settlement with Atmos, the case was settled for a \$2.5 million increase. We also secured a three-year moratorium on further rate increases in that case.

In Atmos' 2008 case, the company asked for a \$4.98 million increase. CURB wasn't able to work out a settlement with the company, because we thought the increase that Staff was willing to go along with was too high. But our participation resulted in a \$2.1 million increase, less than half of what the company had asked for.

In 2010, Atmos requested a \$6.1 million increase. CURB and Staff were able to reach settlement with Atmos for \$3.855 million.

The efforts of CURB and the Commission Staff in just those three cases resulted in savings of almost \$10 million to customers. The credibility of evidence we presented, our opposition to or support of key changes in policies that affect customers, and our constant efforts to secure pro-customer rulings all contributed to exerting a downward pressure on Atmos' increases.

These examples only represent the work of CURB concerning a single utility: there are numerous other examples where CURB's work has contributed to securing lower increases for customers and long-term savings that continue to benefit customers.

Here's another example: Westar customers are paying millions of dollars less each year on depreciation rates because of battles CURB fought several years ago to make sure that we aren't required to contribute funds for demolitions of plants in the future until the company has developed concrete plans to demolish them. We had to go to court to win that one, but it's a victory that continues to provide annual benefits to all Westar customers. There's no message on the bill to remind customers that Westar's rates are lower than they would otherwise be because of CURB's efforts, but they are.

The savings that customers enjoy because of CURB's efforts exceed the cost of operating CURB. CURB continues to operate on a budget of about \$800,000 a year. Our attorneys, like most state employees, haven't had raises for several years, but they continue to fight the good fight, day after day, to ensure that customers have an effective voice in the regulatory process.

And it's not always a fight against the utilities: sometimes we battle the industrial customers, sometimes the Commission Staff, and sometimes the Commission itself. Some of the hardest-fought battles we undertake are to put pressure on Commission Staff to do its job more thoroughly, and to pressure the Commission to consider all the evidence, not just the evidence that the utility has provided. We provide constant reminders to regulators that their job is to regulate utilities and protect the public, not simply to approve every request that crosses their desks.

We can't put a dollar figure value on everything we do, but one recent example stands out: we spent \$188,000 to fight KCPL's last rate increase. KCPL spent \$9 million litigating the case. Despite the odds, we managed to convince the Commission to cut over \$33 million from KCPL's request. Even if you count the \$1.2 million that the Commission Staff spent in that case, together we saved customers over \$33 million in rates for less than \$1.4 million. That's a tangible benefit to customers.

Sure, customers are paying higher rates than they ten years ago, but they are paying lower rates than they would be, had CURB been absent from the process.

We also advocate for customers at the legislature. Our work this year helped kill a bill that would have allowed utilities to immediately begin charging higher rates when they file a rate increase request with the KCC. We work to suggest amendments to legislators when they are revising bills, and support bills favorable to consumers when they are introduced. As longtime readers of the CURBside know, CURB was instrumental in getting the Do-Not-Call List legislation passed, and successfully fought efforts to weaken its protections in later sessions.

CURB staffers spend a lot of their time answering questions and helping customers. We serve on panels, committees and task forces. We never turn down a reporter's call, because we believe it's important that the public is well-informed about utility matters.

Every year, we lose a lot of arguments, but we also amass a bunch of small victories that add up to big savings for customers. In fact, we save customers more money than it costs to fight on their behalf.

The ratepayers are receiving good value for the dollars they pay for representation in the regulatory process. The staff of CURB is proud to say we earn our keep: How many other government agencies can make that claim?