CURB: THE CITIZENS' UTILITY RATEPAYER BOARD OF THE STATE OF KANSAS

CURBside News

NEWS FROM THE WATCHDOG FOR RESIDENTIAL AND SMALL COMMERCIAL CONSUMERS OF UTILITIES JULY 2004

Aquila Requests $19 Million Rate Increase

Increase would boost rates by 27% or more

Aquila WPK, which was formerly known as WestPlains Electric Company, has filed a request with the KCC to increase electric rates to its Kansas customers by $19 million annually.

Aquila is proposing to collect this increase through a 27% surcharge on the non-fuel portion of consumer bill.

Aquila has also filed a motion asking the Commission to allow Aquila to increase consumer rates by $10 million immediately, while the Commission considers the full rate request.

The proposed rate increase will affect WestPlains' 68,500 electric customers in over 150 communities in Southwest and North Central Kansas. The largest of these include Concordia, Dodge City, Great Bend, Harper, Medicine Lodge and Phillipsburg.

WestPlains claims that the increase is needed to pay for increased investment in production plant, transmission and distribution facilities, increased depreciation expenses, increased staffing and wage expenses, increased costs associated with Regional Transmission Organization expenses, and increases to the shareholders' return on equity.

One of the most controversial aspects of the filing is WestPlains request to collect from residential and small commercial customers almost $5 million in annual losses due to WestPlains contracts to serve two industrial customers, Air Products and National Helium.

While most of WestPlains' customers pay a fuel adjustment rate each month on their bills—and have seen these fuel adjustment rates increase dramatically over the last two years as natural gas prices have increased—these two industrial customers have been protected from the increasing natural gas prices through fixed rate contracts.

Since WestPlains is losing money on these fixed rate contracts, it believes residential and small commercial customers should make up these losses. CURB thinks otherwise.

*(See **Aquila** on Page 2)*

CURB Wins Million-Dollar Question

The "million dollar question" before the Commission this year was whether Midwest Energy would be allowed to collect approximately $1 million in fuel costs from ratepayers that it hadn't collected due to a design flaw in the formula used to calculate its energy charge adjustment (ECA).

The KCC handed CURB a major victory recently when it answered this question with a firm "No."

The dysfunctional tariff was enacted as a part of the agreement settling Midwest's request for approval to purchase a part of Westar Energy's territory in central and western Kansas. Although the innovative design of the tariff was intended to protect former Westar customers from immediate steep hikes in electric bills, the result was that Midwest Energy was unable to pass through approximately $1 million in fuel costs to its

*(See **Million** on Page 2)*

Aquila

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CURB will actively fight these rate increases.

Testimony is due in mid-October, with a hearing before the Commission in December. Any rate increase would not take effect until February or March of 2005.

Aquila Seeks 10% Interim Rate Increase

Under Kansas law, a utility may request permission to impose an immediate rate increase, subject to later refund, where there is an "irreparable harm" that would result to the utility by reason of a "sudden and distinctive" deficiency in revenue which is not subject to recovery.

This is not the case with Westplains. It has been on notice for several years that increasing natural gas prices would eventually render its industrial contracts unprofitable, yet it chose not to attempt to hedge its risk.

Thus, CURB does not believe that WestPlains' circumstances meet the definition of "sudden and distinctive," and the company should not be allowed to impose an interim rate increase

However, the decision is in the hands of the Commission, which has the discretion to grant an interim increase if the company establishes its claim.

CURB expects a hearing soon on the issue. If granted, customers could see a 10% surcharge on bills designed to increase rates by $10 million while the Commission considers the rest of the rate case.

Court Order Freezes Proceeds of Canadian Utility Sale

On June 22, 2004, a U.S. District Court judge in Kansas City issued a preliminary injunction that prevents Aquila from using $504 million of the proceeds from its recent sale of its Canadian utility assets to pay down debt.

Business units of Chubb Corporation filed the request for preliminary injunction.

The units issued surety bonds that insure against an Aquila default on certain pre-paid long-term gas supply contracts Aquila entered into with utilities in Nebraska.

This squabble began when Aquila sued Chubb after Chubb demanded a release from its surety bond.

Chubb countered with a request that Aquila post collateral, and asked the court to freeze the $504 million proceeds of the Canadian sale to provided the collateral.

At the hearing, Aquila argued that without the proceeds, liquidity would be tight, placing Aquila at risk of not being able to supply gas to its utilities this winter.

Aquila is already required by its suppliers to prepay for the natural gas it uses to supply its utility customers, so CURB will be following up on this issue with the company.

The judge in the case will hold another hearing in the near future on whether to make the injunction permanent.

Standard and Poors further downgraded Aquila's bond ratings after the decision.

(KCC Docket 04-AQLE-1065-RTS)

Million

(Continued from Page 1)

customers in calculating its monthly ECA charges.

Midwest discovered the flaw soon after the tariff was enacted. Although the parties were all agreed that the company should be allowed to file a new tariff that corrected the ECA formula, Midwest's request to raise rates temporarily to recover the amount undercharged was more controversial.

As CURB argued, ratemaking is always prospective rather than retrospective. Raising rates to recover fuel costs accrued in the past would violate the prohibition against retroactive ratemaking. It is against the law to charge more than the rate on file with the KCC, with a few limited exceptions. No such exceptions applied here.

The Commission agreed with CURB and the Commission Staff. On June 18, the Commission denied Midwest's request to recover the $1 million.

(KCC Docket Nos. 04-MDWE-487-ECA; 04-MDWE-642-ECA)

Governor Taps Moffet for KCC

On June 25, Governor Sebelius announced that her choice to replace John Wine on the Kansas Corporation Commission is Mike Moffet, of Lawrence.

Moffet, who most recently served as a public relations advisor to SBC Kansas, was sworn in on June 30 by the governor's husband, Magistrate Judge Gary Sebelius, a friend of Moffet's since their childhood in Norton.

Moffet previously worked for the Federal Aviation Administration, served as counsel to a committee in the United States Senate, and was an aide to then-U.S. Senator Nancy Kassebaum.

In addressing attendees at the reception following his swearing-in as commissioner, he noted that virtually every article about his appointment had mentioned that he and Judge Sebelius—whom he jokingly referred to as "the First Dude"—had been members of a rock band called the Ascot Five when they were teenagers.

"The Ascot Five has received more publicity in the last week than it got in the two years we were in existence," he quipped.

CURB Consumer Counsel Dave Springe noted that, while he would have preferred an appointee without close ties to the most powerful telecommunications provider in the state, he acknowledged that it is difficult to find candidates with a basic understanding of the issues who haven't at some point worked in the industries that the KCC regulates.

"The Commission has some very technical and difficult issues before it right now. The bottom line is that Commissioner Moffet must balance the interests of Kansas utilities and Kansas consumers," he said. "Commissioner Moffet has assured the Governor and the public that he will take a balanced and fair approach to his tasks on the commission and that he views consumer protection is an important element of this charge. I take him at his word, but we'll also look to his decisions on the issues."

CURB wishes Commissioner Moffet every success with the difficult task ahead.

Telecom Cases in Brief: Dockets on Appeal

02-GIMT-678-GIT: Southwestern Bell has appealed to U. S. District Court the KCC decision prohibiting short-term win, winback, and retention offerings and imposing a 30-day restriction on making winback offerings. Southwestern Bell asserts the Commission order violates its commercial speech rights.

00-GIMT-1054-GIT: Southwestern Bell has appealed to U.S. States District Court Commission orders arising from a general investigative proceeding initiated by the KCC to determine whether local exchange carriers should pay reciprocal compensation for traffic destined for an Internet Service Provider ("ISP"). SWBT contends that the KCC orders are inconsistent with and exceed its authority under prior Federal Communications Commission decisions; violate the Telecommunications Act of 1996; violate Kansas state law; and are arbitrary, capricious, and otherwise contrary to law. The Commission, CURB and private parties deny the allegations, and argue in support of the KCC orders.

99-GIMT-326-GIT, 03-GIMT-284-GIT, 04-GIMT-331-GIT: These cases were originally appealed to Nemaha County District Court by rural telephone companies regarding KCC orders determining that KUSF support would be distributed on a per-line count, and that the costs of the incumbent telephone company would be used to determine distributions to other qualified telecommunications carriers entitled to KUSF support. The District Court held that the KCC's orders regarding KUSF support on a per-line basis were unlawful, and that it was required to examine the costs of all qualified telecommunications entities providing local service to determine whether support distributions are competitively neutral. The KCC appealed the District Court decision to the Kansas Court of Appeals on June 21, 2004.

Farewell to John Wine

Employees at the KCC bid farewell to outgoing Commissioner John Wine at a reception on Tuesday, June 29.

Wine was appointed to the commission in 1996 by then-Governor Bill Graves, and served as Chair from 1997 until last year.

Governor Sebelius chose not to reappoint Wine when his term expired in March. She announced on Friday, June 25, that she had selected Mike Moffet of Lawrence to replace Wine on the three-member commission.

Under Wine's leadership, the KCC preserved consumer protections such as the Cold Weather Rule, and launched what is likely the most exhaustive investigation in its history—the inquiry into Westar Energy's financial condition under the reign of David Wittig.

A patient, soft-spoken man who rarely walked at any speed slower than a break-neck pace, Wine was quiet but firm in his distaste for rancor or theatrics in the hearing room. He brought civility and decorum to a new level at the commission—and introduced a lot of KCC employees to the pleasure of eating pawpaws that he picked along Soldier's Creek.

Asked what he plans to do now, Wine said that he didn't know yet. But he added that he hoped to stay involved in utility matters.

CURB wishes him the best of luck in his future endeavors.

Wind and Prairie Task Force Issues Divided Report

Irreconcilable differences among the members of the Wind and Prairie Task Force were reflected in the report they presented to Governor Sebelius on June 7.

The task force was charged with developing a plan for addressing concerns that have arisen around proposals to place wind energy in environmentally-sensitive areas of Kansas.

Although the Governor asked the group to consider the implications of widespread development of wind power plants throughout the state, the meetings focused mainly on potential impacts on the tallgrass regions of the Flint Hills in eastern Kansas, where proposals to build two or more wind farms have generated controversy among rural residents.

The task force, after five months of discussions and two public forums, offered two mutually-incompatible options to the governor. One option would create a seven-mile buffer zone around most of the Flint Hills, in which no wind development would be allowed.

The other option recommended protecting the most ecologically-sensitive areas of tallgrass prairie from wind farms, but allowing them in less-pristine areas.

Both sides cited the need for economic development in rural areas as support for their views.

Opponents of wind farms in the Flint Hills believe that wind towers would ruin the scenery, which could hurt area tourism.

Proponents of wind energy noted that many rural Kansans would welcome the extra income that leasing land to wind developers would bring, and noted that some areas with wind farms have actually experienced an increase in visitors who are curious to see what a wind farm looks like.

There was sharp disagreement among members about whether wind farms help or hurt the environment. Most of the members were willing to look at all sides of the issues, but as the group struggled to reach agreement, two main camps emerged.

Jerry Lonergan, co-chair of the task force, acknowledged that the inability of the task force members to reach a consensus prompted the group to present more than one set of recommendations. "I guess we could have locked the door and said we're not coming out unless we have a single recommendation," Lonergan told the Associated Press, "but that wouldn't have done the task force members any justice—or the governor."

The only thing everyone seemed to agree with is that there is a pressing need for more detailed mapping of ecologically-important resources in the state. The group often discussed its frustrations with inaccuracies in maps of the areas under discussion.

A small contingent of task force members passionately urged the group to issue a single set of recommendations supported by the majority, but the idea never came to a vote.

Governor Sebelius responded to questions about her reaction to the report by asking all parties involved in the issue to "proceed with caution" until the legislature takes action in response to the group's recommendations.

In the meantime, county officials throughout the state who had hoped that the task force would produce recommendations that would help them deal with the issue of wind development in their counties must continue struggling with these problems without firm guidance.

On the other hand, landowners considering leasing land to a wind developer may find the report's guidelines for negotiating and drafting a wind lease more useful. Two task force members, a land owner and a wind developer, collaborated to adapt guidelines that had been proposed by two attorneys familiar with oil and gas leasing in Kansas.

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FCC Triennial Review Order Update:

In April, CURBside provided an update on the status of the FCC's Triennial Review Order (TRO), which would have preserved local telephone competition and consumer choice by providing competitive local exchange carriers (CLECs) access to local networks operated by incumbent carriers at discounted rates. CURB reported then that the D.C. Circuit Court of Appeals vacated key portions of the TRO in March.

The court vacated the FCC's order, but stayed the vacatur through June 15. CURB and other consumer advocates, as well as many competitive telecommunications providers, hoped that the FCC and the Bush administration would appeal the decision to the U.S. Supreme Court.

Unfortunately, on June 9 the Bush Administration and the FCC decided not to appeal the D.C. Circuit Court decision, and the Supreme Court has declined to stay the mandate.

Although large local providers such as SBC have committed to continuing to provide access to their networks through the end of the year, CURB is concerned that this decision will deal a severe blow to local telephone competition, and may ultimately cause telephone rates to increase.

Shortly after the D.C. Circuit Court of Appeals vacated key portions of the TRO, the FCC called on incumbents and CLECs to enter into commercial negotiations for network access before the ruling went into effect. Although certain carriers have reached agreements such as the ones between Qwest Communications and MCI, and between SBC and Sage Telecom, many CLECs considered the negotiation process a failure. The FCC has said it is in the process of developing new rules.

The decision by the Bush administration and the FCC not to appeal prompted two CLECs to announce plans to cut back local service offerings.

AT&T announced that it would cease marketing efforts to local and long-distance residential customers in seven states (Ohio, Missouri, Washington, Tennessee, Louisiana, Arkansas and New Hampshire).

Additionally, Z-Tel Communications announced that it would no longer take new orders for residential services in eight states (Arkansas, Idaho, Iowa, Maine, Montana, Nebraska, New Mexico, and West Virginia).

CURB anticipates other companies may follow, and believes that Southwestern Bell will regain many of the customers lost to competition over the past several years.

"Unless competitors are able to use SBC's facilities at fair prices, ultimately consumers may be left without any competitive local telephone choices, and will be subject to the prices of a deregulated monopoly," CURB Consumer Counsel David Springe said.

(KCC Docket No. 03-GIMT-1063-GIT)

Consumer Counsel's Corner

(or, Dave Sings the Rainy Day, Bad News for Consumers Blues)

The corner is grey and foreboding today. Perhaps it's that rainy weather we are having, something I'll not complain about, but perhaps it is because I have little in the way of good news to report on the energy front. What do I write when all the news is bad?

Looks like I am going to have to dust off my "Chicken Little" outfit from last year. Natural gas prices are still at record highs and it doesn't look like there will be a break before winter. To a person, everyone I talked to last winter told me they paid the highest gas bills they have ever paid to heat their homes. The record high natural gas prices we saw last winter will be equaled this coming winter, if not exceeded.

The good news is that it appears that consumers got the message. Initial data indicates consumers were more active in their energy conservation efforts last winter. The bad news is you are going to have to try harder this winter. It's time to upgrade your insulation, furnace, windows, thermostats, and sweater collection—whatever it takes—but be thinking now about your home heating choices this winter.

Unfortunately the high natural gas prices are now beginning to force electric rates higher. Most electric utilities use natural gas to fire turbines to create power. Higher natural gas prices mean higher electric prices over time. We've already seen the impact. If you are a customer of Aquila/WestPlains Energy, you've noticed the fuel price on your monthly electric bill jump to record levels. WestPlains has also filed to increase its base rates, which don't include the fuel costs, by an additional $19 million a year.

Westar Energy will file to increase electric rates next May. While that may seem like a long time away, the rates Westar seeks to put in place will be based on Westar's costs during this current year. That means the high natural gas prices Westar is paying right now to generate electricity will show up as increased rates in Westar's filing.

Did I mention that Aquila's gas companies—formerly called Kansas Public Service in Lawrence and Peoples Natural Gas in Wichita—are scheduled to file for rate increases this fall, too?

I suppose I don't even have to mention the price increases at the gas pump. You see those every time you fill up your car. But what you may be missing is that with higher oil prices, higher natural gas prices and higher electric prices, which are all basic inputs used to make a lot of the day-to-day goods we depend on, we are starting to see gradual increases in the cost of many items. Tires, paint, carpet, food—anything that requires energy to create—is becoming more expensive.

The U.S. Labor Department recently reported that the producer price index, a measurement of wholesale costs, increased 0.8 percent in May, the biggest jump since March 2003.

At times like this, economists like to toss out the old adage, "The cure for high prices is high prices." Ouch, that is a painful solution to a problem, but perhaps it takes the current high energy prices to get our attention. Then again, perhaps it is time for this country to take a longer view.

President Kennedy once challenged this country to put a man on the moon by the end of the decade. We did it. Perhaps it is time for a new national challenge. I'd put changing the way we choose to use our energy resources at the top of the challenge list.

On the upside? Well … it's raining outside. Rain is good. We need the rain.

—Dave Springe

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CURB Opposes Waiver of Late Payment Penalty Rate Disclosure

In May, CURB intervened in a docket filed by Southwestern Bell Telephone (SWBT), in which SWBT has requested to waive certain telephone billing practices with regard to a new bill format it seeks to introduce.

The new bill, designed to be simpler and save on unnecessary paper costs, seeks waiver of two billing requirements under current billing practices.

In general, CURB supports SWBT's proposed new bill format, agreeing that consumers wish to receive simpler bills.

However, SWBT seeks waiver of the current requirement that SWBT disclose in advance the percentage it will charge for late payment penalties.

CURB objects to this waiver, arguing that consumers should be notified in advance what percent will be charged in penalty for late payment when the customer does not pay on time.

SWBT also wants to eliminate the requirement that it give customers a detailed summary of calls, if the customers purchase unlimited calling plans.

CURB does not oppose this waiver request, provided that SWBT does not charge its customers if they request to receive the detailed billing information.

(KCC Docket No. 04-SWBT-996-MIS)

Midwest Energy Hedging Agreement

The Commission recently approved an agreement between CURB, Midwest Energy and the Staff of the KCC that allows Midwest Energy to begin hedging its natural gas supply portfolio to protect its residential and small commercial natural gas distribution customers from price spikes in the winter months.

Midwest becomes the fourth local distribution company that has an approved hedging plan for customers. Midwest has a budget of approximate $500,000 to purchase call options or other derivatives that seek to cap the price at which Midwest will purchase natural gas this winter. This amounts to about one dollar per customer per month.

(KCC Docket No. 04-MDWG-638-HED)

KCPL Seeks Input

The KCC has opened a docket at the request of Kansas City Power and Light Company to begin discussing emerging issues related to the supply, delivery and pricing of KCP&L's electric service.

KCP&L is seeking input on a proposal to build a coal-fired power plant north of Kansas City at or near its Itaan site.

However, other issues also are up for discussion. New environmental regulations may require substantial upgrades to existing KCP&L power plants. New investment in transmission and distribution facilities is also needed.

KCP&L also wants input on adding wind generation to its power portfolio, and on programs or pricing structures that encourage energy conservation. The purpose of the proceeding is to get input from as many interested parties as possible. KCP&L has opened a similar proceeding in Missouri.

While CURB appreciates the fact that KCP&L is engaging interested parties in its planning process, the largest underlying issue to wrestle down clearly is how much these upgrades will cost and who will have to pay.

CURB will remain actively involved in the process and encourages any other interested parties to participate, also.

A hearing before the Commissioners to provide background information is scheduled for July 19, 2004.

(KCC Docket No. 04-KCPE-1025-GIE)

SERCC Renamed, Revamped as Kansas Energy Council

The State Energy Resources Coordination Council has a new name, more members and—for the first time—funding to support its mission of formulating a long-term energy plan for the State.

Governor Sebelius issued an executive order in June that officially reformed the organization, which will now be known as the Kansas Energy Council.

Most of the original SERCC members will sit on KEC, but ten new members were added, according to the Governor's press release, to "help ensure the participation of key stakeholders in the energy policy development process."

The legislature provided $150,000 to the KCC in the fiscal 2005 budget to support the group's efforts. Previously, the group depended on the benevolence of other state offices such as the KCC and the Kansas Geological Survey for administrative support.

The revamped council will meet for the first time at the KCC in Topeka on July 22.

CURBside readers will recognize two names associated with CURB on the KEC roster. Consumer Counsel David Springe of CURB will be serving as a representative of CURB. Gene Merry, who is a Coffey County Commissioner and chairman of the CURB board of directors, will be serving in his capacity as a member of the board of directors of the Kansas Association of Counties.

Other members of the Kansas Energy Council are:

Lee Allison, Chair—Kansas State Geologist
Brian Moline, Vice Chair—Chair, KCC
John Moore—Lt. Governor/Secretary of Commerce
Director of the Kansas Water Office
Mike Hayden—Secretary of Wildlife and Parks
Adrian Polansky—Secretary of Agriculture
Michael Volker, Hays
David Dayvault, Wichita
Steve Dillard, Wichita
Spencer Depew, Wichita
Galen Menard, McPherson
Curt Wright, Wellsville
David Phelps, Topeka
Barry Hart, Topeka
Colin Hansen, McPherson
Donna Johnson, Lawrence
Bruce Snead, Manhattan
Greg Krissek, Wichita
Sarah Dean, Lawrence,
Richard Nelson, Manhattan
Rick Anderson, McPherson

Don't forget to visit CURB's new website: http://curb.kcc.state.ks.us/

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