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 APR. 2013

KCC grants interim increase to Saline County water utility that is facing foreclosesure

Sometimes, big trouble comes in small packages. Howison Heights, Inc., a Saline County water utility with about 60 customers, has become a defendant in a foreclosure action filed by Central National Bank of Salina. Despite the concerns this raises, Howison has also been granted an interim rate increase by the KCC, pending its final decision on the utility's request for a 100% increase in rates. To our knowledge, this is the first time since 1981 that the Commission has approved an interim rate increase.

Howison is a privately-owned utility that was created in 2005 by the developer of a subdivision when the closest rural water district declined to extend its service to the homes being built there. It's one of the smallest regulated utilities in the state of Kansas.

Howison Heights' financial difficulties came to the attention of the KCC and CURB when

(*See* **Howison increase,** *at p. 2*)

Westar asks for $82.5 increase from residential, small business customers; wants to decrease rates for larger customers

Westar Energy just filed an application for an overall $31.7 million rate increase. The kicker is that residential customers would actually see their rates increase by $62 million, and small business customers would see an increase of $21.5 million.

Doesn't add up, does it?—unless you also know that Westar proposes to give large *decreases* in rates to medium and large commercial customers, schools, and one large special contract customer. These customer classes would receive decreases from -6% to -19.27%, while residential customers would receive an increase of around 9% and small business customers would get an increase a bit over 6%.

Westar says it believes this proposal to slash big business rates will attract more jobs to Kansas.

(*See* **Westar increase,** *at p. 3*)

AT&T completes deregulation

The legislature has passed and the Governor has signed House Bill 2201, functionally removing all regulatory control over AT&T's pricing and service, as well as making changes in the Kansas Universal Service Fund.

AT&T no longer has carrier of last resort (COLR) obligations in its territory. This means AT&T can simply stop providing service or provide service only through its wireless system in its territory. While removing COLR responsibility likely won't affect customers in large cities, CURB testified that removing COLR will disproportionately affect customers in remote rural areas with few alternatives for service.

In an August 30, 2012, letter to the FCC, AT&T says it needs the ability to "establish a process for identifying a default service provider if a customer fails to migrate and/or permit service providers to ***notify customers that they will be dropped from service*** as of a date certain if they have not migrated to an alternative service/service provider."

(*See* **AT&T deregulates**, *at p. 2*)

AT&T deregulates

(Continued from p. 1)

Under this bill, the legislature deemed wireless service "good enough" for AT&T's rural customers.

AT&T is no longer required to average prices between rural and urban areas. This restriction has helped hold down prices in rural areas. AT&T is now free to charge rural customers whatever it chooses and charge a lower price to urban customers in more competitive areas.

AT&T no longer has to provide Lifeline services to low-income subscribers, and no longer has to meet minimum quality of service standards or billing standards. Further, the KCC no longer has authority over consumer complaints or fraud prevention. The Commission now only "administers" consumer complaints, apparently passing them on to someone else to handle, and "investigates fraud". There is no indication that the Commission has any remaining authority to do anything if it finds a company committing fraud.

The rules concerning the Kansas Universal Service Fund (KUSF) were also changed. The KUSF is a fee paid by all telephone customers, used to help subsidize service in rural areas where low population density means higher costs to serve. AT&T agreed to no longer accept KUSF funds (about $5.2 million). The rural telephone companies were capped at $29 million in KUSF funding, and Century Link, the second largest local carrier in Kansas, was capped at $11.4 million. Further, competitive wireless carriers will have all KUSF funding eliminated over four years.

One key provision was added late. The bill makes clear that if the rural telephone companies lose Federal Universal Service money, they cannot request increased KUSF support. This should restrict any future growth in the KUSF fund.

CURB was one of the only opponents of this bill. The bill was written by the telephone companies for the telephone companies. The bill is good for telephone companies. The bill is not good for Kansas consumers. CURB does not believe that it is smart to hand over to AT&T the ability to simply turn off rural customers and force them to use cell phones, to allow AT&T to charge whatever it chooses. Nor is it smart to eliminate all consumer complaint and fraud protection. Ultimately, only five legislators agreed with CURB.

CURB Legislative testimony on the bill can be read at: http://curb.kansas.gov/legislative/

Call **211**
for information about obtaining assistance with utility bills from agencies and programs associated with the United Way in Kansas.

Howison Heights increase

(Continued from p. 1)

the utility filed a request for a rate increase in late 2011. An attempt by accountants from CURB and the KCC to audit the utility yielded little detail but raised significant concerns. Howison's books were a mess, the utility is deeply in debt, its assets aren't insured and it is behind on various taxes. Further, Howison's owner, who owns other, non-utility businesses, wasn't keeping separate books for each business. It was impossible to tell whether his loans were spent on utility improvements or his other businesses. Further, it appears that he also paid personal expenses out of business accounts.

The KCC ordered Howison to get its books in order, to retain six months of all receipts and invoices, to pay its taxes and obtain insurance. Howison withdrew its rate increase request and announced its intention to enter into negotiations for sale of the utility to the adjacent rural water district. The owner later reported that they couldn't come to an agreement on the sale.

Now the bank that is owed almost $400,000—almost four times the book value of the utility's assets—wants to foreclose. In response, the KCC opened a docket to investigate "Howison's ability to provide sufficient and efficient service." CURB agrees with the KCC Staff's assertion that "Howison Heights is in dire financial condition."

However, CURB did not agree that Howison should be granted an interim rate increase pending final resolution of its rate case application that was filed on March 18. The utility is requesting an increase that would double its customers' rates, but has yet to demonstrate that it is willing or able to address the concerns raised in the previous docket. So far as CURB can ascertain, Howison continues to mingle utility funds with personal and other business accounts, has not paid overdue taxes or water fees, and has not furnished proof of insurance. In fact, the owner has admitted that he doesn't even know how much he owes the state and hasn't asked.

CURB is also concerned that Howison is financially un-able to guarantee that customers will receive refunds if the KCC's final order grants Howison less than the full amount of the increase request-ed. With a foreclosure action pending, and conditions ripe for bankruptcy, all guarantees are off the table.

But despite all of these concerns, on April 17, the KCC allowed Howison to double its rates for the interim until the KCC's final order is issued.

CURB has intervened in both Howison dockets and will do our best to advocate for the 60 customers who may be at risk of losing their water service.

KCC Docket 13-HHIW-460-GIV and 12-HHIW-570-RTS

Westar increase

(Continued from p.1)

Westar's filing was made as an "abbreviated" rate case, with much of the data based on last year's major rate case. Most of the costs requested for recovery relate to ongoing environmental upgrade projects at the LaCygne coal plant, which is co-owned with KCPL.

Westar, in this abbreviated case, will likely receive the same rate of return as it was awarded in the last rate case, which was 10%. If so, Westar customers would pay a higher return on the LaCygne project costs than the customers of KCPL, who are paying a 9.5% return.

Recognizing the negative impact that its proposal will have on low-income customers, Westar has also proposed creating a fund to help its poorer customers meet their electric bills. However, we have no idea whether the fund will be sufficient to help all the customers who will need assistance.

The money for the fund would come out of the profits on off-system sales, which are currently credited to customers through the energy cost adjustment. In other words, it would be funded with money that would otherwise be used to reduce the per-unit cost of energy to customers. Westar's proposal is to have a third-party administrator handle the low-income assistance.

Westar's proposed increase of $31.7 million is not the only increase this year. Westar already has approval for a $9.1 million increase in transmission-related costs that will be passed through to customers via the Transmission Delivery Charge; it is also seeking $27.2 million more that will pass through the environmental surcharge, and $0.5 million more through its energy-efficiency surcharge.

If Westar gets what it's asking for in this case, it will have received approximately $500 million in increases since 2009. We expect a lot more people will be standing in line to receive utility payment assistance by the time this case is resolved.

Of course, CURB has intervened in this case and will be filing testimony later this year. Public hearings on this increase have not been scheduled as yet. We'll keep you posted on the locations and times when that information becomes available. You can also watch for information on the hearings in your bill inserts.

CURB reminds customers that your participation in fighting rate increases is a vital part of the process. Write the KCC; write your legislators; encourage your friends and neighbors to do the same. Attend the public hearing in your area and let the KCC know what you think. CURB cannot do it alone; customers must express their opposition in order for CURB's arguments on their behalf to be taken seriously by the Commission. We need you to help us keep electric rates reasonable.

KCC Docket No. 13-WSEE-629-RTS

KCC grants $370,000 rate increase for MKEC Lane Scott customers based on non-existent debt

On April 3, 2013, the Kansas Corporation Commission approved a $370,000 rate increase settlement reach between Mid-Kansas Electric Company LLC (MKEC) and Commission Staff for the certificated territory serviced by Lane Scott Electric Cooperative (Lane Scott).

CURB opposed the settlement because it was excessive and not based on the credible evidence that historically has been required by the Commission to support an increase.

MKEC requested a $510,915 rate increase using a traditional rate base/rate of return methodology. Both Staff and CURB filed testimony using the same traditional rate base/rate of return methodology, with Staff recommending a $31,334 rate increase and CURB recommending a $48,888 rate increase. Staff also utilized a Times Interest Earned Ratio (TIER) calculation based on what Staff characterized as “de facto” debt, and under this analysis recommended a $312,310 rate increase.

At the evidentiary hearing held at the end of January, CURB presented evidence through MKEC and Staff witnesses demonstrating that Staff’s TIER analysis was flawed and based on non-existent debt. With respect to the rate base/rate of return analysis, CURB demonstrated that if the KCC adopted two major adjustments made by both Staff and CURB and an adjustment uncontested by MKEC, the result would be a revenue requirement between $146,000 and $167,000. This result indicates that the $370,000 settlement was from $200,000 to $224,000 more than was necessary or reasonable.

The Commission disregarded this evidence and approved the $370,000 rate increase proposed in the settlement. CURB has filed a petition for reconsideration, but given the little attention that was given to the evidence in the record, CURB has only faint hope that the Commission will reconsider its decision.

KCC Docket Nos. 12-MKEE-410-RTS

Southern Pioneer wants formula rates

Southern Pioneer Electric filed an application with the KCC on January 8 for permission to adopt a formula rate mechanism that would allow it to raise rates without a traditional rate case for the next five years. Southern Pioneer is a non-profit corporation owned by cooperative Pioneer Electric, which is a subsidiary of Mid-Kansas Electric Company, which in turn is owned by Sunflower Electric Power Cooperative. (Got that?)

With this mechanism that the utility has dubbed the “Debt Service Coverage” rate-making plan, Southern Pioneer would adjust rates based on a formula that would allow the 100% debt-financed utility to meet its cost of service, pay down its debt and add equity to its capital structure. In other words, the mechanism would allow the utility to collect enough money from customers to build a generous cash cushion, something the company says that its lenders will require before they will agree to Southern Pioneer becoming a stand-alone utility separate from its parent coop.

Beyond our concern that the cushion the company wants is too generous, CURB is also concerned that the proposed mechanism will adjust rates based on the company’s revenue projections, rather than on actual revenue numbers. Although the company proposes a cap on potential increases, and also will not adjust rates if the projections indicate that revenues will be within a given range of the year’s goal, there’s little chance that rates will be going anywhere but up, up, up.

The company is proposing a 90-day turnaround for Commission approval of annual rate filings under this plan—almost three times faster than a normal rate case. Only if the KCC Staff finds alleged deficiencies and the company’s response doesn’t satisfy the Commission would the Commission then be able to suspend the proceedings and proceed on a normal 240-day schedule for completing its investigation into the request.

CURB views with skepticism any proposal that reduces scrutiny of rate increase re-

quests, and a 90-day deadline will certainly reduce scrutiny. Virtually every rate case application contains errors and omissions, and evidence that requires further explanation. It's sometimes all we can do to get done in 240 days. Furthermore, under this proposal, CURB would have virtually no opportunity for meaningful discovery, and too little time to prepare effective responses to filings made by Staff and the utility. Such accelerated proceedings deprive customer advocates of their ability to protect the interests of their clients.

Reduced scrutiny also provides opportunities to the utilities to pad their increase requests without being detected. Further, unreasonably short deadlines for decisions create opportunities for the utilities to disadvantage the other parties with unresponsive or tardy responses to discovery requests.

Although the traditional ratemaking process often seems slow and cumbersome to those who don't comprehend how complex it is, it's much less costly than the potential cost of failing to monitor whether our money is being spent prudently. Allowing a utility to tell us how much it is going to increase our rates while at the same time reducing the scrutiny of its claims is like handing the utility a blank check.

Needless to say, we'll be opposing this proposal. We'll follow up in a later issue with a report on the KCC's decision in this case.

KCC Docket No. 13-MKEE-452-MIS

Kansas Renewable Energy Standards survive challenge

Bills introduced this session in both the House (HB 2241) and the Senate (SB 82) sought to alter the requirements of the Kansas Renewable Energy Standards (RES) Act. The Kansas RES was passed in 2009 and requires utilities in the state to meet certain percentages of peak demands by using renewable energy. Under the RES, utilities had to have 10% renewables by 2011, 15% renewables by 2016 and 20% renewables by 2020.

The Senate bill this session attempted to simply move the compliance dates back, moving the 15% requirement from 2016 to 2018 and moving the 20% requirement from 2020 to 2024.

The House bill moved the 15% compliance date back and eliminated the 20% requirement entirely.

Proponents of the bills argue that the renewable mandate forced utilities to buy unnecessary energy at high prices, raising consumer bills. However, opponents, mainly from the wind industry, pointed out that over $3 billion in capital has been invested in Kansas by wind producers, creating jobs and economic development in rural Kansas. The current RES law supports that investment, and to remove that support sends a strong message that wind developers are no longer welcome.

When the votes were finally in, the Senate bill went down to defeat. The House bill was sent back to committee for further hearings. Given that the end of this legislative session is near, it is not likely the house will take up the RES bill again this year. The bill will remain in committee and may be addressed again next session.

CURBside

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KCC dodges disclosure of info on cost of renewables

Last year, the Kansas Legislature amended the Kansas Renewable Energy Standards (RES) Act to include a requirement that the KCC make an annual report to the legislature on the impact of the costs of meeting the state's RES requirements on statewide electric retail rates. The RES imposes minimum requirements on Kansas electric utilities to include in their generation mix energy generated using renewable resources, such as wind, solar power and hydropower. The legislature wants to know if the requirement to utilize renewable resources has increased customer electric rates—and if so, by how much.

In response to this mandate, the KCC opened an investigative docket to gather information from the utilities on the costs of meeting the RES requirements. All of the state's electric utilities under the KCC's jurisdiction were ordered to file this information with the KCC no later than January 16, 2013. Additionally, the KCC requested the Kansas City Board of Public Utilities (BPU), which is not subject to the KCC's jurisdiction, to file the same information with the KCC.

The KCC also granted intervention to CURB without any limitations on its participation in the docket.

All seven utilities filed the requested information on January 16. However, only the Kansas Electric Power Cooperative (KEPCO) served CURB a copy of its report. None of the filings were filed in the original investigation docket because the KCC Staff unilaterally opened seven dockets which Staff dubbed "compliance dockets" and filed the utility's reports in those dockets. And because all of the utilities except for KEPCO claimed their filings were confidential, none of the filings except KEPCO's are available for public scrutiny. No redacted copies were provided.

As a result, CURB had to petition to intervene in the seven dockets as well as request protective orders so that parties other than Staff can see (but not disclose) the allegedly confidential information.

The Commission summarily denied CURB's motions for protective orders in these dockets and denied our petitions.

This deviation from typical Commission procedure is highly unusual and is inconsistent with the KCC's own rules and the state's rules of civil procedure in administrative proceedings.

Here's how these things are normally handled: The Commission itself must issue an order to open a docket. A party must serve all of the parties to a docket when it makes filings with the Commission. When the Commission opens a docket closely related to the subject of another docket, it routinely makes them parties to the new docket. The Commission requires parties who do not want to disclose confidential information to provide redacted versions of their filings that can be made available to the parties and the public, and must limit redactions solely to the information that is truly confidential. The utility must also provide a justification for each redaction within the filing. The Commission routinely grants parties' motions for protective orders in expedited fashion. When the Commission intends to adopt unusual procedures in a docket, it issues an order spelling out what the procedures will be going forward.

But nothing is normal about what's been done here. Compliance dockets are normally used for two purposes: to accept routine filings that are required by law to be filed with the Commission, and to accept filings that a party was ordered to make after a final order is issued in a proceeding. But compliance dockets (which the KCC consider proceedings in which other parties cannot fully participate) are not normally used to gather evidence on a matter of public interest that is to be reported to the legislature. There is a strong public interest in the information being collected. We'd all like to know whether our state's commitment to increasing the percentage of electricity produced with renewable resources is contributing to higher electric rates, and if it is, how much it is costing us. It's a fair question that should be answered—in the open. We are wondering how the public will be able to judge the objectivity of the KCC's

report without access to the evidence.

KCC Docket Nos. 12-GIME-391-GIE, 13-KCKE-468-CPL, 13-SEPE-467-CPL, 13-MDWE-466-CPL, 13-EPDE-465-CPL, 13-WSEE-464-CPL, 13-KCPE-463-CPL and 13-KEPE-462-CPL.

Black Hills' GSRS approved

On February 8, the KCC approved an increase in Black Hills Energy's Gas System Reliability Surcharge (GSRS).

The GSRS is a line-item surcharge designed to provide recovery of costs expended between rate cases for safety-related repairs and replacements of natural gas delivery infrastructure.

Costs attributable to moving gas lines for public works projects are also eligible for GSRS recovery. By statute, utilities are limited to adding no more than 40 cents per month to the surcharge each year.

Black Hills hasn't raised base rates since it purchased Aquila's Kansas gas operations in 2007. The company agreed to a five-year rate moratorium as a condition of the Commission's approval of the transaction. The GSRS, however, isn't subject to the rate moratorium. However, unless Black Hills filed a rate case sometime in the next year, the company will have to discontinue collecting the GSRS. Utilities with GSRS surcharges must file a rate case at least every five years.

As of this writing, Black Hills hasn't indicated when it plans to file for its next base rate increase.

KCC Docket No. BHCG-404-TAR

KCC opens investigation into rate design methodology

On April 10, the Commission opened an investigation intended to review the methodologies used to determine the allocation of rates among the customer classes, particularly the usage of class cost-of-service studies.

Class cost-of-service studies are used by utilities and regulators to analyze all the costs that the utility incurs in providing service to its customers, and to determine what percentage of these costs should be borne by each class of customers. Once the allocation of costs is determined, then the rates are designed to recover that amount from that particular class of customers over the course of a typical year.

Each element making up the costs of the utility is allocated, at least theoretically, to each customer class in proportion to their impact on those costs. The analysis is an attempt to insure that "cost-causers are cost-payers"—which is the fundamental principle of designing utility rates.

However, in recent years, there has been a trend to utilize rate design as a tool to accomplish other goals beyond the simple goal of assigning the costs to the cost-causers. A prime example is the elimination of the discounts to customers with all-electric homes. These discounts were developed to help create a stable year-round market for surplus power and to enable electric utilities to compete more effectively with natural gas utilities for winter heating revenues.

Now, however, the costs of building power plants and the costs of environmental mitigation are skyrocketing, and there is a general consensus that discounts should not be offered to those whose high usage is a major factor contributing to the need for new generation plants.

As a result, the KCC has moved in recent years to approve what are called "inclining block" rate designs. The first block of electricity used—say 900 kwh—is priced at or below actual cost, in order to provide all customers an affordable minimum block of electricity. That lower-priced first block is generally designed to be a sufficient amount of electricity for the average household to meet basic electricity needs for the month. The next block of kilowatt/hours is priced slightly higher, and so on.

This kind of rate design is an effort to allocate more costs to those who are most responsible for incurring them, but does not necessarily allocate them accurately, because it is also an effort to encourage all customers to conserve electricity and reduce the need for new generation plants, or at least delay the need for them further into the future. The inclining-block

(See **Rate design,** *at p. 8)*

Rate design

(Continued from p. 7)

rate structure may or may not accurately reflect cost-causation on a dollar-for-dollar basis. The goal instead is to affect consumer behavior with the long-term goal of holding down rates overall and contributing to a cleaner environment.

Another rate design theory making the rounds is that by deeply discounting rates to large industrial and commercial customers, more businesses will choose to locate in the area and create much-needed jobs. Unfortunately, that approach also requires that the other customer classes pay much higher rates to make up for the discounts given to industry. That would make Kansas much less affordable to residents and small businesses that are already struggling to make ends meet in this depressed economy. Such proposals also violate the principle that each customer class should pay its fair share of the costs of serving that class.

The drawbacks of using utility rates as carrots to entice businesses to Kansas are evident in a similar proposal included in Westar Energy's newly-filed rate increase request. Westar proposes to radically decrease rates for the medium and large commercial classes and radically increase rates for residential and small business classes. At the same time, the company also proposes to create a fund for low-income customers who cannot afford the increase—this fund would also be paid for by Westar's customers. At least Westar recognizes that this proposal would create serious financial hardship for many of its customers.

CURB is not convinced that making Westar's residential and small business customers foot the entire bill for state economic development measures that may or may not work is fair, equitable, or even permissible under current law.

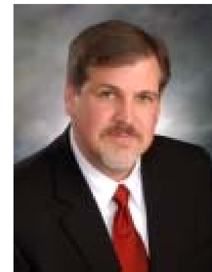
Legally, regulated utility rates must fall within a zone of reasonableness, not only to the utility but to its customers. Traditionally, that has meant that customers should pay rates that allow the utility a fair opportunity to recover its costs of serving those customers, plus a reasonable profit on its shareholders' investment in plant. While the rates must also be fair, in legal parlance, "to the public generally," there's no legal precedent for making one class of customers foot the bill for the cost of a public good that accrues to all.

The Commission has invited the parties to comment, as a threshold question, whether this investigation is even necessary. It's not clear what will happen with this docket if the parties show no interest in exploring the value of alternative proposals for allocating rates among customer classes.

Comments from the parties are due to be filed in mid-May. We'll keep everyone posted as the investigation progresses.

KCC Docket No. 13-GIMX-606-GIV

Consumer Counsel's



CORNER

Today, April 23, 2013, I drove to work through sleet and snow. I love Kansas weather. You just never know what you are going to get from one day to the next. However, on this day, it took me back to winter. And winter is usually a difficult time here in the Corner.

Every January, in the cold dark months of the year, the Kansas Legislature reconvenes. For me, this starts a four-month period where I work two jobs; my normal job here in the office and then a second job covering all the agency's legislative responsibilities.

As a state agency, CURB is required to draft fiscal impact statements on proposed bills as well as go through the legislative budget review process. Even though we are funded on your utility bill, and not from general tax dollars, we are treated like every other state agency. That requires days of subcommittee hearings and committee hearings on our budget. On balance, during my tenure running CURB, the legislative budget committees have been supportive of what we do and appreciative of our efforts.

Then there is testifying in committee on proposed new laws. Last year we beat back an attempt by the natural gas utilities to get interim rate increases. The gas companies wanted to be able to increase your rate when they filed a rate case instead of waiting until the case was over and decided by the Commission. It was a good legislative victory for CURB.

This year was not as good. I spent most of my time on the bill brought in by AT&T and the other Kansas telephone companies. AT&T wanted to rid itself of all regulatory oversight—no price controls, no requirement to serve customers in its territory, no billing standards, no quality of service standards, no consumer protecttion or fraud oversight, and no requirement to serve low-income customers through the Kansas Lifeline program.

I suppose, on one level, I can understand why AT&T, as a business, wants that freedom. That doesn't mean these changes are good for Kansas consumers.

The upshot of the bill is that in rural areas, AT&T will now be allowed to turn off its wireline system and simply use wireless phones to serve customers. Customers will not have a choice in the matter. By passing the bill, legislators essentially said "wireless is good enough in rural areas." I suppose time will answer that question.

The bill also made some reductions to the Kansas Universal Service Fund (KUSF). The KUSF is paid for by fees on our telephone bills and it helps fund service in rural areas, where it is more expensive to maintain wireline service. KUSF funding, while capped in the bill, was still maintained. So, in the same bill that legislators said that "wireless is good enough in rural areas", at least for AT&T customers, they also maintained a fund to subsidize wireline service to all the other rural customers that are not AT&T customers. That could make for some interesting fence post conversation depending on where the service territory dividing lines are in the rural areas.

Finally, the bill restricts the KCC to "administering" consumer complaints and "investigating fraud". By administer, I think that the KCC will simply log your complaint and pass it on to the Attorney General or the Federal Communication Commission (FCC). Have you ever tried to call the FCC about a problem with your cell phone? Good luck. And while the KCC can investigate fraud, it does not appear that the KCC can do anything if it finds fraud.

I spent most of my time testifying in committee about how devastating the loss of these fundamental consumer protections will be. We asked the legislature to at least study the issues for one year before making such a large shift in policy. But in the end, AT&T got what it wanted.

Regardless of the sleet and snow today, I do know that by the end of the week the sun will shine, the temperatures will warm up, the grass and flowers will start their spring bloom and the darkness of winter will lift. This year's legislative season will be wrapping up, too.

One final note. Westar has filed its rate case and is proposing a huge shift of cost onto residential and small business customers so that large business customers can have lower rates. To beat this proposal back, we are going to need you, and all your friends, and all their friends to be active in this case. That means organizing, making telephone calls and writing letters. We'll need to take our concerns to the KCC and also our local legislators. Please look for information about public hearings or other organizing activities. We'll keep you posted.

—Dave Springe

DO YOU KNOW HOW TO CONTACT YOUR REPRESENTATIVES AT THE LEGISLATURE?

If you know the name of your representative, see this link for contact information:
http://www.kslegislature.org/li/
(Click on "Find your legislator")

If you want to learn which House and Senate districts you live in, see this link:
https://myvoteinfo.voteks.org/

(HINT: This information should also be printed on your voter's registration card)

FINALLY: Most county election offices will assist you in identifying your representatives and the districts you live in. Try their websites or give them a call!

MKEC seeks approval to spin down certificates of convenience to its 6 retail utility owners

On January 7, 2013, Mid-Kansas Electric Company LLC (MKEC) and its six retail electric utility owners filed an application with the Commission seeking to spin down MKEC's certificate of convenience and necessity to the six retail electric utilities. In addition to their request to spin down the certificate, MKEC and the six electric utility owners have requested other relief, including a request to abrogate the right of MKEC Lane Scott customers to vote whether the electric services and rates of the six MKEC utility owners should be granted or whether they wish to remain regulated by the Commission.

CURB filed a petition to intervene, which was granted with a specific finding that CURB met the requirements for intervention. No party objected to CURB's intervention nor sought reconsideration of the Order granting CURB's intervention. Despite the absence of any objection to CURB's participation in the docket, the Commission required all parties to file briefs on CURB's authority to represent residential and small commercial ratepayers.

It should be noted that the spin down of MKEC's certificate was contemplated by the parties in the Aquila acquisition docket, which resulted in a settlement between the parties to that docket, including CURB. CURB specifically negotiated the right of the former Aquila customers to vote whether or not the utility created by the spin-down should remain regulated by the Commission.

Briefs were filed by the parties in March, and oral argument was held on April 5th. The Commission's decision is pending.

KCC Docket Nos. 13-MKEE-447-MIS

A Regulatory History

Editor's note: The excerpt below is taken from a legal brief filed by CURB in the MKEC certificate spindown docket. It provides a general history of how the regulatory process, over 20 years, dealt with the sale of Centel to Aquila and then subsequent sale of Aquila to MKEC, and how the customers of those utilities are ultimately bearing the burden of those transactions.

Mid Kansas Electric Company, LLC ("MKEC") has six owners, Prairie Land Electric Cooperative, Inc., Victory Electric Cooperative Association, Inc., Western Cooperative Electric Association, Inc., Lane-Scott Electric Cooperative, Inc., Wheatland Electric Cooperative, Inc., and Southern Pioneer Electric Company

The Kansas Corporation Commission (Commission) appears to be generally focused on the notion that electric cooperatives are member owned and that members vote and control the cooperative. The Commission appears to equate this voting with a reduced need for oversight of member-owned cooperatives. In the current case, CURB believes that a review of the broader background that led up to this case may be helpful.

The customers at issue in the current case have been through several transactions, paid large acquisition premiums, lost valuable assets and are now facing a future of higher rates, and at no point in this process were these customers afforded the opportunity to vote on these transactions affecting their electric service. The case today is not the result of member voting and self-determination. The case today is the result of a regulatory process and regulatory decisions that did anything *but* ask customers what they thought was in their best interest.

In 22 years, the retail customers of MKEC have been sold twice, for a total acquisition payment of over $100 million. MKEC customers, having never had a say in whether they should be sold, are now paying millions of dollars of acquisition costs in rates. MKEC customers also lost, in its entirety, an 8% ownership interest in the Jeffery Energy Center (JEC), an extremely valuable asset. Now, MKEC customers are being asked to pay higher rates as MKEC, through its members, has to make material upgrades on the electric system it purchased at a premium price.

MKEC distribution members

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have uniformly asserted that the WPK system it purchased for a $45 million acquisition premium was not well-maintained and now needs to be rebuilt.

At no point were Centel/Aquila/MKEC retail customers asked their opinion about paying millions of dollars in acquisition premiums in rates, simply because their utility and the purchasing utility agreed to buy/sell assets at a premium price. At no point were Centel/Aquila/MKEC customers asked if they thought losing ownership in the JEC plant was a good idea. Worse, at the end of the lease, MKEC is going to have to increase customer rates again to buy another power plant to replace the JEC plant. Finally, at no point were Centel/Aquila/MKEC customers asked if they were interested in paying higher rates to rebuild an electrical system that MKEC members mistakenly thought was worth $45 million more than the book value of those assets.

In fact, none of the people that actually made these decisions and actually voted on these acquisitions is paying higher rates as a consequence of the decisions. And none of the regulators that have approved these transactions have to live under the rates that resulted from the decisions.

Centel to Aquila acquisition

On September 18, 1991, the Commission approved the acquisition of the assets and customers of the Centel Corporation (Centel) by Utilicorp United, later to be known as Aquila or WPK. Centel's Kansas electric properties consisted of small widely scattered service areas throughout the central third of the state of Kansas. The largest communities served by Centel were Dodge City, Liberal and Great Bend. These same Centel customers were later sold by WPK to MKEC.

WPK paid a $56 million acquisition premium for Centel and its customers. Before the transaction, Centel owned an 8% undivided interest in the Jeffery Energy Center (JEC) coal plant. WPK's interest in the JEC property had a net book value of $58.6 million at the time of the transaction. As part of the transaction, Centel sold its interest in JEC to a financing entity for $114.6 million, which then leased the property back to WPK to supply power to its customers. Instead of outright ownership of a $58.6 million coal plant supplying power for the WPK customers, WPK was now supplied the same power it previously owned under a 27-year lease, with a price designed to recover $114.6 million, plus interest. WPK also retained a right to repurchase its JEC interest at the end of the lease.

WPK sought to recover the full lease payment, including the acquisition premium, from its customers. KCC staff calculated that about $5 million of the annual JEC lease payment was to pay for the $56 million acquisition premium. In a January 19, 2000, Order, after a contentious trial, the Commission allowed WPK to charge customers $2.35 million of the acquisition premium through the JEC lease. WPK's customers were now paying for the power plant they used to own, plus an additional $2.35 million per year simply as a cost of being sold. The Commission believed there were offsetting savings, but CURB found no evidence of savings.

Centel's customers were not asked whether they would like to be sold to Utilicorp, were not asked whether they thought they should pay higher rates for the pleasure of being bought, were not asked whether they thought losing JEC was a good idea. Customers didn't get to vote.

WPK to MKEC acquisition

On February 23, 2007, the Commission approved the acquisition of the assets and customers of WPK by MKEC. MKEC paid an estimated $45.5 million acquisition premium to purchase the WPK assets. According to MKEC, the acquisition premium should be assigned to, and paid through the distribution assets of the MKEC members and not through the generation and transmission assets of MKEC. Since the MKEC distribution members financed the acquisition with debt, and the retail rates of most of the members are set based on debt service coverage ratios or TIER, to the extent the acquisition premium was paid for with debt, the MKEC retail customers are paying for the $45.5 acquisition premium in rates.

Further, according to MKEC

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at the time of the transaction, customers were expected to pay the full JEC lease payment. Paying the full JEC lease payment, if set at the same level as that paid by WPK, means that MKEC customers are also now paying the full $56 million acquisition premium in generation rates from the Centel/ WPK transaction, in addition to the $45 million acquisition premium in distribution rates in the WPK/MKEC transaction.

Westar Energy exercised a right of refusal over the transfer of the JEC lease from WPK to MKEC, so Westar now retains ownership of the 8% JEC interest and is leasing power to MKEC throughout the term of the original lease. The overall transaction price MKEC paid to WPK was reduced by approximately $17 million to reflect this change, but it is unclear whether the JEC lease price changed from the level paid by WPK and the level charged by Westar. At the end of the lease term, ownership of the 8% JEC interest now reverts to Westar Energy, and not back to the MKEC customers that originnally owned the JEC interest.

MKEC customers could be paying rates nearly $100 million higher (between $5-$10 million in annual amortization) simply because they were sold twice. These customers have lost the value and service after 2019 of the 8% JEC interest they once owned. And since this power will have to be replaced at the end of the JEC lease term, MKEC customer rates will likely increase again to purchase another plant.

There were no customer votes before either of these transactions.

Finally, the MKEC distribution members have all come before the Commission to increase retail distribution rates. Each member has made the case that it is currently, or will be soon, incurring substantial costs to rebuild the WPK distribution assets each acquired in the transaction. Each member in its rate case has commented on the generally poor condition and lack of maintenance on the WPK assets, leading one to wonder why these MKEC distribution members voted to pay a $45 million acquisition premium for such a poorly maintained system. Regardless, it is not the members that voted to buy these assets whose rates are going up to fix the problem. Rather, it is the old Centel/WPK retail customers, sold twice without a vote, whose rates are going up to fix this problem. And that is on top of the acquisition premiums being paid in rates.

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