

CURB News

News from the Watchdog for Residential and Small Commercial Utility Consumers

March 2021



THE CITIZENS' UTILITY RATEPAYER BOARD OF KANSAS

Extreme Cold in February Caused Temporary Energy Crisis

A State of Disaster Emergency was declared by Governor Kelly on February 14, 2021. Governor Kelly issued the declaration due to wind chill warnings and stress on utility providers, noting that subzero temperatures were causing increased energy demand and natural gas supply constraints throughout Kansas, and utilities were experiencing wholesale natural gas price increases from 10 to 100 times higher than normal. The natural gas price spike also affected electric utilities, as the most common fuel source for peaking power plants is natural gas. Additionally, Kansas utilities were facing potential reliability issues related to the prolonged arctic temperatures.

In response to the Governor's State of Disaster Emergency declaration, on February 15, 2021, the Kansas Corporation Commission (KCC) opened Docket No. 21-GIMX-303-MIS (21-303) by the issuance of an Emergency Order.

Pursuant to K.S.A. 77-536(a), the Commission exercised its powers to protect the public from immediate danger to health, safety, and welfare. The Commission directed all jurisdictional natural gas and electric utilities to coordinate efforts and take all reasonably feasible, lawful, and appropriate actions to ensure adequate transportation of natural gas and electricity to interconnected, non-jurisdictional Kansas utilities. Jurisdictional natural gas and electric utilities were ordered to do everything necessary to ensure natural gas and electricity service continues to be provided to their customers in Kansas.

It is important for ratepayers to be aware that the extreme weather event from February 2021 has not yet fully impacted rates and bills. While many utility customers may have already received higher than average bills for February due to increased usage for heating during the extreme cold, the effect of the price spike of natural gas has not yet been fully calculated or applied to rates.

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MAJOR CASES WE ARE CURRENTLY FOLLOWING:

- **COVID-19 DOCKETS**
- **COLD WEATHER CRISIS DOCKETS**
- **18-WSEE-328-RTS** —
EVERGY CENTRAL'S DG RATE DESIGN
- **19-KCPE-096-CPL** —
EVERGY'S CAPITAL PLAN AND IRP
- **21-EKME-088-GIE** —
EVERGY'S SUSTAINABILITY TRANSFORMATION PLAN

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Accordingly, the Commission authorized every jurisdictional electric and natural gas distribution utility that incurred extraordinary costs associated with ensuring that their customers (or the customers of interconnected Kansas utilities that are non-jurisdictional to the Commission) continued to receive utility service during the unprecedented cold weather event to defer those costs to a regulatory asset account. Such costs include, but are not limited to: the cost of procuring and transporting natural gas supplies for jurisdictional utility customers, costs associated with jurisdictional utilities coordinating and assisting non-jurisdictional utilities with the transportation of gas supplies, and any other reasonable costs necessary to ensure stability and reliability of natural gas and electricity service. These deferred costs may also include carrying costs at the utility's weighted average cost of capital. All deferred costs shall be segregated by detailed cost category and shall contain enough detail for the Commission to perform a subsequent review for prudence and reasonableness. This deferral is for accounting purposes only.

Each utility bears the burden of proof that the costs: (1) would not have been incurred but for the 2021 Winter Weather Event, and (2) are just, reasonable, and necessary to provide utility services during this extraordinary event. After all costs have been accumulated and recorded, each jurisdictional utility has been directed to file a compliance report in the 21-303 Docket detailing the extent of such costs incurred, and present a plan to minimize the financial impacts of this event on ratepayers over a reasonable time frame.

As part of a Commission Order issued March 9, 2021, separate investigatory dockets have been opened for each utility that falls within the jurisdiction of the KCC. These Dockets are:

Electric Utilities:

- 21-EKME-329-GIE for Evergy
- 21-EPDE-330-GIE for Liberty-Empire
- 21-SPEE-331-GIE for Southern Pioneer

Gas Utilities:

- 21-AEGG-335-GIG for American Energies Gas Service
- 21-ATMG-333-GIG for Atmos
- 21-BHCG-334-GIG for Black Hills
- 21-KGSG-332-GIG for Kansas Gas Service

CURB has intervened in and will be actively involved in the 21-303 docket as well as each of the investigatory dockets. We are looking into the possibility of federal relief. We are also visiting with other state's ratepayer advocates to learn how they are working through this crisis. We hope our efforts will yield equitable results for ratepayers.

Even with whatever relief that utilities and federal or state governments could provide, CURB understands that, unfortunately, some residents will still have trouble meeting utility bills. While CURB is unable to provide direct government assistance for residents who may be struggling to pay their utility bills, CURB's website has a help page listing some organizations that may be able to provide financial assistance for those in need of help on utility bills, accessible at <https://curb.kansas.gov/links.php>. Additionally, the KCC's website

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contains a page with additional helpful links and numbers to organizations and programs that may be able to help, accessible at <https://kcc.ks.gov/public-affairs-and-consumer-protection/utility-weatherization-related-assistance-programs>.

KCC Rejects Evergy's Request to Implement Minimum Bill or Grid Access Charge for Residential Solar (Docket No. 18-WSEE-328-RTS)

On February 25, 2021, the KCC issued an Order in Docket No. 18-WSEE-328-RTS, addressing Evergy Kansas Central's rate design for residential distributed generation (DG) customers (i.e., customers who generate their own energy, typically via solar panels). This case was re-opened in response to the Kansas Supreme Court's April 2020 decision which overturned the KCC's decision to implement a three-part rate design with a demand charge for a new customer class established for solar customers. The Court's basis for the decision was that Kansas law prohibited additional charges for services for customers using renewable generation sources compared to customers who rely exclusively on the grid. The Court ruled that such pricing for identical services for different classes of customers amounted to unlawful discrimination, especially in the face of viable alternative rate designs to address the existence of possible cross-subsidies between the classes.

Evergy proposed two alternative rate designs to comply with the Kansas Supreme Court's Order: a Grid Access Charge (GAC) and a minimum bill. The GAC would assess to all residential customers a new charge based on the amount of installed DG capacity a person has. Non-DG customers who do not use solar energy for their power needs would effectively be charged \$0 while customers in the RS-DG class would see an increase in their bills based on how large their DG systems are. Alternatively, the minimum bill proposal called for the implementation of a \$35 minimum for all customers. Customers whose bills were lower than \$35 in a month would see an increase to the minimum bill level. Evergy indicated that the pricing associated with either rate design would likely be increased in the future to deal with additional costs to serve DG customers. CURB stood opposed to both alternatives based on the disparate impacts each would have on non-DG customers and the high potential for additional challenges under Kansas law.

The KCC's Order rejected both proposals on grounds similar to CURB's opposition. The KCC ruled that Evergy had not met the burden of proof nor provided sufficient evidence to support the use or calculations of the GAC to address cross-subsidy issues. Despite the rejection, the KCC indicated that it is willing to revisit the topic after additional study. The KCC was receptive to arguments against the minimum bill from CURB and solar energy advocates. The KCC rejected the minimum bill proposal on the grounds that the use of the minimum bill requires an unnecessarily disruptive new rate design to address a problem related to only approximately 1,100 DG customers out of the 600,000+ total Evergy customers. The KCC also rejected a request from solar advocate groups to refund all DG customers the amounts charged under the unlawful demand charge. The KCC reasoned that a refund would be difficult to administer in light of the number of customers who actually benefited in the past and that there does not appear to have been an unreasonable windfall that benefited the Com-

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pany under the old rate design. As a result, the KCC ordered that all residential customers will be charged the same two-part rate that non-DG customers currently use. However, the RS-DG class will remain in order to track the number of DG customers in Kansas along with the existence of any cross-subsidies.

On March 12, 2021, solar advocates and utilities in this docket filed petitions for reconsideration in response to a number of the KCC's decisions. The solar advocates ask for reconsideration on two issues. They argue that refunds are, in fact, necessary in order to give effect to the Kansas Supreme Court's Order, rather than simply discretionary for the KCC to issue. The second issue is in regards to the decision to retain the RS-DG class. Solar advocates argue that by keeping DG customers in the RS-DG class, these customers are now ineligible to join in various programs and pilot rate schedules, such as Time-of-Use rates, because they are specifically opened to regular residential customer classes. In a response filed on March 18, Evergy has pledged to open those programs up to RS-DG customers in the near future.

The various utility companies joined together in their petition for reconsideration on three issues. First, the utilities request that the KCC clarify that its Order does not limit the use of differential pricing for "additional services" aside from the export of energy but also to "different services" provided by a utility. The second is whether the KCC intended to limit the scope of different prices for services to DG customers for only export-type services. The third issue involved is the acceptable cost methodology to calculate a new rate design for DG customers. The Utilities wish to clarify whether the KCC intended to make incremental costs the sole calculation method or if other approaches would be acceptable for future filings.

The KCC has yet to issue its ruling on the petitions for reconsideration. The KCC can choose to: deny the petitions and let its February 25 Order stand, grant the petitions and make any necessary modifications to the Order, or grant the petitions and set the case for further proceedings.

CURB is generally pleased with the KCC's Order, as it rejected Evergy's current rate design proposal. Generally, any reduction in usage or additional utility costs unique to DG customers would be covered by other ratepayers, however, the very small amount of solar customers currently on Evergy's system means the additional cost per customer is insignificant. More importantly, Evergy will likely be filing a new rate case in the next two years wherein we can determine a better way of ensuring any costs caused by solar customers are paid by them. Thus, any undue harm or benefit is very short-term and relatively insignificant. From CURB's perspective, the potential issues with having DG on Evergy's system did not warrant the implementation of new and complex alternative rate designs at this time. CURB is working with all stakeholders to pursue additional solutions and to gain legislative insight on these issues before the end of Evergy's rate moratorium in 2023 and their next rate case.

Legislative Update

CURB provided testimony on several key bills during the 2021 legislative session. A quick synopsis of proposed legislation and CURB's testimony includes:

House Bills:

House Bill (HB) 2145 would exempt the retail sale of electricity by public utilities for Electric Vehicle (EV) charging stations from the jurisdiction of the KCC. Specifically, the bill excludes from the definition of "public utility" entities that provide EV charging services if the electricity is purchased solely for that purpose through a retail electric supplier in the certified territory of such retail electric supplier as defined by K.S.A. 66-1,170. Deregulation of EV charging stations is akin to how gas stations that sell compressed natural gas are not regulated by the KCC. Unregulated EV charging service would be offered with fees set at the discretion of the station owners, influenced by market demand and competition. CURB filed neutral testimony on this bill, and it passed the House of Representatives on March 2, 2021, on a vote of 124 to 0. The Senate Utilities committee heard a companion bill (SB 133) on February 10, 2021, but did not take any action on that senate bill. On March 15, 2021, the Senate Utilities Committee heard HB 2145; it passed out this house bill favorably on March 16, 2021. CURB anticipates that the Kansas Legislature will enact HB 2145.

HB 2180 and companion bill (SB 80) would require any changes to electric rates for transmission costs to be approved through an electric utility's general rate case proceedings. CURB filed neutral testimony on HB 2180, recognizing the policy ramifications of the bill—in particular, that a utility's transmission costs are approved by the Federal Energy Regulatory Commission and, therefore, the Kansas Legislature had previously decided that those costs should be passed through to the consumer without laborious review by the KCC. The House Energy, Utilities and Telecommunications committee took no action on HB 2180. The Senate Utilities Committee took no action on SB 80.

HB 2181 would require the KCC to provide an annual report of regional utility rates to the Legislature. CURB filed testimony in support of this bill. The House Energy, Utilities and Telecommunications committee took no action on this bill. However, the Senate Utilities Committee heard a companion bill (SB 81). During that hearing, a number of Senators questioned whether the Kansas Legislature would find significant use from the annual report such that law should require it. Consequently, a stakeholder workgroup (in which CURB was a member) met to discuss the contents and timing of a report to be provided to the Kansas Legislature relative to Kansas electric utility rates compared to those in the geographic region surrounding Kansas. The workgroup was able to agree to a report to be furnished to the Kansas Legislature as a pilot project to determine how useful the data could be to the Legislature before law would require any such report. The KCC staff worked very diligently to do the legwork on this matter.

HB 2321, as initially introduced, provided that the governing body of any city having a population of 300,000 or more (currently only Wichita) shall have zoning and siting authority over urban electric transmission lines, as defined in the House Bill, located in that city. Before any utility (as defined in K.S.A. 66-101a) may begin construction of an urban electric transmission line, the utility must provide the infrastructure planning authority of the city with the preliminary construction plans of the urban electric transmission lines, showing among other things, the locations and dimensions of all poles and supporting facilities. CURB filed testimony in

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support of this bill prior to its being amended to provide that before an urban electric transmission line can be constructed, the electric utility proposing the urban transmission line shall conduct an open house for homeowners and tenants in the near vicinity of the transmission line. The bill defines urban transmission line as a transmission line of 2 ½ miles or greater, designed to transfer at least 69 Kilovolts but less than 230 Kilovolts of electricity, and traversing at least 2 ½ contiguous miles within the corporate boundaries of a city having a population of 300,000 or more. HB 2321, as amended, provides certain notice requirements pertaining to the open house and requires a member of the KCC to attend. The House of Representatives passed this bill 122 to 2. The Senate Utilities Committee heard this bill on March 17, 2021. It passed the bill out favorably on March 18, 2021. CURB anticipates that the Kansas Legislature will enact HB 2321. CURB did not offer testimony on HB 2321 subsequent to the amendment, recognizing that the bill was a product of negotiation and agreement between the city of Wichita and Evergy. At the heart of this bill, in CURB's view, was the aesthetic effect of very large transmission poles in residential neighborhoods. It is an important issue. Because Evergy testified that it had learned a valuable lesson through the public frustration brought about by its placing an urban transmission line (having 105-foot transmission poles) in a Wichita neighborhood, CURB hopes that further legislation will not be necessary. HB 2321 passed the Senate 40-0 on March 23, 2021.

HB 2367 would require the KCC to regulate certain transmission line wire stringing activities. CURB filed testimony in support of this bill because it will promote uniformity on wire stringing and maintenance by ensuring that the local governing body determines the appropriate rules and regulations. The House of Representatives passed this bill on March 2, 2021.

HB 2381 would establish a state energy task force to develop a comprehensive state energy plan. CURB filed testimony in support of this bill. In CURB's view, an energy plan is well overdue in Kansas. CURB testified that Kansas would benefit significantly from a comprehensive energy plan. Several states have comprehensive energy plans that outline their energy policies and ensure that stakeholders can consistently meet policy goals. An effective energy plan is essential to addressing Kansas' energy future in a comprehensive manner. In these regards, CURB noted that one very important aspect of HB 2381 is the express goal that Kansas energy becomes and remains affordable. After passing the House committee, the bill was removed from the House calendar.

Senate Bills:

Senate Bill (SB) 24, if enacted, would prohibit municipalities from restraining utility customers living within these municipalities to choose whether to use the retail provision of natural gas, provided the retail customer is not the municipality itself. CURB submitted neutral testimony on this bill, acknowledging those matters of customer choice and cost, as well as the environmental effect of the use of natural gas versus electricity (which may be generated in part by coal generating power plants) in heating homes, businesses and other uses are important policy considerations. Moreover, policies that restrain consumers from using natural gas to heat their homes has some impact upon the production of natural gas in Kansas, affecting a vital part of the Kansas economy. In particular, CURB urged the Kansas Legislature to consider the cost of heating homes with natural gas versus electricity relative to the energy burden that many Kansas low-income customers bear. SB 24

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passed the Senate 27 to 10. The House Energy, Utilities and Telecommunications Committee heard it on February 18 and March 16, 2021, and it passed favorably out of that Committee on March 18, 2021, with an amendment specifying that propane would be part of the definition of “utility service.” CURB anticipates that SB 24 will be enacted by the Kansas Legislature.

SB 245 would allow Kansas utilities subject to regulation by the KCC to file an application to securitize qualified extraordinary costs, as defined in the bill. As originally filed with the Kansas Legislature this session, SB 245 created the Kansas Grid Resiliency, Innovation and Dependability Act. It prescribed the use of ratepayer-backed bonds for utility purposes, known broadly as securitization, as a regulatory tool to finance the retirement or abandonment of electric utility generation facilities as approved by the KCC. CURB generally supports the concept of securitization. After the winter weather event that occurred in Kansas in February 2021, the KCC, the utilities and CURB worked diligently to amend SB 245 to allow utilities to file securitization applications to avoid extreme customer impacts arising out of qualified extraordinary costs, which likely would include costs arising from the 2021 winter event. The KCC would govern these applications, including hearings with all stakeholders involved to arrive at a reasonable determination. CURB believes that securitization is an appropriate regulatory tool to help lessen the customer impact of qualified extraordinary costs and to spread those costs over a reasonable period of time as well as to deal with the early retirement of coal-fired generation plants. SB 245 passed favorably out of the Senate Financial Institutions and Insurance Committee on March 18, 2021. CURB awaits to see whether the Kansas Legislature will enact the bill. SB 245 is the most significant utility bill introduced this session. The purpose and operation of securitization in Kansas will be a feature of news articles in the CURB newsletter in future editions.

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ABOUT THE CITIZENS' UTILITY RATEPAYER BOARD (CURB)

Established in 1988, the Citizens' Utility Ratepayer Board (CURB) is an agency focused on advocacy for residential and small commercial utility consumers in Kansas. The Board is composed of five (5) appointed volunteer members representing the four congressional districts in Kansas and one at-large member. CURB was initially founded by the Chairman of the Kansas Corporation Commission upon a perceived need for a stronger consumer advocate. CURB has evolved into an independent agency, currently employing a consumer counsel, two supporting attorneys, two analysts, and two administrative staff.

OUR MISSION: To zealously protect the interests of residential and small commercial utility ratepayers before the Kansas Corporation Commission and the Kansas legislature.

OUR VISION: To protect Kansas residential and small commercial utility ratepayers by promoting the delivery of optimal utility services—being safe, reliable and technically robust, environmentally sensible, cost-effective, and equitably provided to all Kansas utility consumers at just prices.



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