



CURBside News

NEWS FROM THE WATCHDOG FOR RESIDENTIAL AND SMALL COMMERCIAL CONSUMERS OF UTILITIES FEB. 2009

CURB asks KCC to reduce KCPL rate increase by nearly \$25 million

On February 3, 2009, CURB filed testimony opposing KCPL's September 2008 application to increase rates by \$71.6 million. The company's application is the third in a series of rate applications outlined in KCPL's five-year Regulatory Plan approved by the Commission in 2005. The company received a \$28 million rate increase in 2007 and a \$29 million rate increase in 2006. KCPL investment in environmental upgrades at the Iatan Unit 1 generating facility is the primary reason for its latest request to increase rates.

After carefully reviewing KCPL's application and requesting further information from the company, CURB consultant Andrea Crane determined the Company's \$71.6 million request should be reduced to \$46.78. Her \$46.78 million recommendation assumed the Commission will include the cash flow mechanism it approved in KCC Docket No. 04-KCPE-1025-GIE (1025 Docket), which provides the company with additional cash flow to maintain certain bond

(See KCPL, p. 5)

KCC approves Westar increase; defers consolidation to new docket

On January 21, 2009, the Kansas Corporation Commission approved a unanimous settlement agreement that grants Westar Energy an annual rate increase of \$130 million. The rate increase will become effective within the next 30 days, and will be divided evenly between customers in the company's two divisions, Westar North and Westar South.

The KCC estimates that the average residential customer will see electric bills rise about 11%, or roughly \$6 to \$9 a month. However, CURB notes that KCC estimates of the impact of rate increases is based only on the increase to base rates, not the energy charge adjustment (ECA), which passes through to customers Westar's costs of fuel and purchased power. Any increases in the company's fuel and purchased power costs will be passed through in addition to the increase in base rates.

(See Westar consolidation, p. 5)

Empire Predicts 7.8% Fuel Cost Increase for 2009

Empire District Electric Company, which serves approximately 10,300 customers in southeast Kansas, predicts that its energy charge adjustment will need to increase by 7.8% for the fiscal year that began on November 1. The ECA recovers costs related to the fuels used to produce electricity, including transportation costs.

The ECA is a separate line-item surcharge on customer bills. For a customer who uses 1000 kilowatt-hours per month, Empire says the higher fuel costs to be passed through the ECA would increase that customer's monthly bill by about \$2.32.

The details on what forces are driving the forecasted increase are, unfortunately, confidential.

Additionally, citing unrecovered costs related to the cost of hedging the price of natural gas, and increases in the cost of fuel for its plants in the last fiscal year, Empire is also seeking to collect \$196,662

(See Empire, at p. 3)

Legislative Update

The CURB staff fully expected that the 2009 legislative session would be dominated by budget woes and a renewed battle over whether the coal plant in Holcomb will ever be built, and predicted that most utility legislation would probably stay on the back burner. To our surprise, however, the House and Senate utilities committees are instead considering more new legislation than we've seen in years.

Several subcommittees have been established with the purpose of familiarizing the members with the numerous bills and vetting their provisions. The House side plans to be finished working on most of them that have survived by Friday, February 12.

Here's what's on their plates thus far:

HB2005: continues funding of KAN-ED through the Kansas Universal Service Fund

HB2009: eliminates the property tax exemption for transmission facilities in Kansas that are not used by Kansas customers or Kansas utilities (aimed at the new KAMO line, which will cross the southeast corner of Kansas, but will serve out-of-state utilities and customers).

HB2013: mandates renewable energy portfolio standards of 20% by 2020.

HB2014: grants Kansas Electric Transmission Authority full powers to operate as a business and recover costs through tariffs or fees.

HB2015: mandates fuel economy standards for state vehicles, promulgation of energy-efficiency standards and energy audits for state-owned properties, and increased participation of state agencies and school districts in the KCC's Facility Conservation and Improvement Program.

HB2016: sets emission standards for new coal-fired plants

HB2017: establishes a deadline of 240 days for KCC decisions on certificates of public convenience

HB2020: requires utilities to interconnect with and purchase power from their customers who operate small generators of renewable energy; directs the KCC to promulgate rules and regulations governing such interconnection agreements, and establish appropriate fees and safety standards.

HB2021: establishes a deadline of 120 days for KCC decisions on certificates of public convenience

HB2024: requires the KCC to create statewide postage-stamp pricing for wind power, with the intention of socializing wind generation connection costs throughout the state.

HB2025: mandates creation of an independent transmission company to operate the Kansas grid

HB2027: provides that a municipal natural gas or water utility may voluntarily, through an ordinance, submit to the jurisdiction and regulation of the KCC.

HB2033: mandates that all public electric utilities register with the climate registry and report carbon dioxide emissions by January 2010.

HB2034: requires utilities to assist businesses and institutions to reduce greenhouse gas emissions

HB2035: eliminates regulation of all utility cooperatives; provides a procedure for coop customers to seek redress of grievances at the KCC.

HB 2036: directs the KCC to convene stakeholders to (1) develop energy-efficiency rating standards for new buildings and for existing structures; (2) develop metrics for assessing the resource value of energy-efficiency programs, (3) study the possibility of using energy storage to stabilize renewable generation, reduce transmission congestion costs and increase system reliability, and (4) assess public safety risks of aging utility infrastructures. Reports on these issues would be submitted to the legislature in January 2010.

HB2038: imposes emission restrictions, mandates carbon capture or sequestration, and imposes renewable portfolio standards on electric generation facilities; provides for Board of Regent universities to evaluate new smart grid technologies.

HB2043: provides for simplified interconnection procedures for wind power and mandates net metering with reimbursement at specified rate levels for the customer's surplus power

HB2051: provides for simplified interconnection procedures for solar power and mandates net metering with reimbursement at specified rate levels for the customer's surplus power

HB2064: seeks to reduce the amount of nighttime artificial light emissions in state parks and wildlife preserves throughout Kansas.

HB2116: requires the KCC to report to the legislature every two years on current and forecasted capacity of the public electric utilities in Kansas; mandates that the public electric utilities develop energy efficiency and load management programs and provide incentives to customers to participate.

HB2117: requires public utilities to offer a wind energy tariff to customers if they generate or purchase wind power for sale to customers.

HB2127: creates mandatory renewable energy portfolio standards; provides for simplified interconnection procedures for wind power and mandates net metering with reimbursement at specified rate levels for the customer's surplus power; and imposes energy efficiency standards on state buildings.

HB2224: orders the KCC to establish rules and regulations for the underground storage of compressed air, including regulations governing emissions and public safety.

HB2225: requires utilities that build pulverized coal facilities must offer any municipal or cooperative utility in Kansas the option to purchase up to 200MW of the capacity; if more than one exercises the option, the available power will be allocated; each purchaser must opt for at least 25MW.

S80: provides for voter approval of the sale of municipal utilities.

S108: provides access to financing through issuance of bonds for wind and solar power projects that provide specified levels of economic development benefits.

SCR1607: proposal to amend the Kansas constitution to change the definition of public utility to include underground storage of natural gas (in regard to property taxation).

Empire

(Continued from p. 1)

from customers that it under-recovered through the ECA.

Because the ECA is based on forecasts of energy costs, not actual costs, these annual adjustments are necessary to true-up the charge to match the actual costs.

CURB has been instrumental in working with the state's electric utilities to ensure that customers receive adequate advance notice of ECA adjustments, which helps customers anticipate significant increases. This is especially helpful to small businesses in formulating budgets. We will monitor this docket to ensure that only reasonably-incurred costs are recovered from customers.

KCC Docket No. 09-EPDE-472-ACA

**CURBside
is brought to you
by the Staff of
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Consumer Counsel's



CORNER

This is my seventh legislative session as Consumer Counsel and I've never seen it this busy. Lots and lots of bills to review, many dealing with the greening of the utility industry—be it net metering or renewable portfolio standards. Most will cost consumers a lot of that other kind of green when all is said and done.

Nothing against green energy here: the Board has taken many positions in support of wind energy and energy efficiency. But as with most things, balance is the key. Balance is hard to maintain under the dome, but I'm doing my best to make sure that the laws aren't being written with unfettered access to your checkbook. You can read my testimony on bills in the legislative section of our web site.

CURB has also been raising the question downtown of why there isn't a centralized agency where consumers can get help with energy efficiency and conservation products to help reduce energy usage. Right now, everyone seems to assume the utilities will provide this service. Me, I'm not sure the fox should guard the hen house.

The Board has supported the creation of an independent non-utility provider of conservation services. An independent provider could reach across all utility service territories with a consistent conservation message and product and not be conflicted about selling less energy—something near and dear to the utilities.

I also want to pat the Board members on the back here. The rate design changes made in the Westar rate case set an important precedent going forward about how we can encourage conservation. The Board supported two principles for rates. First: everyone should have access to a reasonably-priced initial block of power. If you actively conserve, or are a small user, you are rewarded with low rates. Second, rates should encourage conservation. The Board supported reducing winter usage discounts and increasing the price of power above 900 kilowatt hours in the summer. The more you use, the more it will cost per kilowatt hour.

With all the political rhetoric about energy efficiency and conservation in the state right now, only CURB recommended that we change the way rates are designed. This choice was not made lightly. In the short term, some consumers' rates will increase substantially. But in the long term, the Board recognized that we can't keep creating rate structures that encourage increased consumption. We must create rate structures that encourage consumer to use less energy.

Where others talk, this Board acted. That's no small thing.

Okay . . . back to the dome . . .

—Dave Springe

CURB appeals Atmos rate case

CURB has appealed the KCC's final order in the Atmos rate case. CURB is asking the Kansas Court of Appeals to reverse adverse rulings of the Commission concerning the company's application for a gas safety and reliability surcharge tariff.

Although Atmos agreed to withdraw the tariff and reapply for it later, CURB objects to language in the settlement agreement that specifies how the surcharge will be calculated.

Atmos and the KCC have filed briefs opposing CURB's challenge. The KCC claims the issue is moot; CURB disagrees.

CURB won the first round when the Court of Appeals rejected the KCC's motion to have the case dismissed as moot.

Oral arguments have been scheduled at the Kansas Court of Appeals for 1:30 p.m. on February 18, 2009

CURB will have 30 minutes to make its case to the judges. Atmos and the KCC Staff, as aligned parties, will have to split up their 30 minutes between the two of them. Staff Attorney Niki Christopher will be arguing on behalf of CURB. The arguments are open to the public.

KCC Docket No. 08-ATMG-280-RTS

KCPL

(Continued from p. 1)

coverage ratios while completing the construction contemplated its regulatory plan. CURB refused to sign the settlement in the 1025 Docket because the cash flow mechanism permits credit rating agencies, rather than the KCC, to effectively set rates for KCPL.

Commission Staff also filed testimony opposing KCPL's requested rate increase on February 3rd. Staff recommended KCPL's \$71.6 million rate increase request be reduced to \$53.8 million. While the Commission Staff calculated a much higher cash flow mechanism than requested by KCPL (\$115 million), Staff recommended the Commission limit KCPL to the \$11.2 million requested in its application.

CURB witness Brian Kalcic also filed testimony on February 3rd, urging the Commission to amend the Company's existing rate designs to provide a lower (affordable) rate for the first 1,000 kWh and a higher rate for usage over 1,000 kWh by residential customers. Mr. Kalcic also sponsored a more conservation-oriented rate design for small business ratepayers.

A public hearing was held on Thursday, December 4, 2008, at the Overland Park City Hall. However, the Commission will still accept written comments from KCPL customers through March 2, 2009 at 5:00 p.m. Comments should reference Docket No. 09-KCPE-246-RTS

and be sent to the Kansas Corporation Commission Office of Public Affairs and Consumer Protection, 1500 SW Arrowhead Road, Topeka, KS 66604, or you may email your comments to public.affairs@kcc.ks.gov.

Technical hearings are scheduled for March 9-24.

KCC Docket No. 09-KCPE-246-RTS

Westar consolidation

(Continued from p. 1)

Other surcharges are also subject to increases as the costs are incurred by Westar.

CURB was a signatory to the agreement, which contained several key provisions that limited negative impacts on customers. Westar agreed to accept an increase that was \$47 million smaller than it requested, and agreed to forego requesting a higher rate of return on its current wind generation plants, which would have cost customers about \$50 million over the next 20 years had the KCC granted the company's request.

CURB was instrumental in getting the parties and Westar to agree to adopt CURB's proposal for a residential rate design that will encourage conservation. All customers will be charged a lower rate for the first 900 kWh used each month. Kilowatt hours over 900kWh will be charged at a higher rate in summer to encourage conservation. The discount rate for winter power was reduced so that the lower rate for the first 900 kWh could

be made available to all residential customers.

The Commission also decided to sever the issue of whether Westar should consolidate its rate structure rather than maintain separate rates for its North and South divisions. Westar had requested permission to consolidate rates, but several parties' concerns about how consolidation would impact the various classes of customers threatened to scuttle the settlement, so they asked the Commission to decide whether the issue should be severed from the rate case. CURB was also concerned that the public hadn't been adequately informed about how consolidation will impact their rates, because the Commission held the public hearings in the rate case before the parties had an opportunity to file testimony.

Parties to the settlement met recently with the KCC Staff to discuss a proposed procedural schedule for a consolidation docket. Staff is expected to report to the Commission on the parties' proposals, and we expect that the Commission will be opening a new docket this month.

KCC Docket No. 08-WSEE-1041-RTS

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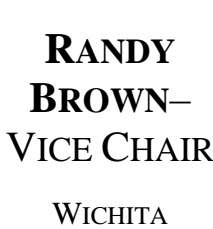
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**Governor disbands
KEC; issues own
energy plan**

Governor Kathleen Sebelius has disbanded the Kansas Energy Council, which she had charged with the task of developing the state's energy policy, and has issued her own plan. Although she publicly stated that the proliferation of other issue-specific policy groups has eliminated the need for the KEC, some officials have quietly let it be known that the governor was frustrated with the KEC's inability to come to a consensus on issues of key importance to the governor's "green" agenda.

Rather than wait for those other policy groups to devise a new energy policy for Kansas, the governor announced on January 9 that she is introducing a comprehensive legislative proposal to impose mandatory renewable portfolio standards on the state's utilities, require utilities to offer net metering, and initiatives designed to create more "green" jobs in the state.

Additionally, she intends to require the state itself to meet higher standards of energy efficiency and conservation as it builds new facilities or signs new leases.

The bill, HB2127, has been subject to much wrangling and revision in a House Utility subcommittee. Over 40 amendments were considered by the subcommittee in a day-long session on February 6 that ultimately resulted in a vote to

table the bill. The full committee is free to keep working the bill because the subcommittees are charged with making recommendations, not final decisions.

However, we think it's safe to say that HB2127's chances for passage are far from assured.

Given that the state is facing a huge budget shortfall that will have to be resolved by the end of the session, we suspect the bulk of statehouse time and energy in the next few weeks will be spent on fighting over budget cuts and possible tax increases rather than remaking Kansas energy policy. Pieces of the bill may end up as trading chips in the continuing fight over whether the coal plant will be built near Holcomb. We'll keep you posted.

**CURB welcomes
Della Smith**

CURB is pleased to announce that Della Smith has joined our staff.

Della has taken the administrative specialist position vacated by Shonda Smith (no relation), who was promoted to office manager after Beth Runnebaum retired.

Della is a longtime Topekan, and previously worked for a rural water district in Shawnee County.

Please join us in welcoming Della to CURB!



KETA intervenes in transmission battle

In the last CURBside, we described the escalating tensions between two competitors to build a large-scale transmission project in western Kansas, ITC Great Plains and Prairie Wind, a partner of Westar Energy. Now the legislature's Kansas Electric Transmission Authority has petitioned to intervene in the cases.

KETA Chairman Carl Holmes has publicly expressed his unhappiness with the procedural schedule issued by the KCC in these cases, which provides for a final decision in late 2009 on which company will be approved to build the lines. Given that this is the first time that the KCC has ever had to deal with the problem of deciding between competing projects—and without statutory guidance from the legislature on how to pick the winner—allowing some time in the schedule to investigate and hear the issues seems reasonable to CURB. It didn't seem reasonable to KETA, however, which voted on January 9 to intervene in the dockets with the goal of expediting the decision. Only KETA's Tim McKee, a former KCC commissioner, voted against the interventions.

We're not convinced that KETA's participation in these dockets will expedite matters, but it will certainly make things more interesting if KETA's

petition is granted. The parties are being urged to quickly settle case to get the projects moving on a faster track. However, whether or not the cases settle, the Commission still has the obligation to ensure that the projects are necessary and that the routes are reasonable, which will require it to cite to findings of fact in the record to uphold its decision to approve a settlement.

In the meantime, the battle to get those facts in the record is becoming more contentious, with the companies each claiming that much of the data sought is proprietary and therefore confidential. With so much disagreement about discovery, settlement doesn't look likely any time soon.

A final note: the original four cases have been consolidated, leaving only one ITC docket and one Prairie Wind docket, which also have been consolidated for purposes of investigation and hearing.

Docket Nos. 08-ITCE-936-COC & 08-PWTE-1022-COC

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assistance with
utility bills from
agencies and
programs associated
with the United Way
in Kansas.

Energy-efficiency talks continue at KCC

On December 11 and 12, the KCC hosted two days of collaborative sessions with utilities, CURB and other parties to discuss energy-efficiency policy goals. The Commission established a set of policy goals in this docket on June 2, 2008. Comments to the Commission's policy goals filed by intervening parties indicated a need for a collaborative "brain-storming" session.

Topics discussed during the collaborative session included use of the five benefit-cost tests to determine the economic efficiency of an energy - efficiency program, how to perform the evaluation, measurement and verification of these programs. Other topics included allowing for flexible budgets for energy-efficiency programs and utilizing consumer bills to better educate customers on how to conserve energy.

Staff filed a report with policy recommendations to the Commission on December 31, summarizing the collaborative sessions. CURB and other parties responded to this report in comments on January 14. CURB will have another chance to respond to comments later in January.

In our comments, CURB encouraged the Commission to establish clear and precise goals and objectives for energy-efficiency programs.

(See Efficiency talks, p. 9)

Decoupling part of federal economic recovery plan

The US House of Representatives recently approved President Obama's economic recovery plan, and sent it to the US Senate for final approval. CURB was particularly interested in the billions of dollars set aside for energy efficiency initiatives.

The economic recovery plan sets aside \$2 billion in state-level block grants that will be released only if the governor of that State notifies the US Secretary of Energy that the governor will seek to ensure that each of the following will occur:

(1) The applicable State regulatory authority will implement the following regulatory policies for each electric and gas utility with respect to which the State regulatory authority has ratemaking authority:

(A) Policies that ensure that a utility's recovery of prudent fixed costs of service is timely and independent of its retail sales, without in the process shifting prudent costs from variable to fixed charges. This cost shifting constraint shall not apply to rate designs adopted prior to the date of enactment of this Act.

(B) Cost recovery for prudent investments by utilities in energy efficiency.

(C) An earnings opportunity for utilities associated with cost-effective energy efficiency savings.

CURB has argued against decoupling (breaking the link between sales and profit) most recently in Docket No. 08-GIMX-441-GIV. CURB has argued that while decoupling may "incent" a utility to spend more ratepayer dollars on energy efficiency programs, decoupling can actually dampen the consumer's incentive to conserve, because regardless of usage, the utility will ultimately collect the same amount of money from ratepayers.

CURB will continue to follow the progress of the federal economic recovery plan and report what implications it may have for utility ratepayers in Kansas.

KCC considers PURPA standards

Two dockets have been opened at the KCC to ensure that the Commission is in compliance with the Energy Independence and Security Act of 2007. In that legislation, Congress directed state utility commissions to consider four new standards in the Public Utility Regulatory Policy Act (PURPA). The commissions are to consider implementing standards for requiring integrated resource planning and rate design modifications to promote energy efficiency investments for both natural gas and electric utilities.

Additionally, the commissions are to consider implementing standards for smart grid investments and smart grid information provided to all electricity purchasers by electric utilities.

Since the Act permits commissions that have already substantially fulfilled these requirements in previous dockets will not be required to do it again, the main question for the KCC in these proceedings has been whether Commission action in prior dockets satisfies the new requirements.

Virtually all the parties who filed comments agreed that the Commission has fulfilled the requirements for considering integrated resource planning standards and has already established policies concerning rate design to encourage energy efficiency investments by utilities. Some of the parties believe that the Commission has not fulfilled its requirements to consider smart grid investments and information.

CURB's comments pointed out, however, that the parties in previous dockets were free to propose standards regarding smart grids, but no one endorsed such a policy. Additionally, CURB noted that the Kansas Electric Transmission Authority, the legislature and two dockets at the KCC are focusing on the strong interest in building more traditional transmission in Kansas to support the expansion of wind generation. The

(See PURPA, p. 9)

Efficiency talks

(Continued from p. 7)

The Commission's original order setting policy goals was vague, leaving too many unanswered questions. CURB requested that the Commission order a clear and prescriptive set of rules so that all energy-efficiency programs can be implemented and evaluated in a similar way. CURB also recommended the use of a third-party evaluator for the evaluation, measurement and verification of program results,

and urged utilization of the California Energy Commission's Database for Energy Efficiency Resources as a tool and guide for energy-efficiency programs in Kansas. It is unknown when the Commission will issue another order in this docket, and whether or not the originally-vague policy goals for energy-efficiency programs will be clarified.

KCC Docket no. 08-GIMX-442-GIV

PURPA

(Continued from p. 8)

Commission could reasonably conclude that adoption of smart grid technology and information standards for Kansas is simply premature.

*KCC Docket Nos. 09-GIME-360-GIE
and 09-GIMG-361-GIG*

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