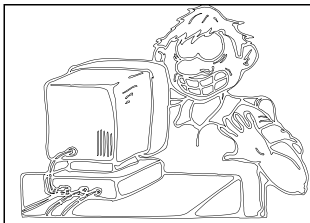

CURBside NEWS

A Newsletter of the Citizens' Utility Ratepayer Board

May 2001

Western Resources' Rates Too High!

CURB Recommends Rate Decrease for Western Resources

In testimony filed April 6, 2001, CURB recommended to the Commission that Western Resources rates be decreased by $36.5 million for KG&E customers and $9.0 million for KP&L customers.

CURB's recommendation is in response to Western Resources' request to increase rates by $151 million. (KCC Docket No. 01-WSRE-436-RTS) Western argues that the increase in rates is necessary to pay for $230 million of new generation facilities that have been constructed in the last year.

Western is still over-earning, even if the investment in new generation facilities is considered, according to CURB's consultants. When a more realistic view of Westerns capital structure, return on equity and depreciation rates for Western's existing generating plants are considered, Western has been over earning for years.

CURB recommended that rates be lowered immediately. Other parties to the case presented similar recommendations to the Commission. The Commission Staff recommended a $92 million rate cut for KG&E customers and a very slight rate increase for KP&L customers. The Kansas Industrial Customers proposed a $94 million rate cut, with about $69 million going to KG&E customers and $25 million going to KP&L customers.

Three weeks of technical hearings are slated to begin May 17, 2001 at the Commission. A decision is expected from the Commission by July 25, 2001.

CURB Expresses Concerns to SEC About Western Resources Breakup

In an April 24, 2001 letter sent to the Securities and Exchange Commission ("SEC") CURB expressed its concerns that a plan filed at the SEC by Western Resources to split into two separate companies contained, in CURB's belief, material omissions of fact that may mislead shareholders about the financial integrity of the remaining electric utility operations.

Western Resources, according to a Registration Statement filed at the SEC on April 13, 2001, plans to split into two separate companies. One company, Western Resources, will retain the electric utility operations known as Kansas Power & Light Company and Kansas Gas and Electric Company. The other company, Westar Industries, will hold all of Westerns current non-regulated operations, consisting of Protection one, a monitored security company, the stock in ONEOK Inc, and several other small companies.

Of chief concern to CURB is that, through this breakup, Western plans on moving all of the shareholder equity, between $1 billion and $2 billion on the utility books, over to Westar Industries. All of the debt of the company will be placed on the books of the electric utility. This shifting of debt onto the electric utility may severely impair the electric utilities' financial viability in the future. Western may have difficulty raising additional funds to build new electric generation given that it will have more debt than assets, and no shareholder equity. Major bond rating companies have already downgraded Westerns' debt to junk bond status, a precipitous fall from its previous investment grade status.

CURB requested that the SEC give serious consideration to denying Western's request to split the company, thereby protecting the electric operations that serve Kansas consumers.

KCC Extends Cold Weather Rule

On March 20, The Kansas Corporation Commission acted to extend the Cold Weather Rule until May 31 this year to help alleviate the crisis many ratepayers have faced as a result of the high gas bills this winter. The Commission ordered a moratorium on disconnections until May 31, as well.

Spokespersons from Kansas Gas Service, UtiliCorp and Greeley Gas have indicated that they will not oppose the Commission's order. This additional 60-day period of respite should be a welcome relief for ratepayers who are struggling to get caught up with their bills.

Update

The Commission, pursuant to legal challenge, has amended its previous order, extending the Cold Weather rule for only 30 days, rather than the 60 day extension in the original order. The Commission apparently overstepped its statutory emergency authority. Residential customers will still have until May 31, 2001 to enter into a monthly payment arrangement with their gas utility. However, the moratorium on service disconnections will only be in effect through April 30, 2001.

Commission Extends KGS Gas Assistance Program

The Commission has extended the application deadline for Kansas Gas Service Company's Gas Assistance Program (GAP). The GAP program provides relief for Kansas Gas Service Company customers who are struggling to pay their winter heating bills. Under the GAP program, eligible customers will receive a 50% credit on the gas portion of their winter heating bills between January and June,2001. To be eligible for the GAP program, KGS customers must have annual income of between 130% and 200% of the federal poverty guidelines (between $22,168 and $34,100 for a family of four), and not qualify for other assistance programs.

KGS customers who think they might qualify under the GAP program are urged to contact their local Red Cross Agency, or Kansas Gas Service.

APPLY NOW. This is a first-come, first-serve program.

KGS Gas Price Hedge Program Approved for Additional Year

The Commission has approved a request by Kansas Gas Service to spend $7.3 million dollars of ratepayers' money in an attempt to cap the natural gas prices customers will see in their bills next winter. (KCC Docket No. 98-KGSG-475-CON)

In a March 1, 2001 Order, the Commission approved a stipulation and agreement that allows Kansas Gas Service to continue its existing hedge program for an additional year. KGS had agreed to make several changes in the program. First, the program will be expanded to cover all KGS customers. Second, the financing mechanism used last year has been discontinued. This year, the annual budget of $7.3 million will be billed directly to customers, which equates to about $1.00 per month per customer. Third, KGS must use the budget to buy price protection equal to 65% of KGS's flowing gas in the months of December and January, and if there is remaining money once this target is met, to buy price protection in the months of November and February. Fourth, KGS will attempt, to the extent possible, to buy straight call options, which gives KGS the right to buy gas at a preset fixed price.

CURB agreed to these changes and the continuation of the program as a means to offer some insurance for consumers against the types of price spikes in natural gas bills that occurred last winter. While the hedge program will not place an absolute hard cap on natural gas prices, it should reduce the volatility in consumer bills if natural gas prices trend upwards. As natural gas prices increase past a certain level, the call options will be exercised. This means that the price consumers see in their bills will not increase as fast, or to the same level as market prices for natural gas.

In CURB's view, $1.00 per month may be a small price to pay to avoid the type of disaster consumers faced last winter.

Greeley Gas Company Asks for Gas Hedge Program

Approval of a natural gas hedge program patterned after the Commission-approved KGS program is the subject of a recent filing by Greeley Gas Company. (KCC Docket No. 01-GRLG-886-PGA)

Greeley, a provider of natural gas service to about 115,000 customers in Kansas, is requesting approval of a $2.8 million dollar budget to purchase price protection for its gas customers this winter. While the program is patterned after the KGS gas hedge program that has been approved by the Commission, it appears to be much more aggressive than the KGS program. The budget is twice as high as the KGS budget, about $2.00 per customer per month. Greeley also intends to purchase straight call options to fix the price of gas this winter at a preset level, meaning if prices spike as they did last winter, customers would not see prices higher than the call option price.

CURB is reviewing the filing.

Supreme Court Refuses to Hear CURB Appeal of Gas Rate Increase

As reported in January's CURBside News, CURB filed a petition for review with the Kansas Supreme Court earlier this winter, requesting review of the

Court of Appeals' decision to uphold the Commission's Order allowing UtiliCorp United to increase gas rates by $4.78 million (Docket No. 00-UTCG-336-RTS).

CURB recently received notice that the Supreme Court has denied our petition for review. CURB is disappointed that the Court of Appeals decision is now final. There will be no further opportunity for review.

Consumer Counsel Testifies Before Federal Congressional Subcommittee

On February 28, CURB's Consumer Counsel, Walker Hendrix, testified before the U.S. House of Representatives' Subcommittee on Energy and Air Quality in Washington, D.C. The hearing, entitled, "National Energy Policy," focused on natural gas issues. Walker was requested to testify on behalf of the National Association of State Utility Consumer Advocates, NASUCA, of which CURB is a member.

Mr. Hendrix was asked by the committee to present testimony regarding the impact on average small consumers of the high natural gas prices this winter, and to recommend energy policies and other actions that can be implemented at the federal level that will benefit residential and small commercial consumers of natural gas.

CURB recommended national policy priority be given to increased conservation and weatherization measures to reduce short term and long term demand for natural gas, better communication of prices to consumers so that consumers have information on which to base consumption decisions, and increased incentives for large customers to increase fuel switching ability, so that pipeline capacity and natural gas remain available to higher-priority residential and small commercial customers in times of supply crisis.

CURB also recommended creating additional incentive to increase exploration, production and delivery of natural gas. Increased pipeline capacity and storage capacity must also be achieved, so that the supply and demand imbalances that occurred this past winter are avoided in the future.

Kansas should be proud of our representation by Mr. Hendrix before this federal subcommittee. No other state advocate was asked to speak, and Mr. Hendrix received many gracious comments from our federal legislators on his ability to articulate the policy needs of small consumers.

Settlement of Ad Valorem Litigation Means Refunds for Kansas

A recent settlement agreement filed February 26, 2001at the Federal Energy Regulatory Commission may end 15 years of litigation and result in close to $50 million dollars in refunds for Kansas.

A little history: During the 1980's, the price of natural gas was regulated at the federal level. Natural gas producers were allowed to charge a "maximum lawful price" as set by the regulatory agencies. However, producers could add certain severance taxes to the maximum lawful price in determining the price of natural gas charged to customers. During the period from 1983 through 1988 gas producers added the Kansas Ad Valorem taxes in setting gas prices to customers. The Ad Valorem taxes paid were passed to LDC customers in their price of gas.

Whether the Kansas Ad Valorem tax was an appropriate add-on to the maximum lawful price was challenged in court in 1988. (Colorado Interstate Gas Co. v. FERC, 850 F.2d 769 (D.C Cir. 1988)) The Court remanded the issue to FERC, where it was determined that the Kansas Ad Valorem tax was not an appropriate add-on to the maximum lawful price. A refund of these overcharges was ordered to be paid by the natural gas producers for the period October 1983 through June 1988. Litigation ensued.

CURB participated in settlement discussions with natural gas producers, Williams Pipeline Company and the Staff of the Commission throughout the fall of 2000, in hope of ending the litigation. While the initial overcharge on the Williams system (the largest system impacting Kansas) amounted to approximately $46 million, with interest accumulating while the litigation was ongoing, the total due is now approximately $135 million on the Williams system.

An agreement was reached wherein small producers with less than $100,000 owed were released from liability, and large producers were given a credit that approximated 25%. The Settlement Agreement was submitted to FERC for approval.

Under the agreement, Kansas is allocated between $45-$50 million dollars. Of this amount, approximately $38 million will be paid to the local distribution companies and refunded to consumers. (The other $9-$10 million will be refunded to customers who bought gas directly from Williams, mostly large industrial customers.)

Battle for Ad Valorem Refunds Gets Testy

Recently, both houses of the Kansas legislature passed resolutions (HR. 6006, SR 1808) urging the Commission to order the local distribution companies receiving Ad Valorem refunds to dedicate the funds exclusively to relief from winter gas bills for low income ratepayers. The Legislature targeted those residential consumers who make too much money to receive help elsewhere, but who are nevertheless hurting from the winter's high gas prices and extremely cold weather of December and January.

CURB and the KCC Staff support the legislature's proposed program, and have filed motions to adopt programs to distribute the refunds. Industrial customers who believe they are entitled to individual refunds are vigorously opposing the idea. The utilities involved have proposed using only the residential and small commercial ratepayers' share of the refunds for relief programs, but have not actively opposed CURB and Staff's recommendations to use all the refunds for the programs.

A hearing on the matter was scheduled to last two days, but the industrials made the going rough by raising numerous motions and objections. CURB also stood its ground on several matters and won most of its points. Unfortunately, the disputes were numerous and prolonged, so the hearings were ordered to resume on April 4 and April 10. A negotiation session is also scheduled to seek a resolution to the differences among the various parties.

CURB extends its thanks to ratepayer Mrs. Willie Meier, who traveled from her home in Hartford, near Emporia, to testimony as a witness for CURB. Mrs. Meier is like many of our constituents: a hard-working person all of her life, now on a fixed income, the kind of person who never asked for help–until now. High gas bills this winter have placed many of our constituents in the same boat. CURB will continue to work in this docket towards getting relief for Mrs. Meier and our many other constituents who need relief.

The Commission should decide this matter sometime in May.

CURB Participates in Roundtable Discussion on Review of Utility Gas Purchasing Practices

CURB recently participated in a Roundtable discussion with the Commission, the local gas utilities and the Staff of the KCC. Up for discussion was the Commission's process of reviewing gas utility purchasing practices and contracts, and whether this process needs to be modified given the rapidly changing market for natural gas.

As noted in the last CURBside News, on November 1, 2000, the Commission issued an order modifying the procedures and requirements for filing and reviewing gas purchase contracts. When the utilities complained, the Commission backtracked, deciding to have a roundtable discussion about the issues, rather than simply moving forward.

The Commission convened its roundtable discussion on March 30, 2001. Issues discussed included whether all natural gas purchase contracts must be filed, or whether better monthly reporting requirements are an adequate substitute, what standard should be applied in determining whether a utility has purchased gas at the best possible price, how should other factors like reliability be viewed in the review process, how often purchasing practice reviews should take place, and whether the Commission should review the utilities total portfolio of gas contracts in a general overview, rather than reviewing each individual contract.

CURB supported updating the existing reporting requirements to give more information on the types of contracts entered into and some of the specific terms of the contract. CURB also supported more frequent contract reviews and purchasing practice reviews.

CURB expects an order from the Commission sometime in May.

KGS Weather Normalization Credit Benefits Customer

Kansas Gas Service customers should check their gas bills. As noted in the last CURBside News, the Commission approved a new program for KGS that creates bill credits or debits depending on whether weather in the past winter was warmer or colder than normal. As we are all aware, this past winter was considerably colder than normal. Under the KGS program, the additional revenue KGS received from customers due to increased gas use this winter is credited back over the next year. KGS customers should find a credit of 6.4 cents per MCF used over the next year.

LOOKOUT, Your Telephone Bills May Be Next!

After suffering through the highest natural gas prices in history this past winter, and facing potential increases in electric rates if Western Resources gets its way, consumers may now be faced with increases in the price of local telephone service.

In a docket open recently, (KCC Docket No. 01-GIMT-082-GIT) the Commission is conducting a general investigation into reforming access charges. Access charges are fees charges by local telephone service providers like Southwestern Bell, to long distance carriers like AT&T, for access to the local telephone system. Every time someone calls you from out of town, the long distance carrier must pay the local carrier to deliver the call to your telephone.

The issue in this docket is, if the Commission requires that access rates be reduced, meaning that a revenue source for the local telephone service providers is reduced, should the local service provider be allowed to raise your local rates to offset this lost revenue?

CURB says NO WAY! However, it is becoming clear that the local service providers are supporting a plan to raise your local telephone rates: by how much per month is yet to be determined. The wild card in this debate is the Staff of the Corporation Commission, which CURB believes also supports the local rate increase. Testimony in the docket is due to be filed on May 16, 2001. CURB will fight any increase in local rates.

CURB Files Comments to Protect Customers from Disappearing CLEC's

CURB filed comments in an effort to protect consumers when Competitive Local Exchange Carriers go out of business. (KCC Docket No. 01-GIMT0649-GIT) In what has become an increasing problem in Kansas, small CLEC's serving customers may decide to quit the business, leaving customers with no telephone service, and no notice that the service has been canceled.

The Commission has opened a general investigation to set rules and standards for notice to customers when a CLEC will be quitting business, and procedures that allow the customer to transfer service to another provider. The goal is to minimize the inconvenience to the customer.

CURB recommended a minimum 45-day notice period be given to customer to give the customer adequate time to find another telephone service provider. This also will protect customers from paying a bill and then immediately losing service. CURB also suggests that, when necessary, the incumbent local telephone service provider should be required to provide service to the customers until a new service provider is selected.

THIS JUST IN

CURB Agrees to KCP&L Restructuring

In an Agreement just filed with the Commission, CURB has agreed to allow Kansas City Power and Light to restructure its business into a holding company with the electric utility as an independent subsidiary. (KCC Docket No. 01-KCPE-708-MIS)

Great Plains Energy will be the name of the new holding company, which will control the electric utility, along with a new company holding generation assets that will be built in the future, and a separate company holding KCP&L's existing non-regulated operations. At some future date, a services company will also be created to hold corporate billing and legal services supplied to all subsidiaries.

Key to CURB's agreement was KCP&L's commitment to maintain Commission control over consumer rates. While this may seem obvious, the process of restructuring into a holding company moves certain issues under the jurisdiction of the Securities and Exchange Commission and the Federal Energy Regulatory Commission. There is a concern that the Kansas Commission could be pre-empted by decisions made at the SEC and FERC, thereby losing the ability to control certain charges that must be recovered in consumer rates. KCP&L has agreed that it will not argue this pre-emption in any case involving consumer rates. Additionally, KCP&L will allow the Commission to review, when necessary, the books and records of the holding company and its subsidiaries.

The Commission has not yet made a decision whether to approve the agreement to allow KCP&L's restructuring.

Legislative Update

Although quite a few utility-related bills have been introduced this legislative session, none have yet passed into law. Here's a sampling of what the legislature has been doing lately:

HB2266, HB2245, HB2268, and SB177: Intended to foster independent power generation in Kansas.

HB2266 would exempt independent power producers from regulation and would create certain tax incentives to build power plants in Kansas. A companion bill, **HB2245**, confers tax and other benefits to encourage production of electricity from renewable resources. After the House Utilities passed both bills with amendments, they were passed by the Assessment and Taxation Committee on March 21.

A similar bill in the Senate was passed (**SB 177**), and is now under consideration by the House Utilities Committee, which heard testimony on the bill on March 20.

HB2268 would permit utilities to place construction of power plants in the rate base before they are producing power, and would exempt the plants from property taxes for 10 years.

Consumer Counsel for CURB, Walker Hendrix, testified on **SB 177**, and expressed concern about placing the generating capacity of the state outside the jurisdiction of the Commission. He encouraged the lawmakers to defer action on the bill until an independent study could be made of all the potential consequences of the legislation.

CURB testified against **HB2268**, noting that placing plants in the rate base before they are producing power places the bulk of the risk of the endeavor on the ratepayers. Unless the laws that guarantee shareholders a return on their investment are repealed, shareholders would get a "free ride" for little or no risk. CURB urged the legislature to reject this bill as a radical departure from traditional ratemaking that has the potential to expose ratepayers to excessive risk and expense.

HB2034: Funding Upgrades of 911 Service for wireless phones.

Currently, if a cell phone user dials "911," emergency dispatchers are unable to identify the caller's location. **HB2034** would allow local governments to charge up to 75 cents a month to wireless users for funding upgrades of local 911 equipment to enable it to locate emergency calls from wireless phones. Currently, taxes supporting 911 services are paid only by those with regular, "wired" telephone service. Although this measure passed the House, it is currently stalled in the Senate Commerce Committee.

SB 190: Performance-based Ratemaking for Natural Gas. The Senate Committee on Utilities held a hearing in February to hear testimony on performance-based ratemaking, which is designed to give utilities incentive to improve their gas purchasing practices.

There has been no action on the bill since then.

HB2307: Establishing Standards for the KCC to Adjudge Mergers. This bill codified the standards adopted by the Commission in the KPL/KGE merger case. CURB's testimony at the February hearing noted that the bill failed to protect ratepayers from being required to pay "acquisition premiums," which is the excess over book value of the purchase price of the acquired utility. No action has been taken on the bill.

HB2309: Eliminating "Golden Parachutes" from the Rate Base. The House Utilities Committee heard testimony in February on **HB2309**, a bill designed to limit to what extent ratepayers would be required to pay for "golden parachutes" and other excessive compensation of utility executives. CURB Consumer Counsel Walker Hendrix testified in favor of the bill. There has been no further action on the bill.

SB 233: Changing Taxation of Natural Gas. **SB233** would eliminate local sales taxation of natural gas, with the intent of improving incentives for increasing production in the state. Other provisions would shift excess severance taxes collected for Fiscal Year 2001from the State General Fund to the County and City Revenue Sharing Fund. This bill started out in the Assessment and Taxation Committee, was referred to the Ways and Means Committee, and is now back in Assessment and Taxation. There have been no votes on the bill.

HB 2397: Allowing cities to intervene on behalf of their residents. Currently, Kansas cities are limited to representing themselves as utility users in proceedings before the Commission. This bill would allow cities to intervene on behalf of their residents. Although CURB represents those residents as a part of its role as the consumer advocate for all residential and small commercial ratepayers, CURB does not oppose this bill. Sometimes cities have distinct concerns they would like to raise on behalf of their local ratepayers, as in the KGE/KPL rate parity dispute between Topeka and Wichita. CURB, as a representative of ratepayers across the entire state, is reluctant to enter into such intra-state disputes. Additionally, since CURB often benefits from alliance with other interveners in sharing expenses and expertise in preparing for KCC proceedings, we support passage of this bill. This bill passed the House, and is now being considered by the Senate Utilities Committee.

SB 299: Net Metering and Tax Credits for energy efficiency. This bill encourages energy efficiency by allowing consumers who generate electricity to sell the excess back to their utilities. Additionally, the bill provides tax credits for energy efficiency improvements that produce at least 25% energy savings. Other provisions create tax credits for a variety of energy-saving measures taken by residential, commercial, and new home builders, including a credit for installing solar or other renewable energy equipment.

Gas Marketing and Trading Seminar

CURB's David Springe and Niki Christopher attended a seminar on gas marketing, held at the Commission's offices on March 21. Chris Skoog, President of ONEOK Energy Marketing and Trading, made a presentation that gave the attendees insight into the complex world of calls, puts, hedges and other financial devices used in gas marketing and futures trading.

As consumers demand more protection against spiking gas prices, such as those we all experienced this winter, utilities and consumers alike are becoming more interested in the tools utilized in financial markets to improve stability and predictability in gas prices. CURB's staff appreciated the opportunity to gain greater understanding into how such tools are used.

California Energy Crisis Topic of Seminar in KC

On January 12, 2001, CURB's Walker Hendrix, Dave Springe and Niki Christopher spent all day in Kansas City at a conference sponsored by the Energy Bar Association, listening to experts from across the nation presenting their opinions about what caused the recent California energy crisis.

Although there was no firm consensus on of all the things that went wrong in California, virtually all of the speakers agreed that California erred in deregulating the generation side first without a reciprocal deregulation of consumer prices on the distribution side.

One of the most interesting speakers was a representative of industrial customers in California, who questioned whether deregulation is a good idea after all. He advocated a return to traditional regulation of electric utilities.

However, most speakers were not discouraged by the California experience with deregulation, and instead suggested ways to avoid the mistakes made there.

There was general agreement at the conference that the crisis there will contribute to a general slow down in the pace of deregulation across the U.S. One speaker noted, however, that the slowing down of the pace will provide a useful opportunity for states to review and revise their plans for deregulation mindful of the lessons learned from the California crisis.

Governor Reappoints Three CURB Board Members

Governor Bill Graves has announced the reappointment of CURB board members Gene Merry, Burlington; Francis Thorne, Lansing and Nancy Wilkens, Great Bend. Each Board member was reappointed to serve a four year term through June of 2005.

Board members A.W. "Bill" Dirks, Wichita, and Frank Weimer, Shawnee

Mission, were reappointed in 1999 to serve terms through 2003.

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