



# CURBside News

NEWS FROM THE WATCHDOG FOR RESIDENTIAL AND SMALL COMMERCIAL CONSUMERS OF UTILITIES DEC. 2008

## **CURB negotiates smaller increase for Westar customers; consolidation delayed**

The Citizens' Utility Ratepayer Board (CURB) and ten other parties have reached a settlement with Westar Energy that reduces the proposed rate increase for customers by \$47 million. This is the first time in almost 20 years that Westar has succeeded in negotiating an uncontested settlement in a rate case.

The settlement also includes several key terms that CURB sought for residential and small commercial customers of Westar, including an agreement to redesign the company's energy charge adjustment to limit adjustments of the ECA to four times a year, and to give customers advance notice of changes in the ECA before they take effect.

The company also agreed to withdraw its request for an enhanced rate of return on its investments in its current set of wind projects, and agreed not to seek an enhanced return on these projects in any future proceeding. This will save ratepayers \$50 million over 20 years.

The proposed settlement would allow Westar to increase

rates by \$130 million annually, with the increase to be divided equally between the company's North and South divisions.

Additionally, the costs of environmental upgrades that have already been approved and are currently being passed through to customers through a separate line-item surcharge will be returned to base rates; Westar will have to reapply next year to place additional costs into the environmental rider.

Rate design for Westar customers will also reflect changes that CURB's board has sought in its policies to encourage energy conservation and to ensure that a basic block of electricity remains affordable for all, especially for low-income seniors and other fixed-income customers. The most economical rate will be charged for the first 900 kWh used per month, and the discount for winter power was reduced to make this lower rate available to all residential customers.

Electricity use above 900 kWh will be more expensive

*(See Westar, at Page 2)*

## **KCPL Seeks \$71.6 million increase**

Kansas City Power & Light Company (KCP&L) filed a request in September to increase its rates by \$71.6 million. The Company estimates a typical residential customer will experience a monthly increase of approximately \$12.57—roughly 17.5%—under its proposed rate increase. KCP&L identified its growing investment in environmental upgrades at the Iatan Unit 1 generating facility as the primary reason for this request to increase rates once again.

The Company's application is the third in a series of rate applications outlined in KCP&L's five-year Regulatory Plan, which was approved by the Commission in 2005. The Company received a \$28 million rate increase in 2007 and a \$29 million rate increase in 2006.

CURB is reviewing this latest application and will be filing testimony on February 3, 2008. Technical hearings are scheduled for March 9 – 24.

A public hearing is scheduled for Thursday,

*(See KCPL hearing, at Page 2)*

## KCPL hearing

(Continued from Page 1)

December 4, 2008, at the Overland Park City Hall, 8500 KCPL hearing Santa Fe Drive, Overland Park, 66212. The public hearing provides an opportunity for ratepayers to tell the Commission what you think about the proposed rate increase.

Public hearings are held in two sessions. The first session allows customers to ask questions of representatives of the KCC Staff, KCPL and CURB. The Commissioners have traditionally not attended this part of the hearing. In the second session, the three Commissioners will hear formal statements from customers who wish to address the Commission.

Additionally, customers may call or send written comments to the KCC through March 2, 2009, at 5:00 p.m. See the inset box on this page for information on how to submit your comments.

**KCC Docket No. 09-KCPE-246-RTS**

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## IT'S YOUR TURN!

**Tell the KCC what  
you think about  
KCPL's request for a  
\$71.6 million rate  
increase!**

## PUBLIC HEARING

on KCPL's rate  
increase request

**Thursday  
December 4  
7:00 p.m.**

**Overland Park City  
Council Chamber**

**8500 Santa Fe Dr.  
Overland Park, KS**

For those of you who cannot attend the hearing, comments are being accepted by the KCC through March 2, 2009.

Comments should refer to:

**KCC Docket No.  
09-KCPE-246-RTS.**

**Comments by email:**

[public.affairs@kcc.ks.gov](mailto:public.affairs@kcc.ks.gov)

**Comments by U.S. mail:**

Kansas Corporation  
Commission  
Office of Public Affairs and  
Consumer Protection  
1500 SW Arrowhead Road  
Topeka, Kansas 66604

**Comments by toll-free  
call:**

1-800-662-0027  
(271-3140 in Topeka)

## Westar

(Continued from Page 1)

in the summer, which will encourage customers with higher usage to conserve.

CURB believes that these changes will contribute to the overall goal of delaying the need for Westar to add more plants by encouraging conservative use of power, while ensuring that everyone has access to a basic amount of reasonably-priced power.

In recognition of the volatility of the current financial markets, the parties agreed to assume that the settlement will yield Westar a rate of return on equity of 10.4%, and an overall rate of return of 8.4949%.

Additionally, Westar will be allowed to file an abbreviated rate case under KCC regulations in the next year or two to propose an increase in rates to include more of the construction costs of the yet-to-be completed Emporia Energy Center and 296MW of wind generating facilities that are currently under construction.

The parties have agreed to leave it up to the Commission to decide whether Westar's North and South rate structures should be consolidated into a single company-wide rate structure. The Commission has granted a motion to sever the issue from this case and hear the issue in a separate docket this spring.

The evidentiary hearing to consider the settlement was held at the KCC on November 4. The KCC's decision is expected in January.

"We knew that Westar had

enough increased costs to justify a substantial increase in this case,” said CURB Consumer Counsel David Springe, “so we were very interested in finding a way to soften the impact on customers. Given the concessions Westar made to CURB and the other consumer groups on the revenue requirement and other policy issues, we feel the settlement provides customers some real benefits that they might not have received had we litigated the case. The increase will hurt, but not as bad as it might have. We appreciated the effort Westar made to work with us to make the increase less painful to customers.”

Springe went on to say that customers need to be aware that this increase is just the first step in what inevitably will be a series of increases in electric rates over the next decade. “Average demand per household is growing. Even if customers make serious efforts to reduce their consumption, Kansas utilities are going to have to start building new plants soon.” As a consequence, he said, “Conservation will become more and more important in the near future to prevent rates from skyrocketing. Customers who don’t make the effort to cut back their usage will find themselves paying a higher proportion of the utilities’ costs of meeting growing demand.”

Springe also noted that moving the issue of whether to consolidate the rates of Westar South and Westar North to a separate docket will allow the parties to more fully investigate

the potential impact on customers. “The decision whether to consolidate rates will be a political decision as much as a policy decision,” he said. “The Commission should have a fully-developed record before making the call. Public hearings will allow affected customers to present to the Commission all of the pros and cons. We’re much more comfortable with the idea of considering consolidation in a separate docket than trying to tackle all these big issues without having further hearings.”

*KCC Docket No. 08-WSEE-981-RTS*

**CURBside  
is brought to you by  
the Staff of CURB:**

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STACEY HARDEN**

**ADMINISTRATIVE STAFF  
SHONDA SMITH**

**KCC rejects CURB’s  
stance on GSRS:  
appeal is next step**

On October 22, the KCC issued an order that denied CURB’s petition for reconsideration on two contested issues in the recent Atmos rate case settlement.

CURB had sought reconsideration of the Commission’s decision not to require Atmos to record a regulatory liability for ratepayer contributions to certain future removal costs. Recording a regulatory liability merely ensures that the accrued contributions are credited to ratepayers if they are not used for removals.

Although the Commission had recently ordered Westar Energy to record a regulatory liability for future removal costs to protect Westar customers, and the need to protect natural gas customers is the same, the Commission argued that its decision to approve the black box settlement without requiring Atmos to record a regulatory liability was not arbitrary or capricious.

Although the KCC denied that its decision to do so in the Westar case set a precedent because it was directed to “another utility, in a fully contested proceeding, in a different industry, dealing with different types of assets,” the Commission made no effort to explain why the differences justified denying Atmos customers the protection that the

*(See GSRS appeal, at Page 7)*

## Utilities face off in battle over 765kV line

Westar Energy is facing off with several Kansas utilities over who will build a major transmission line to expand capacity to carry wind power from Western Kansas to the market.

ITC Great Plains, a newly-certificated utility in Kansas that plans to build transmission lines and sell transmission service to other utilities, has been promoting a proposal to build a 345 kV line that would run from Spearville in Ford County down to the border with Oklahoma in Comanche County, and then would connect with a facility near Wichita.

Mid-Kansas Electric Company and Sunflower Electric Power Corporation are supporting ITC's "V-Plan", which is based on a proposal called the "X Plan" that was studied by the Southwest Power Pool. The "X Plan" was a proposal to build two major lines through western Kansas into Oklahoma and the Texas panhandle that formed an "X"-shape. ITC proposes to build the upper half of the "X"—which is why its plan is called the "V-Plan."

When Westar announced that it planned to partner with AEP, another Midwestern utility, to form a company called Prairie Wind that would construct a 765kV line along another route in western Kansas, that's when the fur started flying.

TC proposed a compromise that would have ITC and

Westar each build a portion of the line.

Westar argues that ITC isn't as qualified as Prairie Wind to construct and operate the 765kV line. Sunflower and MKEC, which prefer ITC's plan, argue that they should have a say in who will build the line, because either project will impact their system.

This is the first time in the history of the KCC that it will face the dilemma of deciding which utility should build a transmission line. Some observers have questioned whether the KCC even has the jurisdiction to make the choice. The KCC is solely charged with determining the necessity of the line and determining the reasonableness of the route: the transmission siting statutes provide no guidance to the KCC about how to determine which entity should be allowed to build a new line.

The KCC Staff is arguing for a competitive hearing process that would allow the proponents of each plan to make their case for approval, and Westar agrees. ITC and its allies have countered that such a process would unreasonably delay construction of needed transmission. We've heard some rumors that some legislators are also concerned about possible delays. It's not clear at this juncture what the KCC will choose to do, or whether the legislature will step into the fray. We'll keep you posted.

*KCC Docket Nos. 08-PWTE-1022-COC, 08-ITCE-936-COC, 08-ITC-937-COC & 08-ITC-938-COC*

## KCPL seeks approval of two Energy Star programs

Kansas City Power & Light (KCPL) is awaiting KCC action on two Energy Star Programs for which the company has sought approval. Both were developed by the Environmental Protection Agency (EPA) and the United States Department of Energy (DOE) for implementation by utilities.

The first program is the Energy Star New Homes Program, which encourages a total home-approach to achieving energy savings. With approval of this program, KCPL would provide incentives for builders to build Energy Star-rated homes in the KCPL territory.

Additionally, KCPL would provide technical services, such as builder training and marketing of the program. KCPL predicts that the program will lead to the construction of 3,500 Energy Star-rated homes in its service territory over the next five years.

Similar Energy Star New Home programs have been successful in many other states. However, the data provided by KCPL to calculate this program's potential for success were based on housing information from 2003, before the housing bubble burst. Whether or not this program will succeed in a slumping housing market was a key question for the Commission, which unanimously approved this program on November 14.

KCPL's second program is the Home Performance Program with Energy Star. This program was also developed by the EPA and DOE. However, while the first program will address the construction of new homes, this second program will address making energy-efficient upgrades to existing homes.

Through this program, Building Performance Institute-certified contractors or consultants would perform an energy audit of a customer's home, using a "whole house" approach to identify all possible energy savings. The certified contractors or consultants will then provide a detailed listing of improvements that may be made to the home, and will coordinate the installation of improvements as directed by the customer.

Customers who choose to make at least one of the recommended energy-efficiency upgrades will be rebated up to \$600 of the cost of the energy audit.

On September 9, the Commission denied KCPL's application for approval of the Home Performance Program, stating that this program did not make the best use of energy-efficiency dollars. Because participants in the proposed program would not be required to select the most effective energy-efficiency improvement as identified by the energy audit, the Commission concluded that the result would not be the best cost-effective way to achieve energy savings.

In addition, this program has come under additional scrutiny

because of concerns about whether it would encourage fuel-switching. Kansas Gas Service and Atmos Energy have both argued that this program would encourage participants to switch from natural gas appliances to electric appliances. It was further argued that by encouraging participants to switch from natural gas to electricity, that this is a load-building program that will increase electricity sales in KCPL's territory rather than decrease load—which is an explicit goal of KCPL's long-term regulatory plan approved by the Commission.

KCPL filed a petition for reconsideration with the Commission, requesting a limited hearing in order to further explain the details of this program. The request was granted and a limited trial was held on November 25.

KCPL urged Commission approval of this program, while Atmos Energy and Kansas Gas Service asked the Commission to deny this petition because the program does not pass the benefit cost tests set forth in the Commission's 08-GIMX-442-GIV order.

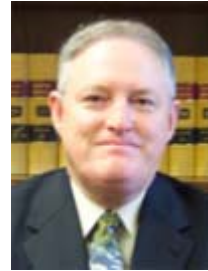
A decision from the Commission is expected before the end of the year.

*KCC Docket Nos. 08-KCPE-848-TAR (new homes); KCPE-581-TAR (existing homes)*

## **CITIZENS' UTILITY**

### **RATEPAYER BOARD: CURB**

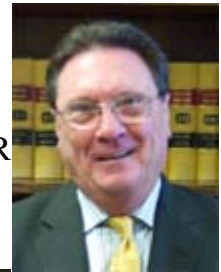
#### **MEET OUR MEMBERS:**



**GENE  
MERRY –  
CHAIR**  
BURLINGTON

**RANDY  
BROWN –  
VICE CHAIR**

WICHITA



**LAURA  
MCCLURE  
– MEMBER**

OSBORNE

**A.W.  
"BILL"  
DIRKS  
– MEMBER**  
WICHITA



**CAROL  
FAUCHER  
– MEMBER**  
LEAWOOD

## Margaret Bangs and the story of CURB

by Margaret J. Miller

Margaret Bangs died in April 2008, after a lifetime of good works. If she had lived a month longer, she would have been 90 years old. And Margaret Bangs is one of the main reasons we now have CURB.

In the 1970s, Kansas Gas and Electric Co. (KG&E) and Kansas City Power and Light (KCPL) decided to build a large nuclear generating plant. The owners boasted that the electricity it produced would be “too cheap to meter.”

But by the 1980s, the cost of nuclear fuel had skyrocketed. (Westinghouse Electric had to abrogate its supply contracts. Construction costs far exceeded original estimates, so it became apparent that electric rates would increase, not decrease.)

By the 1980s, several groups of citizens were studying and protesting the building of the nuclear plant, now called Wolf Creek.

Margaret Bangs, through her son who was an attorney in Arizona, learned that most states have agencies representing residential ratepayers in the regulatory process. I also became interested in the issue, so the two of us discussed what we could do.

Along the way, Linda Wier Enegren, owner of a small business in Wichita, joined the effort and added the support of many of her associates who had

small businesses and feared the impact of utility costs on their firms.

Fortunately, we were acquainted with a few Kansas legislators, among them Ken Grotewiel, Henry Helgerson, George Dean and Tom Sawyer. When we approached them with our information, they and others said they would try to help us.

So they introduced a bill into the legislature in the early 1980s to set up an agency which would represent residential and small business ratepayers in the regulatory process.

At that time, only utility companies, the staff of the Kansas Corporation Commission (KCC) and large businesses who could afford legal help could participate in the rate hearings at the KCC. Small businesses and individual residential ratepayers could not afford lawyers for this long and complicated process.

Utility companies, of course, opposed our proposal to have small businesses and individuals represented by a board funded by all ratepayers.

So it took about five years for a bill setting up such an agency to make it through the legislature. During this time, Margaret Bangs and I made frequent trips to Topeka to talk to legislators. We came to know many of the members.

Please note that she and I did this on our own: we kept up our own cars, paid for our own gasoline, for our meals, and for our housing if we stayed over-

night. But we were intent on our purpose.

About this time, I was appointed to the State Legislative Committee of AARP. One of the committee's goals was to support such a bill as we were working on. AARP was a great deal of help, inasmuch as some of my expenses were paid when we went to visit the legislature. We were glad to have an important agency like AARP supporting us.

Finally, about 1985, the bill we had been working on was passed. The agency was given a name—the Citizens' Utility Ratepayer Board—CURB. We were elated!

We came to know Bill Riggins, the first attorney of CURB, quite well. We have been very proud of the succeeding attorneys and other staffers. We know it is hard work, bucking the establishment.

Early on, we had to push the media to consult CURB when covering utility cases. But now they do it fairly automatically.

So, many thanks to Margaret Bangs, who never gave up on her good idea!

*(Editor's note: the author of this piece, Margaret Miller, who was also instrumental in the creation of CURB, continues to keep tabs on CURB through reading the CURBside and gracing us with occasional phone calls and notes from her home in Wichita. We are thankful to her for putting down on paper her recollections about the struggle to obtain protection for ratepayers in the state of Kansas.)*

## Consumer Counsel's



## CORNER

Well, the *good* news is the price of natural gas price has fallen since my last Corner article, taking some of the sting out of heating your home this winter. The *bad* news is the price came down because the economy is in the tank, unemployment is at a record high, home foreclosures are increasing, the federal government is spending next year's budget bailing out credit markets, and consumer spending has ground to a halt. In short, demand for energy, both oil and natural gas, has declined. Lower demand means lower prices in the market.

In terms of your winter heating bill, at this point, I expect prices to be about equal to what you paid last year. As long as the weather is not extremely cold, your overall bill should not be a lot different than last year.

I know that doesn't sound like something to get excited about, but given how high winter natural gas prices were the last time I wrote, and how high your heating bills could have been, these more moderate prices truly are something to get excited about.

I also made the decision to enter into a rate settlement with Westar Energy. While we knocked \$47 million off of Westar's request, and saved an addition \$50 million over the next 20 years by eliminating the incentive return on the wind farms, consumers will still see a fairly substantial increase if the Commission approves the settlement.

The Board also supported some rate design changes in the Westar case. While we didn't completely succeed, we are trying to establish a rate structure that encourages conservation while maintaining an affordable base level of service. The cost of the first 900 kilowatt hours of usage each month will cost slightly more than in past years. However, usage above 900 kilowatt hours will be much more expensive, meaning the more you use, the larger percentage increase you will see. This shift will make conservation more financially attractive to consumers. If we can trim our electric demands, and trim the number of power plants that will need to be built, costs for everyone will be less going forward.

As we move into the holiday season, and into next year, I am ever mindful of those among us that are experiencing extreme hardship due to the economic downturn. I fear things could get much worse before they get better. However, I am always optimistic. I always believe that the best in people comes out at during the hardest of times. At this time especially, I urge everyone to dig a little deeper

and donate to those in need, extend a hand a little further to help those that need help, and to smile a little brighter to lift a spirit that may be down.

On behalf of the Board, and the staff here at CURB, I wish you the best of holiday seasons and the hope for a better year ahead.  
—*Dave Springe*

## GSRS appeal

(Continued from Page 3)

Commission wanted Westar customers to have.

The Commission also rejected CURB's argument that the KCC's decision to use an average rate of return of other gas utilities to determine the company's appropriate rate of return on the GSRS surcharge violates the procedures set forth in the Gas Safety and Reliability Policy Act.

Because Atmos and Staff agreed before the rehearing that Atmos would withdraw its tariff until it seeks to recover eligible costs through the surcharge, the KCC dodged the sticky issue of whether the Commission was required by the statute to determine the appropriate rate of return based on the information provided in the rate case, rather than utilizing an average of other utilities' rates of return to determine the rate of return.

CURB will raise the regulatory liability issue again in the generic docket on depreciation issues that the Commission opened shortly after the rehearing. CURB is planning to appeal the GSRS ruling.

*KCC Docket No. 08-ATMG-280-RTS*

## **KCC energy efficiency workshop explores cost recovery**

The Kansas Corporation Commission hosted a workshop on August 26 to discuss cost recovery and incentives for energy efficiency. The workshop followed a format similar to workshops held earlier this year that addressed program evaluations and the cost-benefit structure of utility sponsored energy efficiency programs.

The workshop was moderated by Rich Sedano from the Regulatory Assistance Project (RAP). Other presenters included Wayne Shirley, also of RAP; Chuck Goldman, Lawrence Berkeley National Laboratory; and John Perkins, Iowa consumer advocate and former NASUCA President. Presentations informed attendees about several topics including cost recovery options, decoupling and performance-based incentives for utility companies.

KCC Staff, CURB and other intervening parties then filed comments based upon the information presented at the August 26 workshop for the Commission's review. CURB took the following positions:

### **1. Capitalization of expenses is a discredited policy.**

Utilities were eager to request the Commission to allow for the capitalization of energy-efficiency expenditures, arguing that energy-efficiency investments should be given the same regulatory treatment as investments in capital assets.

CURB refuted the utilities' comments by showing that in recent years, thirteen states allowed utilities to capitalize energy-efficiency expenses, but of those thirteen states, only one still allows capitalization. Even in that one state, Nevada, the policy is currently under review. CURB noted that these other states have abandoned their capitalization policies in part because total costs associated with EE programs were rapidly rising.

**2. Energy efficiency programs should be administered by a third party.** CURB encouraged the Commission to re-think policies that only allowed utilities to sponsor energy-efficiency initiatives. Using a third-party administrator—as is the currently practice in Vermont, Oregon, New Jersey and New York—removes the disincentives that exist for utilities to decrease their sales. Furthermore, a third-party administrator can reach all people in Kansas, regardless of the utility service territory in which a customer lives. CURB requested that the Commission fully investigate the benefits of using a third-party administrator before setting further energy efficiency policies that benefit utilities.

**3. Decoupling must be accompanied by a reduced rate of return.** Decoupling – breaking the link between sales and profits – was supported by all utilities in one form or another. CURB argued that if utilities are allowed to use decoupling mechanisms, they have less risk – in essence, they

are guaranteed a certain level of revenue no matter whether sales were down due to a change in the seasonal weather, energy-efficiency projects taken on by consumers, or poor management of the utility. CURB urged the Commission to allow decoupling mechanisms only where the utilities agree to reduced rates of return.

**4. Performance-based incentives are economically unsound.** Utilities are faced with an inherent disincentive to promote energy efficiency, because their financial growth relies on increased sales. It was discussed at the workshop whether performance-based incentives should be given to utilities in order to encourage them to promote energy efficiency. CURB argued that performance-based incentives were not in the best interests of the ratepayer. Many consumers are choosing to make energy efficiency investments on their own, without the intervention of a utility. CURB doesn't believe that it is possible for the Commission to distinguish utility efficiency performance from consumer efficiency performance. As a result, the utilities will be over-compensated for achieving savings that ratepayers achieved at their own expense. CURB argued that this was not only unfair to ratepayers, but unsound economics and bad public policy.

An order from the Commission is expected in late November.

*KCC Docket No. 08-GIMX-441-GIV*



## Aquila Becomes Black Hills Corporation

In late July, Black Hills Corporation officially completed its acquisition of the Aquila natural gas utility in Kansas. Aquila customers in Lawrence, Wichita and southwest Kansas should notice the change of name on their monthly bills. However, Black Hills has agreed to use Aquila's rates and terms of service, so customers should not see any changes there, other than the usual monthly changes in the cost of natural gas.

Black Hills acquired the 90,000 Kansas Aquila gas customers along with Aquila's electric and natural gas operations in Colorado, Iowa and Nebraska in a complicated transaction that also involved Kansas City Power and Light's purchase of Aquila's Missouri electric properties.

Black Hills paid about \$48 million dollars above book value for the Aquila gas properties. At CURB's insistence, Black Hills has agreed that it will never seek to recover the acquisition premium from customers in rates.

Black Hills now serves 750,000 electric and natural gas utility customers in Montana, South Dakota, Wyoming, Colorado, Kansas, Iowa and Nebraska.

*KCC Docket No. 07-BHCG-1063-ACQ*

## Springe Reelected as NASUCA President

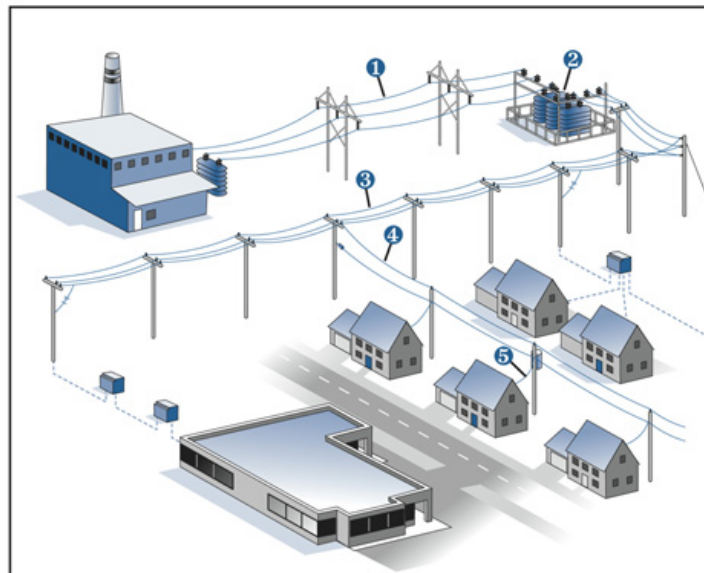
Consumer Counsel David Springe was elected to serve a second annual term as President of the National Association of State Utility Consumer Advocates (NASUCA) at the association's recent annual meeting in New Orleans. NASUCA's member offices include the statutory utility advocates from 40 individual states, as well as several other utility consumer advocacy organizations.

While in New Orleans, Springe joined several NASUCA members who volunteered to spend a day helping remodel a home that had been devastated by Hurricane Katrina.

## Who gets restored first after a major system outage?

Have you ever wondered who is top on the list for restoration of power when a major electrical system has suffered a widespread outage due to severe weather? Most utilities attempt to repair major lines first. Here's how KCPL describes the hierarchy:

### THE POWER RESTORATION PROCESS



In the event our system is damaged by severe weather, KCP&L repairs those areas which impact the largest numbers of customers first. Generally, the sequence is as follows:

- ① *Transmission lines serving thousands of customers,*
- ② *Substation equipment,*
- ③ *Main distribution lines serving commercial areas and subdivisions,*
- ④ *Tap lines serving neighborhoods, and*
- ⑤ *Service lines to individual homes or businesses.*

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