

CURB: THE CITIZENS' UTILITY RATEPAYER BOARD OF THE STATE OF KANSAS



# CURBside News

NEWS FROM THE WATCHDOG FOR RESIDENTIAL AND SMALL COMMERCIAL CONSUMERS OF UTILITIES JULY 2015

*This month, we're offering a two-part article on the KCPL rate case: one describing the testimony filed before the hearing, and in the other, discussing the partial settlement reached in the case and the issues argued at the evidentiary hearing.*

**PART 1:  
CURB, intervenors  
file in KCPL rate  
case; company files  
rebuttal**

On May 11, the KCC Staff, CURB and other intervenors filed their testimony in Kansas City Power and Light's \$67.2 million rate increase request.

The net increase request is actually closer to \$56.2 million, after adjusting for transmission costs and property tax costs that are already buried in rates and riders.

CURB is recommending an increase of \$16.8 million and KCC Staff is recommending an increase of \$35.7 million. That sounds like a big difference, but most of the difference is related to only two differences between CURB's and Staff's approaches to the case.

The first issue concerns how much shareholder profit—the return on equity (ROE)—KCPL will be allowed to earn. ROE is the margin of profit on the utility's capital investments that will be built into the increase. KCPL is asking for 10.3%. The KCC gave KCPL 9.5% in its last rate case, and has since approved a 9.1% ROE for Atmos Energy, both decisions reflective of the low cost of debt and general trend downward in ROEs approved by utility commissions across the country.

According to CURB's financial witness Randy Woolridge, the capital cost models support an ROE of 8.55%, so KCPL's request for 10.3% is clearly excessive. There's a \$30.4 million difference between KCPL and CURB on that single issue.

KCC Staff is recommending an ROE of 9.25%, although the capital cost models of Staff witness Adam Gatewood yield similar results to CURB's. But the KCC staff is arguing that lowering shareholder profits all at once to 8.5% would be a shock to KCPL's finances. Staff argues for "gradualism"—setting the profit margin higher than the analysis calls for, and then lowering it over time.

Arguments for gradualism are usually made on behalf of customers facing a precipitous rate increase; the principle of gradualism calls for implementing the increase gradually, over several months or years to prevent customers from suffering "rate shock"—i.e., a sudden and detrimental impact to their pocketbooks. The theory is that increasing rates gradually will allow customers, especially customers on fixed incomes, time to make room in their budgets for higher rates. However, no one at CURB can recall an instance when this argument has been made on behalf of shareholders. While a utility may have legitimate concerns that shareholders may bolt if ROEs are lowered too drastically, employing a principle intended to protect fixed-income seniors and low-income families to protect shareholders seems off the mark.

Further, capital cost models are based on conditions nationwide that are affecting utilities that are similar to the utility under analysis; if KCPL is facing a decline in shareholder profits, so are the other similarly-situated electric utilities across the country, so shareholders won't find significantly

higher returns elsewhere. The models indicate that regulators are finally catching up to the rest of the country by approving lower ROEs that reflect the lower costs of short-term debt and the low interest rates on mortgage-type debt that have been at rock-bottom levels for several years.

The difference in between CURB's 8.55% ROE recommendation and Staff's 9.25% ROE is about \$12 million of the \$19 million difference between our recommendations. If the Commission follows its usual practice of accepting its Staff's recommendation on ROE, that one decision alone would knock \$18 million off KCPL's proposed increase. A few percentage points add up to big, big dollars; that's why the ROE is such an important issue in rate cases.

The second big difference between Staff and CURB is how many updates of costs each party decided to accept in determining their recommended increase. KCPL provided a lot of post-test year "updates" of its costs—without providing the calculations of their impact on the revenue requirement. The KCC Staff included about \$34 million in these capital expenditure updates in its recommendation, which resulted in a \$4 million adjustment in Staff's recommended increase.

CURB's witness Andrea Crane argued that the updates weren't legitimate updates to the company's revenue requirement, they weren't timely provided, and since the com-

pany failed to update revenues for the same period, they shouldn't be included in the case.

On rate case issues other than the ROE and the plant updates, Staff and CURB are only about \$3 million apart.

On policy issues, CURB rejected KCPL's proposals for trackers on costs for vegetation management and cyber security upgrades, but accepted KCPL's request for additional revenues to combat the Emerald Ash Borer, which is a pest that downs ash trees and causes costly repairs to utility lines. The KCC Staff also rejected the cyber security tracker.

CURB doesn't support line-item surcharges, but the legislature passed a law that allows utilities to implement a Transmission Delivery Charge (TDC), so opposing KCPL's request for a new TDC would be pointless. However, we argued against KCPL's request for an annual true-up mechanism. Westar Energy's TDC does not have a true-up mechanism, and we believe that the statute doesn't permit a utility to file true-ups; the utility can file for a change in the TDC rate at any time its transmission costs aren't being fully recovered through the surcharge, but the change in rates will be prospective. Only the Commission can initiate a true-up when it finds that customers have been overcharged and order the utility to make refunds.

CURB recommended that the Commission allow KCPL to recover about \$10.6 million it

hasn't yet recovered that was spent on electric meters that are now being replaced by new so-called "smart" meters. Like the KCC Staff, CURB recommended that KCPL should not be allowed to earn a return on these stranded meter costs. CURB recommended a ten-year amortization of the costs; Staff recommended twenty years.

CURP supported the Base and Peak (BIP) model for class cost of service, but since KCPL's revenue allocations were almost identical to allocations under the BIP model, we accepted the allocations.

CURB recommended that the Commission reject KCPL's proposal to increase the residential customer charge to \$19 per month, and recommended a more reasonable service charge of \$11.33. The KCC Staff recommended a \$13 service charge.

CURB witness Stacey Harden presented our recommendation that the Commission consider reinstating the all-electric discount rate that was in place prior to the Commission's reduction of the all-electric discount two rate cases ago. The board is asking the Commission to determine whether the all-electric customers received fair notice of the discount reduction, and to determine whether they were treated inequitably when the discounts were reduced because the Commission did not protect these customers from rate shock by requiring a gradual reduction of the discount.

CURB recommends reinstating the all-electric discounts that were in place before the last rate case if the Commission adopts the board's position, and keeping these rates in place through 2025. CURB also recommends that the Commission close the all-electric class so no new customers are eligible to receive discounts at this level. All new all-electric accounts or existing all-electric accounts that undergo a change in ownership would receive discounts at the current level. We also recommended the Commission adopt increasing block summer rates.

If the all-electric proposal is approved by the Commission, fewer revenues will be recovered from the all-electric class, which will have to be recovered from other customers. The Commission will have to determine whether to spread out the costs over all customer classes just the residential customers.

No earthshaking issues were raised in cross testimony, where Staff and all the parties except the company respond to each other's testimony. KCPL has also filed its rebuttal testimony, where it responds to the previous testimony of the Staff and other parties. KCPL conceded a few issues to Staff and CURB, but not enough to eliminate the likelihood that we'll be litigating the case rather than reaching a settlement.

Assuming that the Commission will go forward under the current schedule, the evidentiary hearing on KCPL's request

will begin on June 22 at the KCC offices in Topeka.

*KCC Docket No. 15-KCPE-116-RTS*

**PART 2:  
KCPL partial  
settlements; hearing  
on remaining issues**

On June 17, 2015, several of the parties involved in the Kansas City Power & Light (KCPL) rate case filed two settlement agreements that settled many of the smaller issues in the case concerning the revenue requirement and rate design. The remaining contested issues were litigated at a three-day evidentiary hearing that began on June 22.

The overall rate increase, the return on equity (shareholder profit), and the overall rate of return were the contested revenue requirement issues. This wasn't surprising, as these issues are usually the most hotly-contested issues in every rate case. Recommendations on shareholder profit ranged from KCPL's request for 10.3% down to CURB's recommendation of 8.55%.

Rate base items that were litigated included the amount to include in KCPL's fossil fuel inventory, and the disposition of the remaining unamortized costs of the meters being retired to make way for newer, more advanced electronic meters. Not only does KCPL want the customers to pay off the unamortized costs of the old meters that are no longer in service within five years, but

Westar also wants to continue earning a return on the balance. CURB and the KCC Staff were in agreement that providing profit to shareholders on meters that are no longer in service is unfair to customers, though both agreed that customers should pay off the remaining balance.

CURB was pleased with the outcome of the settled issues. Since CURB and the KCC Staff were united on most of the major revenue requirement and rate base adjustments, we were negotiating from a strong position that enabled us to secure many concessions favorable to customers.

Opinions and positions on KCPL rate design proposals were all over the map, so the settlement agreement on rate design was signed by fewer parties, and did not settle all the contested rate-related issues. Modifications to the Transmission Delivery Charge Rider requested by KCPL, as well as billing determinants to be used in designing rates and the allocation of the rate increase were settled.

The signatories also agreed to a residential monthly service charge of \$14.00 and a \$20.00 service charge for time-of-use rates; agreed to an adjustment to heating rates; and agreed not to implement an inclining block rate structure, which would charge higher per Kwh/hr rates to higher-usage residential customers. The agreement also determined the allocation of the rates to the various customer classes. If approved, the

residential customers will get an increase of the same percentage as the overall increase percentage.

CURB argued for restoring the discounts to all-electric customers that were eliminated in a previous rate case; most of the other parties opposed our proposal.

The actual amount of the rate increase approved will depend on the Commission's decisions on the contested issues. The decision is due to be issued no later than September 10.

*KCC Docket No. 15-KCPE-116-RTS*

### **CURB, other parties file testimony in Westar rate case**

On July 9, 2015, intervening parties in the Westar Energy rate case pre-filed their direct testimony on Westar's proposals included in its Application. (*See the April 2015 CURBside for the details on the Application*).

Westar is requesting a net \$152 million increase in annual base rates collected from customers. The consensus among the parties is that Westar is requesting far too much.

For example, CURB found over \$100 million in excesses in the company's claim. CURB recommends an increase of just under \$51 million, and a return on equity—shareholder profit—of only 8.85%, in contrast to Westar's request for a return of 10% for shareholders.

The KCC Staff recommended a \$55 million increase; the

difference between CURB's and Staff's revenue recommendations is mainly attributable to Staff's recommendation of a slightly higher return on equity of 9.25%.

CURB and the KCC Staff agreed on several key issues in the case. Both oppose Westar's proposal to require ratepayers to fund 100% of any discounts awarded through its Economic Development program; currently, the split on cost-sharing is 60/40. Both offered similar reductions to the rate base related to Westar's fossil fuel and fuel oil inventories. Both rejected Westar's proposal for a "Grid Resiliency Rider", which would have created yet another surcharge, this time for the costs of improving the reliability of its distribution system.

CURB and Staff didn't agree on everything, however. CURB opposes the company's proposal to add one more surcharge to customer bills, this one for the costs related to improving the "cybersecurity" of its transmission grid. CURB found that while costs of tightening security on the grid may be likely to increase over the coming years because of more stringent federal standards, Westar offered no evidence supporting its anticipated costs.

Since reliability of the grid is itself a security-related concern, CURB is wary of such a broad surcharge becoming the recovery mechanism for every cost that is can be claimed as being remotely related to reliability. On the other hand, the KCC Staff testified that it would sup-

port the surcharge if the terms and limitations were similar to those of the surcharge proposed in the recent partial settlement of KCPL's rate case. CURB accepted the modified surcharge as a part of the total package of terms in the partial settlement with KCPL, but that agreement offered other offsetting benefits; we're not sure this case will settle, let alone on such agreeable terms.

The KCC Staff also proposed terminating the Environmental Cost Recovery Rider (ECRR) because Westar has completed the major projects that were the original justification for the surcharge and is now in compliance with current environmental regulations.

This proposal would roll all of the costs currently being recovered in the surcharge into base rates. Staff argues that if, in the future, Westar needs to make some more costly environmental improvements to its plants in response to a new set of regulations, the company can always come back to the Commission with evidence supporting resurrection of the surcharge. CURB will support Staff's proposal if the case goes to hearing.

CURB and Staff agree that the Commission should reject Westar's proposal for escalating the residential service charge to \$27 over five years, and both also agree that the Commission should also reject Westar's proposals for two new alternative rate schedules and defer any adoption of rate schedules for customers with distributed

generation until after a general investigation is conducted to gather data on how Westar customers with their own solar or wind generators impact the costs of Westar and how rates should be designed to ensure those costs are not subsidized by other ratepayers. Right now, there isn't any evidence supporting any rate proposal for distributed generation customers of Westar.

The large industrial and commercial customers and the state school board association also filed testimony, but their proposals are so specific to their particular concerns that it is difficult to find common threads among them—other than their joint opinion that Westar's rate request is too high, and those who offered testimony on the return on equity also agree it is too high. The organizations with interests in promoting solar energy and distributed generation (i.e., rooftop solar and small-scale wind generation) filed testimony voicing their objections to Westar's proposal that customers with distributed generation may only opt for the "stability rate" (with a \$50 per month service charge) or the "demand" rate, which will include a demand charge based on the customer's highest usage every month.

Westar's rebuttal testimony is due to be filed on July 29.

**KCC Docket No. 15-WSEE-115-RTS**

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## **Southern Pioneer files formula rate case**

Southern Pioneer Electric has filed for a 1.3% increase in its rates, which the company says will require an increase of almost \$900,000.

Southern Pioneer files for increases based on a "Formula Based Ratemaking Pilot Program", which is generally referred to as the "DSC Plan." DSC stands for Debt Service Coverage. Southern Pioneer's lenders require the company to maintain a margin in earnings equal to 1.75 times the company's debt service obligations. Each year for five years, Southern Pioneer will file a request to update its rates to meet the 1.75 threshold.

Southern Pioneer is in a period of accelerated capital spending related to upgrading outdated infrastructure, and anticipated having to file several major back-to-back rate cases. The KCC approved this plan back in 2013 to reduce the impact of regulatory costs on the utility's small customer base. In approving the pilot ratemaking scheme, the KCC also required Southern Pioneer to create a customer advisory committee that reviews rate increase requests on behalf of customers.

CURB filed testimony on July 1, recommending the Commission reduce Southern Pioneer's request by almost \$24,000 that was spent for Southern Pioneer's corporate promotion, charitable donations, and employee social events, golf tournaments, and gifts.

If the Commission approves CURB's adjustments the small rate impact under the DSC Plan will not change. Rates will still go up to allow Southern Pioneer to achieve debt service coverage of 1.75. Despite the lack of impact on rates, CURB believes our adjustments are important and assist the Commission to police these types of expenses, which do not relate to Southern Pioneer's ability to provide electric service to its patrons.

If the testimony of the Commission Staff and intervenors persuade the Commission to hold an evidentiary hearing, the Commission will issue an order setting the hearing for August 12; the KCC's order would be issued no later than August 27. Otherwise, the Commission will approve the company's request no later than July 30.

*KCC Docket No. 15-SPEE-519-RTS*

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## **KCPL and Westar rate case issues present challenges**

On May 5, the Commission issued an order in KCPL's rate case docket granting permission to Kansas City Power & Light to withdraw its proposal for a program that would assist low-income customers.

KCPL had requested permission to withdraw the issue in response to the Commission Staff's brief that argued that the program as proposed would violate Kansas' prohibition against low-income rates, also known as "lifeline" rates. The

company said that there wasn't sufficient time in this rate proceeding to figure out a way to revise the program that would make it acceptable to Staff.

Lifeline rates have been found to be unduly discriminatory because other customers have to subsidize some of the costs not included in low-income rates.

While CURB believes the Commission could approve certain assistance programs for low-income customers based on a finding that they are not unduly discriminatory to other customers, we welcome the withdrawal of KCPL's proposal from this docket because this program proposal clearly would have required other customers to pay rates that subsidize the costs incurred by the low-income customers.

On another front, proponents and purveyors of solar energy technology that have sought to intervene in the rate cases of Westar Energy and Kansas City Power & Light are facing opposition from the electric utilities that do not want them to be able to participate in the rate cases. The Commission has issued orders limiting their participation that have left some of us wondering whether the Commission has exceeded its discretion.

For example, the Climate Energy Project, a Kansas-based organization that promotes energy efficiency as a means of promoting public health and the economic interests of Kansans, filed a petition to intervene in the KCPL rate case. The Com-

mission found that CEP qualifies to intervene, but ordered that CEP will not be allowed to participate at the evidentiary hearing. The order did not state that CEP would not be allowed to prefile testimony, but simply stated that it was limiting its intervention because the "potential impact of this docket on CEP is indirect."

That raises the question of whether CEP has been denied its due process rights to cross-examine witnesses presenting testimony in the case.

The provision that the Commission cited to as its authority for making this ruling, K.A.R. 82-1-225(c)(2), describes the types of limitations that the Commission may impose on an intervenor seeking to participate in a KCC proceeding. The Commission can limit the party's participation to particular issues, can limit the party's use of discovery or other procedures to maintain an orderly proceeding and can require intervenors with common interests to consolidate and present one witness and one set of testimony and require them to choose one attorney to participate. However, the regulation does not say that the Commission can completely deny a party with a legitimate interest the right to participate in an evidentiary hearing.

It's fair to ask whether limiting participation in the hearing altogether exceeds the scope of the regulation and denies procedural due process to the intervenor. Such an extreme limit on participation in the proceeding

may even constitute an impermissible abrogation of the constitutional right to be heard.

When a party can only sit by and observe the evidentiary hearing like a member of the audience, then the party might as well not intervene at all. The only thing an intervenor gets in this circumstance that the general public doesn't get is official service of the documents filed in the case.

Additionally, this sort of limitation raises the question of whether, if the Commission allows CEP to file testimony, the Commission's ruling also deprives the other parties their due process rights to challenge the testimony and cross-examine CEP's witnesses.

CURB understands the Commission's concerns about new issues being injected into the proceedings. But thus far, the special interest groups seeking intervention in the case are focusing on proposals contained in the utilities' applications, and none of the intervenors in these cases has a history of disruptive behavior.

In our view, K.A.R. 82-1-225(c)(2) allows the Commission to limit participation, but it does not authorize the Commission to deny due process to participants by eliminating their participation altogether without sound grounds for doing so. Rather than taking the considerable risk that an intervenor will file an interlocutory appeal based on a denial of due process, a safer risk for the Commission would be to allow the intervenors full participation

in the evidentiary hearing, and to impose limitations only when an intervenor's participation at the hearing becomes disruptive or is causing undue delay. The Commission has broad authority over the conduct of the proceedings, but has no authority at all to preemptively deny due process to parties that have demonstrated a genuine interest in the proceedings.

We are awaiting the Commission's order on the issue of whether an intervenor that has been denied participation at the evidentiary hearing may file testimony in the docket.

*(Editor's note: Here are some late-breaking developments on these interventions since this article was written:*

*In the Westar rate case on July 13, the Commission issued an order granting the interventions of Cromwell Environmental, Solar Choice and Brightergy, while reserving the Commission's right to impose limitations prior to or during the hearing. The Commission found that they can provide "indispensable insight" into rate design issues related to distributed generation.*

*The petition of Aron Cromwell (owner of Cromwell Environmental) to intervene on behalf of himself and his business as customers of Westar were denied, because both are represented by CURB, which is the statutory representative of residential and small business customers of Westar.*

**KCC Docket Nos. 15-KCPE-116-RTS  
and 15-WSEE-115-RTS**

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## **Westar ECRR increase \$10.8 million; Staff wants rider terminated**

The surcharge on Westar Energy's bills for environmental costs is increasing. On May 21, 2015, the Commission approved a \$10.8 million increase to Westar's Environmental Cost Recovery Rider.

The line-item surcharge was authorized by the Commission to provide Westar accelerated recovery of costs related to several large-scale projects at its coal-fired plants to improve emissions as required by the Environmental Protection Agency. A customer using 900 Kwh per month will see the surcharge increase by about 55 cents per monthly bill. A small commercial customer using 10,000 Kwh per month will see a larger increase of about \$5.87 per month.

The KCC Staff has made a proposal in Westar's current rate case proceeding to eliminate the surcharge from customer bills because Westar has completed or is near completion of all of the projects that are needed to bring Westar into compliance with current EPA regulations. Staff states in its testimony that it would consider supporting a revival of the surcharge if future EPA regulations require more major projects, but says Westar no longer needs the surcharge at present.

CURB agrees with Staff's proposal, which would roll the

environmental costs currently being recovered through the surcharge into base rates and remove the surcharge from customer bills.

*KCC Docket Nos. 09-WSEE-737-TAR  
& 15-WSEE-115-RTS*

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## **Empire Asbury rider and notice approved**

On April 14, the Commission approved a temporary rider for Empire District Electric Company that will allow it to begin recovering the costs of an environmental upgrade of its Asbury generation facility. The rider was proposed as an interim recovery mechanism until Empire files a general rate case in September of next year.

CURB did not object to the use of the mechanism in this limited circumstance to avoid Empire's 10,000 Kansas customers from having to bear the costs of two back-to-back rate cases, but was concerned that customers wouldn't be prepared for the appearance of a new surcharge on their bills. Empire agreed to provide notice to customers and the Commission approved a comment period through May 15 for customers to provide input on the proposal.

The surcharge will become effective on June 15 and is subject to true-up and refund upon review.

**KCC Docket No. 15-EPDE-233-TAR**

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## **Black Hills customers to receive GSRs refund**

Black Hills customers, you will be pleased to learn that you will be receiving a credit on your monthly bill for the coming year. But don't get too excited: it's only four cents. And it was your money in the first place.

Apparently, Black Hills overcollected about \$51,000 from customers through its Gas System Reliability Surcharge (GSRs) during the previous year. The Commission Staff recommended making a refund to customers, and in an order issued on March 17, the Commission agreed.

Black Hills customers should be seeing the four-cent adjustment on their bills by now. While admittedly a tiny amount, at least it's not an increase. Enjoy it while it lasts.

*KCC Docket No. 14-BHCG-593-TAR*

## **Westar TDC rider increase: \$7.2 million**

On July 14, 2015, the Commission approved Westar Energy's request for a \$7.2 million increase in its Transmission Delivery Charge (TDC). The TDC is a line-item surcharge on customer bills that recovers Westar's transmission costs. The rates became effective on April 2 on an interim basis, pending review of the application by the Commission Staff and CURB.

Staff reviewed the company's request and recommended approval to the Commission. CURB's review concurred with Staff.

Staff estimates that the \$7.2 million increase will increase the surcharge on customer bills for the coming year by an average of 23 cents per month.

*KCC Docket No. 15-WSEE-366-TAR*

## **If approved, FERC settlement will reduce TDC charge on Westar bills**

On August 20, 2014, the KCC filed a complaint against Westar Energy at the Federal Energy Regulatory Commission (FERC) alleging that the current 10.8% base return on equity (ROE, or shareholder profit) component of Westar's Transmission Formula Rate is unjust, unreasonable, and unduly discriminatory. The KCC proposed 8.87% as a just and reasonable base ROE for Westar's Transmission Formula Rate.

After going through a mandatory settlement effort, Westar and the Commission came to an agreement that Westar's ROE in its formula rate would be 9.8%, effective August 20, 2014.

They further agreed that the ROE for transmission projects that are subject to an incentive-bonus adder to the ROE would not exceed 11%. This is a particularly welcome provision; CURB has opposed these FERC adders since their inception

because the utilities need no additional incentive to build transmission projects, especially during a period in which no new generation plants are needed. Building new transmission is one of the best opportunities they have at present for making large-scale additions to rate base that increase returns for their shareholders.

The agreement requires that Westar reduce its Transmission Formula Rates according to the above terms, and also to provide \$10 million in refunds to customers. These would be provided in the form of a reduction to the Transmission Delivery Charge (TDC) portion of customer bills.

If FERC approves the agreement, customers should see about a 40 cent reduction per month in the TDC portion of their bills, beginning in early 2016.

*FERC Docket No. EL14-93-000*

## **CURB files petition for reconsideration of KCC order**

On July 6, CURB filed a petition for reconsideration and/or clarification in the Commission's investigation addressing the issue of providing accelerated cost recovery for replacement of obsolete materials regarded as a safety risk.

On June 18, the Commission issued an order finding that it had jurisdiction to create a surcharge similar to the Gas System Reliability Surcharge (GSRs), a legislatively-created



surcharge that provides accelerated cost recovery to natural gas utilities for projects that do not enhance revenues. Examples of projects recoverable through the GSRS are the unreimbursed costs of moving mains for highway projects, safety-related replacements of or upgrades to existing infrastructure. In other words, any project that does not add new customers to the system is eligible.

The Commission rejected a similar proposal of Atmos Energy in the company's last rate case in 2014.

The ostensible purpose for a new surcharge for infrastructure replacements is that the natural gas utilities in Kansas have a great deal of pipe in the ground that is well past its prime condition, and a fair portion of that pipe is made of materials that has since been deemed unsuitable for natural gas pipelines. Cast-iron and bare steel pipe without cathodic protection are especially susceptible to corrosion, and other materials like PVC and Aldyl-A have proven to be unsuitable for long-term use in natural gas systems. The utilities have expressed concern that they can't afford to tackle system-wide replacement of these obsolete materials without guaranteed recovery of the costs.

CURB would like to know why there is so much obsolete pipe in the ground in the first place. Cast-iron has been known to be subject to corrosion for over fifty years, and most of the other problematic

materials were identified as problematic back in the 1970s. The utilities have apparently made no systematic effort to replace this pipe, and would not be proposing to do so now if it were not for the natural gas utilities' sagging revenues.

In the last 30 years, as more and more households replaced their natural gas furnaces and water heaters with increasingly energy-efficient models, and as more and more residences were weatherized and insulated, average annual natural gas usage per customer has been steadily decreasing. So natural gas utilities are seeking other ways to enhance revenues, and adding infrastructure to increase the rate base on which profits are earned is an effective way to increase profits. This is especially true for natural gas utilities in areas where customer numbers aren't growing.

The decrease in customer usage and slow customer growth has coincided with some recent high-profile natural gas explosions, most notably in California and Pennsylvania, that were attributable to pipeline corrosion. The utilities have pointed to these explosions, which resulted in human fatalities and casualties, as ominous warnings that the nation is at risk of more explosions if aging and obsolete infrastructure isn't replaced soon.

However, at the same time, the utilities continue to maintain that their systems are safe, and that they continue to address safety problems as a routine part of operations. It's a mixed

message that raises questions. It's not clear whether they are afraid to disclose the magnitude of the risk—which would indicate that they have neglected their continuing obligation to provide safe and reliable service—or perhaps they are under pressure from their insurers to reduce risk or face higher premiums.

Although CURB is well aware of the problems that exist in the state's natural gas infrastructure, CURB suspects that the real driver behind the push for another surcharge is a desire to build rate base and increase profits—and do so at a pace that exceeds the 40-cent cap on annual increases to the GSRS. Virtually all replacements of obsolete and aging infrastructure are safety-related replacements that are eligible for GSRS recovery, but the utilities want even more accelerated recovery on their investments in infrastructure than the GSRS can provide.

At any rate, the utilities' campaign for a "different" surcharge for replacing outdated pipe culminated in the Commission's opening an investigation into how to implement a mechanism that doesn't serve to violate the legislatively-imposed cap on accelerated cost recovery.

As a threshold matter, the KCC asked the parties to brief the question of whether, in light of the legislature's enactment of the GSRS Act, the Commission has the jurisdiction to authorize a surcharge to provide accelerated recovery for replacement

of aging and obsolete pipe materials. CURB's brief argued that the answer is no, the Commission has no jurisdiction to authorize a surcharge in addition to the GSRS that would provide accelerated cost recovery for the same types of projects the GSRS was designed to provide. Further, if the Commission allowed more than 40 cents per month per customer in accelerated cost recovery for these projects, the surcharge would be allowing the utilities to evade the cap that the legislature had added to the original GSRS proposal.

The Commission found it had jurisdiction, however, to authorize a mechanism for "accelerated replacement of natural gas pipelines constructed of obsolete materials considered to be a safety risk" and asserted that "The purpose of the GSRS is entirely separate and distinct from the scope of a system-wide obsolete replacement program." The Commission also found that "any new and separate infrastructure it may implement would not change the monetary cap and would thus not conflict with the plain language of the GSRS."

CURB petitioned for reconsideration of the finding of jurisdiction, and in the event the Commission denied the petition, clarification of that last statement, which CURB asserted was subject to several interpretations, all of which were ambiguous and inconsistent with the "plain language" of the GSRS.

The Commission bases its holding on a 2006 Kansas Industrial Consumers case (36 Kan.App.2d. 83), where KIC had argued against the KCC's approval of a new surcharge for Westar by claiming that the legislature's creation of ad valorem and fuel cost surcharges "occupied the field" and deprived the KCC of authority to create other surcharges. The Commission argues that the court held that the KCC's broad rate-making authority allows it to create alternative ratemaking mechanisms.

CURB countered in its petition that the court's opinion should be interpreted as holding that the legislature's creation of surcharges for certain types of costs, such as ad valorem taxes and fuel costs, does not deprive the Commission of its broad authority to create surcharges for other types of costs. The opinion in KIC is not support for the proposition that the KCC may create an alternative rate mechanism for recovery of the same kinds of costs for which a legislatively-created surcharge provides recovery, nor does it support the notion that the KCC can authorize a surcharge that serves to evade the cap the legislature imposed on the amount of accelerated cost recovery that can be provided annually for those types of costs.

One absurd aspect of having to fight this battle over jurisdiction is that the simple solution for getting more accelerated cost recovery is for the utilities to ask the legislature to

increase the GSRS cap. In fact, CURB and the natural gas utilities had discussions a while back about going together to the legislature to propose an increase to the GSRS cap up to 85 cents, which would provide more accelerated cost recovery for these obsolete infrastructure replacement costs. But when the Commission expressed no interest in supporting that amendment, the utilities lost interest in proposing it to the legislature. All this wrangling over jurisdiction could be avoided if the utilities would simply go to the legislature with this proposal. CURB would not oppose increasing the GSRS cap if it will help get more of that obsolete pipe replaced at a faster pace. But CURB doesn't believe the Commission has the authority to provide a different type of relief, or more relief than the legislature chose to provide for these kinds of costs.

*KCC Docket No. 15-GIMG-343-GIG*

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## *The Citizens' Utility Ratepayer Board*



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