



# CURB RESPONSE TO KCC STUDY

Citizens' Utility Ratepayer Board Presentation  
to the Kansas Senate Utilities Committee  
January 30, 2019



# CURB RESPONSE TO KCC STUDY

- I. RATE CASES ARE COMPLEX
  - A. Rate Case Issues
  - B. The Role of the Utility, KCC Staff, CURB and Others
- II. HISTORY OF BASE RATE INCREASES
- III. CURB'S RECOMMENDATIONS

# GENERAL RATE CASE ISSUES



**In determining rates, the Commission first establishes a revenue requirement and then designs a rate structure.**

“In a seriously contested rate investigation **there must be a determination of (1) a rate base, (2) a fair rate of return, and (3) reasonable operating expense.** In determining these factors, there are numerous elements pertaining to each which must be fairly and reasonably determined if a fair return is to result.”

*Southwestern Bell Telephone v. State Corporation Commission*, 192 Kan. 39 (1963).

“In reviewing **rate design issues**, a structure imposing different rates on different classes **will be upheld if there is a reasonable basis to support it.**”

*Unified School District No. 259 v. State Corporation Commission*, 138 P.3d 417 (2006).

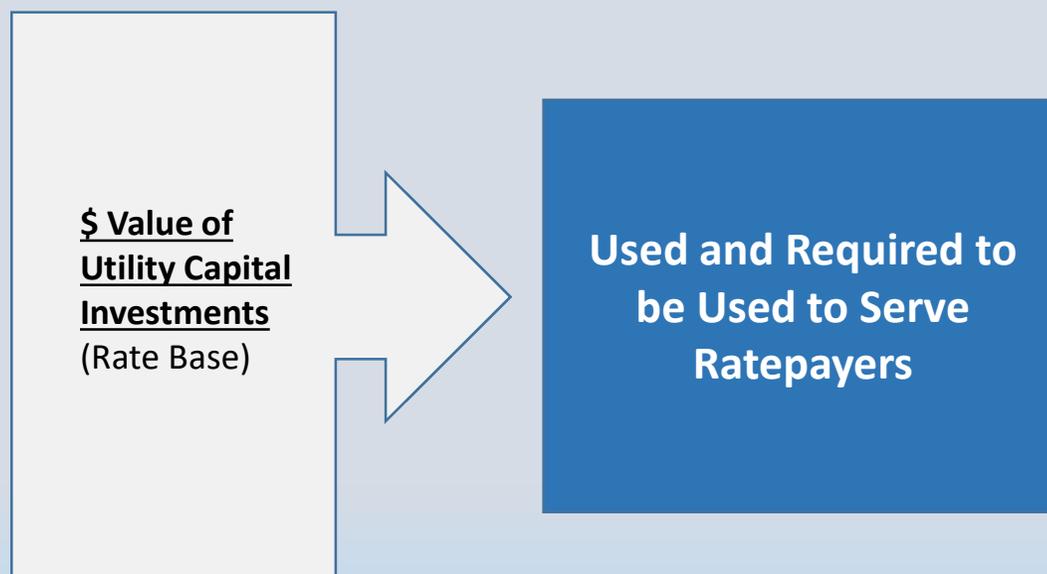
# Rate Case Overview

(Revenue Requirement)

**RATE BASE (CAPITAL INVESTMENTS)**

**RATE OF RETURN**

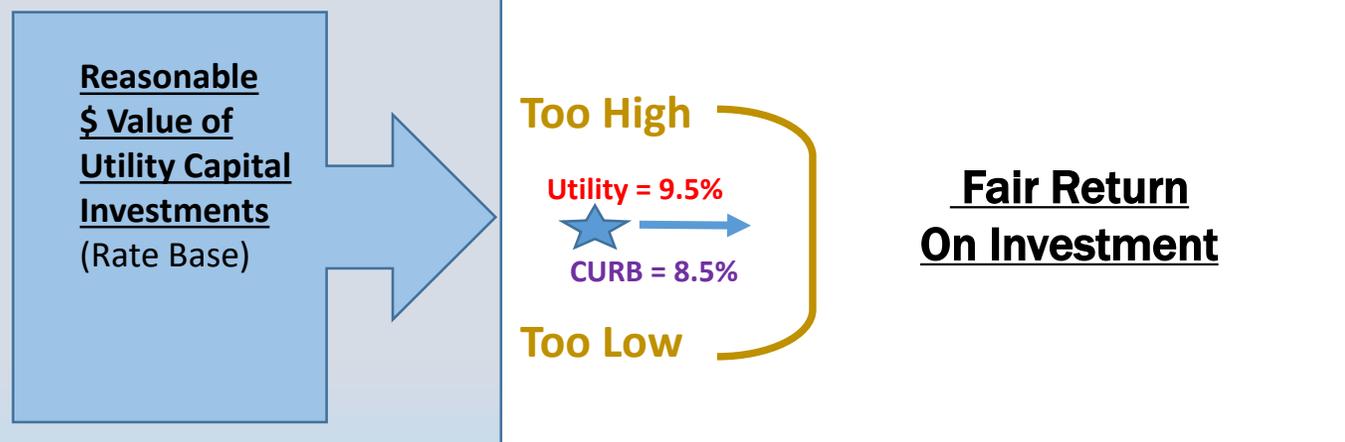
**RECOVERY OF REASONABLE EXPENSES**



# Rate Case Overview

(Revenue Requirement)

## AUTHORIZED RATE OF RETURN ON CAPITAL INVESTMENTS



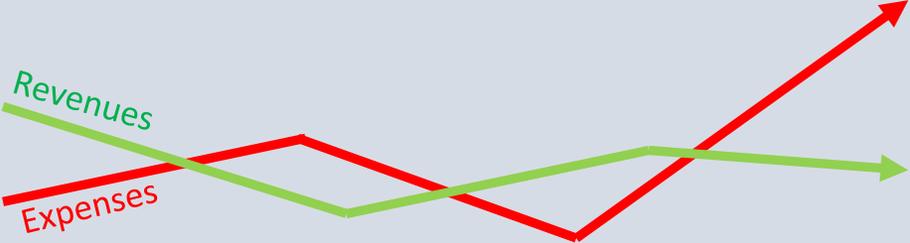
# Rate Case Overview

(Revenue Requirement)



Utilities Must be Allowed to Recover Reasonable Expenses

**REVENUES** AND **EXPENSES** OF UTILITIES ARE DYNAMIC

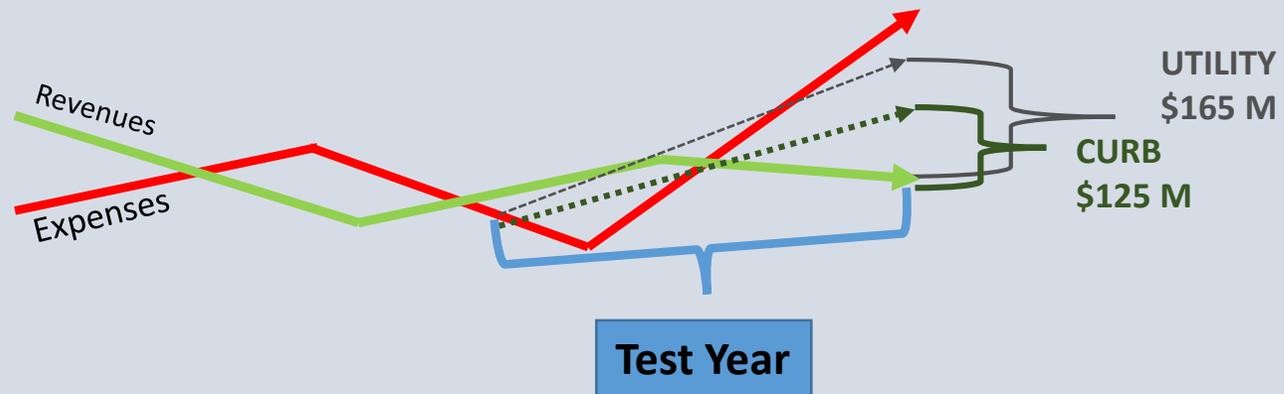


# Rate Case Overview

(Revenue Requirement)



REVENUES AND EXPENSES ARE DETERMINED  
UPON THE BASIS OF A **TEST YEAR**



# Rate Case Overview

(Revenue Requirement)



REVENUES AND EXPENSES ARE DETERMINED  
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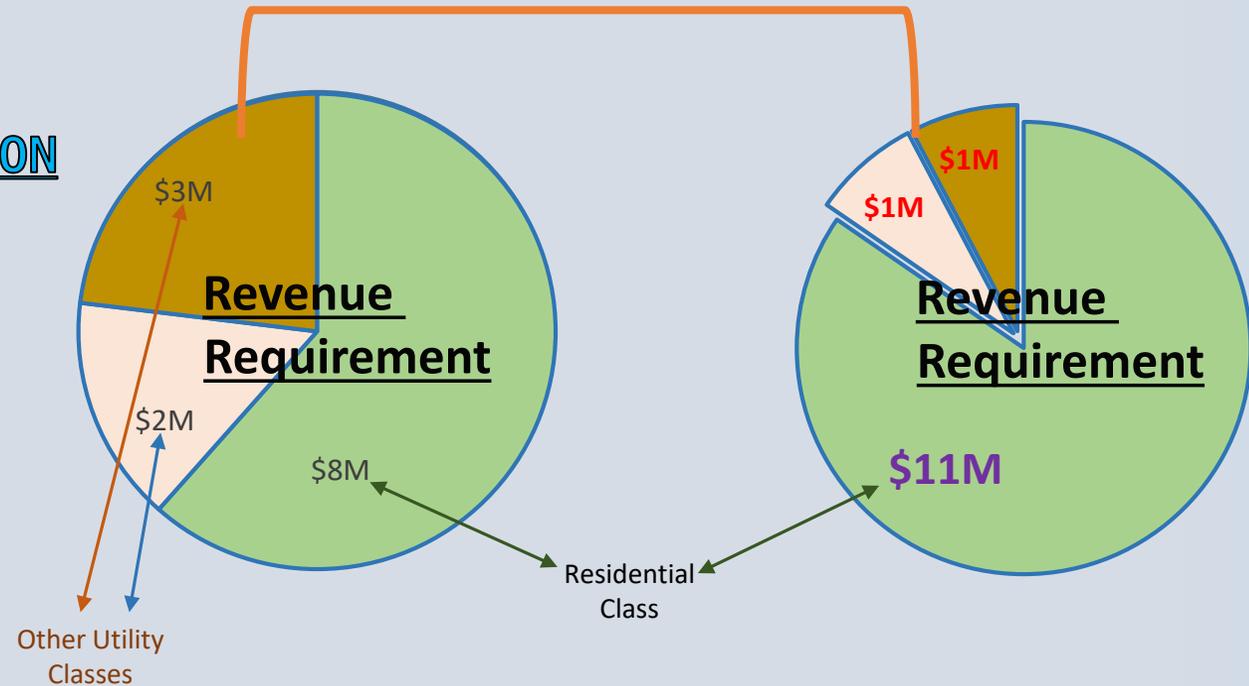


# Rate Case Overview



## (Rate Design)

**A REASONABLE COST ALLOCATION**  
**MUST BE DETERMINED**



# Rate Case Overview

## KCC DECISIONS ARE BASED UPON EVIDENCE



## MANY DIVERSE VIEWS ARE NECESSARY FOR EFFECTIVE REGULATION

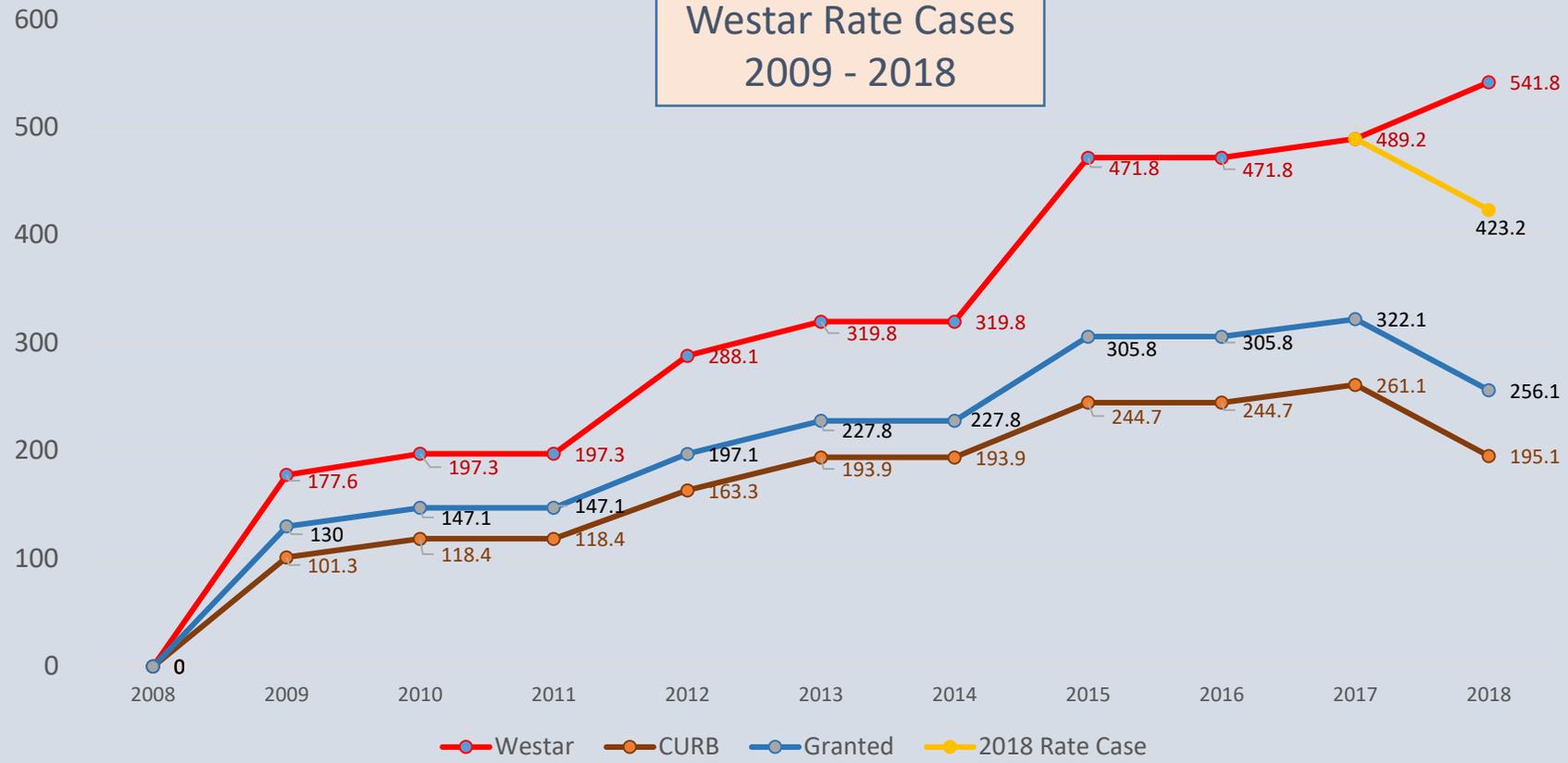


Kansas Corporation Commission  
weighs the evidence and balances  
the interests of the parties



# BASE RATE INCREASES

Westar Rate Cases  
2009 - 2018

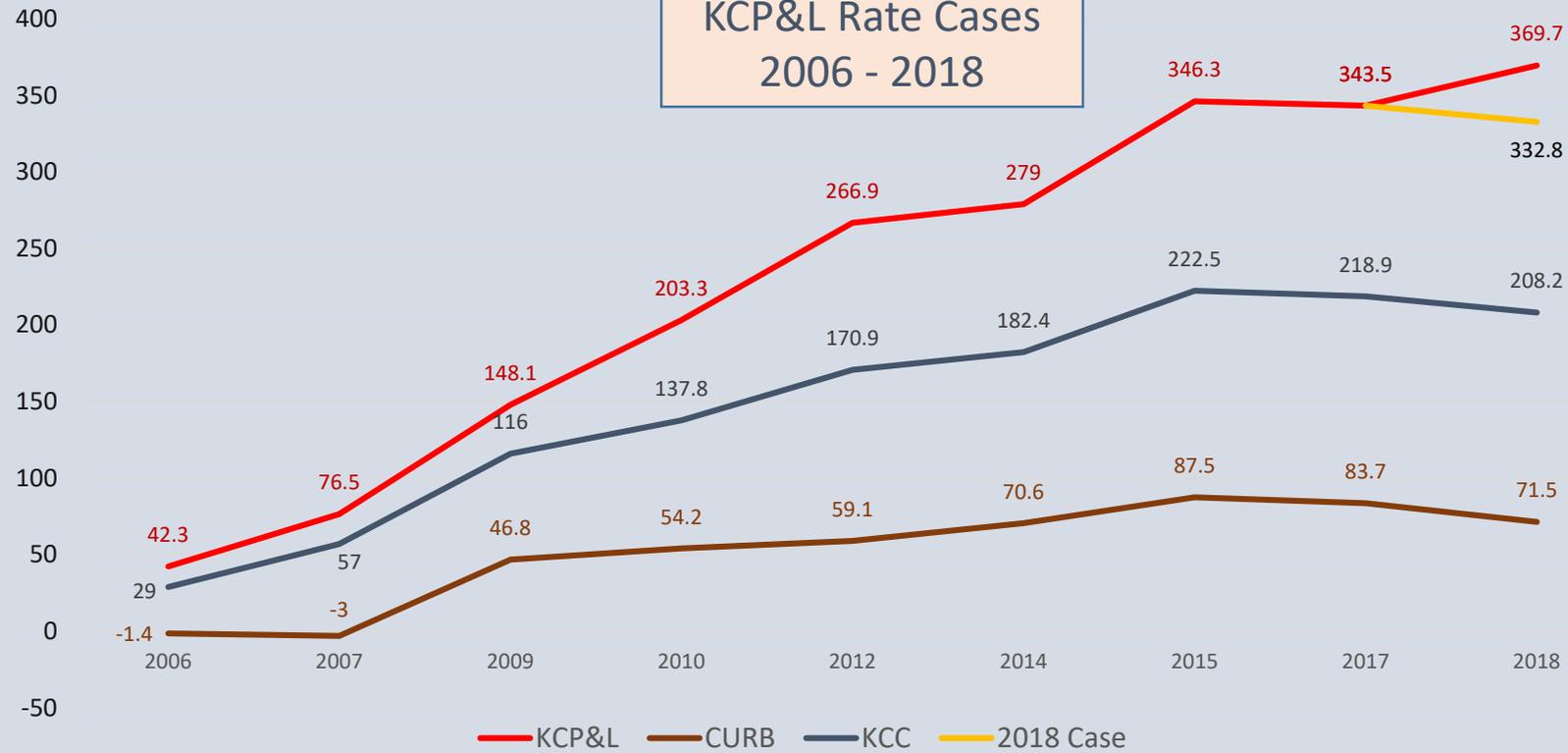


In \$Millions



# BASE RATE INCREASES

KCP&L Rate Cases  
2006 - 2018



In \$Millions

# PRESENT REGULATION

## STATUS QUO

- ❖ Kansas Has High Utility Rates
  - Sales have Decreased
  - Costs have Increased

## CAUSES

- ❖ Generation & Transmission Costs
  - FERC & Environmental
  - Energy Efficiency, etc.

## OPTIONS

- ❖ Is Change Needed?
  - Danger of Overreaction
  - Who Really Bears Risks/Rewards

## SUGGESTIONS

- ❖ Need for Further Study
  - Legislative Direction
  - Stakeholder Input

# FUTURE REGULATION

## Purpose of a Study

### ISSUES

- ❖ Regulatory Environment Has Changed
  - No Continued Growth
  - Dynamic Economic Environment

### OBSTACLES

- ❖ Traditional Regulatory Model is Limited
  - Is Reactive not Proactive
  - Is an Adversarial Process

### SOLUTIONS

- ❖ Proactive Regulatory Model
  - Open Communication
  - Find Common Solutions/Strategies

### NEEDS

- ❖ Need to Consider Other Perspectives
  - Multiple Strategies to a Goal
  - Flexibility/Long-term Outlook



Thank You

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January 30, 2019  
Kansas Senate Utilities Committee  
Testimony Regarding KCC Staff's Rate Study  
Citizens' Utility Ratepayer Board

My name is David Nickel, Consumer Counsel for the Citizens' Utility Ratepayer Board (CURB). CURB appreciates the opportunity to respond to the Rate Study furnished by the Staff of the Kansas Corporation Commission (Rate Study) from the perspective of Kansas residential and small commercial utility ratepayers.

There are three parts to CURB's response. First, CURB will echo the Rate Study as to the complexity of utility regulation, particularly rate cases. In these regards, key issues that are determined in rate cases will be outlined. The complexity involved in rate cases will be shown by highlighting the roles of the Kansas Corporation Commission (KCC), KCC Staff, CURB and others in the rate making process. The complexity of rate cases supports the need for further study, hopefully to solve the utility rate issues shown in the Rate Study.

The second part of CURB's response will show the history of base rate increases for Westar Energy, Inc. (Westar) and Kansas City Power & Light Co. (KCP&L). This history will show that the utility rates of those utilities have indeed increased over the past 10 years, but the increases certainly could have been higher. In short, the KCC has met its statutory obligations to regulate utility rates. That much is borne out of the Rate Study.

The third part of the response will explain CURB's recommendation concerning potential future utility regulation models that could be derived from an independent study. **To summarize, CURB's recommendation is that Kansas needs further independent study regarding how, if at all, to revise or supplement the current utility regulatory scheme in Kansas. Indeed, CURB believes that now is the time for Kansans to work together to find solutions to our high utility rates. CURB believes that an independent study can and will lead to feasible solutions.**

One problem in the current rate making process that may need to be addressed is that the current regulatory scheme is reactive and adversarial, versus proactive and collaborative. Yet, altering the rate making process in Kansas without a comprehensive study could result in unintended consequences that are adverse to the interests of residential and small commercial ratepayers or others. Indeed, CURB believes that, due to the complexity of the rate-making process, an independent study is necessary to judiciously solve the problem of high utility rates.

To start with, in CURB's view, the rate making process in Kansas is extremely complicated. As noted by the Kansas Supreme Court:

“The commission's decisions involve difficult problems of policy, accounting, economics and other special knowledge that go into fixing utility rates. It is aided by a staff of assistants with experience as statisticians, accountants and engineers.”  
*Southwestern Bell Telephone Co. v. KCC*. 192 Kan 39 (1963).

The complexity of rate cases compels CURB's conclusion that there is no quick fix to high utility rates in Kansas. The Rate Study makes that complexity very clear.

In the ratemaking process, there are two key aspects that the KCC must determine: A utility's **revenue requirement** and an appropriate **rate design**. These are both important to establishing just and reasonable utility rates. Regarding the revenue requirement, Kansas courts have held that the KCC must determine three issues:

#### The Utility's **Rate Base**, **Rate of Return**, and **Expenses**.

Yet it is even more complicated. There are numerous elements to each of these issues that must be addressed by the KCC. Moreover, the KCC's decision must have an evidentiary basis. All of the parties' due process rights must be satisfied.

The complexity of the ratemaking process is manifested by outlining the parties' involvement in the process. Starting with the determination of **rate base**, the issue is two-fold. The KCC must determine if the rate base (capital investments in the utility) is used and required to be used for serving the ratepayer. The KCC must also determine if the amount of the capital investment is reasonable. The utility posits what it believes is a reasonable amount of rate base in its application, supported by testimony. CURB and other intervenors study the application and usually posit in testimony a lesser amount of rate base for various reasons.

Ultimately, the KCC determines the reasonable amount of rate base that is used and required to be used to serve ratepayers, based upon evidence presented at the hearing. Determining this issue can be very difficult. Consider what the Kansas Supreme Court said in the 1976 case of *KG&E v. KCC*, 218 Kan 670:

“Unquestionably, electric utilities must plan for the future. To construct generating plants only when the need arises is, of course, ridiculous, and to construct it only for those needs without anticipating future growth would be even more ridiculous. At the same time, regulatory agencies cannot grant carte blanche authority to construct huge plants just barely more than experimental in nature, and allow the company to charge the expense entirely to the rate payer.”

The KCC must also determine the appropriate **rate of return** on equity invested in the utility. All investors reasonably expect a fair return on their investments. The issue for the KCC is what rate of return is reasonably necessary to attract investment in the utility. The KCC's decision must be even-handed and based upon the evidence presented at the rate case hearing.

In these regards, there is often disagreement between CURB, the KCC Staff and the utility as to what rate of return is fair. The parties posit various financing formulae and methods and the testimony of economists and those familiar with corporate finance is entered upon the record. Ultimately, the KCC determines what is a fair rate of return.

The third aspect of determining a utility's revenue requirement is the determination of reasonable **expenses** likely to be incurred by the utility in providing service to ratepayers. If a utility is not allowed to collect its reasonable expenses then its rate of return is illusory. However, expenses must also be reasonable. Consumers should not be expected to pay higher utility rates due to imprudent or unreasonable expenses being incurred by the utility.

One of the complexities involved in determining what a utility's expenses will be is that revenues and expenses are dynamic. They do not follow any pattern exactly from year to year. So if one were to state that a utility should be entitled to collect the same level of expenses it had in years past, it would likely lead to an over collection or under collection of actual expenses.

To solve that issue, expenses are based upon a test year, which is an annual period ending a few months before the filing date of the rate case application. The parties then make adjustments as to what expenses are just and reasonable. The parties present hundreds of pages of vastly different testimony concerning the issue of what a utility's reasonable future expenses will and should be.

Once the revenue requirement is determined, the KCC must determine a rate design, that is, how the revenue requirement will be paid among various rate classes. That issue is determined upon the evidence, economic models and expert opinions. There are no easy answers in rate design. By changing rates for one rate class, other rate classes can be affected. Thus, one cannot reduce rates in one rate class without likely adversely affecting other rate classes. Rate design is hotly contested.

In CURB's view, the KCC strives hard to weigh all of the evidence and balance the interests of all involved. Yet, despite the many efforts of the KCC and its staff, CURB and several intervenors over several years, Kansas has very high utility rates. (See the attached charts.) This problem begs for a solution. For many residential consumers, particularly those on fixed income or suffering low income, every increase in utility rates can mean choosing between food and heat, or medicine and heat. For these consumers, the need to solve high utility rates in Kansas cannot be overstated.

The attached charts indeed show that Westar and KCP&L utility rates have risen considerably in the past ten years. However, the KCC has reduced utility rates from those requested by the utilities. In the various rate cases during that time, CURB has proposed utility rates even below those recommended by the KCC Staff. The Rate Study verifies the increase in utility rates. However, the Rate Study was not intended to and does not pose the solution to the problem of high utility rates in Kansas.

Regarding the Rate Study, CURB has thoughts and recommendations. First, CURB notes that the study thoroughly discusses the status quo. The facts are that Westar's and KCP&L's utility rates have gone from low among regional utilities to high. The Rate Study fairly posits that sales have fallen and costs have risen. The Rate Study further points to various causes. Energy efficiency is

cited as a cause for reduction in sales. In addition, the economic environment in Kansas is a factor. As far as cost increases, the Rate Study names increases in power generation and transmission costs and environmental retrofit costs as causes. In CURB's view, the KCC Staff did a great job of presenting the status of utility rates and the reasons why they are high.

The Rate Study leaves Kansans with at least two options: First, do nothing and see if other states eventually raise their rates to pair competitively with Kansas. That is akin to hoping somebody loses. Second, Kansas could seek change. CURB believes that its constituents could benefit from a study to determine how, if at all, our regulatory scheme could be revised or supplemented.

There is no quick and obvious fix available to the problem of high utility rates in Kansas. As noted earlier, the utility regulation process is very complex. KCC Staff is very dedicated to its job. It is not fair to lay high rates solely at the feet of the KCC. The solution to high utility rates in Kansas is not simply to assert that the KCC or any participant in the rate making process has failed to do their job. The regulatory problem, if any, may be systemic.

Indeed, it is important to note that the rate case procedure is generally reactive. KCC Staff responds to applications filed by the utilities; it is generally not a proactive process where problems are posed and solutions are collaborative found. In addition, rate cases are adversarial. They constitute a 9-1 game many times on many issues. In view of the dynamic economic and regulatory environment in Kansas, perhaps the current rate making process could be served well by supplemental or revisionary measures.

For example, perhaps there are win-win solutions that can be found outside of that reactive adversarial process. In these regards, the IRP process is a step in a more proactive regulatory approach. A study could point to other approaches.

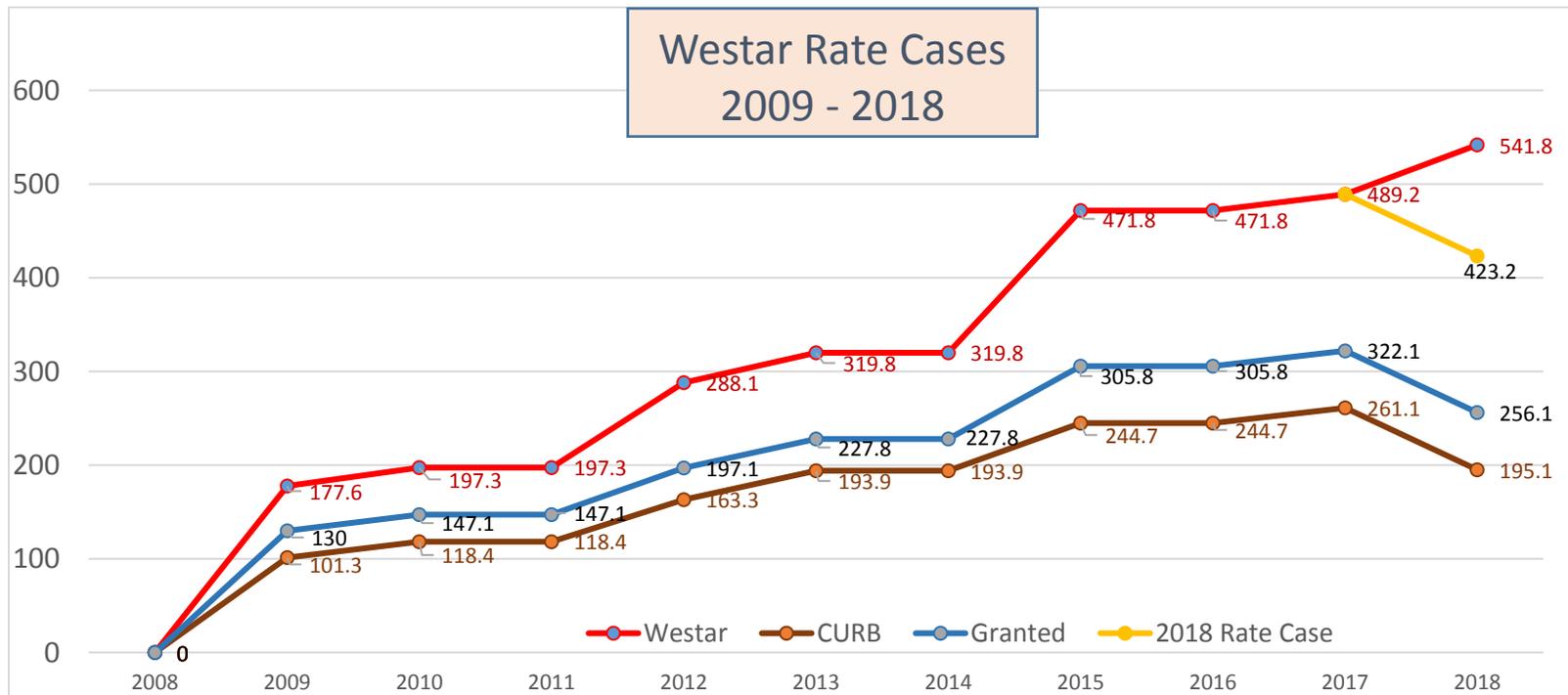
CURB suggests that Kansas high utility rates could and perhaps should be the subject of further study. CURB believes that the study should not revisit the conclusions that the KCC arrived at in its study. Rather, it should be a look forward. The focus should be on what can be done rather than what has been done. It is an imperative that this be under the direction of the legislature. It is also important that this study lead to a conclusion.

Clearly, stakeholders should be involved in the process. There are many Kansans with diverse views of this rate problem and potential solutions. What may be good for some rate classes may be terrible for others. A study will provide balance and restraint where needed.

One solution that a study may be a more proactive regulatory model. The further study could suggest a regulatory model that incentivizes open communication among stakeholders in an environment where change is expedited to meet dynamic changes in the regulatory climate. It may allow collaboration among stakeholders, where common solutions and strategies can be found.

To sum up, there is a problem with high utility rates in Kansas. CURB recommends that the Kansas Legislature direct an independent and comprehensive study to lead to a solution to these high utility rates in a way that benefits all Kansans. CURB wants to be involved in the process and to assist the Kansas Legislature to find a solution. Together, we can and will make a difference.

# BASE RATE INCREASES



Cumulative  
(In \$Millions)

# BASE RATE INCREASES

