

# CURB News



Volume 17, Issue 2

THE CITIZENS' UTILITY RATEPAYER BOARD OF KANSAS

March 2017

## Kansas Legislative Update - Energy

Unusually, this legislative session has not been very active to date. Although several House Bills and Senate Bills have been introduced in various Senate and House Committees, no Bill has been passed out of the originating Committees to date. It is important to note, however, that all of the House Bills and Senate Bills presently in the Committees could be acted upon in the next legislative session, next year. Therefore, we thought that our readers would want to have an outline of the House Bills and Senate Bills that were introduced this legislative session.

In the House, HB 2061, HB 2166 and HB 2190 have been assigned to the House Energy, Utilities and Telecommunications Committee. HB 2061 would add to the definition of "competitive video service provider" any entity which provides packet delivery system for video service and any entity that is a reseller of video service over a broadband network, provided that the entity is not franchised as a cable operator in Kansas. HB 2166 was heard on February 15, 2017, but

failed to pass out of the Committee. This House Bill would exempt from KCC regulation any entity which provides electric vehicle charging services provided that the entity is not regulated as a public utility by the KCC. Finally, HB 2190 would amend current law regarding the sale of renewable energy to allow an exemption for any renewable energy supplier from the statutory definitions of a "public utility" and a "retail electric supplier." The House Bill would allow the renewable energy customer to receive electricity at multiple, separately metered locations and to aggregate multiple, separately metered renewable energy suppliers.

In the Senate, SB 119, SB 182, SB 183, SB 196 and SB 209 have been assigned to the Senate Committee on Utilities. SB 119 would allow telecommunications carriers to participate in the Kansas Lifeline Service Program, regardless of whether or not the carrier provides universal service at least partially through its own facilities. This Bill was heard on February

16, 2017, but no vote has been taken on the Senate Bill as of yet. SB 182 would require the KCC to open an investigation into a number of issues which seem to be presumed to keep utility rates from being reasonable, including policies which allow KCC personnel to take jobs with utilities after their employment with the KCC, policies which keep travel costs in rate cases to a minimum, and policies pertaining to the CURB. SB 183 creates the Retail Choice Act, which allows customers to choose their retail electric generation supplier. SB 196 (and SB 209) require that electric invoices to ratepayers contain numerous items of information concerning the invoices, including applicable taxes, beginning and ending dates of service, charges per kilowatt for the generation of the electricity provided that covers the physical infrastructure needed to generate the electricity, charges per kilowatt for the transmission of the electricity provided from generation sources

### UPCOMING CASES WE ARE FOLLOWING:

- 16-KCPE-593-ACQ — GPE SEEKS TO ACQUIRE WESTAR
- 17-WSEE-014-TAR WESTAR AND KG&E'S 2016 TARIFF RIDER
- 17-EPDE-101-RTS EMPIRE DISTRICT EC APPLICATION PROPOSING RATE CHANGES

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## Meet our Members:



**ELLEN JANOSKI**  
– CHAIR  
PECK



**BOB KOVAR**  
– VICE CHAIR  
OSAWATOMIE



**JAMES L. MULLIN, II**  
– MEMBER  
LENEXA



**BOB HALL**  
– MEMBER  
HUTCHINSON



**HENRY HUNGER-BEELER**  
– MEMBER  
LEAVENWORTH

### OUR MISSION:

TO ZEALOUSLY PROTECT THE INTERESTS OF RESIDENTIAL AND SMALL COMMERCIAL UTILITY RATEPAYERS ....

## (Kansas Legislative Update, cont. from page 1)

that covers the physical infrastructure needed to transmit the electricity, a decommissioning fee to cover the costs of removing generation from service, a demand charge base on the rate of electricity used at a specific point in time during the billing period, and other items. SB 209 was heard

on March 15, 2017, but no vote has been taken on the Senate Bill as of yet.

CURB has monitored the Kansas legislature and the Bills discussed above on behalf of the residential and small commercial ratepayers. CURB has not sponsored testimony for any Bill, except HB 2166 that CURB favored due to

the fact that there seems to be inadequate reason to regulate electric vehicle charging stations at this time. CURB will continue to keep an eye on potential legislation which may affect residential and small commercial ratepayers.

## CURB TALKS TRANSMISSION - JOINS SPP STUDY

Responding to the recently opened investigative filing docket [17-SPPE-117-GIE](#), CURB will join Staff and intervenors to help determine if there is public interest in retaining membership in the Southwest Power Pool (SPP), as well as requiring annual or periodic cost/benefit reporting by the SPP and participating Kansas utilities. The Kansas Corporation Commission (KCC) has outlined a series of questions meant for com-

ment, which include parameters surrounding cost/benefit reporting and other concerns.

The SPP is a regional transmission operator (RTO) that manages transmission in 14 states including Kansas. SPP was founded in 1941 as an 11-member tight power pool to help provide the additional electricity needed by an Arkansas aluminum plant serving WWII manufacturing. The SPP "pools" power capacity from its

members through interconnected electric systems which allow for greater coordination, load balancing, improved reliability and more efficiency as per SPP. An expanded role and recent proposed tariff increases prompt this examination by the KCC to determine if periodic reporting by SPP, and participating Kansas utilities in SPP, is warranted.

## Meet Our New Staff

CURB is pleased to announce that Todd E. Love joined the CURB Staff on March 13, 2017. Mr. Love will work as a Staff attorney assisting CURB

with concerns before the KCC. Prior to joining CURB, Todd worked for both the City of Topeka and Shawnee County as a prosecuting attorney.

Welcome Todd!

Check our webpage online to learn more about our staff:

[curb.kansas.gov/about.htm](http://curb.kansas.gov/about.htm)

## CCIF 2017 Spring Summit 2 Focuses on Smart Cities

CURB attended the CCIF 2017 Spring Summit 2 which was held in Kansas City, Missouri on March 20-21, 2017. Formed in 2010, the CCIF (Critical Consumer Issues Forum) is intended to provide state commissioners, consumer advocates, and electric industry representatives opportunities to collaboratively resolve pertinent consumer issues through highly interactive discourse. The CCIF seeks to find consensus among these issues when possible, and at the least seeks to have parties understand and appreciate differing perspectives. Participants at the CCIF 2017 Spring Summit 2 discussed the topic, "Smart Cities, Enabling Technologies & the Grid."

According to Techopedia, "a smart city is a designation given to a city that incorporates information and com-

munication technologies (ICT) to enhance the quality and performance of urban services such as energy, transportation and utilities in order to reduce resource consumption, wastage and overall costs." Many cities are now employing big data and Internet-of-Things applications to improve their citizens' daily lives. Major tech companies like Sprint and Cisco cooperate in Smart City endeavors. Most importantly, utilities are integral to Smart City development. The roles of consumer advocates and utility regulators are also crucial.

At the CCIF 2017 Spring Summit 2, the work of Kansas City, Missouri, and Louisville, Kentucky, toward Smart City development was studied. Numerous representatives from state public utility commissions, consumer advocate offices (such as the CURB) and the electric industry

(including KCP&L) in attendance shared insightful perspectives on Smart City development. Several key issues were identified, and participant roles and potential collaborative solutions were outlined.

CURB was very privileged to be invited to the forum and we obtained a greater appreciation of future challenges facing municipalities and regulated utilities. One thing we can all appreciate is that big data is here and its use by cities will offer vast benefits and create some dangers to residential and commercial ratepayers. Certainly, given the great potential of information and communication technologies, it is important for utilities, consumer advocates and public utility commissions to stay abreast.



"[B]IG DATA IS HERE AND ITS USE BY CITIES WILL OFFER VAST BENEFITS AND CREATE SOME DANGERS..."

## Consumer Feature: SMART SPRINGTIME SAVINGS TIPS

Spring is in the AIR! A spring cleaning routine can lend itself to your energy use too, helping you re-evaluate and anticipate summer needs. Try these tips for a boost:

- ◆ Give your AC a tune-up
- ◆ Check and drain your water heater

- ◆ Clean out your fridge
- ◆ Seal up cracks
- ◆ Be smart with your thermostat
- ◆ Embrace natural ventilation - open up windows!
- ◆ Stay out of the kitchen

- ◆ Invest in Energy Star appliances
- ◆ Redirect household air with ceiling fans

Read more about these and other energy-saving tips at [www.money.usnews.com/money/blogs/my-money/articles/2016-03-29/8-energy-saving-tips-for-spring](http://www.money.usnews.com/money/blogs/my-money/articles/2016-03-29/8-energy-saving-tips-for-spring).



## CONSTITUTION PREEMPTS MARYLAND REGULATORY PROGRAM



THE U.S. SUPREME COURT HELD THAT THE MARYLAND REGULATORY PROGRAM VIOLATES THE SUPREMACY CLAUSE BECAUSE IT DISREGARDS THE INTERSTATE WHOLE RATE FERC REQUIRES.



In the last edition of the CURB News, we highlighted *FERC v. Electric Power Supply Association*, 136 S. Ct. 760 (2016) in which the United States Supreme Court upheld a Federal Energy Regulatory Commission (FERC) rule even though it appeared to intrude upon state regulation of retail utility sales. Because it also is affected by scope of authority of the FERC under the Federal Power Act (FPA), we thought another United States Supreme Court case, *Hughes v. Talen Energy Marketing, LLC*, 136 S.Ct. 1288 (2016) should be highlighted.

*Hughes v. Talen Energy Marketing, LLC*, involves PJM Interconnection (PJM), which is a Regional Transmission Organization (RTO) that oversees a multistate electricity transmission grid. PJM operates a capacity auction designed to identify the need for new generation and to accommodate long-term bilateral contracts for capacity among various participating load serving entities (LSEs). LSEs are entities that deliver power they purchase from independent power generators to retail

consumers under Maryland's deregulated energy market. The power purchased and the price paid for it by the LSEs occurs under capacity auctions, which are FERC regulated.

Maryland is located within a congested part of the PJM grid, making it difficult to import power from other parts of the grid. Believing that the PJM capacity auction failed to encourage development of sufficient new in-state power generation, Maryland enacted a regulatory program to alleviate the problem. Under the program, Maryland selected CPV Maryland (CPV) to construct a new power plant in Maryland, and LSEs were required to enter into a 20-year pricing contract ("contract for differences") with CPV at a rate CPV specified in its proposal. The LSEs sell the capacity obtained by that contract in the PJM auction whereby a clearing price for capacity is set. However, the contract for differences requires LSEs to pay CPV the difference between the auction clearing price and the contract price if the clearing price was lower; and it required CPV to pay the LSEs

the difference between the contract price and the auction clearing price if the clearing price was lower.

A number of incumbent generators filed suit against the Maryland Public Service Commission in Federal District Court of Maryland, which determined that the Maryland program violated the Supremacy Clause of the United States Constitution. This decision was affirmed by the United States Court of Appeals for the Fourth Circuit. An appeal to the United States Supreme Court ensued.

The United States Supreme Court held that the Maryland regulatory program violates the Supremacy Clause because it disregards the interstate wholesale rate FERC requires. The Court agreed with the Fourth Circuit Court of Appeals that, under the Supremacy Clause, state laws are preempted when they "den[y] full effect to the rates set by FERC, even though [they do] not seek to tamper with the actual terms of an interstate transaction." Maryland insisted that it was attempting to encourage new in-state generation, which is clearly

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## Constitution Preempts, cont.

allowed to be regulated by States under the FPA.

Compare that holding to the holding in [FERC v. Electric Power Supply Association](#), wherein the United States Supreme Court upheld a FERC rule which requires wholesale market operators to pay aggregators of electricity consumers for demand response participation (with exceptions), at the locational marginal price (LMP), even though U.S.C § 824(b) of the FPA "limit[s] FERC's sale jurisdiction to that at wholesale." Regulatory authority over retail sales (as well as intra-

state wholesale sales) belongs to the States. However, in the view of the majority of the Court whatever the effects of the FERC rule at the retail level, "every aspect of the FERC regulatory plan happens exclusively on the wholesale market and governs exclusively that market's rules."

There is clearly a tension between regulation of utilities at the state level and FERC regulation of RTOs. It is important that state public utility commissions retain authority to regulate utilities within their respective jurisdictions. It is also important that residen-

tial and small commercial ratepayers are protected through the regulatory process from detrimental practices of both RTOs and member utilities. In these regards, as FERC regulation of RTOs grows, the realm of practical authority of state public utility commissions may diminish, leaving residential and commercial ratepayers with little voice.



Maryland State Seal

**"IT IS IMPORTANT THAT STATE PUBLIC UTILITY COMMISSIONS RETAIN AUTHORITY TO REGULATE UTILITIES..."**

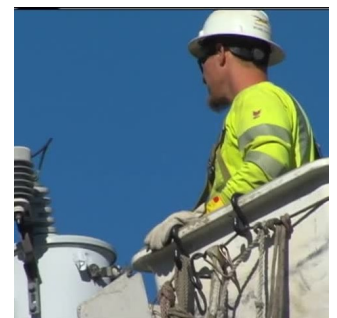
## EMPIRE FILES RIDER INCREASE

Empire District Electric Company (Empire) has filed an application in docket [17-EPDE-280-TAR](#) with the KCC requesting approval of a new rider. The filing stems from the acquisition docket [16-EPDE-410-ACQ \(410 Docket\)](#) unanimous settlement in which the company agreed to amend the existing AECR Rider to reflect inclusion of their new Riverton 12 combined cycle gas fired generating

unit. Both CURB and Staff also agreed as part of the 410 Docket to support the amended rider (called the AERR Rider) as long as certain conditions were met in the filing.

CURB will be evaluating the application and testimony provided by Empire to confirm the company has met requirements. Should the filing prove satisfactory, the AERR will be implemented and set for evaluation on an

interim basis. The company anticipates the monthly impact to a typical Empire residential customer using 1,054 kWh per month will be \$5.50. CURB has reserved the right to challenge the reasonableness of any of the costs collected by Empire in the company's next general rate case. Bookmark this newsletter for updates on this and other important issues.





## News from the Watchdog for Residential and Small Commercial Utility Consumers

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ing your email address. The KCC will send communications regarding cancellations, changes in the date, time, or location as far in advance as possible, adding an extra service. The KCC notes that the Agenda/

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## We're on the Web!

[curb.kansas.gov](http://curb.kansas.gov)

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### ABOUT CURB



*Established in 1988, the Citizens' Utility Ratepayer Board (CURB) is an agency focused on advocacy for residential and small commercial utility consumers in Kansas. The CURB is composed of an appointed board of five (5) volunteer members representing the congressional districts in Kansas and one at-large member, and was initially founded by the Chairman of the Kansas Corporation Commission upon a perceived need for a stronger consumer advocate. Today, CURB has evolved to an independent agency, and states its mission is "to zealously represent the interests of residential and small commercial utility ratepayers before the Kansas Corporation Commission and the Kansas legislature."*