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 2011

KCPL seeks $9.1 million to pay outside help who fought for increase

KCPL is asking its customers to pay $9.1 million in costs relating to KCPL's recent rate case. Of that amount, KCPL spent $7.6 million on outside lawyers and outside consultants to fight for the rate increase.

KCPL hired 40 lawyers who worked over 14,200 hours on the case. The average hourly rate paid for the lawyers was $345, with several lawyers charging $600 per hour and more.

KCPL also hired 45 consultants who billed 11,350 hours on the case.

CURB doesn't think ratepayers should have to pay for KCPL's high-priced lawyers and consultants.

KCPL's recent rate case was its fourth in five years. The case was the last rate case contemplated under the KCPL Comprehensive Resource Plan that included building the Iatan II coal plant. At issue in this case was whether ratepayers should be responsible for the

(See *KCPL rate case expense* ,P.)

KCC adopts several CURB proposals in revising customer deposit policy

On June 22, the KCC issued new billing standards on customer deposits—about four-and-a-half years after the KCC first determined to review the standards. In general, the Commission resisted the proposals of the utilities to make the rules tougher on customers. Several ambiguities were addressed and corrected by the Commission, and new-fangled ways of paying deposits are now expressly permitted.

Most importantly, the Commission adopted CURB's recommendation not to increase deposits for residential and small commercial customers, and agreed not to subdivide commercial customers by industry type for purposes of assessing the amount of deposit required.

For residential customers who have been disconnected, either for non-payment or because they are moving, the Commission declared that they shall be allowed a 30-day grace period to become reconnected

(See *Customer deposits*, at P.)

KCPL seeks pre-approval of costs to make La Cygne coal plant cleaner

KCPL is asking the Commission to approve a proposed upgrade of environmental equipment for its La Cygne coal plant, which is estimated will cost $1.23 billion. The upgrade should take four years to complete. The La Cygne plant has two large coal units that total about 1400 Megawatts. The units were built in the early 1970's.

KCPL is proposing to install wet scrubbers, bag houses, a common chimney for both units, low NOx burners and a selective catalytic reduction system. These components will help KCPL reduce the emissions from the plant to meet federal environmental standards as enforced by the Kansas Department of Health and Environment. As part of a settlement of a lawsuit brought by the Sierra Club, KCPL has agreed to exceed the federal emission limits that would otherwise apply. Under the agreement, KCPL claims that the project must be completed by

(See *La Cygne upgrade*, at P.)

KCPL rate case expense

(Continued from P. 1)

massive cost overruns KCPL experienced during construction of the plant. KCPL asked the Commission to increase customer rates by $55 million annually. In the end, the Commission approved a rate increase of only $22 million. Over the four rate cases comprising the regulatory plan that was designed to help fund the Iatan II construction, KCPL has increased customer rates over $135 million.

The Commission also ruled that CURB and the KCC staff failed to prove that the cost the overruns on the Iatan II project were KCPL's fault. The Commission allowed KCPL to put all of the cost overruns into customer rates.

Initially, KCPL estimated the cost of trying the rate case would be $2.1 million. CURB did not object to that amount at trial. It was a major, hard-fought case. The expense pays CURB's costs, the KCC's costs and the costs of any specialized witnesses who are not full-time employees of the utility. The Commission allows a reasonable level of rate case expense to be charged to customers, and generally permits the utility to come in later after the trial when all the invoices have been paid to finalize the rate case expense amount.

However, after the trial, KCPL's claim for rate case expense was much higher than KCPL's $2.1 million estimate: KCPL asked the Commission for $8.3 million. Naturally, CURB objected. The Commission decided to allow $5.6 million to be placed into the rates KCPL's customers are currently paying. CURB objected again. Changing course, the Commission then ordered a new proceeding to take evidence on the appropriate level of expense for the rate case.

Then, KCPL filed and asked for $9.1 million in rate case expenses in the new proceeding rather than the original $8.3 million. To put KCPL's costs into perspective, included in this amount are CURB's costs of $185,000 in the docket, as well as the KCC regulatory fee of roughly $1.2 million.

KCPL's expenditures in this case are $7.6 million—and rising with each day of the current proceedings.

KCPL spared no expense in the rate case. The evidence shows that attorneys representing KCPL averaged over 100 legal hours *per day* during the first week of the trial. That's eight attorneys each working more than twelve hours per day for KCPL. By contrast, CURB had one attorney working on the case during the trial.

During a single month, seventeen attorneys billed KCPL for 975 legal hours, totaling over $300,000, to review the testimony of a *single* KCC Staff witness. KCPL racked up another $300,000 in bills for 898 hours of legal work from four law firms for personnel to attend "witness training". The trainers were also paid over $100,000. That one course of training cost more than twice the entire cost of CURB's participation in the case over a period of eight months.

Furthermore, several attorneys who never entered an appearance in the court room each billed KCPL for more hours than CURB staff spent on the entire case.

One of KCPL's expert witnesses billed the company for sixteen flights to meetings—flights that averaged over $1000 each.

For the convenience of witnesses, attorneys and KCPL employees KCPL rented 20 rooms at the Topeka Hampton Inn across the street from the KCC during the trial. However, but it didn't bother to keep records of whether anyone stayed in any of those rooms.

These are just some of the examples of how KCPL spent money lavishly to fight for its rate increase, and how little effort it made to moderate expenses or keep track of whether they were spent wisely.

CURB argues that the Commission should allow only the original $2.1 million into customer rates. If KCPL wants to spend more, it should be allowed to, but it should not be able to bill ratepayers.

If the Commission won't go that far, as an alternative CURB suggests that the Commission allow no more than twice the total bill for the KCC's and CURB's participation in the case.

As a last resort, if the KCC rejects both of these recommendations, CURB, after reviewing the invoices, would

recommend disallowing all but $4.9 million to be placed in customer rates.

The parties representing consumers are hoping that the Commission will set forth policy guidance in its order for establishing a reasonable level of rate case expense for utilities in the future. Just because the utility spends the money shouldn't mean it is automatically entitled to get the money back from its customers.

This issue in the case goes to trial in early September, with no deadline required for a Commission order.

KCC Docket No. 10-KCPE-415-RTS

KCC approves agreement on Westar wind contracts

The Commission has approved a unanimous settlement between Westar Energy, CURB and the Commission Staff that permits Westar to enter into two purchased-power agreements as part of its efforts to satisfy the 2011 (10%) and 2015 (15%) renewable portfolio standard (RPS). As a part of the big "compromise" energy bill passed in 2009, the Kansas legislature imposed requirements that the state's electric utilities generate 20% of their electricity with renewable resources by the year 2020. Intermediate requirements of 10% and 15% must be met in 2011 and 2015, with some leeway for utilities that are making "good faith efforts" to comply with the requirements or whose rates would increase more than 1% if required to meet the standard.

Westar now has approval to enter into two contracts to purchase 369MW of wind power for its customers. The cost of the power will pass through the energy charge adjustment, as do the costs of all other purchased-power agreements. CURB believes that the contracted price for the power is reasonable, and purchasing the wind power will be more economical for Westar than building wind farms to meet all of its renewable energy requirements.

The KCC held an evidentiary hearing on March 30 to ask questions of the witnesses in the case. The order approving the proposal was issued on May 9.

KCC Docket No. 11-WSEE-377-PRE

Governor appoints new KCC Chair

On May 5, Governor Sam Brownback appointed Mark Sievers of Cripple Creek, Colorado, to the Kansas Corporation Commission to replace Joe Harkins, who retired from state service in January.

Sievers' previous career was primarily with telecommunications firms, including Verizon Global Solutions, GTE, Sprint and Southwestern Bell. He has graduate degrees in economics and a law degree.

On June 13, Chair Sievers convened a meeting of all KCC employees, to which CURB was invited, to announce that he is planning sweeping reforms to the organization of the KCC, in accordance with Gov. Brownback's policy of streamlined government that is responsive to the needs of businesses and the ratepayers the KCC serves.

The implication from his remarks was that he expects the KCC will be a much smaller but more efficient and effective agency once he accomplishes his goals.

As for particular changes he has in mind, Sievers announced that the new executive director of the KCC, Patti Petersen-Klein, would function much as a CEO does for a corporation, with the KCC's division directors all reporting to her.

Sievers also said that he is exploring the possibility of moving all of the KCC's litigation attorneys over to the Attorney General's office.

Once he has accomplished his preliminary goals of reorganization and reclassification of KCC jobs by function and responsibility, he said the newly-created positions will be advertised and current KCC employees will be eligible to apply for these positions along with other applicants.

Although he said he did not intend to fire everyone and make them re-apply for their jobs, it was clear that he expects that there will be more applicants than positions to fill.

Midwest Energy seeks $3.3 M rate increase

Midwest Energy, the state's largest electric cooperative, is seeking a $3.3 million increase for its customers. Overall, that's an average increase of 1.02% for residential customers. Midwest says that an average residential customer's bill would increase by about $2.29 per month if the full increase is granted, depending on whether the customer is a total electric customer. However, Midwest's W System customers, which are customers near Hutchinson who were acquired from Westar Energy several years ago) are facing a much larger 7.59% increase.

When the Westar customers were acquired in 2003, Westar's rates were significantly lower than Midwest's. The Commission froze their rates at current levels in order to prevent those customers from suffering rate shock by suddenly having to pay Midwest's higher rates. Now, Midwest intends to equalize rates throughout their system, which will hit W System customers the hardest. Generally, they are facing an average increase approximately 6 to 7 times higher than other residential customers.

Midwest also proposes to move most customers to an inverted block rate system that would reward customers who conserve and impose greater costs on customers who do not. CURB is generally supportive of rate designs that promote conservation, and finds that Midwest's proposal is reasonable.

The public hearing was held in Great Bend, with a video link to the Commission offices in Topeka. Disappointingly, not a single customer attended, other than those who are board members or employees of Midwest. Customers of Midwest may comment on the proposals to the KCC through August 18.

The Commission's order is due out by October 31: that's Halloween. It could turn out to be a verrrry scary day for Midwest's customers if the KCC approves the full increase requested.

KCC Docket No. 11-MDWE-609-RTS

Suburban Water rate case goes sour

Suburban Water was thoroughly chastised by the Commission in its order on Suburban Water's abbreviated rate case. Although the company was granted an annual rate increase of almost $45,000, the Commission ordered that the rates were interim and subject to true-up in the company's next rate case.

In particular, the Commission takes issue with Suburban's wholesale water contract with the Board of Public Utilities (BPU) of Wyandotte County. The KCC apparently believes that the BPU's practice of approving its own rate increases is illegal, and believes that the BPU's imposition of fees for payments in lieu of taxes (PILOT) is illegal outside Wyandotte County, and that Suburban's customers in Leavenworth County should not have to pay them.

The KCC also is dissatisfied with Suburban's efforts to secure other sources of water for its customers, and had harsh criticism of Suburban's management, alleging that the company had caused the KCC to incur unnecessary regulatory costs. The KCC failed to justify its conclusion that the BPU contract is illegal, and fails to recognize that BPU provides the most economical supply source that Suburban has found in the region. Forcing Suburban to go elsewhere for water will only further burden its customers with higher costs.

As we see it, a BPU order, just like a KCC order, is presumed to be legal and binding, until proven otherwise in a court of law. The appropriate action for the KCC to take if it objects to the legality of BPU's ratemaking is to challenge the BPU, not burden the customers who are at its mercy. Forcing the company to seek more expensive sources of water can't be the only solution.

At minimum, the KCC should seek attorney general's opinions on whether BPU's ratemaking process is legal and whether imposing PILOT fees on out-of-county water sales is permissible under Kansas law. But the KCC should not penalize Suburban's customers by forcing Suburban to use more expensive water sources because the KCC doesn't like the way the BPU does business.

In the last Suburban rate case, the KCC rejected the unanimous settlement of parties to allow Suburban to pass through BPU increases to customers via a purchased water adjustment. As a result, CURB notes that the legal and regulatory costs of the last case and the costs thus far in this case exceed the amount of the increase Suburban needs to cover the BPU increases….and there are two more cases to go. CURB disagreed with Staff's analysis of the case, which would grant Suburban the full increase, and objects to Suburban's inclusion of expenses in this case that weren't supposed to be included. However, CURB reiterated its belief that the Commission should reconsider its rejection of a PWA for Suburban. With only 1200 customers to spread the costs over, these successive KCC proceedings are creating an unnecessary regulatory expense for the customers and the company.

Suburban has petitioned for reconsideration of several rulings in the case, and CURB authorized the company to state that CURB is supportive of its efforts to seek reconsideration.

KCC Docket No. 11-SUBW-448-TAR

Westar to file for rate increase

Westar Energy has filed notice with the Commission that it intends to file a general rate case. Westar specified no date for the filing in its notice, but in public documents provided to investors, Westar says the rate case will be filed in mid-August. There's no word yet on how large of an increase Westar will ask the Commission to approve.

CURB supports using RECs to satisfy RPS

Westar is seeking to use renewable energy credits it retained in 2009 and 2010 from operating its own wind plants and purchasing renewable power to satisfy a part of its 2011 and 2012 renewable portfolio standard requirements. Renewable energy credits (RECs) are certificates issued by an accrediting organization that verify that a given amount of energy was produced with renewable resources. In many states, RECs can be purchased by a utility to satisfy all or part of its obligation to meet renewable energy portfolio standards, in lieu of producing the renewable energy itself. RECs also can be assigned by the generator to a purchaser of the energy, or retained by the generator.

In this docket, Westar wants to use the RECs it has retained to help it meet the state's renewable energy portfolio standards for 2011 and 2012. Westar is in the process of developing additional wind farm generation facilities that will enable it to meet standards in future years.

CURB is satisfied with Westar's filing and supported it with comments. We believe the statute does not limit Westar to purchasing credits from another source, and believe it would be economically wasteful to require Westar to purchase renewable energy credits when it already has credits it has banked during the past two years.

Westar and its customers should not be penalized because Westar voluntarily added renewable energy to its generation mix in advance of the passage of the statute that now makes it mandatory.

On the other hand, Staff believes the legislature didn't intend for home-generated RECs to be used to satisfy the RPS statute. However, Staff concluded that under the KCC's authority to waive penalties for utilities demonstrating a "good faith effort" to satisfy the RPS, Westar should be allowed to use them to satisfy the RPS without penalty because Westar has presented evidence that it is in the process of developing wind farms that will enable Westar to meet the standard in future years.

Staff's and CURB's comments were filed in March; the Commission's order is due out by August 7, 2011.

KCC Docket No. 11-WSEE-438-MIS

Clean Line seeks certification as public utility

A unique kind of transmission line will be built in Kansas if Clean Line Energy

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Partners has its way. The company has applied for a limited certificate of convenience for transmission rights to site, build and operate a 550-mile 500kV to 600kV high voltage direct current (DC) transmission line that would begin near Spearville and end at the St. Francois substation in southeast Missouri.

The line, which the company has dubbed the Grain Belt Express, would be built to carry power from wind farms in the Spearville area to the MISO region, which is more densely populated and has poorer quality wind resources than western Kansas. The company estimates that the project will cost $1.7 billion and will traverse about 300 miles through Kansas.

DC lines are more efficient carriers of power over long distances than alternating current (AC) lines, but interconnections with DC lines are expensive, because the equipment to convert AC to DC and vice versa is very expensive. Therefore, although the line will be available to all power producers who want to connect to it, Clean Line does not expect to transport loads for customers other than wind farms connected by feeder lines to its Spearville AC/DC conversion station.

Clean Line claims that serving as a conduit of renewable power to load centers in the MISO service area will be a profitable venture. The company also plans to build similar lines from the northern high plains to Chicago, from the panhandle area of Oklahoma and Texas to the Tennessee Valley Authority and southeastern states, and from eastern New Mexico to Nevada and California.

Although there will be obvious benefits for wind farm developers in Kansas, CURB is uncertain whether Clean Line's project will bring it under the definition of a "public utility." The line is intended to serve merchant power producers who want to sell power into the MISO region, not to serve the general public. Although the line will be available to all under open access tariffs, the expense of connecting to a DC line will effectively prohibit truly "open" access in the usual sense of the word.

The main question is whether Clean Line should be permitted the power of eminent domain to build a project that may be beneficial, but will not serve the public generally. Since something like this has never been tried before in Kansas, there's not a lot of guidance from previous cases.

There is also a question as to whether the Clean Line project will take business away from other planned transmission lines in the Spearville area. The company says it won't, but it's a genuine concern, from CURB's point of view. The benefit/cost ratios on other state transmission projects currently under consideration are marginal at best; if Clean Line eats away at those margins, Kansas may be left with hundreds of miles of new transmission lines that aren't economic, or at best, won't be so for decades.

However, it's refreshing to see a transmission company planning to build billions of dollars of transmission lines without asking ratepayers to finance the construction costs: that's the kind of proposition that CURB would like to see more often. All too often, however, we find that attractive proposals have unattractive hidden costs; we'll be looking out for them as we analyze the Clean Line proposal.

KCC Docket No. 11-GBEE-624-COC

Customer deposits

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before the utility may require a new deposit.

Currently, even if a customer has been a good customer, some utilities require a new deposit if any time elapses between disconnection and reconnection at the same or a new address. The grace period will help customers who are unavoidably delayed in getting utilities set up at a new location or are experiencing a temporary financial crisis from being further burdened by having to pay a new deposit.

The Commission also rejected the current standard that has been interpreted to allow a utility to require a deposit if the meter has been removed from the premises. The Commission noted that the utility, not the customer, makes the decision whether to remove the meter when a customer is disconnected, and that some utilities routinely do so, whether or not the customer is in arrears.

Since the customer has no control over the decision to remove the meter, the Commission reasoned that the customer who is otherwise in good standing with the utility should not be required to pay a deposit simply because the utility made the decision to remove the meter.

However, the Commission confirmed that utilities may require a deposit if the customer accrues three delinquent bills in a row, and one of the three bills is at least 30 days in arrears.

In addressing privacy concerns, the Commission ordered that utilities may request a social security number for identification purposes, but may not require that the customer provide one, so long as the customer is able to provide other suitable forms of identification.

Additionally, the Commission determined that while utilities may request the names of all adults residing at the customer's residence, utilities may not require customers to provide the names. The Commission stated that customers have a right to pay a deposit in lieu of providing credit history or identification information that might otherwise make them eligible to obtain service without a deposit.

The Commission also adopted CURB's position that national credit bureau ratings or credit scores shall not be used to determine the "creditworthyness" of new customers for purposes of determining whether the customer must pay a deposit. The Commission agreed with CURB's argument that credit scores and ratings are notoriously inaccurate, and are not necessarily reflective of the customer's history of paying his or her utility obligations. Therefore, the KCC decided that utilities may only consider the payment record of the customer with respect to paying utility bills in determining whether the customer will have to pay a deposit.

The Commission cleared up an ambiguity in the current standards concerning what is a "change in the character of service" of a current customer that might justify imposing a deposit or increasing the amount. CURB was concerned that the Commission might allow the utilities to increase or impose deposits on residential customers simply because the prices of electricity or natural gas have risen since the deposit was paid. However, the Commission adopted CURB's position that rising commodity prices are not a "change in the character of service" that can be used to justify an increase of the deposit.

Additionally, the Commission confirmed that this provision should only apply to non-residential customers, because the "character" of residential service is essentially uniform from customer to customer. Typically, a line or pipe is connected to the house when it is constructed, and the initial connection is normally sufficient to service that address for the lifetime of that home, regardless of how much power or natural gas the customer uses at any given time. By contrast, commercial customers can and often do require special equipment, and often require major changes in their service—new multi-phase power connections, larger supply lines to accommodate growth in production or new machinery, new lines or pipes to service expanded facilities, etc.

Furthermore, a payment default by a large customer with large demand or peak load requirements poses much greater financial risk for the utility than a similar default of a residential customer—a risk which includes not only the risk of losing the payment itself, but also the risk of losing the unrecovered balance of the utility's substantial investment in infrastructure to serve the commercial customer. With these differences in residential and commercial service in mind, the Commission reasoned that the magnitude of a potential default by a commercial customer justifies requiring a larger deposit if the character of service to the customer changes sufficiently to demand it.

Thus, for large commercial customers, the utility may retain the deposit regardless of the customer's payment history, and the deposit may be recalculated every three years based on the specific character of service to that customer.

The Commission determined that a utility may require a deposit or increase the amount for residential and small commercial customers only on

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the basis of the customer's payment history with utilities, and only if the utility refunds the deposit once the customer has established a good payment history with the current utility.

For residential and small commercial customers, the Commission decided to continue to require utilities to inform customers that they may pay the deposit in four equal monthly installments.

For purposes of determining whether a customer is in arrears, the Commission determined that a customer "in arrears" is a customer who paid a bill a day or more after the due date printed on the bill. Apparently, some smaller utilities consider a bill "due" on the day it is issued and the issue date is the only date printed on the bill. This makes it almost impossible for any customer to make an "on-time payment" under the standard, although some utilities offer a "grace period" during which the payment is considered "late" but not subject to a late payment fee. Most major utilities issue bills several days in advance of the due date printed on the bill, and consider the bill paid "on-time" if the payment is received from the customer on or before the due date printed on the bill. The Commission confirmed that a payment received on or before the due date printed on the bill is an "on-time payment" under the standards.

One ambiguity remains, however. It's not clear whether utilities that don't currently print a due date on the bill that is several days later than the issue date will have to begin doing so. If not, their customers will be eternally considered "in arrears" unless they receive the bill on the day it is issued and pay it that same day. We don't believe that is the result that the Commission intended.

The Commission confirmed that if a customer has used another current customer in good standing with the utility as a guarantor for the account rather than pay a deposit, that the utility may require a deposit or a change in guarantors if the current guarantor ceases to be in good standing with the utility. CURB has no objections to that provision. If someone who has promised to pay another's utility bills isn't paying his or her own utility bills, it isn't unreasonable for the utility to require an adjustment to the original arrangement that provides some protection against default.

Finally, the Commission updated the standards to allow customers to pay deposits with cash cards, electronic payments and other modern methods that were not in common use when the standards were last revised.

All in all, CURB was quite satisfied with the outcome of the Commission's updating of the standards relating to utility deposits. Most of the revisions are reasonable and fairly balance the interests of the utilities and their customers, and also recognize the fundamental differences between the classes of customers that justify different rules for each class.

The new rules will go into effect on August 22. If you are interested in reading the new standards, look up the docket (using the docket number below) on the KCC website; the new standards are attached to the Commission's June 22 order.

KCC Docket No. 07-GIMX-446-GIV

Duffy moves on, Petersen-Klein in

On May 18, Susan Duffy, the KCC's executive director, announced her resignation from the KCC. Duffy had served as executive director since 2003, having been appointed to that position by then-Governor Kathleen Sebelius. Previously, Duffy had served as head of the fiscal department of the Commission. She began her career in public service thirty years ago when she was appointed to be a Governor's Fellow by then-Governor John Carlin.

The staff and board members of CURB wish Susan the best of luck in her future endeavors.

Duffy was succeeded by Patti Petersen-Klein, who most recently served as an advisory attorney to the Commission. Petersen-Klein had a previous career in banking prior to taking her law degree, and was a law clerk for Justice McFarland on the Kansas Supreme Court. As executive director of the KCC, she assumes new responsebilities as the chief advisor to the Commission as well as the top administrator of the agency.

La Cygne upgrade

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June 1, 2015, or the plants will have to be shut down.

The KCPL owns half of the La Cygne plant, and Westar owns the other half. KCPL will be responsible for $615 million of the $1.23 billion cost. KCPL's Kansas customers will be responsible for about 45% of that total, or about $281 million. KCPL estimates that rates for Kansas customers will increase $58 annually to pay for the upgrades, which would increase the average residential bill by $8.27 per month.

Westar customers will be responsible for the remaining $615 million of the construction costs. Westar estimates that residential customer rates will increase up to $3.95 per month to cover this cost. Because Westar has several hundred thousand more Kansas customers to bear the costs than KCPL does, the increase for each of Westar's customers will be smaller than the increase for each of KCPL's Kansas customers.

KCPL filed this case under the Kansas Predetermination statute, K.S.A. 66-1239. The law, passed in 2006, allows any utility to seek approval from the Commission for recovery of the costs of a large construction project before it is started. Here, KCPL seeks the Commission's blessing on the $1.23 billion construction estimate.

KCPL is also seeking expedited recovery of the costs of construction each year through a new Environmental Cost rider added to customer bills. If approved, KCPL will increase consumer rates annually during the four-year La Cygne project, without a full rate case review by the KCC. Westar already has a similar Environmental Cost rider on customer bills.

CURB reviewed KCPL's data and modeling supporting the La Cygne environmental upgrades as the least-cost option for proving power in the future. We found that KCPL's data and modeling assumptions were biased in favor of using coal to generate power and therefore support the La Cygne upgrade. With potential cost exposure to carbon regulation, and the low cost of natural gas, it may make better financial sense to close the La Cygne plant and spend the $1.23 billion building newer, more-efficient plants.

CURB cannot say conclusively one way or the other which is the better option, but for purposes of this predetermination case, CURB argues that KCPL has not met its evidentiary burden of proving the La Cygne makes the best sense for customers. As such, CURB is asking the Commission to deny the predetermination request. If KCPL believes that upgrading the La Cygne plant is the right thing to do, then it should proceed, even without the approval of the Commission.

If the Commission decides KCPL has proven that upgrading La Cygne is the correct action and issues the predetermination order, CURB requests the Commission also order a reduced level of shareholder profit on this project, since preapproval of the project shifts all of the risk of cost recovery to the customers.

Further, CURB is opposed to the Environmental Cost rider, arguing it is better for consumers to keep their money between KCPL rate cases, rather than paying increased rates each year through the rider.

Of interest in the case is that Sierra Club and a local group called GPACE are also in the case. Both agree with CURB's conclusion that KCPL's modeling was inadequate; however, both groups take strong stances in favor of natural gas as a superior generation fuel and argue that the La Cygne upgrade should not be approved.

The KCC Staff also agreed with CURB's conclusions about KCPL's modeling—but then paid a consultant for an independent model that Staff argues is supportive of the LaCygne upgrade as the best option for customers.

At this writing, the trial at the KCC is underway. The statutory deadline for a Commission decision is August 22, 2011.

KCC Docket No. 11-KCPE-581-PRE

Call **211** for information about obtaining assistance with utility bills from agencies and programs associated with the United Way in Kansas.

ITC gets approval for siting permit for Spearville-Medicine Lodge transmission project

ITC Great Plains has been granted a siting permit that would enable it to begin siting and construction of a high-voltage double-circuit 345kV trans-mission line from a substation near Medicine Lodge to a substation near Spearville. The permit will confer the right to ITC to exercise eminent domain to obtain easements where negotiations with the property owner to purchase an easement does not culminate in an agreement.

The 120-mile project will connect at Medicine Lodge with a similar line to be constructed by Prairie Wind that will connect to Wichita and to the Oklahoma border. (See Prairie Wind article in this issue). ITC and Prairie Wind originally were competing for the right to build the entire line from Spearville to the Oklahoma line to Wichita, but they were forced by political pressures to agree to share the project rather than fight a long battle in court that would inevitably delay construction.

This proposed line was approved as a "Priority Project" by the Southwest Power Pool, which conducts regional trans-mission planning for Kansas utilities, as well as for utilities in nine other states. Priority Projects are those projects that SPP has determined will provide positive economic benefits throughout SPP's service area. Priority Projects qualify for what has been dubbed "high-way-byway" cost allocation. Costs of these so-called "high-ways" of lines of 300kV capacity or greater will be paid for by all stakeholders in the SPP region. Smaller lines, referred to as "byways" will continue to be paid for primarily by the utilities that build them. However, SPP analyses have revealed that any positive cost benefits of this line won't be realized until the SPP region has at least 10GW of wind generators operating in the region.

The line was originally proposed as an extra-high-voltage 765kV line, but SPP determined that the cost of building such a large-capacity line would outweigh the benefits. Its marginal benefits also led the SPP's engineering group to recommend that the line be removed from the list of Priority Projects, but it was restored to the list when pro-wind groups and Kansas legislators loudly protested.

After the public hearing in Greensburg on April 20, several landowners, farmers with long-term leaseholds, and oil and gas operators with mineral rights in the area intervened or commented with objections to portions of the proposed route.

ITC adopted some of their proposals for alternate routes just a few days before the evidentiary hearing, which led CURB to raise the question of whether people whose property interests may be affected by the new proposals had received the proper notice required by the Transmission Siting Act. If not, CURB argued, the Commission should find that it has no jurisdiction to consider the new proposals. The Commission denied CURB's motion, but scheduled another public hearing for landowners affected by the new proposals. Upon renewing its motion at the end of the evidentiary hearing, CURB was ordered to brief its objection.

CURB also objected to an exhibit presented by ITC that purported to show which landowners in the area of the newly-proposed routes would support the new proposals. CURB argued that testimony revealed that the exhibit was founded on ITC's speculation about whether certain landowners would support or oppose the alternative routes, rather than being founded on direct knowledge of whether the landowners supported or opposed them. The company's guess as to what landowners would think was hearsay and simply irrelevant to the issue being decided in the proceed-ing. However, the Commission refused to strike the information to which CURB objected. We briefed that objection as well.

The second public hearing on alternative proposals was held on June 27 in Dodge City. The Commission's order approving ITC's siting permit with the proposed alterations was issued on July 12. CURB lost on all issues it raised.

KCC Docket No. 11-ITCE-644-MIS

KCC decision pending on KCPL pension trackers

Kansas City Power and Light, the Commission Staff and CURB have entered into a settlement on how pension and post-retirement costs will be tracked.

The settlement provides that KCPL will accept Staff & CURB's preferred trackers in this case, but reserves its right to argue against this treatment in a future case. Likewise, Staff and CURB reserved the right to defend their preferred method.

KCPL maintains that because it is a multi-jurisdictional utility, the trackers proposed by Staff and CURB for its Kansas costs will create mis-matches with its Missouri costs. However, the other large multi-jurisdictional utilities have adopted the trackers, such as Kansas Gas Service, Empire District Electric, Black Hills Energy and Atmos Energy. Staff and CURB hope to continue uniform treatment of these costs among all the regulated utilities.

The stipulation and agreement was filed with the Commission on April 15. The Commission has yet to file an order approving or denying approval of the agreement.

KCC Docket No. 07-GIMX-1041-GIV

Midwest files for GSRS increase

Midwest Energy has filed for an increase in its Gas Safety and Reliability Surcharge (GSRS). If the full amount requested is approved by the Commission, residential customers will pay 61 cents a month, up from 44 cents. Small commercial customers will pay 98 cents per month, up from 71 cents.

The GSRS was created by the legislature to allow gas utilities to recover non-routine capital expenditures mandated by government safety regulations or government projects, such as moving a gas main for a highway project. The residential increase in the GSRS is limited to no more than 40 cents for each annual filing. A utility must file a rate case every five years if it wants to recover expenditures through the GSRS.

This filing has caught CURB's attention because Midwest is requesting a return on its GSRS investment of just under 8.5%, which is a weighted calculation based on Midwest's 60/40 capital structure, a cost of debt of 5.2% and a return on equity of 13.5%. The cost of debt seems reasonable, and is close to the 5.16% claimed in its current rate case before the Commission. However, the company's claim for a 13.5% return on equity appears out of line with today's economy and is much higher than the return on equity requested in its current rate case. Midwest is claiming a need for a 10.15% return on equity in its rate case—almost 3 percentage points lower than its claim in this GSRS filing. Since the return on the GSRS is supposed to be based on the return awarded in the most recent rate case, we believe that the return should mirror the level of return that the Commission will be awarding in the current rate case.

We'll be scrutinizing this filing closely, and plan to file a response to the Commission Staff's report and recommendation on Midwest's application when it is filed.

KCC Docket No. 11-MDWG-862-TAR

KCPL to add more wind power

Last winter, Kansas City Power and Light issued a request for proposal ("RFP") seeking proposals for 100 MW of new wind generation. According to its RFP, KCPL is seeking to put an additional 100MW of new wind energy on-line no later than June 1, 2012.

KCPL is seeking to add additional wind resources to meet statutory renewable portfolio standards that have been set in both Kansas and Missouri, which require electric utility energy resource portfolios to contain a minimum percentage of energy from renewable sources.

As yet, KCPL has not requested Commission approval to purchase additional wind resources and it is unclear whether the company will request a pre-determination of costs by the KCC, or whether it plans to simply pass through the costs of purchasing the wind energy to its customers through its energy cost adjustment.♦

Westar seeks recovery of smart grid costs

Westar Energy recently filed a request for an accounting order to preserve its claim for recovery of costs associated with its SmartStar smart grid project in Lawrence. If granted, the accounting order would allow Westar to argue in its next rate case for recovery of the costs plus a return on the capital investment portion of the costs, or, in the alternative, to recover the costs through the utility's energy-efficiency rider.

The SmartStar project is a pilot project to develop an entire community with advanced meters and technology that will allow customers to monitor their energy usage, and will allow Westar to read meters automatically and record usage data, to remotely connect and disconnect accounts, and to precisely locate outages.

Thus far, 1387 advanced meters have been installed in the Deerfield neighborhood of northwest Lawrence. When the project is completed, all of the approximately 45,000 meters in Lawrence will be replaced with advanced meters that will be connected to a "dashboard", or customer interface computer program that will allow customers to access their usage data and in some circumstances, to control appliances and thermostats remotely.

The Commission Staff released a report with recommendations to the Commission to deny several components of Westar's request. Staff recommends that internal labor costs should not be eligible for inclusion in the regulatory asset, because the cost of paying existing employees is already subsumed in base rates. There's a danger of over-recovery of labor costs if Westar is permitted to separately recover for costs of employees who are being used to roll out the SmartStar project.

Staff also recommended against allowing Westar to include carrying charges in the regulatory asset because the amount claimed is small and thus not eligible for the extraordinary treatment afforded by an accounting order. Staff noted that Westar is receiving grant monies from the Department of Energy for the project that will offset some of the costs.

Westar's request to accumulate depreciation expense was also rejected by Staff, which noted that Westar hasn't requested or received authority to do so for recent accounting orders for much larger expenditures related to two major ice storms. Staff noted that determining the correct amount of depreciation expense associated with this project must be considered in context with the entire range of depreciable assets held by Westar.

Lastly, Staff concluded that the benefit of SmartStar to Westar of reducing service calls in Lawrence is substantial, and is a benefit that will continue to grow as the project approaches completion. Staff argues that it would be inequitable to allow Westar expedited recovery of costs associated with the project, but to ignore the offsetting cost savings associated with it, as well. Staff's analysis concluded that, in its current form, the SmartStar project is producing more savings for Westar on reduced service call costs than it is providing energy-savings benefits for customers. Therefore, Staff recommended against allowing Westar to recover the project's costs through its energy-efficiency rider.

Staff also recommended that Westar be allowed to accumulate only the non-labor expenses associated with the SmartStar project in the regulatory asset. That means that Westar would track these expenses and be allowed to request recovery of them in its next rate case. However, since Westar has already notified the Commission of its intention to file a rate case later this summer, CURB wonders if it's worth bothering with an accounting order at all.

Although CURB generally agrees with Staff's conclusions in its report, we are scratching our heads at some of the numbers we've seen concerning the Lawrence project. Only 182 households out of 1224 who can access the "dashboard" have visited it. That's less than 15%. Less than 1% have signed up to receive alerts via web, text or both. And only 4 people out of 1224—less than a third of one per cent!—have signed up for monthly and/or weekly notifications. These are dismal numbers for a program that has budgeted a hefty $55 per meter

for customer education. Deerfield is a solidly middle-class-to-upscale neighborhood, presumably full of web-savvy, well-educated customers, who are a part of a larger community that is well-known for being enthusiastic about energy efficiency and environmental matters. If Lawrence residents are not interested in the information that the SmartStar system offers them, then who else will be? We'd really like to see more customer utilization of the features offered by the SmartStar technology before Westar commits wholeheartedly to going statewide with its smart grid plans. If the main benefit of these new meters and the very expensive IT infrastructure that supports them is that Westar can save labor costs on service calls and locating outages, then we ought to be evaluating smart grid programs on their value in saving labor costs and improveing outage response times, rather than making assumptions about their value in empowering customers to make smart energy use choices.. At this juncture, it appears that customers aren't interested much at all in being empowered.

All in all, CURB generally opposes the use of accounting orders to preserve costs for future consideration except in extraordinary circumstances, such as repairing extensive damage from major ice storms. There's some justification for preserving the right to recover huge unexpected expenditures because the events that give rise to them don't occur often enough to justify building such extraordinary costs into base rates.

Further, we believe that moderate expenditures made as a part of ongoing projects should be built into base rates rather than recovered on a piecemeal basis. In other words, the costs of the SmartStar project are neither extraordinary nor unexpected. They are part of a larger long-range plan to upgrade Westar's transmission and distribution systems. While the SmartStar project is innovative, the project is really just a part of an ongoing effort by Westar to improve reliability and provide quality service to its customers. However, we are still considering whether the unique aspects of the SmartStar project merit special consideration. CURB is still in the process of analyzing the application, and will file our comments in the next week or so.

KCC Docket No. 11-WSEE-610-ACT

MKEC wins rate hike for Wheatland area

The KCC approved a settlement of rate case filed by Mid-Kansas Electric Company LLC (MKEC) on June 30, 2011. MKEC through Wheatland Electric coop provides service to about 55,000 customers in Great Bend and south central Kansas.

MKEC had requested a revenue increase of $4,264,081 in its December 14, 2010, filing for the certificated territory serviced by Wheatland. The company's filed request would have resulted in an overall rate increase of 19.5%.

Staff had recommended a revenue increase of $2.504 million, and CURB recommended a revenue increase of $2.757 million. The parties agreed to settle for a rate increase of $3.058 million, resulting in an approximate 12.1% overall increase to MKEC's current retail rates. As part of the settlement, monthly customer charges will increase from $8.39 to $10 a month for residential customers and from $9.78 to $11 a month for small general service customers.

CURB was disappointed in the concurring opinion filed by the newly-appointed Commissioner, Chairman Mark Sievers, who despite hearing testimony showing CURB and Staff successfully negotiated a reduction of over $1.2 million annually from the request filed by MKEC, stated he could not "clearly identify how the public or consumers benefited by Staff or CURB's role in this matter independent of each other or Mid-Kansas, LLC's role as representative of its customers and members."

CURB is confident that Wheatland division ratepayers see it differently, and appreciate having, collectively, over $1.2 million more each year to spend on other goods and services in Great Bend and south central Kansas, rather than on higher electric bills.

KCC Docket No. 11-MKEE-439-RTS

Consumer Counsel's

CORNER

We're feeling a little outgunned here in the Corner. The KCPL rate case expense docket is a textbook case for everything that is wrong with the regulatory process. To explain why we're feeling so blue, let's talk a little bit about the economics of firepower, and why CURB is feeling outgunned.

Let's assume that the regular legal system operates like the KCC regulatory process. Somebody files a law suit and you may be negatively affected by the outcome, so you get involved. The first things you need are a lawyer and some expert witnesses to testify on your behalf and protect your interests.

Now here's the catch. If the court system operates like the KCC regulatory process does, you will have to pay for your own lawyer and expert witnesses … AND the other side's lawyers and experts …AND the judge and judge's lawyers AND a whole separate set of lawyers and experts who purport to be neutral, but want to offer an opinion, anyway.

Now, being a smart consumer, you have a very strict budget, and you adhere to it in deciding what to spend on your own lawyers and experts. However, what if no one else does? While you are careful with what you spend because you have to pay for it, no one else is careful with what they spend…because you are the one paying the bills for everyone else, and because everyone else wants to win. No one even asks you what you are willing to pay. They just spend as much as they want to, and send you the bills.

That's the KCPL rate case expense docket in a nut shell.

In every rate case, the utility brings in a claim for rate case expenses, and the Commission allows some amount of rate case expense into customer rates. That's a nice way of saying that customers pay the bills for a utility's rate case through an increase tacked on to the amount the Commission approves in the rate case. The cost added is amortized over three to five years, depending on what the best guess is for how long it will be until the utility files its next rate case.

The rate case expense pays for CURB's costs (your lawyers and experts), the KCC's costs (the judge, the judge's lawyers, the KCC Staff's neutral lawyers and its experts) and for any outside lawyers and witnesses the utility hires to make its case for a rate increase. Note the word "outside"— you are already paying for all of the utility's in-house lawyers, accountants, engineers and regulatory employees, because payroll for their salaries is already built into your current rates. This proceeding is about how much of all the other expenses KCPL incurred in this case will be paid for in your future rates.

In the just-finished KCPL rate case, CURB spent a total of 1100 legal hours working to protect your interests. The total amount you'll pay for your lawyers and experts at CURB is $185,000. Most of that is for our two main consultants and the single CURB attorney who performed the vast majority of the legal work for CURB in this case.

The KCC costs (the judge, the judge's lawyers, and its Staff's neutral lawyers and experts) came in at about $1.2 million. So CURB and the KCC ran up a tab of a little under $1.4 million in expenses for their participation in the rate case.

That may seem like a lot of money—until you see KCPL's tab. KCPL opened its checkbook and hired the best help that money could buy to protect its shareholders. KCPL hired 40 lawyers and spent 14,200 legal hours protecting its shareholders. KCPL hired 45 consultants and spent 11,000 hours protecting its shareholders. And now they want you, the customers, to pay the $7.6 million bill—not its shareholders.

If KCPL has its way, for every dollar that KCPL wants to charge you for its rate case expense, you get to spend 2 cents of that dollar for your own lawyers and experts at CURB

who represent your interests. The other 98 cents you have to pay is for everyone else's lawyers and experts. 83.5 cents of that dollar will go directly towards helping KCPL make its case to increase the rates you pay for electricity.

The economic lesson here is that you customers can buy a lot of firepower for $7.6 million—the problem is that at least 83% of the firepower you're paying for is protecting the shareholders' interests, not yours. Shareholders don't pay a dime for all the firepower protecting their interests. No wonder we feel out-gunned. We ARE outgunned, and our customers are being forced to pay for it all.

So here's two cents' worth from my bunker…uh….Corner: This system isn't designed to help customers get a fair deal.

—Dave Springe

KCPL wants to make pilot DSM programs permanent

Kansas City Power and Light has filed for approval to move six pilot demand-side management and energy-efficiency education programs to permanent status. The programs were included in KCPL's portfolio of energy-efficiency and demand-side management programs that it agreed to implement as a part of its five-year regulatory plan during the construction of Iatan II. Now that the plant is in operation and the regulatory plan has ended, KCPL has recently reviewed its portfolio of programs and requested permission to discontinue several of the pilot programs that were either unpopular with customers or that did not produce the desired results. KCPL wants to continue on a permanent basis with six of the programs that have been popular with customers or that have proved successful in helping reduce demand. Additionally, the company has proposed a few modifications to these programs that it believes will improve their performance and make them easier to administrate. The company also indicated that it is seeking to recover the costs of these programs through its existing energy-efficiency rider.

The six programs are the: Low Income Weatherization; Home Energy Analyzer; Business Energy Analyzer; Building Operator Certification; Energy Optimizer and MPower. CURB is in the process of analyzing the proposal to make these programs a permanent part of KCPL's portfolio of energy-efficiency and demand-side management programs. CURB has found in previous dockets that the low-income weatherization hasn't provided any efficiency gains, and that the Optimizer and MPower programs aren't providing needed capacity because KCPL has plenty of capacity at present. However, the CURB board has been supportive of KCPL's efforts to offer efficiency programs to customers.

We do note that because KCPL has eliminated so many programs in its portfolio, the educational programs like the Building Operator Certification program and the Home and Business Analyzer programs now comprise the bulk of the portfolio—far exceeding the Commission's recommendation to limit education programs to no more than 5% of the portfolio's budget. That alone isn't a deal-killer, but the KCC will have to decide whether to enforce the 5% limit developed as a part of Commission policy.

We'll be assessing whether KCPL's proposals to modify these programs will benefit the ratepayers or not, and deciding whether the portfolio in its proposed form merits the support that CURB has given it in the past. Our comments will be filed sometime in July.

KCC Docket No. 11-KCPE-780-TAR

Good news, bad news: Westar offers EE loans, but customers must pay for lost energy sales

On the energy-efficiency front in Kansas, there's good news, and yes, there's some bad news.

The good news is that the KCC has approved Westar Energy's application to become an Efficiency Kansas Partner. Westar's Simple Savings program, partnering with Efficiency Kansas and making use of $37 million of American Recovery and Reinvestment Act funding, will offer its customers

(Continued on next page)

no-interest loans for energy-efficiency improvements and allow customers to pay the loans back on monthly utility bills over fifteen years. Customers can contact Westar Energy about scheduling an appointment to have a home-energy auditor evaluate their homes. There are fees involved for the audit, but Efficiency Kansas is now offering rebates to help defray the costs.

It's a pretty good way for Westar's customers to make energy-efficiency improvements to their homes without having to come up with all the costs up front. The energy audits will also identify the specific improvements each home needs so customers can get the best bang for their hard-earned bucks.

So what's the bad news? In the same order, the Commission approved, over CURB's objections, an unprecedented "lost revenue" recovery mechanism, which will allow Westar to increase its rates to make up for reduced energy sales to customers who use less electricity after making energy-efficiency improvements to their homes through the Simple Savings program.

Westar requested the "lost revenue" recovery mechanism. If Westar customers use the Simple Savings program to improve their homes and use less energy, Westar argued that it will sell less electricity and receive less revenue. Westar asked the Commission to protect it from losing any revenue. The Commission agreed, and will allow Westar to bill its customers, dollar-for-dollar, for any revenue it loses after custom complete the improvements to their homes through the Simple Savings program.

CURB argued that the Commission had already established a policy disapproving of lost revenue mechanisms. We thought that's what the KCC meant when it said a couple of years ago in an order establishing policy concerning recovery of energy-efficiency-related costs that it "doesn't favor lost revenue mechanisms" Apparently, we were wrong.

In the order on Westar's request for lost-revenue recovery, the Commission said that when it previously stated that it "does not favor" such mechanisms, what the Commission really meant was that it "might consider" such mechanisms. Needless to say, CURB was very disappointed with this aspect of the Commission's order. This is the first time that the KCC has ever granted a utility this sort of iron-clad revenue guarantee.

However, CURB is comfortable with Westar's choice to partner with Efficiency Kansas, which is a program operated by the KCC's State Energy Office.

If you are interested in the program, further information can be found at the State Energy Office's Efficiency Kansas website: www.efficiencykansas.com.

KCC Docket No. 10-WSEE-775-TAR

CURB
Citizens' Utility Ratepayer Board

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