



CURBside News

NEWS FROM THE WATCHDOG FOR RESIDENTIAL AND SMALL COMMERCIAL CONSUMERS OF UTILITIES AUG. 2006

CURB, Consumers are big winners in Westar appeal

The Kansas Court of Appeals has overturned three rulings of the Kansas Corporation Commission concerning the recent Westar Energy rate increase. Westar customers may see rate reductions of up to \$48 million system-wide if the court's opinion is upheld.

The court's opinion represented major victories for CURB, the Kansas Industrial Consumers and USD 259, all of whom had appealed several of the KCC's decisions in the case.

The court ruled that the KCC had erred in granting Westar \$29 million in depreciation rates for future dismantling of their steam-generation plants. The court found that there was so little evidence that Westar will ever dismantle the plants, the KCC's decision to include the costs in rates was a product of "unchecked speculation."

The court also held that including future inflation when calculating future dismantling costs is beyond all fairness to current ratepayers.

Additionally, the Court of Appeals reversed the Commission's decision to deny Westar South's customers a long-standing benefit derived from the LaCygne plant lease. The court remanded because the KCC made a major shift in policy, but had not fulfilled its obligation to provide a reasonable explanation for the change.

Finally, the court agreed with consumers that the KCC had failed to comply with the requirements of recent legislation that allows a utility to pass through its costs of transmission in a separate transmission delivery charge, so long as it is on a "revenue neutral" basis.

The court said that the KCC violated the requirement of revenue neutrality when it allowed Westar to calculate the delivery charge based on higher FERC rates that have not yet been approved by the agency.

The resulting \$13 million increase in transmission costs

CURB: KCPL rates should be reduced \$1.5M

As this CURBside goes to press, CURB is preparing to file its testimony in the Kansas City Power and Light rate case. While it's not final at this point, CURB will likely recommend that KCPL decrease rates to its Kansas customers by \$1.5 million annually. KCPL had requested a \$42.3 million increase in Kansas rates.

This is the first of four possible KCPL rate cases under a resource and regulatory plan agreement between KCPL and the Staff of the Commission. The resource plan included the building of a new coal-fired power plant, at least 100 megawatts of new wind power plant, major environmental upgrades to existing coal plants to reduce emissions, transmission and distribution upgrades, and new energy conservation programs for customers.

The regulatory plan allowed KCP&L to file annual rate cases to begin recovering the cost of

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Westar

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was thus held to be in violation of state law.

Disappointingly for CURB and consumers, the court also upheld the KCC's authority to allow Westar to pass through capital expenditures on environmental upgrades in a separate line-item surcharge. It also upheld the KCC decision to allow the utility to reinstate its ECA, which passes through fuel costs directly to customers.

The court also rebuffed KIC's challenge of Westar's rate case expenses.

The pro-consumer rulings in the opinion could result in as much as a \$48 million reduction in Westar rates.

KIC decided to file a petition for review of the decision by the Kansas Supreme Court after the parties learned that Westar intended to file a petition.

If review is granted, the parties will have the opportunity to file briefs in defense of their positions.

CURB will be filing a reply to Westar's petition by the August 18 deadline.

If the petitions are denied, the Court of Appeals will issue a mandate to the KCC to implement the changes prescribed in its opinion. Westar customers should see significant rollbacks of the recent increases in their rates if the KCC complies with the court's mandate.

We'll keep you posted.

KCC Docket No. 05-WSEE-981-RTS

KCPL

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the new construction.

One controversial aspect of the regulatory plan that CURB objected to was the inclusion of an unprecedented adjustment to consumer rates called the "Contribution in Aid of Construction" or CIAC. The CIAC is a proposed charge to be added onto consumer rates to give KCPL additional revenues to meet financial requirements set forth by an outside credit-rating agency called Standard and Poor.

The regulatory plan allowed KCPL to request an Energy Cost Adjustment to flow fuel costs direct to consumer bills, but KCPL has not requested the ECA clause in this case. Rather, KCPL has requested that the Commission allow it to retain a certain level of off-system sales revenue.

KCPL requested that the KCC build an 11.5% profit for shareholders into consumer rates. Instead, CURB is recommending a more reasonable profit level of 9.5% for shareholders. The KCC recently granted Westar shareholders a 10% profit.

KCPL is in the process of bringing online its 100-mega-watt wind farm near Spearville Kansas.

While CURB generally supports the inclusion of wind assets where they are economic, CURB has asked the KCC to disallow a portion of the wind costs. KCPL chose to own the wind farm at issue, rather than

purchase wind power from a third-party vendor. Between the time KCPL proposed the wind farm and the time KCPL finalized its purchase of the assets, costs increased more than \$30 million dollars. CURB does not believe this increase in cost should be added summarily to consumer rates.

The KCC staff has yet to file its testimony, so CURB has no comment on the recommendations that the KCC staff may make. KCPL also has a rate case running simultaneously across the border, where it has asked for increased rates from Missouri regulators.

CITIZENS' UTILITY

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Midwest Energy seeks \$3.42 million and “decoupling”

CURB recently filed testimony in the Midwest Energy rate case. Midwest has asked for an annual rate increase of \$3.42 million for its gas customers in central and western Kansas. If the company’s request is granted, customers could see rates increase significantly, particularly delivery and distribution costs, which would rise roughly 25 to 30 per cent.

CURB would like to see the KCC trim about \$1.37 million from that increase. We are recommending a much more modest increase of \$2.05 million. We also recommend a rate of return of 10%, which is much more in line with the return of similar utilities than the 13.51% requested by Midwest.

Most controversial in the company’s application is its request to implement a “decoupling” mechanism that would sever the relationship between gas sales and company revenues.

This is how it works: The price of natural gas constitutes about 70 to 80% of a customer’s bill for natural gas service. This cost is passed through directly to customers: no margin of profit is added.

The utility makes its profits from the delivery charge, which is a fee charged for every mcf

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Court tosses FCC rules that barred state regulation of wireless bills

In a significant victory for consumers, consumer advocates, and state regulators, the U.S. Court of Appeals for the 11th Circuit (Atlanta) recently threw out rules adopted last year by the FCC that had preempted state regulation of line items on wireless bills.

Under current federal law, states are allowed to regulate the terms and conditions of bills, but not rates, which are left to federal regulators.

The National Association of State Utility Consumer Advocates (NASUCA) filed a petition for a declaratory ruling in 2004, asking the FCC to prohibit wireless and long-distance carriers from imposing line-item charges on bills, unless they are authorized or mandated by law.

In rules adopted in March 2005, the FCC extended its truth-in-billing rules to wireless carriers, but preempted state regulation of line items on wireless bills.

NASUCA appealed the FCC’s rules, arguing that billing practices were considered “other terms and conditions” under Section 332(c)(3)(A) of the Communications Act of 1934, not “rates charged.”

The National Association of Regulatory Utility Commissioners (NARUC) and the

Vermont Public Service Board also appealed the FCC rules.

The Cellular Telecommunications and Internet Association (CTIA) and five wireless carriers intervened and supported the FCC’s position that line items on bills are “rates charged,” not “other terms and conditions.”

In the July 31, 2006 decision, a three-judge panel of the 11th Circuit ruled that the FCC exceeded its statutory authority when it preempted states from requiring or prohibiting the use of line items on wireless bills. “The scope of federal authority to regulate ‘rates’ or ‘entry’ does not include the presentation of line items on cellular wireless bills . . . This billing practice is a matter of ‘other terms and conditions’ that Congress intended to be regulable by the states.” The court further found, “The language of section 332(c)(3)(A) unambiguously preserved the ability of the States to regulate the use of line items in cellular wireless bills.”

CURB and other consumer advocates are pleased with the court decision, and believe it should prevent the FCC from adopting broader preemption rules. Consumer advocates and state regulators are currently opposing proposed federal legislation that would rescind state authority over wireless “terms and conditions.”

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ecurb@kcc.state.ks.us**

***Ex Parte* appeal advances— at snail's pace**

CURBside has previously reported on our efforts to obtain the public release of so-called confidential documents that were furnished to members of the Kansas Corporation Commission in a series of serial meetings with Aquila officials in February 2005. Kansas statutes and KCC regulations forbid the Commissioners from meeting privately with fewer than all the parties to a docket after a hearing has been scheduled, and before a final order has been issued in the docket. The KCC has doggedly refused to release the documents, claiming that its obligation to protect confidential information trumps its obligation to release them under the *ex parte* statutes.

CURB and the parties known as the Large Volume Customers both appealed the issue to the Douglas County District Court. CURB immediately became embroiled in a battle with the KCC over procedural issues, further delaying the court's consideration of the merits of CURB's and LVC's complaint. To streamline the proceedings, CURB applied for the right to intervene in LVC's case. On July 19, 2006, the court granted CURB's intervention.

As CURB had previously said it would do if intervention was granted, CURB voluntarily petitioned to withdraw its own appeal. On August 9, 2006, the

court granted CURB's petition to withdraw. The order confirmed that it had granted CURB "full rights of participation" in the LVSC appeal.

Unfortunately, the KCC has responded once more by raising numerous objections to CURB's intervention and seeking limits on CURB's participation in the case. CURB filed its response to the objections last week, and will continue to vigorously defend its right to advocate for the public's rights under the *ex parte* statutes. After 18 months, we haven't given up hope that the district court will eventually order the KCC to release the documents.

**CURBside
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Consumer Counsel's Corner

Perhaps I spoke too soon.

In the May CURBside, I reminded you that when you feel like you can't catch a break, you should remember the record-setting warm January weather we had in Kansas. With record high natural gas prices, that warm weather was a welcome break from what could have been extremely high heating bills.

When I wrote that, I didn't realize we'd follow winter up with what might be a record-setting warm summer. At least the summer has certainly has started off hot.

While I don't think we've set many records in terms of daily temperatures, 100 degrees isn't necessarily abnormal for Kansas. What has been abnormal is the sustained level of very hot weather.

One way weather is measured during the summer is by looking at "cooling degree days." A cooling degree day is a measure of the average daily temperatures, minus a base temperature. The higher the number of cooling degree days over the course of a month, the higher the average temperature was during that month.

A friend at one of our utilities told me that through the end of July, the number of cooling degree days was 60% higher than what we would normally expect to date. In fact, he said that we've had more cooling degree days through

July 31st than we usually have all year.

Although we weren't face to face, I could imagine his wry smile: with these temperatures, customer electric meters were spinning like Kansas windmills.

The level of temperatures has pushed system demands to record levels. According to a Westar Energy press release, Westar set a new record usage peak of 4,938 megawatts on July 19, 2006, about 4.5% higher than the previous recorded peak usage level. Westar's customers in the North used 2,575 megawatts and customers in the south used 2,363 megawatts.

Sustained higher-peak energy records will encourage utilities to build more power plants.

With these sustained high temperatures, many of you are now feeling the effects of the change the Commission has made in electric rates. The Commission has in recent cases re-instituted energy cost adjustments (ECAs) to pass increasing fuel costs directly through on consumer electric bills..

For Westar, the Commission also allowed the use of increasing block rates, which means that the more kilowatt hours you use, the more each kilowatt hour costs. Add to these charges other the line-item charges like transmission costs, environmental costs and other adjustments, and my guess is that many Kansas customers have felt a sting in their electric bills recently.

One of the Commission's goals is to make utility costs

more apparent to consumers so they can make better consumption decisions. I suppose they succeeded, but if you are like me, you probably wish you could catch a break....

--Dave Springe

Kansas Renewable Energy & Energy Efficiency Conference



On September 26 – 27, the KCC Energy Office is co-sponsoring the 2006 Kansas Renewable Energy and Energy Efficiency Conference. The public is invited to attend.

Staffers and board members from CURB will be attending presentations and break-out discussion sessions on a variety of energy-related topics.

The KCC is expected to take a more active role in energy matters since it has adopted the "National Action Plan for Energy Efficiency" which was endorsed by the National Association of Regulatory Utility Commissioners, and is an aggressive approach to developing conservation and renewable energy programs for the states.

For registration information, schedules and location of the conference, follow the links on the KCC Energy Office website at <http://www.kcc.state.ks.us/energy/index.htm>, or call Jim Ploger at (785) 271-3349.

Federal excise tax abolished

On May 25, 2006, the United States Treasury Department announced that it will no longer collect the federal excise tax on long distance telephone bills.

After losing several court battles, the Treasury Department announced it was conceding a long-standing legal dispute, and would provide refunds to consumers for the past three years, including interest. Three years is the period covered by the statute of limitation.

"Today is a good day for American taxpayers; it marks the beginning of the end of an outdated, antiquated tax that has survived a century beyond its original purpose, and by now should have been ancient history," said Treasury Secretary John Snow.

The federal excise tax on long-distance service was originally enacted in 1898 to help pay for the Spanish-American War. At the time, there was no federal income tax, and telephone service was generally available only to the rich. The excise tax was considered a "luxury tax" to help the government during a time of high military spending.

The excise tax has been repealed or scheduled to be phased out several times, but was repeatedly reinstated. It is a significant revenue generator for the Treasury. In 2005 alone, it generated \$5.9 billion.

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Excise Tax

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An excise tax is also levied on local service, but that will not be refunded. However, both Treasury Secretary Snow and Senate Finance Committee Chairman Charles Grassley (R-Iowa) have indicated they would like lawmakers to abolish the excise tax in its entirety.

Ratepayers may seek a refund of the 3% excise tax billed to them on long-distance service since February 28, 2003, including interest, and will be able to claim it on their 2006 tax returns that are due to be filed in April 2007.

Midwest

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delivered to the customer; and from the flat customer service charge, which is designed to recover the utility's fixed costs and a margin for profit.

Decoupling will ensure that the utility will receive a certain amount in delivery charges, regardless of how much gas is delivered. In other words, the revenues are "decoupled" from volumes.

A target amount of revenues would be preset by the Commission, and if the actual revenues received by the utility are less than the target, customers will make up the difference by paying a surcharge. If the target is exceeded, customers receive a credit.

As CURB's consultant Andrea Crane noted in her

testimony, gas companies like decoupling because they are guaranteed a fixed amount of revenue per customer, regardless of how much gas the customer uses.

Decoupling mechanisms also shift the risk of revenue shortfalls onto the customers. If weather is warmer than normal, or customers succeed in reducing consumption through careful conservation, they will have to make up for the utility's total revenue shortfalls by paying surcharges.

The concept of decoupling has been floating around for years, and is gaining popularity with advocates of conservation who want utilities to be at the forefront of promoting conservation and weatherization programs. Utilities have resisted participating in conservation programs because, even though they don't make money on the gas they deliver to customers, the more gas they deliver to customers, the more money they make on delivery charges. Utilities have asked, "Why should we advocate practices that reduce our revenues?"

Decoupling has been touted as the answer: it is a way for utilities to continue to receive a given level of revenues, even if their customers reduce their consumption.

Conservation advocates consider it a win-win situation: the utilities would have the incentive to promote conservation of a valuable natural resource, because they will continue to receive a level amount of revenues if their conservation efforts succeed. Conservation-

ists believe that reducing consumer consumption and preserving the resource will help hold down gas prices.

However, CURB questions these assumptions. For one thing, the theory that reducing residential consumption of natural gas will ease demand and reduce prices has been disproven already.

Current residential gas consumption is about 20% lower than it was a decade ago, and continues to drop as more homes are weatherized and fitted with more efficient heating equipment. But gas prices have risen considerably in recent years, and customers really haven't seen a drop in their total bills. Conservation measures have just moderated the increases. This overall reduction in gas consumption by consumers has done nothing to moderate natural gas prices. It has just made more gas available to electric utilities, which are using more and more natural gas to produce electricity to meet peak load demands in the summer.

Traditionally, gas utilities placed gas in storage for winter during the summer, because it was plentiful and cheap in the summer. Not anymore.

Gas companies still store gas for winter consumption, but they increasingly compete for summer supplies with electric utilities, which use the gas to meet peak generation demands in hot weather.

So, the savings from buying gas for storage in summer have largely disappeared. The result is higher gas prices year-round,

even though each customer is using, on average, less gas than a decade ago.

Decoupling is a giant step away from the principle that a utility's rates should be set so that the utility has a reasonable opportunity for a profit.

With decoupling, the KCC would basically guarantee the utility sufficient revenues to meet its expectations for profitability. Although the delivery may vary somewhat month to month, the annual charges to customers will remain the same until the next rate case. Delivery charges will flatten out, and will resemble customer service charges—those flat charges that customers make every month to pay for the utility's fixed costs.

No one who advocates for decoupling will admit that it's just another way to increase the customer service charge, because customer service charges are notoriously unpopular with customers—especially those who make efforts to conserve.

Additionally, regulators are supposed to set rates at a level that gives the utility the opportunity to make a fair profit, not a gold-stamped guarantee.

Since it is an axiom of our economy that lower-risk investments should pay less than higher-risk investments, ratepayers should be paying lower rates of return in exchange for these guarantees. But regulators generally aren't reducing the level of profit they are allowing utilities to recoup from customers in exchange for these guarantees.

Like other trends in rate-making that allow utilities to pass through fuel costs, transmission costs, environmental compliance costs, homeland security costs and tax costs, decoupling is just another way of ensuring that the utilities achieve their desired level of profit, without recognition of the reduced risk that their shareholders will face.

It's a worse deal for the customer/owners of utility coops, who are, in essence, similar to the shareholders of a corporation, but with one big difference: they have no choice but to become an owner if they reside in the service area of a cooperative.

Cooperatives often claim that since they are governed by democratically-elected boards, their customers are protected from unreasonable decisions on the part of the utility.

However, it is doubtful that the customers of Midwest or any other coop would voluntarily choose to have their rates increased by 25 to 30 per cent or more, or to have their customer charges doubled or tripled, which is what decoupling essentially does.

Since the legislature has granted the KCC the authority to regulate cooperatives like Midwest, CURB believes that the KCC is obligated to ensure that Midwest's ratepayers pay rates that are based on the opportunity for the utility to make a profit—not a guarantee.

CURB believes that regulators should be honest enough to stand up and admit that adopting decoupling mechan-

isms is a sneaky way to increase customer service charges and to guarantee revenues, without explicitly saying so. If the KCC intends to start guaranteeing revenues, it should say so, and not let the utilities confuse and deceive customers by calling this practice "decoupling."

Needless to say, CURB will be opposing this proposal in the Midwest rate case.

The evidentiary hearing is scheduled to begin on Tuesday, August 29 at 10:00 a.m.

Superior Customers convert to propane

Residential customers of Superior Energy who were slated to be cut off from natural gas service this summer in the wake of Superior's bankruptcy have all been converted to propane as of this writing.

The customers received notice last spring that they would no longer be receiving natural gas service because KGS, which took over parts of the bankrupt utility, could not guarantee the safety of the gathering-system gas they had been receiving from Superior.

CURB received a nice note from a resident of Lake City, thanking CURB for its participation in helping ensure that these customers received \$3000 each from KGS to help with the expenses of the conversion.

Lake City's last remaining meeting place for large gatherings, a church, was also one of the customers that received KGS assistance to convert.

Kids' CURB

Citizens' Utility Ratepayer Board



Wally
"The Watchdog"

Shonda has updated the KIDS' CURB section of CURB's website with new kid-friendly graphics, and a new kid-friendly mascot, Wally the Watchdog.

Kids can learn about energy and conservation, and enroll as Official CURB "Junior Watchdogs"!

Follow the links on CURB's website at:
<http://curb.kcc.state.ks.us/>

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