

CURB News

News from the Watchdog for Residential and Small Commercial Utility Consumers

September 2020



THE CITIZENS' UTILITY RATEPAYER BOARD OF KANSAS

CURB Will Weigh in on Evergy's Sustainability Transformation Plan

(Docket Nos. 20-EKME-514-GIE and 21-EKME-088-GIE)

Early in 2020, CURB learned that Elliott Management LLC (which owns an economic interest equating approximately 11.3 million shares of Evergy) had engaged in private discussions with Evergy management on ways to improve value for all of Evergy's key stakeholders. After those discussions had taken place, Evergy and Elliott entered into an agreement on February 28, 2020, creating a Strategic Review & Operations Committee (SROC). Evergy and Elliott intended the SROC to explore various means by which to increase Evergy's shareholder value. In connection with that purpose, the SROC was required to consider and recommend to the Evergy Board a plan that would effectively cut operating and maintenance expenses and increase capital expenditures, either as a standalone plan (Modified Standalone Plan) or in combination with a merger of Evergy with another company (Merger Transaction).

Concerned with the potential ramifications of the SROC recommendations on ratepayers, the Commission issued an Order Opening General Investigation on June 18, 2020 in Docket No. 20-EKME-514-GIE. In that Order, the Commission directed the Company to provide a report to the Commission within two weeks after Evergy's Board took action on the SROC recommendation. The Commission required Evergy to produce the SROC Report submitted to Evergy's Board and to provide explanations of various issues pertaining to either the Modified Standalone Plan or the Merger Transaction, if selected by the Board. The Commission intends the investigation to fully inform the Commission, Evergy's customers and other stakeholders about the Board's analysis and rationale behind its decision to pursue either a Modified Standalone Plan or a Merger Transaction. Further, the Order granted Staff, CURB, and any other intervenors the right to file responsive comments no later than 45 days after Evergy submitted its report to the Commission.

After finishing its evaluation of its options, the SROC recommended to the Evergy Board and it approved Evergy's engagement in a "Sustainability Transformation Plan" (STP). Evergy decided against a merger, to remain a standalone enterprise instead. As required, Evergy filed with the Commission on August 13, 2020, its report outlining the STP. CURB obtained a copy of it.

There are many features of the STP, but CURB took note of some aspects in particular. Regarding capital expenditures, the STP calls for \$8.9 billion in investment from 2020-2024 for Evergy's Kansas and Missouri jurisdictions combined, being an increase of \$1.4 billion over previous investment plans. The STP expects that non-fuel operating and maintenance costs ("NFOM") will be \$330 million below 2018 levels by 2024 (a reduction of 25%). Evergy estimates that the rate impact of the STP will be an annual increase of 1.6% from 2020 to 2024 across all of its utility customers.

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MAJOR CASES WE ARE CURRENTLY FOLLOWING:

- **COVID-19 DOCKETS**
- **STATE INCOME TAX EXEMPTION FILINGS**
- **18-WSEE-328-RTS** —
EVERGY CENTRAL'S DG RATE DESIGN
- **21-EKME-088-GIE** —
EVERGY'S SUSTAINABILITY TRANSFORMATION PLAN
- **21-WCNE-103-GIE** —
WOLF CREEK DECOMMISSIONING FINANCING

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CURB is currently studying the STP and will file comments with the Commission in response to Evergy's report in the near future. While these comments have not been finalized, CURB's primary focus is that the STP should not result in either deterioration of service or in utility rates that are higher than necessary. CURB's comments in this matter will be further outlined in a future newsletter.

Importantly, the Commission has opened another general investigation to further explore the ramifications of the STP on ratepayers and other stakeholders. That investigation was opened in Docket No. 21-EKME-088-GIE. Presently, the parties have set a meeting date to discuss an appropriate procedure in that docket. CURB will take part in those meetings. As this new investigation progresses, CURB will outline its thoughts and concerns in future newsletters.

CURB Responds to Evergy's Capital Plan

(Docket No. 19-WSEE-096-CPL)

On September 4, 2020, CURB filed Comments in Docket No. 19-WSEE-096-CPL. This docket originated from the Westar and KCP&L merger (which created Evergy) in Docket No. 18-KCPE-095-MER. As part of the Order Approving Merger Application, it was agreed that Evergy, Kansas Corporation Staff and CURB would collaborate in establishing a Capital Plan and Integrated Resource Plan Reporting Format in which it was proposed that Evergy file a report with two sections: (1) Capital Plan reporting and (2) IRP reporting.

On March 9, 2020, Evergy filed its initial 2020-2024 Kansas Capital Investment Plan (Plan). On August 19, 2020, Evergy filed a revised Capital Plan and then further filed a second revised Capital Plan on August 29, 2020.

CURB's comments on the Plan were filed on September 4, 2020. CURB's review of the revised 2020-2024 Plan indicates that there is an overall projected increase of \$347 million from the prior year's Capital Plan for Evergy's consolidated Kansas operations.

CURB noted in its Comments that the 2020-2024 Plan Summary contains substantial changes from year to year in capital investments budgeted by Evergy. Yet, there is no narrative provided for these budget changes. Therefore, CURB suggested that the Commission could require future Capital Plan filings to provide a high-level explanation regarding significant deviations from prior projections. CURB believes that, by providing reasonable explanations as to substantial deviations from prior projections, the Commission would increase transparency with the capital plan reporting process. It would help the parties and the Commission to understand the rationale for changes in capital spending.

Additionally, CURB noted a concern that Evergy continues to invest in additional capital growth above and beyond the level that may actually be needed to efficiently and sufficiently serve its customers. The Plan, as filed, contains projects that CURB believes may not be needed to provide service to Kansas customers. For instance, CURB views building new generation for the sake of building as a significant factor in why Kansans are experiencing higher electric rates compared to the surrounding states in the region. This is particularly relevant with the appearance of Elliott Management into the Evergy corporate framework as advocates for increased shareholder profit.

CURB also expressed concerns over the non-competitiveness of Evergy's rates as compared to other regional utilities. These concerns have been brought to light and validated in two recent rate studies produced by Kansas Corporation Commission Staff (Staff) in 2018 and the London Economics International Rate Study commissioned by the Kansas Legislature in 2019. This issue continues to appear often in CURB's interaction with other ratepayers and other interested parties and is a great concern to CURB and many other Kansas residents.

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Separate from the filing of its Capital Plan, on August 13, 2020, Evergy filed its Sustainability Transformation Plan (STP) Report in Docket 20-EKME-514-GIE. The STP came about as a result of an agreement between Evergy and Elliott Management. The STP Report presents a change to the five-year Capital Plan of an additional \$303 million investment for Kansas beyond what was presented in the most recent Capital Plan filing. The Commission has since opened Docket No. 21-EKME-088-GIE for review of the STP. CURB is in the midst of reviewing the STP Report and, therefore, refrained from commenting on it in great detail in the response to the Capital Plan.

Evergy KS Central's Residential Distributed Generation Rates Revisited

(Docket No. 18-WSEE-328-RTS)

On April 3, 2020, the Kansas Supreme Court ("Court") rejected a KCC-approved rate design for Evergy Kansas Central's residential Distributed Generation (DG) customers that included a flat demand charge to customers who utilized renewable resources to generate their own electricity. Evergy (formerly Westar Energy, Inc.) argued that the new demand charge was needed to make up for fixed costs recovery shortfalls due to DG customers' lower consumption of energy. The Court relied upon a 1970 statute that prohibited discrimination by charging customers a higher price for the same services for DG customers compared to a customer who relies entirely on the grid. The Court sent the case back to the KCC to approve a new rate design that does not discriminate against DG customers. For the KCC's consideration, the Court identified possible alternative rate designs that may not result in discrimination and also improve fixed cost recovery by the utility. The KCC ordered various electric utilities and other stakeholders, including CURB, to file comments on these alternative rate designs and any other possible changes to Evergy's DG customer rate design. These alternative rate designs include a flat fixed customer charge for all customers that fully recovers the fixed costs of service, a sliding block rate that decreases the price of electricity as more of it is used by a customer, a time-of-use rate which prices energy based on the hour of the day, and a minimum bill for all customers regardless of actual energy consumption.

On August 14, CURB filed initial comments in the docket. CURB identified several problems associated with the alternative rate designs from the perspective of residential ratepayers. A flat fee that recovers all of a utility's fixed costs would require a higher customer charge than what it is presently. Typically, a utility gets back some of its fixed costs based on how much electricity it sells. Higher fixed charges will increase bills for everyone without the utility doing any additional work. A sliding block rate would reward larger energy users while smaller energy users or energy conservation-conscious customers would not see increased benefits from this structure. Time-of-Use rates require significant study and data collection to design prices that accurately reflect real-time conditions and result in adequate cost-recovery. CURB also raised the possibility that future legislative action could impact the use of these rate designs.

In order to address DG customer rates in the near term, CURB recommended that the KCC simply move residential DG customers onto the standard two-part rate design used by non-DG customers without the demand charge. To account for any lost fixed costs by Evergy, CURB recommended that the KCC allow Evergy to create a regulatory asset to track these amounts for possible recovery in the future. Eliminating the additional demand charge should comply with the Court's order. A regulatory asset would provide a solution for Evergy to recover its fixed costs for service. This plan would not require significant study or data to implement and stops customers from being charged an illegal rate sooner without significant disruption of residential rates as a whole.

Evergy is to file a proposed rate design with the KCC by October 13, 2020. CURB will then have the opportunity to file testimony in response to this proposal. An order on the new rate design for residential DG customers is due by February 25, 2021.

Tracking Utility Savings, Costs, and Lost Revenue Due to COVID-19

(Docket Nos. 20-EPDE-427-ACT (Empire); 20-EKME-454-ACT (Eversource); and 20-GIMG-423-ACT (Atmos, Black Hills, and Kansas Gas))

In response to the unprecedented circumstances associated with the COVID-19 pandemic, utility companies across Kansas have implemented a number of changes to protect customers while maintaining service. As a result, these companies are incurring new costs and savings not experienced during normal operations. Several utilities have filed requests with the Commission to authorize the tracking of these costs and savings in a regulatory asset for consideration of recovery in the future. The three above dockets were brought by Eversource, Empire-Liberty, and all three major gas utilities (Atmos Energy, Black Hills Energy, and Kansas Gas Services), respectively, between April and May 2020.

These applications call for an Accounting Authority Order (“AAO”) to track all costs and lost revenue, along with carrying costs, incurred by the utility related to the COVID-19 pandemic for the duration of the pandemic. The companies have pledged to keep records and file annual reports regarding this tracking so all interested parties are apprised of the amounts. Additionally, the companies are required to provide frequent updates on the levels of past due and delinquent accounts and of any customer assistance programs. The utilities will be allowed to request recovery of lost revenue and increased expenses through rates in future proceedings, though recovery is not guaranteed. The Commission approved the applications and opened separate dockets to collect these reports from the respective utilities.

CURB highlighted the fact that utilities are likely experiencing savings in some aspects of operations and maintenance associated with changes due to the pandemic. Additionally, with more residential customers staying at home and using more energy, utilities are seeing higher revenue from these customers. This increased revenue will, at least partially, offset pandemic-related losses and costs incurred by a utility. CURB believes that utilities are not the only ones who are experiencing significant changes during the pandemic. Many Kansans are also going through personal and financial difficulties due to the pandemic, but do not have the ability to recover their losses. CURB appreciates the companies’ efforts to accommodate the ratepayers to reduce the new burdens associated with COVID-19. CURB will continue to monitor the utilities’ reports and numbers for prudent service until the requests for recovery are made.

Kansas Public Utilities are Now Exempt from State Income Tax

(Docket Nos. 21-EKME-050-RTS (Eversource); 21-EPDE-101-TAR (Empire); 21-ATMG-100-TAR (Atmos); 21-BHCG-099-RTS (Black Hills); 21-KGSG-097-RTS (Kansas Gas))

House Bill 2585 (HB2585) signed into law by Governor Laura Kelly effective July 1, 2020, for tax years ending on or after January 1, 2021, exempts every electric and natural gas public utility, as defined in law and subject to rate regulation by the Kansas Corporation Commission (Commission), from payment of state income taxes. Utilities must track changes to income tax collections and file an application with the Commission for new retail rates reflecting adjusted income tax rates within 60 days of such a change in state or federal law. The statute requires utilities to adjust their rates if there is an over collection or under collection of income tax expenses that is equal to or exceeds 0.25 percent of a utility’s KCC-approved base revenue level from the utility’s most recent rate proceeding. The statute states that a utility is not required to file a general rate proceeding to change retail rates and grants the Commission 120 days to address an application filed in compliance with this rule.

Eversource, Kansas Gas Service, Black Hills Gas, Atmos Energy, and Empire District Electric have made applications to the Kansas Corporation Commission for approval to reduce their rates to reflect exemption from Kansas income tax. CURB has intervened in each of these dockets to represent the interests of residential and small commercial ratepayers.

CURB Considers Potential Securitization Legislation

During the 2020 Kansas legislative session, Senate Bill (SB) 437 was introduced and heard by the Kansas Senate Utilities Committee. Due to a shortened legislative session (caused by COVID-19) and other reasons, SB 437 was not worked by that Committee. However, CURB anticipates that legislation pertaining to securitization may be introduced before the Kansas legislature next year and is undertaking a study of the concept with the aim of ensuring that ratepayers are protected throughout the securitization process.

What is securitization? Essentially, securitization involves the sale to investors of securities that are backed by a pool of assets and/or the credit support of a third party. In the utility sphere, securitization is an alternative financing mechanism reflected by the practice of paying for a capital project outside of the utility financing model by selling bonds that are directly backed and paid for by ratepayers. In theory, securitization allows utility capital projects to be financed at lower rates than may be experienced by using a utility's capital structure, but the bonds are backed by the ratepayer.

One of the purposes that some believe is appropriate for the use of securitization as a utility project financing tool is the abandonment of coal-powered generation plants. Some believe that, by replacing high cost, coal-powered generation plants with low cost renewable energy generation plants, the ratepayer may benefit through lower rates. To some, use of securitization as a financing tool lowers the financing cost of these types of transactions from costs associated with traditional financing mechanisms. Several states have utilized securitization as a financing tool for various utility capital projects.

Importantly, securitization is a very complex process, generally involving an application before the Commission. Some contend that one of the most difficult aspects of securitization is the identification of appropriate assets to be securitized. They point out that to accomplish securitization there must be a cash flow tied to a sizeable asset or group of assets. Securitization can involve several parties, including the Commission, the utility, ratepayers, bond investors and intermediaries. Securitization in Kansas would require legislation to be introduced and enacted into law.

In CURB's view, before any securitization process may be approved by the Commission, it is imperative that ratepayers benefit from the process and are protected from unnecessary risk. Indeed, there are several risks associated with any securitization process, but there are also benefits. CURB hopes to work with open-minded stakeholders on the concept of securitization prior to the upcoming legislative session. CURB will keep its readers informed as this work progresses.

CURB Board Member Mary Treaster Receives Climate + Energy Project Award

On September 16, 2020, Climate + Energy Project announced the recipients of its 2020 Climate + Energy Awards. This award recognizes the lifetime achievements of individuals in the area of renewable energy in Kansas. Prior to Mary's appointment to CURB's board, she worked and volunteered as an advocate for renewable energy in western Kansas. Mary has served Kansans in a number of capacities, including school superintendent and member of the original Reno County Wind Energy Task Force. Her background and enthusiasm for clean energy led to an opportunity to serve on the board of Climate + Energy Project. While on the board, Climate + Energy Project expanded their operations and fostered engagement and cooperation among people all across Kansas to promote renewable energy resources.

Mary's dedication to public service and energy issues in Kansas caught the attention of Governor Kelly, which resulted in her appointment to the CURB board in 2019. As a CURB board member, Mary works diligently to advise CURB staff on ways to best represent residential and small commercial ratepayers on all types of topics. Mary provides a keen interest and informed perspective on current issues before the state legislature and KCC, such as electric vehicle charge and distributed generation rates. One of the perks about being a CURB board member, according to Mary, includes the ability to talk utility regulation with her son, who also works in the utility world. CURB greatly appreciates the contributions of all its board members and congratulates Mary on her recognition by Climate + Energy Project and for her career in public service and customer advocacy.

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ABOUT THE CITIZENS' UTILITY RATEPAYER BOARD (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 Board is composed of five (5) appointed volunteer members representing the four congressional districts in Kansas and one at-large member. CURB was initially founded by the Chairman of the Kansas Corporation Commission upon a perceived need for a stronger consumer advocate. CURB has evolved into an independent agency, currently employing a consumer counsel, two supporting attorneys, two analysts, and two administrative staff.

OUR MISSION: To zealously protect the interests of residential and small commercial utility ratepayers before the Kansas Corporation Commission and the Kansas legislature.

OUR VISION: To protect Kansas residential and small commercial utility ratepayers by promoting the delivery of optimal utility services—being safe, reliable and technically robust, environmentally sensible, cost-effective, and equitably provided to all Kansas utility consumers at just prices.



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