

Citizens' Utility Ratepayer Board

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Testimony on Behalf of the Citizens' Utility Ratepayer Board

By Steve Rarrick, Staff Attorney
Before the House Utility Committee

Re: House Bill 2278

February 6, 2007

Chairman Holmes and Members of the Committee:

Thank you for the opportunity to appear before you this morning on behalf of the Citizens' Utility Ratepayer Board (CURB). My name is Steve Rarrick and I am an attorney with CURB.

CURB understands House Bill 2278 has been proposed by Midwest Energy, a gas and electric utility that intends to implement a Pay As You Save ("PAYS") program. PAYS programs are designed to assist and motivate ratepayers to buy cost effective, resource efficient products such as high efficiency heating and air conditioning units. The cost of the products are repaid over time, and the obligation to repay is tied to the meter rather than the homeowner or tenant. As a result, when an owner sells or a tenant moves, the PAYS obligation passes to the next owner or tenant paying for the utility. CURB generally supports the concept of PAYS programs and appreciates the efforts of Midwest Energy to implement a PAYS program. CURB has some concerns about whether a PAYS program provides sufficient notification to subsequent home owners or tenants about the ongoing obligation to pay, but believes those concerns will be addressed in the tariff docket before the Kansas Corporation Commission.

CURB is opposed to House Bill 2278 because CURB is not convinced there is a need to remove existing Kansas Consumer Protection Act ("KCPA") protections to Kansans who purchase products and services from public utilities. As members of this Committee may recall, several specific KCPA statutes were passed to apply to business transactions conducted by public utilities (slamming, cramming, no-call). CURB understands from conversations with representatives of Midwest Energy that they did not intend the bill to have the broad application the existing language provides. However, CURB will remain opposed to more narrowly tailored language (i.e., gas and electric utilities engaging in energy efficiency or renewable energy programs), because we simply do not see a need for the elimination of the important consumer protections provided by the KCPA. CURB has been working with representatives of Midwest Energy, but to date has been unable to determine exactly why the company thinks the requested exemption is necessary other than a desire to avoid the jurisdiction of the KCPA for these transactions.

CURB understands that utilities are already exempt from the requirements of the Kansas Consumer Credit Code. The KCPA does not have specific detailed requirements applicable to

gas and electric utilities, but instead generally prohibits deceptive and unconscionable business practices. CURB doesn't expect the marketing materials sent to utility customers about a PAYS program would include deceptive misrepresentations leading to consumer complaints. However, in the event a utility did commit deceptive practices in marketing an energy efficiency program, it does not seem reasonable that consumers impacted by that deception should be left without the same consumer protections they would have in other transactions. Since the KCPA does not require a laundry list of specific requirements applicable to public utilities, it is difficult to see why consumers dealing with public utilities (or gas and electric utilities engaging in energy efficiency or renewable energy programs) should be denied the general consumer protections provided under the KCPA.

On behalf of CURB, I urge the Committee to vote against passage of House Bill 2278, and would stand for questions at the appropriate time.