

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of The)
Empire District Electric Company for) Docket No. 17-EPDE-280-TAR
Approval of its Asbury Environmental and)
Riverton Cost Recovery ("AERR") Rider to)
Replace the Existing Asbury Environmental)
Cost Recovery ("AECR") Rider.)

**PETITION TO INTERVENE AND MOTION FOR
PROTECTIVE ORDER AND DISCOVERY ORDER**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and petitions the Corporation Commission of the State of the Kansas ("Commission") for intervention in the above-captioned case pursuant to K.S.A. 66-1223 and K.S.A. 77-521(a). In support of its petition and motion, CURB states and alleges as follows:

1. On January 6, 2017, Empire District Electric Company ("Empire") filed an application with the Kansas Corporation Commission for approval of its Asbury Environmental and Riverton Cost Recovery ("AERR") Rider to replace the existing Asbury Environmental Cost Recovery ("AECR") Rider.

2. CURB is composed of five volunteer board members.¹

3. CURB has specific statutory authority to "represent residential and small commercial ratepayers before the state corporation commission"² and to "function as an *official intervenor in cases* filed with the state corporation commission."³ CURB's authority and role as the official intervenor in cases filed with the Commission has been recognized by the Kansas Supreme Court.⁴

¹ K.S.A. 66-1222(a).

² K.S.A. 66-1223(a).

³ K.S.A. 66-1223(b).

⁴ K.S.A. 66-1223(b). *See, Citizens' Utility Ratepayer Board v. Kansas Corporation Comm'n*, 24 Kan. App.2d 63, 68,

CURB also has specific statutory authority to seek judicial review of Commission orders and decisions on behalf of residential and small commercial ratepayers.⁵

4. CURB's express statutory authority referenced above reflects the intent of the Legislature that CURB should participate in cases filed with the Commission. This fulfills the requirement under K.S.A. 77-521(a)(2) because CURB "qualifies as an intervener under any provision of law."

5. The residential and small commercial ratepayers whose interests CURB represents will be bound by any Commission order or activity in this proceeding. The rates paid and the services received by residential and small commercial ratepayers under Empires proposed Asbury Environmental and Riverton Cost Recovery ("AERR") Rider that is to replace the existing Asbury Environmental Cost Recovery ("AECR") Rider may be substantially affected by any Commission order or activity in this proceeding.

6. The representation of CURB's interests in this proceeding by existing parties is inadequate. No other party to this proceeding is authorized to (a) represent residential and small commercial ratepayers before the Commission, (b) function as the statutory official intervenor in cases filed with the Commission, or (c) seek judicial review of Commission orders and decisions on behalf of residential and small commercial ratepayers. While Commission Staff may have authority to investigate, evaluate, testify and offer exhibits on behalf of the *general public* pursuant to a

rev. den. 262 Kan. 959 (1997) ("*CURB v. KCC*"). See also, *Farmland Industries, Inc. v. Kansas Corp. Comm'n*, 29 Kan.App.2d 1031, 1047-48, 37 P.3d 640 (2001) ("The bulk of current customers otherwise entitled to receive refunds are *statutorily represented* by CURB. See K.S.A. 66-1223(a)")

⁵ K.S.A. 66-1223.

definition contained in a Commission regulation,⁶ Staff does not represent residential and small commercial ratepayers and is expressly denied the right to appeal Commission orders.⁷

7. Accordingly, CURB has a substantial and vital interest in the outcome of this proceeding which cannot be adequately represented by any other party. Pursuant to K.S.A. 77-521(a)(2), CURB qualifies as an intervenor (a) under provision of law and (b) because the rights, duties, privileges, immunities, or other legal interests of residential and small commercial ratepayers may be substantially affected by this proceeding.⁸

8. CURB's requested intervention is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.⁹

9. CURB therefore requests that the Commission grant CURB's Petition to Intervene and participate fully in this docket, including but not limited to the right to conduct discovery, file pleadings and testimony, present oral argument, and fully participate in any scheduled hearings.

10. In addition to undersigned counsel, please include the following CURB representatives with all electronic notices, pleadings, and correspondence regarding this Application as follows:

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⁶ Staff's authority to represent the general public is not specifically authorized by statute, but merely referenced in the definition section of Commission regulations. K.A.R. 82-1-204(q) ("Technical staff may conduct investigations and otherwise evaluate issues raised, and may testify and offer exhibits on behalf of the *general public*.") (emphasis added).

⁷ K.A.R. 82-1-204(i)(3).

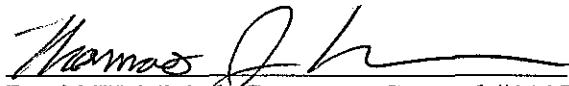
⁸ K.S.A. 77-521(a)(2).

⁹ K.S.A. 77-521(a)(3).

11. Discovery responses may contain confidential information. CURB is requesting the Commission issue a Protective Order and Discovery Order in this docket to allow CURB and its consultant access to the full information contained in this filing.

WHEREFORE, CURB respectfully requests the Commission grant its Petition for Intervention and Motion for Protective Order and Discovery Order in this Docket.

Respectfully submitted,



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CERTIFICATE OF SERVICE

17-EPDE-280-TAR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 9th day of January, 2017, to the following:

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