

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of a General Investigation)
Regarding the Acceleration of Replacement)
of Natural Gas Pipelines Constructed of) Docket No. 15-GIMG-343-GIG
Obsolete Materials Considered to be a)
Safety Risk.)

**COMMISSION STAFF'S RESPONSE TO CURB'S PETITION FOR
RECONSIDERATION AND/OR CLARIFICATION**

COMES NOW Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) and in response to the *Petition for Reconsideration and/or Clarification* of the Citizens' Utility Ratepayer Board (CURB) dated July 6, 2015, files its Response. In support hereof, Staff states as follows:

I. Background

1. On March 12, 2015, the Commission issued its Order Opening General Investigation. In its Order, the Commission opened a generic proceeding to investigate programs that will allow Kansas local distribution gas utility companies (LDCs) to accelerate replacement of natural gas pipelines constructed of obsolete materials and considered to be a safety risk.¹

2. Attached to the Commission's Order was a Report and Recommendation (R&R) from Staff. In its R&R, Staff presented a straw-man proposal for accelerated pipeline replacement programs. As part of the proposal, Staff suggested an LDC could request either of two alternative ratemaking mechanisms: 1) a surcharge allowing ongoing recovery of actual costs through an annual filing or 2) a deferred cost recovery mechanism that would track costs

¹ Order Opening General Investigation, March 12, 2015, Ordering Clause A.

(including depreciation expenses and carrying costs) through a regulatory asset for inclusion in rates in the LDC's next general rate proceeding.²

3. To facilitate its investigation, the Commission requested the parties address a number of questions through comments.³ The Commission also specifically requested the parties initially address the Commission's jurisdictional authority to establish alternative rate making methodologies for pipe replacement before submitting further comments.⁴

4. On March 19, 2015, following email correspondence between the parties and Prehearing Officer Van Blaricum, the Commission issued its Order Setting Procedural Schedule. The Scheduling Order required the parties to submit initial legal briefs on the Commission's jurisdictional authority to establish alternative ratemaking methodologies for pipe replacement.⁵ The Scheduling Order also noted the Commission would set further proceedings, if necessary, following an order on the jurisdictional question.⁶

A. The Parties' Briefs on Commission Jurisdiction

5. In its Order Opening General Investigation, the Commission requested the parties brief the following single legal issue: "Does the Commission have the jurisdictional authority to establish alternative rate making methodologies for pipe replacement that go beyond the parameters established under the Gas Safety and Reliability Policy Act?"⁷ On April 17, 2015, five parties submitted briefs on this issue.

² Order Opening General Investigation, Staff Report & Recommendation Attachment, February 2, 2015, Attachment 1, p. 3.

³ Order Opening General Investigation, ¶ 4.

⁴ Order Opening General Investigation, ¶ 4.

⁵ Order Setting Procedural Schedule, March 19, 2015, ¶¶ 2-3. (Scheduling Order, ¶¶ 2-3.)

⁶ Scheduling Order, ¶ 3.

⁷ Order Opening General Investigation, ¶¶ 3-4.

i. Commission Staff's Brief on Jurisdictional Authority

6. On April 17, 2015, Staff filed its Brief on Jurisdictional Authority. In its Brief, Staff recommended the Commission find it does have authority to establish alternative ratemaking mechanisms for recovery of costs associated with accelerated replacement of natural gas pipelines constructed of obsolete materials considered to be a safety risk.⁸

7. Staff first described the Commission's general authority to prescribe alternative ratemaking methodologies outside the typical general rate case process.⁹ Staff also noted that this power is allowed under Kansas law and has been recognized by Kansas courts.¹⁰

8. Next, Staff analyzed the Gas System Reliability Surcharge (GSRS) statute. Staff's brief described, in detail, the different aspects GSRS mechanism.¹¹ In particular, Staff noted the accommodating terms of the GSRS for LDCs and explained how those terms limited the Commission's general ratemaking authority.¹² Staff also pointed out that, because of these tradeoffs, the statute limits LDCs' use of the GSRS mechanism to an increase of \$0.40 per residential customer over the most recent filing of a GSRS.¹³

9. Therefore, in analyzing the plain language of the GSRS statute, Staff concluded,

[W]hen an LDC *chooses* to recover costs through the accommodating terms of the GSRS mechanism, the LDC can only apply for cost-recovery up to a certain level.

Because any new separate program would contain entirely different terms – and would not change the terms of the GSRS mechanism – the new program would not conflict with the GSRS mechanism. The plain language of the GSRS statute does not state that it is the exclusive manner for LDCs to recover infrastructure replacement costs. It is simply a voluntary accommodation that an LDC may *choose* to utilize to effectuate cost-recovery between general rate cases. Any new cost-recovery mechanism would be an entirely distinct program with a different

⁸ Commission Staff's Brief on Jurisdictional Authority, April 17, 2015, ¶ 5. (Staff Brief, ¶ 5.)

⁹ Staff Brief, ¶¶ 6-7.

¹⁰ Staff Brief, ¶ 7.

¹¹ Staff Brief, ¶¶ 8-12.

¹² Staff Brief, ¶¶ 9-10.

¹³ Staff Brief, ¶ 11.

purpose and different terms. The programs described in Staff's straw-man proposal would not serve as an extension or expansion of the GSRS mechanism in any way.¹⁴

10. Staff then turned to the related question of whether the GSRS statute precludes the Commission from creating a separate cost-recovery mechanism specifically for replacement of pipelines constructed of obsolete materials. Staff concluded a separate program for recovery of these costs does not conflict with the plain language of the GSRS statute.¹⁵ In support, Staff's analysis noted 1) the GSRS statute, by its express terms, does not purport to be the exclusive means of cost-recovery for all infrastructure system replacement, 2) the limited scope of the GSRS is distinct from the scope of a system-wide obsolete pipeline replacement program, and 3) the GSRS is an entitlement offered to LDCs that they are not required to utilize and any new mechanism would leave the GSRS mechanism intact.¹⁶

11. Finally, Staff also addressed the *expressio unius* doctrine of statutory interpretation. Staff first explained the doctrine should not be applied to an unambiguous statute.¹⁷ Also, because the Commission has been granted broad ratemaking authority, and the legislature has not expressly limited that authority, the doctrine would not apply in this case.¹⁸

ii. CURB's Brief on Jurisdiction

12. On April 17, 2015, CURB filed its Brief on Jurisdiction. In its Brief, CURB concluded that the GSRS statute deprives the Commission of authority to approve any additional alternative ratemaking mechanism for pipe replacement.¹⁹

¹⁴ Staff Brief, ¶¶ 11-12.

¹⁵ Staff Brief, ¶ 14.

¹⁶ Staff Brief, ¶¶ 15-17.

¹⁷ Staff Brief, ¶ 18

¹⁸ Staff Brief ¶¶ 18-21.

¹⁹ CURB Brief on Jurisdiction, April 17, 2015, ¶ 23. (CURB Brief, ¶ 23.)

13. First CURB characterized the GSRS statute as “the current surcharge mechanism for pipeline safety expenditures.” In describing the purpose of the statute, CURB cited liberally to legislative history.²⁰ However, CURB also echoed Staff’s comments recited above, stating, “The GSRS Act is not an ambiguous statute. It imposes precise limits on the Commission’s usually broad power to set utility rates.”²¹ CURB then described the terms of the GSRS, including the cap on annual GSRS increases.²²

14. Next CURB argued at length that the GSRS statute is the exclusive method of alternative cost-recovery for LDC infrastructure expenses. Therefore, CURB reasoned, the GSRS statute limits Commission authority because the new mechanism proposed by Staff would cover some of the same costs eligible for GSRS treatment.²³ In conclusion, CURB further argued “the legislature has unambiguously chosen to preclude the Commission from free exercise of its powers of ratemaking on the issue of more timely recovery of expenditures related to pipeline safety and system integrity.”²⁴

iii. Brief of Kansas Gas Service on Jurisdictional Issues

15. On April 17, 2015, Kansas Gas Service, a Division of ONE Gas, Inc. (KGS), filed its Brief on Jurisdictional Issues. In its brief, KGS contends the Commission does have the authority to establish an alternative ratemaking mechanism for pipeline infrastructure replacement.

16. KGS described the history and purpose of the GSRS statute and noted that the GSRS mechanism is a voluntary option available to LDCs.²⁵ KGS continued by describing the

²⁰ CURB Brief, ¶¶ 3-5

²¹ CURB Brief, ¶ 7.

²² CURB Brief, ¶ 7.

²³ CURB Brief, ¶¶ 8-22.

²⁴ CURB Brief, ¶ 22.

²⁵ Brief of Kansas Gas Service on Jurisdictional Issues, April 17, 2015, ¶¶ 1-2, 6. (KGS Brief, ¶¶ 1-2, 6.)

limited scope of the GSRS mechanism.²⁶ Next, KGS stated that the GSRS statute “places no prohibition on the Commission’s broad ratemaking and regulatory authority.”²⁷ KGS further stated,

All The [GSRS] Act does is to provide utilities with a procedure for seeking recovery between general rate cases of certain pipeline safety and government relocation capital costs. The Act does not require a utility to make an application. It is entirely discretionary. There is no prohibition against a utility proceeding independently with a rate application to permit another means by which the costs may be recovered and the timing for collection.²⁸

17. KGS concluded, “Based on express language of the Act not limiting the Commission's ratemaking authority, the answer would appear abundantly clear in acknowledging the Commission's prerogative to establish an alternative ratemaking mechanism for pipeline infrastructure replacement.”²⁹

iv. Black Hills Energy’s Brief on Jurisdictional Question

18. On April 17, 2015, Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy (Black Hills) filed its Brief on Jurisdictional Question. In its brief, Black Hills argues the Commission does have authority to establish alternative ratemaking methodologies for pipe replacement.

19. Black Hills began by establishing the Commission’s underlying authority to approve alternative ratemaking mechanisms.³⁰ Next, Black Hills noted that the GSRS statute requires the Commission to allow recovery of costs under the GSRS surcharge when requested by the gas utility.”³¹ However, Black Hills continues,

²⁶ KGS Brief, ¶¶ 3, 7.

²⁷ KGS Brief, ¶ 4.

²⁸ KGS Brief, ¶ 9.

²⁹ KGS Brief, ¶ 5.

³⁰ Brief on Jurisdictional Question, April 17, 2015, ¶¶ 1-4. (Black Hills Brief, ¶¶ 1-4.)

³¹ Black Hills Brief, ¶ 5.

There is no language contained in the GSRS Act that suggested the Legislature intended for the Commission to be precluded from looking at other alternative rate mechanisms to cover cost recovery for pipeline projects. Nor is there any language suggesting that natural gas utilities are precluded from requesting some other type of recovery mechanism, or that the GSRS surcharge was the only mechanism that could be approved by the Commission with respect to pipeline replacement.³²

Therefore, Black Hills reasoned, the mere existence of the GSRS statute does not preclude the LDCs from requesting, or the Commission granting, additional cost-recovery mechanisms.³³

20. Finally, Black Hills urged the Commission to utilize its broad ratemaking authority and review proposals on a case-by-case basis. Black Hills notes the Commission should take advantage of its expert staff and the expertise of the utilities in evaluating the merits of individual proposals.³⁴

v. Atmos Energy's Brief on Jurisdictional Question

21. On April 17, 2015, Atmos Energy (Atmos) filed its Brief on Jurisdictional Question. In its brief, Atmos argues the Commission does have authority to establish alternative ratemaking methodologies for pipe replacement.

22. Atmos, like Black Hills, began by establishing the Commission's underlying authority to approve alternative ratemaking mechanisms.³⁵ Atmos also noted the GSRS statute requires the Commission to allow cost recovery if properly included in a GSRS filing, but the express language of the law does not preclude other methods of cost recovery. Therefore, like

³² Black Hills Brief, ¶ 5.

³³ Black Hills Brief, ¶ 5.

³⁴ Black Hills Brief, ¶ 6.

³⁵ Brief on Jurisdictional Question, April 17, 2015, ¶¶ 1-4. (Atmos Brief, ¶¶ 1-4.)

Black Hills, Atmos argued the mere existence of the GSRS statute does not preclude the LDCs from requesting, or the Commission granting, additional cost-recovery mechanisms.³⁶

23. Finally, like Black Hills, Atmos also urged the Commission to utilize its broad ratemaking authority, review proposals on a case-by-case basis, and take advantage of its expert staff and the expertise of the utilities in evaluating individual proposals.³⁷

B. The Commission's Order on Jurisdictional Issue

24. On June 18, 2015, the Commission issued its Order on Jurisdictional Issue. In its Order, the Commission found it does have authority to establish an alternative ratemaking mechanism for accelerated replacement of natural gas pipelines constructed of obsolete materials considered to be a safety risk.³⁸

25. In support, the Commission first cited its “broad and plainly authorized” statutory ratemaking powers.³⁹ Next, the Commission recognized its authority to approve alternative ratemaking mechanisms under Kansas statutes and case law.⁴⁰

26. The Commission then specifically announced its findings regarding authority to implement an alternative ratemaking mechanism of pipeline replacement. The Commission stated, “The GSRS statute, by its express terms, does not purport to be the exclusive means of cost-recovery for all infrastructure system replacement. The statute merely provides one optional avenue of cost recovery in the time between rate cases for a specific subset of infrastructure repair and replacement.”⁴¹

³⁶ Atmos Brief, ¶ 5.

³⁷ Black Hills Brief, ¶ 6.

³⁸ Order on Jurisdictional Issue, June 18, 2015, Ordering Clause A. (Jurisdiction Order, Ordering Clause A.)

³⁹ Jurisdiction Order, ¶ 4.

⁴⁰ Jurisdiction Order, ¶ 5.

⁴¹ Jurisdiction Order, ¶ 6.

27. Further, the Commission found a mechanism for system-wide pipe replacement such as Staff’s proposal would not change the terms of the GSRS, including the monetary cap.⁴² The Commission also noted that the two mechanisms would be distinct in both purpose and scope.⁴³ Therefore, the new mechanism would not conflict with the plain language of the GSRS statute.⁴⁴

28. Next, the Commission considered the *expression unius* doctrine and found it should not be applied. The Commission stated, “Only an express statutory limitation will defeat the legislature’s grant of broad ratemaking authority to the Commission, and the GSRS statute does not contain such an express statutory limitation.”⁴⁵

29. The Commission also agreed with Staff and the LDCs in finding “that the GSRS is an optional mechanism for cost recovery for certain infrastructure replacement projects and does not limit the Commission’s authority to implement additional alternative ratemaking methodologies for recovery of costs related to accelerated replacement of natural gas pipelines considered to be a safety risk.”⁴⁶

30. The Commission concluded, “[the Commission] does not have jurisdictional authority to expand or change the GSRS. The Commission respects the legislative process that created the GSRS and will not expand or change that program.”⁴⁷

C. CURB’s Petition for Reconsideration and/or Clarification

31. On July 6, 2015, CURB filed its Petition for Reconsideration and/or Clarification (PFR) of the Commission’s Order on Jurisdictional Issue dated June 18, 2015. In its PFR,

⁴² Jurisdiction Order, ¶ 7.

⁴³ Jurisdiction Order, ¶ 8.

⁴⁴ Jurisdiction Order, ¶¶ 7-8.

⁴⁵ Jurisdiction Order, ¶¶ 9-10.

⁴⁶ Jurisdiction Order, ¶ 11.

⁴⁷ Jurisdiction Order, ¶ 12.

CURB seeks reconsideration of the Commission’s finding that it has jurisdictional authority to establish an alternative ratemaking mechanism for accelerated replacement of natural gas pipelines constructed of obsolete materials considered to be a safety risk. CURB requests reconsideration on the grounds that the Commission’s jurisdictional finding is (1) “based on a determination of fact, made or implied by the agency, that is not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole, and (2) is based on an erroneous interpretation of the law....”⁴⁸ CURB also requests the Commission clarify certain language finding that a new mechanism would not conflict with or change the GSRS mechanism.⁴⁹

32. CURB argues the Commission findings are not supported by substantial competent evidence: (1) the purpose of the GSRS is entirely separate and distinct from the scope of a system-wide obsolete pipeline replacement program, and (2) a new and separate infrastructure mechanism it may implement would not change the monetary cap and would thus not conflict with the plain language of the GSRS statute.⁵⁰ CURB further contends the Commission’s finding of jurisdictional authority rests on an erroneous interpretation of law.⁵¹

II. Statutory Standard of Review

33. Kansas courts examine the validity of Commission orders pursuant to the Kansas Judicial Review Act (KJRA), K.S.A. 77-621 *et seq.* On appeal to Kansas courts, CURB would bear the burden of proving the Commission's action was invalid.⁵² The validity of the Commission's action is determined in accordance with the standards of judicial review provided in K.S.A. 77-621, as applied to the Commission's action at the time it issued its Order. CURB

⁴⁸ CURB Petition for Reconsideration and/or Clarification, July 6, 2015, ¶ 4. (CURB PFR, ¶ 4.)

⁴⁹ CURB PFR, ¶ 4.

⁵⁰ CURB PFR, pp. 4, 10.

⁵¹ CURB PFR, ¶ 4.

⁵² K.S.A. 77-621(a)(1).

must prove one of the eight grounds under K.S.A. 77-621(c) in order to obtain relief, and, of those grounds, two are implicated. CURB asserts the Commission (a) relied upon evidence that was not substantial when viewed in light of the record as a whole and (b) erroneously interpreted the law.⁵³

34. The statute further states that the “record as a whole” shall include all record evidence, whether it supports or detracts from the Commission’s findings. The statute also specifically notes a court, in reviewing the record, will not re-weigh the evidence.⁵⁴

III. Staff’s Response

A. The Commission’s Order Relied Upon Substantial Competent Evidence.

35. CURB asserts the following Commission findings are not supported by substantial competent evidence: (1) the purpose of the GSRS is entirely separate and distinct from the scope of a system-wide obsolete pipeline replacement program, and (2) a new and separate infrastructure mechanism it may implement would not change the monetary cap and would thus not conflict with the plain language of the GSRS statute.⁵⁵

36. Staff first notes that the Commission’s decision in this matter involved only a legal interpretation and did not resolve a factual dispute. The Commission simply interpreted the plain language of the GSRS statute. However, to the extent CURB questions the Commission’s basis of the Commission’s findings that underpin that legal interpretation, Staff will respond to CURB’s contentions.

⁵³ CURB PFR, ¶ 4; K.S.A. 77-621(c)(4) & (c)(7).

⁵⁴ K.S.A. 77-621(d). See also, *Herrera-Gallegos v. H & H Delivery Service, Inc.*, 42 Kan. App. 2d 360, 362, 212 P.3d 239 (2009).

⁵⁵ CURB PFR, pp. 4, 10.

i. The Commission Correctly Found the Purpose of the GSRS is Separate and Distinct from the Scope of a System-Wide Obsolete Pipeline Replacement Program.

37. CURB argues the Commission’s statement that “the purpose of the GSRS is entirely separate and distinct from the scope of a system-wide obsolete pipeline replacement program” is not supported by substantial evidence. In essence, CURB contends that because there will be overlap between projects eligible for each cost-recovery mechanism, the scope of programs are not distinct.⁵⁶

38. CURB cites extensively to legislative history in an attempt to show the overlap between those projects eligible for GSRS and those potentially eligible for Staff’s hypothetical proposal. Legislative history of GSRS is not relevant to this inquiry. As cited in Staff’s initial brief, the most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained.⁵⁷ When a statute is plain and unambiguous, an appellate court does not speculate as to the legislative intent behind it *and will not read into the statute something not readily found in it*. Where there is no ambiguity, the court need not resort to statutory construction. Only if the statute's language or text is unclear or ambiguous does the court use canons of construction or legislative history to construe the legislature's intent.⁵⁸ In its initial brief, CURB itself acknowledged that the “GSRS Act is not an ambiguous statute.”⁵⁹

39. Therefore, the Commission should examine the plain language of the GSRS in determining its scope. GSRS projects are very specifically defined to include only 1) infrastructure projects to comply with state or federal safety requirements and 2) facility

⁵⁶ CURB PFR, ¶ 7.

⁵⁷ *Bergstrom v. Spears Manufacturing Co.*, 289 Kan. 605, 607, 214 P.3d 676 (2009).

⁵⁸ *Double M Constr. v. Kansas Corporation Comm'n*, 288 Kan. 268, 271-72, 202 P.3d 7 (2009). (Emphasis added.)

⁵⁹ CURB Brief, ¶ 7.

relocations required due to public works projects.⁶⁰ Staff's proposed accelerated pipeline replacement program, on the other hand, would cover system-wide replacement of all pipeline infrastructure constructed of obsolete materials considered to be a safety risk. Therefore, the scopes of the programs are quite different, with different goals for each. Furthermore, whether there may be some overlap in eligible projects is irrelevant to the ultimate question of whether a new infrastructure replacement program would serve the same purpose as the GSRS or conflict with the plain language of the GSRS statute.

40. CURB mistakenly focuses on potential overlap in project eligibility in an attempt to demonstrate that the programs are not separate and distinct. While some infrastructure projects may be eligible for recovery under both programs, the mechanisms and their eligibility requirements are entirely separate, would offer different ratemaking treatment, and the existence of one would not alter the other.

ii. The Commission Correctly and Clearly Found a New and Separate Infrastructure Mechanism would not Change the “Monetary Cap” and would not Conflict with the Plain Language of the GSRS Statute.

41. CURB next contends the Commission did not rely on substantial evidence when it found a “new and separate infrastructure mechanism it may implement would not change the monetary cap and would thus not conflict with the plain language of the GSRS statute.” CURB requests reconsideration or clarification of this statement.

42. Staff has some difficulty following CURB's logic and multiple arguments on this point, but Staff does not believe CURB has accurately captured the Commission's finding in any of its three interpretations.⁶¹ However, after reviewing the Commission's Order, Staff submits the Commission's finding is clear: a new alternative ratemaking mechanism for system-wide

⁶⁰ K.S.A. 66-2202(f)(1)-(3).

⁶¹ CURB PFR, ¶¶ 16-19.

obsolete pipe replacement would not alter or subvert any GSRS provisions, including the cap on annual GSRS increases. Therefore, because the GSRS will remain intact and available to the LDCs, a separate mechanism for obsolete pipe replacement would not conflict with the GSRS statute.

B. The Commission’s Decision on Jurisdiction Relied Upon a Valid and Correct Interpretation of Law.

43. CURB contends the Commission erroneously interpreted the law when it found it has authority to establish an alternative ratemaking mechanism for accelerated replacement of natural gas pipelines constructed of obsolete materials considered to be a safety risk. CURB argues the Commission would be establishing a “ratemaking mechanism to serve the same purpose as a mechanism that the legislature has already prescribed and upon which has set specific limits.”⁶²

44. CURB’s analysis rests on two flawed assumptions: that (1) the GSRS and a new obsolete infrastructure cost-recovery program “serve the same purpose,” and (2) the mere existence of the GSRS precludes the Commission from prescribing ratemaking treatments for any costs for which the LDCs could seek recovery through the GSRS mechanism.

45. As noted above, the scope and goals of the two programs are distinct. There could be some overlap in project eligibility, and LDCs may be able to seek recovery of those costs through either mechanism. However, this overlap is not because the programs “serve the same purpose.” Rather, any potential overlap will simply occur because some obsolete pipe replacement projects may also meet the specific standards set for GSRS eligibility.

46. Furthermore, the GSRS surcharge created by the legislature is a self-contained ratemaking mechanism with many favorable terms for the LDCs. When projects are eligible for

⁶² PFR, ¶ 20.

GSRs treatment, LDCs are entitled to seek recovery through the GSRs – but that recovery is limited to a \$0.40 annual increase on customer bills. Staff supports that limit. As Staff has previously noted, the GSRs employs a streamlined ratemaking treatment LDCs would otherwise not enjoy. However, while the statute limits the LDCs’ use of the GSRs surcharge, nothing in the GSRs statute expressly limits the Commission’s ratemaking authority regarding costs an LDC cannot or chooses not to recover through the GSRs mechanism.

47. Despite CURB’s misleading arguments to the contrary, the GSRs cap will not be affected if the Commission approves a new cost-recovery mechanism for replacement of obsolete infrastructure. In fact, none of the terms of the GSRs mechanism will change, including the many terms favorable to the LDCs. The voluntary GSRs cost-recovery option will remain open to LDCs – up to a limit. Even if the Commission approves a new alternative ratemaking mechanism for recovery of certain infrastructure replacement costs, Staff expects the LDCs will continue to utilize the GSRs mechanism for GSRs-eligible costs.

48. The following CURB statement succinctly presents CURB’s argument and also displays CURB’s misunderstanding of this issue: “KCC's broad authority must yield to the legislature's determination of what is an appropriate method of providing accelerated cost recovery for replacements or enhancements of infrastructure that do not add customers or revenues.”⁶³

49. The plain language of the GSRs does not encompass cost recovery for all “replacements or enhancements of infrastructure.” The GSRs is far more limited in scope. Furthermore, as Staff has noted repeatedly, the GSRs statute is voluntary and simply *allows* an LDC to seek recovery through its provisions. The plain language of the statute does not

⁶³ CURB PFR,

expressly – or even implicitly – limit the KCC’s ability to exercise its ratemaking authority outside of GSRS applications.

WHEREFORE Staff submits its *Response to CURB’s Petition for Reconsideration and/or Clarification* and recommends the Commission deny CURB’s Petition for Reconsideration and/or Clarification and affirm its Order on Jurisdictional Issue dated June 18, 2015.

Respectfully submitted,

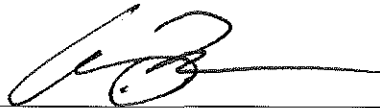


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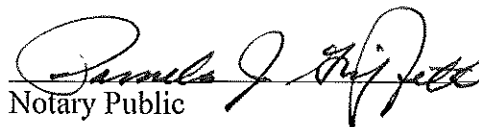
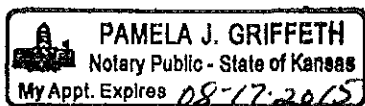
VERIFICATION

Andrew French, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Commission Staff's Response to CURB's Petition for Reconsideration and/or Clarification* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Andrew French # 24680
Kansas Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 13th day of July, 2015



Notary Public

My Appointment Expires: August 17, 2015

CERTIFICATE OF SERVICE

15-GIMG-343-GIG

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Commission Staff's Response to CURB's Petition for Reconsideration and/or Clarification was served by electronic service on this 13th day of July, 2015, to the following:

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