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Kansas Corporation Commission
/S/ Susan K. Duffy

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

Before Commissioners: Thomas E. Wright, Chairman
Michael C. Moffet
Joseph F. Harkins

In the Matter of Midwest Energy Seeking Commission Approval to Implement a Pay-As-You-Save Program for its Natural Gas Service.	))))	Docket No. 07-MDWG-784-TAR
In the Matter of Midwest Energy Seeking Commission Approval to Implement a Pay-As-You-Save Program for its Electric Service.	))))	Docket No. 07-MDWE-788-TAR

ORDER ADOPTING STIPULATION

The above captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, and being duly advised in the premises, the Commission makes the following findings:

I. Background

1. In Docket No. 07-MDWG-784-TAR (784 Docket), Midwest Energy, Inc. (Midwest) filed a tariff rider on January 29, 2007, to implement a pilot energy efficiency

program in its natural gas service areas. The rider was originally identified as the Pay-As-You-Save Rider (PAYS®), but the designation has been changed to the How$mart[sm] Rider in the amended tariff rider and implementing documents. On the same day in Docket No. 07-MDWE-788-TAR (788 Docket), Midwest filed similar tariff rider for its electric service areas. As certain legal issues identified by the parties and resolved herein are identical, the Commission issues this consolidated order addressing issues related to both dockets.

2. On February 1, 2007, the Citizens' Utility Ratepayer Board (CURB) filed petitions to intervene in both dockets. Both petitions were granted on March 2, 2007. On February 2, 2007, the Commission issued an Order Assessing Costs in both dockets.

3. On February 9, 2007, in the 784 Docket, the Commission issued a Suspension Order, which suspended the tariff filing and deferred the effective date for not more than 240 days, until September 26, 2007. On February 12, 2007, in the 788 Docket, the Commission issued a Suspension Order, which suspended the tariff filing and deferred the effective date for not more than 240 days, until September 26, 2007.

II. Stipulation and Agreement Filed by Staff, Midwest, and CURB

4. On May 17, 2007, Midwest, CURB, and the Commission Staff (Staff) (collectively, "the Parties") filed a Stipulation and Agreement (Stipulation) in both dockets, requesting the Commission accept the Stipulation on certain issues regarding the How$mart[sm] Rider and requesting the Commission adopt the stipulated briefing schedule for purposes of facilitating Commission resolution of certain controverted issues.

5. The Commission granted the stipulated briefing schedule and subsequently granted CURB's motion to extend the briefing schedule. No responsive briefs were filed.

6. Midwest is a certificated natural gas and electric public utility in Kansas.

III. The How$mart^sm Program

7. The How$mart^sm program is directed primarily toward the low income and rental markets and is intended to overcome market factors that inhibit customers from buying cost effective, resource efficient products. However, all residential and even commercial property owners are also eligible to participate. Under the program, Midwest intends to develop a conservation plan for participating customers and pay the upfront costs for approved efficiency measures. The payment obligation for recovering the costs will be assigned to the premises to be recovered through a monthly line item charge on the customer's utility bill. The payment obligation would transfer to subsequent customers at the same premises until the obligation is repaid in full. Midwest states the monthly charge will be less than the estimated monthly average savings attributable to the efficiency investment. Under Midwest's proposal, the monthly charge would be treated the same as Midwest's charges for natural gas service or electric service under the Commission's Billing Standards. As proposed, failure to make payment could result in disconnection in accordance with Midwest's approved Terms and Conditions. In addition, as proposed, bad debts incurred as a result of the program would be recoverable in subsequent rate filings. Stipulation, 3.

IV. Mandatory Elements for PAYS® Programs

8. The program was originally filed as a PAYS® Rider. Although Midwest subsequently chose to change the designation to How$mart℠, the requirements for use of the PAYS® trademark are instructive. PAYS® America, owner of the trademark, has established these primary requirements:

> a. Assignment of PAYS® charges to specific meter locations, rather than to individual customers. The How$mart℠ program makes the payment assignments on a meter location basis. The parties are in agreement on this point.
>
> b. Independent certification that products are appropriate and savings estimates exceed payments. Midwest's energy audit and calculations underlying the How$mart℠ conservation plan are designed to meet this requirement. The parties also agree on this point.
>
> c. Billing and payment of the energy efficiency program costs on the utility bill with disconnection for nonpayment. The How$mart℠ plan contemplates, and the parties agree, that billing and payment should be accomplished via the utility bill. However, CURB disagrees regarding authority to disconnect service for nonpayment.

Midwest Brief, 2-3.

V. Controverted Issues

9. CURB does not agree the How$mart℠ pilot program should be offered as a tariffed service. CURB believes that if the How$mart℠ pilot program is offered as a tariffed service, it should be considered a "special service" under the Commission's Billing Standards, and should not be considered a regular utility service that could result in: (1) Disconnection for failure to pay charges due under the How$mart℠ pilot program per the Commission's Billing Standards; and (2) bad debts incurred under the How$mart℠ pilot program being recoverable in future rate filings.

A. Should the How$mart[sm] Program Should Be Offered As A Tariffed Service?

1. Arguments

10. Midwest contends the ability to disconnect for nonpayment of the How$mart[sm] charge is an essential component of the plan. The fact that landlords are reluctant to invest in energy efficiency improvements when they are not responsible for payment of utility bills and when they will not realize any direct economic benefit from the additional investment is one of the primary market barrier PAYS®-type programs are designed to overcome. Tenants are not willing to invest significant sums for energy efficiency improvements they will not own and from which they likely will benefit for only a short period of time. Tenants are not willing to commit to financial obligations that would extend beyond the length of their occupancy. The transferability of the repayment obligation in the How$mart[sm] plan overcomes this obstacle. The landlord is more likely to agree to energy efficiency improvements if someone else provides all or at least a portion of the capital. Tenants should be more willing to pay for an improvement if overall utility bills -- including the project surcharge -- are reduced and no tenant obligations remain when the premises are vacated.

11. Even with transferability to future customers, however, Midwest contends there must be some means to encourage repayment of the project costs. Utility service is normally in the name of the tenant, not the property owner. If utility service cannot be disconnected for nonpayment of the How$mart[sm] charges, there is no immediate or efficient method to motivate payment. A utility is left with only the expensive and time-

consuming option of initiating formal collection efforts via the court system. Once the conservation measure is installed, a customer receives the economic benefits, irrespective of payment practices, unless disconnection is an available tool. Further, the proposed How$mart^{sm} tariffs require the project surcharge to be less than 90 percent of the estimated savings. As a result, net customer bills will be lower than they otherwise would be and the incidence of unpaid bills -- and the need for disconnection -- should actually decrease from the current circumstance.

12. Both Midwest and Staff contend the Commission is empowered to offer the How$mart^{sm} Program as a tariffed Service. Both argue the Commission's general authority permits approval of How$mart^{sm} Program as a tariffed Service. The Commission is granted broad authority to supervise and control the electric and natural gas public utilities under its jurisdiction. K.S.A 66-101; K.S.A. 66-1,201. It is also empowered "to do all things necessary and convenient for the exercise of such power, authority and jurisdiction." K.S.A. 66-101g and K.S.A. 66-1,207. Further, grants of power, authority, and jurisdiction made to the Commission are to be liberally construed, and confer on the Commission all incidental powers necessary to effectuate provisions of Kansas public utility law. K.S.A. 66-101g and K.S.A. 66-1,207. This authority has been exercised frequently in the area of energy efficiency and conservation. An example is the Commission's approval of Kansas City Power and Light's energy efficiency tariff dockets. Dockets No. 06-KCPE-497-TAR; 06-KCPE- 1232-TAR; and 07-KCPE-683-MIS.

13. Midwest and Staff refer to the Kansas Legislature's emphasis on energy efficiency and conservation. Both cited K.S.A. 66-117(e), expressly authorizing the Commission to allow a premium return on investment on utility projects that can be reasonably expected to cause energy conservation or bring about the more efficient use of energy by a utility's customers. Midwest and Staff contend the How$mart[sm] program advances both conservation and efficiency objectives set forth in the above legislative policy.

14. Finally, both Midwest and Staff argue the 2007 Kansas Legislature explicitly authorized Commission approval of PAYS®-Type Programs as a tariffed utility service. In the 2007 Legislative session, the Kansas Legislature adopted Substitute for House Bill 2278 (HB 2278), L. 2007, ch. 58, § 1. Section 1(a) of HB 2278 authorizes public utilities to enter into financing arrangements with customers and landlords of customers for the purchase and installation of energy conservation measures. Section 1(b) gives the Commission authority to approve tariffs that will recover the utility's financing and program costs. Section (b) states: "Such utilities may recover the cost of such financing and related program costs through tariffs approved by the state corporation commission pursuant to K.S.A. 66-117."

15. By attaching the repayment obligation to the premises (or meter), the How$mart[sm] plan assigns the repayment obligation to customers who are receiving utility service at those premises at any point in time. As a result, there is a direct link between the energy efficiency benefit and the repayment obligation. The traditional rate making nexus of cost causer/cost payer is maintained. Additionally, neither the original tenant

nor the property owner worry about the obligation outlasting occupation and receipt of utility services where How$mart℠ efficiency and conservation improvements have been installed.

16. Midwest also argues the Commission's existing Electric, Natural Gas and Water Billing Standards (Billing Standards) do not prohibit the disconnection option. Likewise, other legislative and regulatory bodies have considered the disconnection issue and explicitly allowed disconnection for nonpayment of PAYS®-type surcharges. See Midwest Brief, 5-6 (discussing Hawaii and New Hampshire).

17. CURB requests the Commission deny Midwest's application to approve its How$mart℠ program as a tariffed service. Instead CURB advocates the Commission authorize Midwest to offer How$mart℠ as a non-tariffed service. If the Commission approves the How$mart℠ program as a tariffed service, CURB urges the Commission to treat How$mart℠ charges as a "special service" (and not as a regular utility service) under the Commission's Billing Standards. Such designation would prohibit Midwest from disconnecting utility customers for failure to pay for special services.

18. CURB argues that since 1979, the Commission's Billing Standards have prohibited termination of service for non-payment of special services such as the sale of merchandise, insulation, or services performed in connection therewith. Section IV. B. (1) and Section I. A. (3) of the Commission's Billing Standards. The language, in Sections I.A. (3) and IV. B. (1) of the Commission's Billing Standards, has remained virtually unchanged since it was adopted by the Commission. CURB argues the How$mart℠ program involves "the sale of merchandise, insulation, and services

performed in connection therewith." Thus, CURB contends, allowing termination for nonpayment of the How$mart^{sm} obligation would reverse the longstanding Commission policy and would not be in the public interest.

19. Although recognizing that Substitute for House Bill No. 2278 arguably authorizes the Commission to approve Midwest's How$mart^{sm} program as a tariffed service, CURB contends this bill was not effective when the tariff was filed and will not become effective until its publication in the statute book. Thus, the Commission retains its discretion and is not required to tariff this proposed program. House Bill 2278, L. 2007, ch. 58, §1, authorizes utilities to recover the costs of energy efficiency programs, such as the How$mart^{sm} program costs, through tariffs approved by the Commission. CURB argues that the bill provides no indication the Legislature intended to reverse Commission policy prohibiting the termination of service for nonpayment of special services and that the Commission can still condition any tariff it approves. If it chooses to approve this tariff, CURB urges the Commission to recognize and designate How$mart^{sm} as a "special service" -- to preserve the longstanding Commission policy prohibiting the termination of service for nonpayment of special services.

20. CURB contends that most ratepayers finance these products and services using traditional banking services, and their natural gas and electric service is not terminated in the unfortunate event they are unable to make the payment on the new furnace or air conditioner and that Midwest is merely offering those banking services.

2. Analysis and Conclusion

21. The issue is whether, as a policy decision, the How$mart^{sm} program should be a tariffed service.

22. The Commission has always has the authority to include energy conservation measures in tariffs and has done so on numerous occasions. In recent past, the Kansas Legislature has adopted various legislation encouraging energy efficiency and conservation. K.S.A. 66-117(e) specifically authorizes a premium on return for utility projects that promote energy efficiency or conservation. More specifically, the 2007 Kansas Legislature adopted HB 2278. House Bill 2278 authorizes public utilities to enter into financing arrangements with customers and landlords of customers for the purchase and installation of energy conservation measures. L. 2007, ch. 58, §1(a). Importantly, the Commission is given the authority to approve tariffs that will recover the utility's financing and program costs. Section 1(b). House Bill 2278 became effective on July 1, 2007. Clearly, there is no statutory or other legal impediment which would prohibit the Commission from allowing Midwest to offer the How$mart^{sm} program as a tariffed service.

23. The Commission is persuaded that both the energy efficiency goal and structure of the How$mart^{sm} program has been endorsed by the Legislature's actions regarding this issues. The How$mart^{sm} program is directed primarily toward the low income and rental markets and is intended to overcome market factors that inhibit customers from buying cost effective, resource efficient products. The program is directed at customers that, without an incentive, would probably not avail themselves to the expense of energy efficient measures.

24. The Commission is also persuaded that the utility's ability to disconnect for non payment assists the utility to fulfill the purpose of the program, which ultimately assists the public generally. Midwest contends the ability to disconnect for nonpayment of the How$mart℠ charge is an essential component of the plan. The fact that landlords are reluctant to invest in energy efficiency improvements when they are not responsible for payment of utility bills and when they will not realize any direct economic benefit from the additional investment is one of the primary market barriers How$mart℠-type programs are designed to overcome. Tenants are not willing to invest significant sums for energy efficiency improvements they will not own and from which they likely will benefit for only a short period of time. Tenants are not willing to commit to financial obligations that would extend beyond the length of their occupancy. The transferability of the repayment obligation in the How$mart℠ plan overcomes this obstacle. The landlord is more likely to agree to energy efficiency improvements if someone else provides all or at least a portion of the capital. Tenants should be more willing to pay for an improvement if overall utility bills are reduced and no tenant obligations remain when the premises are vacated.

25. However, even with transferability to future customers, Midwest contends there must be some means to encourage repayment of the project costs. Utility service is normally in the name of the tenant, not the property owner. If utility service cannot be disconnected for nonpayment of the How$mart℠ charges, there is no immediate or efficient method to motivate payment other than through a formal collection process which defeats the purpose of the program. The Commission also notes that the program

is designed in such a way as to actually lower customer bills, which should, in some measure, assist customers in meeting their payment obligations and result in fewer disconnections for non-payment.

26. Accordingly, the Commission finds the How$martsm program is reasonable and should be approved as a tariffed service, and that disconnection for non payment is appropriate. The Commission applauds Midwest for proposing and supporting a program that should result in energy conservation in a way that can lower customer bills as well.

B. Recovery of the How$mart^{sm} Program Costs in Midwest's Bad Debts Expense.

27. The How$mart^{sm} program was designed to allow Midwest the opportunity to seek recovery of bad debts associated with the program in subsequent rate cases. CURB opposes this provision and appears to make the cost causer/cost payer argument -- that unrecovered costs incurred for one ratepayer should not be absorbed by other ratepayers on the system. Midwest contends the program is available to all commercial and residential customers. Therefore, it would not be unjustly discriminatory or unduly preferential to permit the recovery of How$mart^{sm} bad debt expenses from those customer classes. In its brief, Midwest notes Midwest is not seeking prior Commission approval of How$mart^{sm} associated bad debt expenses in this proceeding. Rather, the proposed tariff only allows Midwest the opportunity to seek recovery in a subsequent rate case. At that time, the Commission would determine the reasonableness of the proposed

bad debt expense amounts. Thus, bad debt expense recovery associated with the How$mart[sm] program is not guaranteed.

28. The Commission concurs with Midwest's analysis of this issue.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Stipulation is hereby approved in the 784 Docket and the 788 Docket. The How$mart[sm] program is approved as a tariffed service, authorizing disconnection for nonpayment of service. Midwest may seek to recover any bad debt expense resulting from the How$mart[sm] program in its next rate case and if it does, the Commission will render a decision on that issue, in that context.

B. A party may file a petition for reconsideration of this order within 15 days of the service of this order. If this order is mailed, service is complete upon mailing and 3 days may be added to the above time frame.

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn; Moffet, Com.; Harkins, Com.

Dated: AUG 1 6 2007

ORDER MAILED

AUG 1 6 2007

Susan K. Duffy Executive Director

Susan K. Duffy
Executive Director

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