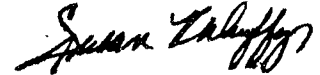


THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

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

DEC 24 2008



In the Matter of a General Investigation)
Into Incentives for Fuel Switching.) Docket No. 09-GIMX-160-GIV

CURB's Reply Comments

The Citizens' Utility Ratepayer Board (CURB) submits its reply below to comments filed by various parties on November 18, 2008, in the above-captioned docket:

1. CURB elected not to file initial comments in this docket because CURB maintains a fuel-neutral position. CURB will not advocate for ratepayer-funded fuel-switching programs simply because one fuel is argued to be more efficient or environmentally-friendly on a source-to-site perspective than another. While CURB remains fuel-neutral, it recognizes that the Commission needs to consider the consequences of programs that have fuel-switching implications.

2. Despite CURB's fuel-neutral position, there were several statements made by parties in initial comments to which the Commission should pay close attention.

3. First and foremost, CURB appreciates the concern expressed for consumers in the initial comments. However, several of the comments made by Westar and KCPL have nothing to do with fuel-switching implications, but rather the availability of energy efficiency (EE) and demand response (DR) programs to consumers. Westar stated that "it is not necessary to offer customers incentives to encourage fuel-switching," (*Comments of Westar Energy, Inc. and Kansas Gas and Electric Co. Regarding Fuel Switching Programs*, at 5), adding that "consumers

will ultimately make the decision” on which energy source to use. (*Id.*, at 2). KCPL offered a similar opinion, stating that “customers are in the best position to decide what is right for them.” (*Initial Comments of KCPL*, at ¶14). KCPL also expressed concern that consumers “should not be precluded from availing themselves of EE/DR programs on the basis that their current utility does not offer such programs. To do so would not be reasonable or fair and may impede the development of EE/DR programs in the State of Kansas.” (*Id.*, at ¶1).

4. CURB strongly agrees with these assertions made by Westar and KCPL. Consistent with our filings in both the 441 and 442 dockets, CURB first notes that utilizing a third-party administrator would address KCPL’s concern that it would be unfair to Kansas consumers if the Commission were to reject certain EE/DR programs. CURB urges the Commission to investigate the benefits of using a neutral third-party administrator, not only for programs with fuel-switching implications, but for all EE/DR programs. A third-party administrator would reach all consumers in Kansas, without regard to jurisdictional boundaries, and without regard to which fuel source the consumer currently uses or chooses to use in the future. Appointing a neutral, third-party administrator that is charged with keeping “the eye on the prize”—whether the goal is energy efficiency, energy conservation or achieving lower demand—would free the Commission from having to constantly referee battles over whether one utility’s programs are unfair to another, and eliminate any concerns that the Commission may inadvertently create bias towards one fuel or another in approving utility-based programs. Thus, the creation of a third-party administrator would accrue direct benefits to the Commission itself, as well as facilitate fair and efficient administration of EE/DR programs.

5. Furthermore, a third-party administrator could provide all consumers in Kansas

unbiased, specific information on the economic efficiency of all fuels. A third-party administrator would help to educate consumers so that they could make their own independent, informed decisions about their energy consumption without regard for fuel-switching concerns. So in addition to alleviating concerns about biased programs or inter-utility squabbling, consumers would also accrue direct benefits from neutral, third-party administration, especially if it is utilized to administer programs that may give rise to fuel-switching concerns. The Commission should reconsider its decision to continue utility administration of EE/DR programs.

6. CURB agrees with statements made by the Kansas Gas Utilities that the Commission needs to establish clear policies and goals at the outset for EE/DR programs. (*Joint Recommendations and Comments of Kansas Gas Service, a Division of ONEOK, Inc., and Atmos Energy*, at ¶38). Despite framing its energy efficiency policies in two separate proceedings, the Commission has failed to provide clear policy-driven goals in its orders in Docket Nos. 08-GIMX-441-GIV and 08-GIMX-442-GIV (“441” and “442”), which ultimately “provide[] no guidance whatsoever to the designers of energy efficiency programs ...”.¹

7. Furthermore, the Commission has been vague in defining energy efficiency and how it intends efficiency to impact Kansans. Everyone, including utility EE/DR program designers, has been left to decipher whether the Commission’s goal is energy conservation—*i.e.*, simply using less energy—or whether the goal is energy efficiency—*i.e.*, using less energy to provide the same level of service in an economically-efficient way. The Commission needs to clearly define what its goals are, clarify what its objectives are, and clearly communicate the

¹ 08-GIMX-442-GIV, *Comments of CURB*; July 2, 2008, at 2.

policies for evaluating EE and DR programs in Kansas. Without clear definitions and consistent goals in place, addressing concerns about fuel-switching is putting the cart before the horse.

8. CURB directs the Commission's attention to a research paper published by the Regulatory Assistance Project (RAP). According to RAP, in order to successfully implement cost-effective energy-efficiency programs, three criteria must be addressed:

- **Clarity of stated purpose** at every level, from the overarching goals to the individual program design and evaluation metrics.
- **Consistency of policy** over time that minimizes changes in goals, program design and activity level.
- **Consensus** of key stakeholders with regards to the goals, structure, program design, measurement metrics, cost recovery and performance incentives.²

9. If the Commission neglects these criteria and instead follows the path laid out in its orders in the 441 and 442 dockets—again ordering that it will continue to evaluate all programs with fuel-switching implications on a “case-by-case” basis—it will fail to provide much-needed direction for designers of utility EE/DR programs. Establishment of clearly-defined policy goals and objectives for all EE and DR programs is long overdue, including those with fuel-switching applications, and should be addressed in this and other proceedings before attempting to move forward.

10. KCPL argues that the Commission should not negatively impact one utility's development of EE/DR strategies by rejecting proposed programs solely because another alternate-fuel utility is not offering a similar EE/DR program. (*Initial Comments of KCPL*, at ¶1).

KCPL further states that for the Commission to reject EE/DR programs simply because of a possible fuel-switching implication would be an “inappropriate abdication of the Commission’s duty”. (*Id.*, at ¶5). While CURB does not disagree with KCPL’s statements, CURB cautions that the Commission should not approve a program simply because it is the only one like it on the table. As previously stated, the Commission needs to adopt clear policies outlining what is required for approval of an EE/DR program, including those with fuel-switching issues.

11. The joint gas utilities argue that Commission approval of programs that offer a financial incentive to participants to switch fuels—specifically, from natural gas to electricity—will lead to an increase in the consumption of electricity. (*Joint Recommendations and Comments of Kansas Gas Service, a Division of ONEOK, Inc., and Atmos Energy*, at ¶36). CURB agrees with their assessment that programs which offer an incentive to switch from natural gas to electricity have load-building consequences, and are therefore in direct conflict with the objectives of the legislature and this Commission’s order in the 442 docket.

12. Furthermore, CURB doubts that a program offering an incentive to switch from natural gas to electricity will be able to pass any of the Commission prescribed benefit-cost tests. In its 442 order, the Commission stated that it would place emphasis on both the Total Resource Cost (TRC) and Ratepayer Impact Measure (RIM) tests.³ CURB agrees with the Commission’s assessment that the TRC and RIM are the two best indicators of economic efficiency in EE and DR programs. However, according to the *California Standard Practice Manual*, in fuel-

2 “Who Should Deliver Ratepayer Funded Energy Efficiency”, Cheryl Harrington, May 2003, at http://www.raonline.org/showpdf.asp?PDF_URL=%22/pubs/ratepayerfundedee/ratepayerfundedeefull.pdf%22
3 Docket No. 08-GIMX-442-GIV, *Order Setting Energy Efficiency Policy Goals, Determining a Benefit-Cost Framework, and Engaging a Collaborative Process to Develop Benefit-Cost Test Technical Matters and an Evaluation, Measurement, and Verification Scheme*, at 15-16.

switching applications, the “TRC cannot be applied meaningfully to load building programs, thereby limiting the ability to use this test to compare the full range of demand-side management options.”⁴ Therefore, if the Commission determines that a fuel-switching program will have load-building consequences, the TRC cannot be used to judge the program’s benefits, leaving the RIM test as the only effective way to measure the program’s economic efficiency. The Commission must determine whether it is prudent to approve programs that can only be effectively evaluated with a single test.

13. Finally, Midwest Energy commented that “if a fuel-switching incentive program passes the RIM test, it is yielding net benefits to non-participants ...”. (*Initial Comments of Midwest Energy*, at 3). CURB agrees that if an EE/DR program with fuel-switching implications is able to achieve a RIM score of greater than 1.0, both participants and non-participants are benefiting and the program should receive Commission approval. However, if an EE/DR program with fuel-switching implications does not achieve a RIM score of greater than 1.0, the Commission should not approve the program, because the RIM results indicate that the program is not economically-efficient. Such inefficient programs should not be funded with ratepayer dollars.

⁴ *California Standard Practice Manual: Economic Analysis of Demand-Side Programs and Projects*; July 2002, at 21.

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A handwritten signature in black ink, appearing to be 'Niki Christopher', written over a horizontal line.

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