

providing those resources is incurred in the most efficient and effective manner. As such, CURB suggests that the Commission consider requiring its jurisdictional utilities to form a joint utility non-profit corporation¹ to centrally develop, enable and distribute conservation and efficiency resources. While the end product may still be branded with the local utility name, it makes no sense for each utility to separately staff, develop and distribute resources which may overlap and are aimed at accomplishing the same objective². It may be more efficient to centrally develop programs and information based on best practices that apply across territories and utilities, and then attach a local utility name to the product depending on territory. CURB would specifically note that the gas utilities joined last year to create “Warmhelp.org” as a means of moving a specific conservation message to consumers. This model can be expanded to encompass additional directives.

3. The cost and rate impacts of additional energy conservation and efficiency efforts are an important concern for the ratepayers of the jurisdictional utilities. While CURB acknowledges that ratepayers are always concerned when rates increase, it is CURB’s belief that consumers are willing to monetarily support these energy conservation and efficiency efforts. However, the Commission should endeavor to minimize rate impacts, make costs transparent as possible and be candid with consumers about the potential rate impacts and possible overall benefits that may occur under this policy. Based on these constraints, CURB is not unwilling to support a public benefits type surcharge on consumer bills with certain caveats related to insuring money collected cannot be raided by other

1 CURB is not suggesting nor would CURB support a new government agency being created to accomplish this objective.

2 One additional benefit of the utility non-profit corporation model which is of interest to CURB is that smaller cooperative and municipal utilities that are non-jurisdictional to the KCC and perhaps too small to independently staff, develop and distribute conservation and efficiency resources could voluntarily opt into the organization (and perhaps contribute a small fee) and leverage its relatively small resources with the larger utility resources. While the Commission may have limited jurisdiction over the co-ops and municipals in Kansas, if the

entities and that resources go back to consumers in some relationship to how the money was collected. This may also be an easy method of funding the costs of the utility non-profit corporation suggested above while being transparent to consumers. The Commission should seek some level of uniformity in approach to programs and funding. CURB is concerned that different utilities will develop different programs with differing objectives and cost levels. CURB does not believe that this is necessarily the most efficient manner for the Commission to implement policy.

4. In addition to these Comments, the Commission should also reference CURB's February 6, 2004 and June 3, 2005 Comments in KCC Docket No. 04-GIMX-531-GIV. CURB would note the Commission appears to adopt the legal analysis contained in Attachment A to the February 9, 2005 Staff Report and Recommendation in KCC Docket No. 04-GIMX-531-GIV. Based on that legal analysis the Commission concludes that there is no legal basis to depart from the conclusion reached in a prior docket that low income assistance tariff programs are impermissibly discriminatory and unduly preferential under Kansas law because the low income rates "caused higher rates for other ratepayers." With respect to the current docket, unless a proposed program passes the Ratepayer Impact Measure (RIM) test the program by definition will "cause higher rates for other ratepayers". Those who receive the conservation resource may also pay the higher rate, but will pay less of the overall cost of providing the resource because through conservation they will use, and pay for less energy. Therefore, by definition a program that does not pass the RIM test requires those who do not receive the conservation and efficiency resource to subsidize those who do receive the resource. This would appear to specifically violate the exact legal reasoning on undue discrimination the Commission used to deny low income rate programs. CURB suggest the Commission revisit and

opportunity is available the Commission should endeavor to use its authority in a manner that may provide benefit to

clarify this ruling.

5. Finally, the Commission seeks comment on “decoupling” mechanisms. CURB views “decoupling” as simply a rate design issue. The Commission has the authority to order decoupling, but must make public policy decisions regarding whether decoupling is in the public interest. If the Commission does decouple utility revenue requirements from usage, the Commission must recognize the reduction in revenue risk to the utility and make a commensurate reduction in allowed returns in the rate setting process. Historically the Commission has been reluctant, for policy or political reasons, to increase customer charges or to offer the type of revenue guarantee a decoupling mechanism will require. Further, even where there has been marked reduction in utility risk through weather normalization mechanisms, fuel adjustment clauses, environmental adjustment clauses, property tax adjustment clauses, uncollectible bill recovery mechanisms, capital expenditure riders and other similar regulatory mechanisms, the Commission still appears, from CURB’s perspective, reluctant to recognize these risk reductions though lowered returns. Since the only benefit to consumers of decoupling is through lowered returns and the commensurate lowered rates, CURB is reluctant to endorse decoupling without some assurance the Commission will lower the utility return collected in consumer rates.

II. Specific Comments .

6. The following additional comments are offered to certain of the Commission questions:

Question 9. a) Are there limitations on the Commission's authority to require utility companies to offer energy efficiency programs to customers?

Response: Other than the constitutional requirement that a utility be allowed to recover its expenses and earn a reasonable return on capital, the Commission has the authority to require

all Kansas consumers, not just those behind a jurisdictional utility.

jurisdictional utilities to do that which the Commission deems to be in the public interest. To the extent that the Commission deems it in the public interest to require utility companies to offer energy efficiency programs, and the cost recovery issues are met, there is no direct limitation on the Commission's authority. The question of whether the cost and rate impacts of certain programs amount to undue discrimination may be an open question based on the Commission ruling in a prior docket.

b) Are there any limitations on the kind of "incentives" that the Commission may offer to utilities for energy efficiency programs, other than or in addition to the extra return, such as nontraditional accounting treatment of expenses or investment?

Response: While the Commission has discretion to set accounting principles such as depreciation rates or amortization time frames, the "additional return" incentive in K.S.A. 66-117 is the only direct monetary incentive approved by statute. With respect to accounting principles, CURB assumes that the Commission would not set accounting too far outside of the mainstream of regulatory accounting requirements. CURB also does not necessarily agree that utilities should be paid an incentive for doing that which the Commission has determined is in the public interest.

c) May the Commission authorize a "decoupling" of revenue requirements from usage in order to remove disincentives for energy efficiency?

Response: Yes. Whether the Commission should decouple is a separate question.

d) What are the legal parameters for KCC adoption of benefit-cost tests for efficiency programs; e.g. does the reference in the last sentence of K.S.A. 66-117(e) to a "cost effective manner" allow the imposition of a benefit-cost test even though the prior sentence only requires "projects or systems that can be reasonably expected . . . to cause conservation of energy . . . or bring about the more efficient use of energy" or do the two sentences refer to different programs? Further, do the statutes or case law either require or provide guidance on which benefit-cost test should be adopted?

Response: See CURB's February 6, 2004 and June 3, 2005 Comments in KCC Docket No. 04-GIMX-531-GIV.

e) Can the Commission consider societal benefits, such as external environmental benefits, in balancing interests to decide whether it should approve energy efficiency programs?

Response: In general CURB believes that like any other evidence in any case, the Commission can consider substantial competent evidence of the external environmental costs and benefits of any resource decision in setting just and reasonable rates or policy.

Question 10. a) In addition to the areas covered below, what other areas need to be addressed in order to establish such "rules"?

b) Should the Commission actually promulgate administrative rules and regulations governing this area rather than acting through various orders? Does the Commission have the legal authority to do so?

c) Whatever the form of the "rules," how detailed do they need to be?

Response: CURB is not opposed to the Commission setting formal rules and regulations. CURB would note that the Commission attempted to set formal rules with regard to Integrated Resource Planning in the early 1990's. That process failed to arrive at any consensus and ultimately failed to arrive at any rules. CURB suggests that the Commission may want to enunciate certain policies that it favors and will follow. CURB believes that policy setting would not require the type

of formal proceeding that issuing rules and regulations would require. Further, the Commission is free to change policy in the future based on sufficient evidence. Policy setting would give the Commission the flexibility to adapt its requirements over time. CURB would point to the hedging programs for jurisdictional utilities as a model to follow.

Question 11. a) Which among the alternatives discussed in this paragraph should the Commission pursue at this time, and why? Are there other alternatives that should be considered? What are the benefits and drawbacks of each approach?

Response: At present the Commission has approved programs on a company by company, program by program basis. CURB suggests above that the Commission require a centralized utility created non-profit corporation be created (and funded) to develop and implement programs across utility territories and customers. CURB is concerned that if each utility creates and operates its own programs, this approach will lead to duplication of effort, duplication of costs, increased rates and a lack of consistency in objective and methodology.

b) Do you favor a limited trial basis type of approach or a comprehensive effort?

Response: These options are not exclusive. There should be some comprehensive efforts and approaches. There will likely also be programs or ideas that need to be implemented on a trial basis.

d) What monitoring, evaluation and verification protocols should be part of such programs?

Response: Independent monitoring, evaluation and verification of programs and expenditures are necessary components of any program. CURB has no specifics as to protocol at this time.

Question 13. b) It appears that one of the issues concerning the appropriateness of the RIM test is whether consumers do not use efficiency measures on their own, without incentives, because of various barriers. What is the experience or evidence that such barriers exist and how do such barriers impede cost-effective energy efficient investments from occurring? If it is your view that no barriers exist, or that they have an insignificant effect on investments in energy end uses, please offer experience or evidence for this perspective.

Response: It is not correct to suggest that consumers do not use efficiency measures on their own without incentives because of barriers. While CURB would agree that consumers have less than perfect information at times, there is a lot of information available on energy efficiency and conservation. Typing “energy efficiency” into Google results in 23,800,000 page hits. Any hardware store is filled with products that can improve energy use characteristics. Consumers may not always be able to afford the up-front costs of certain investments in infrastructure, which is an area that the state or the KCC may want to devote some resources. However, CURB does not believe there are truly “barriers” to increasing the efficiency with which a consumer uses energy. CURB would observe that average residential natural gas usage has fallen dramatically over the last decade. During this same period consumers have seen natural gas prices increase dramatically. In the recently filed Aquila natural gas rate case, average residential customer usage is 73 Mcf annually, down from an average of about 100 Mcf’s a decade ago. CURB would suggest that conservation and better efficiency are responsible for a good part of this decrease in average usage.

Question 15. a) Should the cost recovery or incentive mechanisms be uniform for all companies?

Response: Yes. Although CURB does not necessarily agree that incentives should be paid to public utilities for doing what the Commission has decided is in the public interest.

c) *Is the extra return on investment allowed by K.S.A. 66-117(e) sufficient incentive for utility companies? If not, why not?*

Response: If the Commission decides that it is in the public interest for jurisdictional utilities to pursue energy conservation, the Commission allows the utility to recover its reasonable expenses and allows the utility a reasonable return on capital just like any other capital expended, CURB disagrees that any “incentive” need be offered the utility. Investors have supplied capital to a utility in exchange for the opportunity to earn a return. Investors don’t dictate the level of return based on what type of plant or resource the capital is then invested in by the utility.

d) *Is "decoupling" of revenue requirements from sales volumes a necessary or desirable mechanism to remove disincentives for energy efficiency programs? What are the pros and cons of such a mechanism? If decoupling is not implemented, is it appropriate and desirable to have an ex poste mechanism to recover lost margins from sales not made due to energy efficiency investments? What are the pros and cons of this approach?*

Response: Decoupling is not necessary, and may not be desirable. From a consumer standpoint, without a commensurate reduction in return (and rates) for the reduced utility revenue risk, consumers see no benefit from being the guarantor of utility revenues. CURB urges caution on this issue. CURB is concerned that utilities may promise much to get decoupling, but deliver little.

III. Additional Comment:

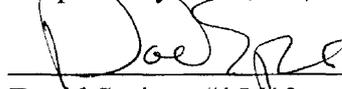
7. While not specifically addressed within the Commission’s Order, CURB would suggest one other area of inquiry for the Commission. The utilities house an enormous amount of information in their data bases about the energy use characteristics of dwellings they serve. Yet very little effort is placed on compiling and using this wealth of information. Further, as front line

contacts in terms of meter reading, service calls, turn off and turn on of service, the utilities have the capability to gather even more information about infrastructure at specific dwellings. As an example, if a gas utility is called to turn on a furnace at a residence, it would take very little effort for the service person to note the vintage of the furnace and air conditioner, whether there are storm windows and any other directly observable information and record to this information. It would take very little effort to connect those in houses with higher than average usage and that may receive bill assistance with a weatherization program. It seems obvious that if the Commission is going to institute a policy that encourages energy conservation and efficiency and supports weatherization, that the Commission also use its jurisdictional authority over the utilities to require information be gathered, compiled from data bases and shared with those in the state running weatherization or assistance programs. While CURB acknowledges that there are privacy issues related to specific customer information that must be addressed, CURB does not believe that those issues are insurmountable. The Commission has the authority to require jurisdictional utilities be an active participant in this coordination of resources and information. A Commission policy supporting conservation and energy efficiency that does not also leverage the information and resources available within the state and within the Commission authority would truly be a lost opportunity. CURB would urge the Commission, as a part of this policy process, to examine ways to maximize the resources and information available at the utilities within its authority.

WHEREFORE, CURB respectfully submits the above comments for Commission consideration on this important policy issue. CURB looks forward to participating on behalf of residential and small commercial utility ratepayers in the further discussions or proceedings that the

Commission deems necessary to develop and refine a consistent and applicable policy on energy conservation and efficiency for Kansas consumers.

Respectfully submitted,



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