

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

In the Matter of Midwest Energy, Inc.'s )  
Compliance with the Commission's Order in )  
Docket No. 13-GIME-391-GIE. )

Received on  
MAR 11 2013  
Docket No. 13-MDWE-466-CPL

by  
State Corporation Commission  
of Kansas

**STAFF'S REPLY TO CITIZENS' UTILITY RATEPAYER BOARD'S  
PETITION FOR RECONSIDERATION**

Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) respectfully submits its Reply to the Citizens' Utility Ratepayer Board's Petition for Reconsideration, and states:

**I. Background**

1. On December 13, 2012, the Commission opened a general Investigation of the Annual Determination for the Statewide Retail Rate Impact Resulting from Affected Utilities Meeting the Renewable Portfolio Requirement Pursuant to K.S.A. Supp. 2012 66-1260 in Docket No. 13-GIME-391-GIE (391 Docket). The stated purpose of the 391 Docket was to "require submission of information related to a utility's portfolio requirement" so that the Commission can prepare its annual report to the Legislature, due on March 1.<sup>1</sup>

2. On January 16, 2013, the instant docket was opened to permit Midwest Energy, Inc. (Midwest) to comply with the Commission's requirements in the 391 Docket and maintain confidentiality.<sup>2</sup>

3. On January 24, 2013, the Citizens' Utility Ratepayer Board (CURB) filed its Petition to Intervene and Motion for Protective Order.<sup>3</sup> On February 13, 2013, the Commission granted CURB limited intervention in this docket, but denied CURB's Motion for Protective

<sup>1</sup> Order Opening General Investigation Docket (391 Docket) (Dec. 13, 2012), paragraph 1 (Dec. 13, 2012 Order, ¶ 1).

<sup>2</sup> See, Notice of Filing of Confidential Report, (Jan. 16, 2013).

<sup>3</sup> Petition to Intervene and Motion for Protective Order by the Citizens' Utility Ratepayer Board (Jan. 24, 2013).

Order.<sup>4</sup> On March 1, 2013, CURB filed its Petition for Reconsideration.<sup>5</sup> CURB seeks reconsideration of the Commission's denial of CURB's Motion for Protective Order and reconsideration of the Commission's limitations on CURB's intervention in this docket.<sup>6</sup> Staff respectfully requests the Commission deny CURB's PFR for the reasons discussed below.

## II. Discussion

4. The stated purpose of Docket No. 13-GIME-391-GIV (391 Docket) is to allow the Commission to "require submission of information related to a utility's portfolio requirement through either an order or rules and regulations," pursuant to the Kansas Legislature's requirement of an annual report from the Commission, pursuant to K.S.A. 2012 Supp. 66-1260.<sup>7</sup> The legislative mandate of K.S.A. 2012 Supp. 66-1260 is specific, requiring the Commission to gather information and provide an annual composite report to the legislature.<sup>8</sup> The 391 Order Opening Docket orders certain utilities to provide information updating the August 2012 Renewable Energy Standard (RES) Report and requires the utilities provide future annual reporting of the same.<sup>9</sup>

5. CURB relies on its status as a statutory intervener to bolster its credibility. However, CURB's potential "interests" in this compliance docket are minimal and peripheral at best. Pursuant to K.S.A. 66-1223, CURB's consumer counsel may:

- (a) Represent residential and small commercial ratepayers before the state corporation commission;
- (b) function as an official intervenor in cases filed with the state corporation commission, including rate increase requests;
- (c) initiate actions before the state corporation commission;

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<sup>4</sup> Order Granting CURB Limited Intervention and Denying Motion for Protective Order (Feb. 13, 2013) (February 13, 2013 Order), ¶ 4.

<sup>5</sup> Petition for Reconsideration by Citizens' Utility Ratepayer Board (Mar. 1, 2013) (CURB's PFR).

<sup>6</sup> CURB's PFR, opening paragraph.

<sup>7</sup> Order Opening Docket, 391 Docket (Dec. 13, 2012) (391 Order Opening Docket), ¶ 1.

<sup>8</sup> See, K.S.A. 2012 Supp. 66-1260.

<sup>9</sup> 391 Order Opening Docket, ¶ 3.

- (d) represent residential and commercial ratepayers who file formal utility complaints with the state corporation commission;
- (e) intervene in formal complaint cases which would affect ratepayers; and
- (f) make application for a rehearing or seek judicial review of any order or decision of the state corporation commission.

However, K.S.A. 2012 Supp. 77-521(c) provides, in pertinent part:

If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervener's participation in the proceedings, either at the time the intervention is granted or at any subsequent time. Limitations may include:

- (1) Limiting the intervener's participation to designated issues in which the intervener has a particular interest demonstrated by the petition;
- (2) limiting the intervener's use of discovery, cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings; . . .

6. The Commission alone is required to make an annual report to the legislature and pursuant to K.S.A. 2012 Supp. 66-1260, may require utilities to submit "information pertaining to an affected utility's portfolio requirement."<sup>10</sup> The 391 Order Opening Docket ordered certain utilities, including Midwest, to submit the required information.<sup>11</sup> This compliance docket was opened to permit Midwest to comply with the 391 Order Opening Docket and provide the Commission with a method of tracking Midwest's compliance.<sup>12</sup> The Commission alone may enforce its orders, and has elected to monitor such compliance with its orders through compliance dockets.<sup>13</sup> As CURB cannot enforce the Commission's orders, the Commission's limitation on CURB's intervention and denial of CURB's Motion for Protective Order in this docket is proper, and the Commission should deny CURB's PFR.

7. Staff asserts that CURB has no legitimate need to review the information filed by Midwest in this compliance docket. As such, a Protective Order in this compliance docket is superfluous. The Commission's 2013 RES Report (391 Report) to the legislature was filed in the

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<sup>10</sup> K.S.A. 2012 Supp. 66-1260.

<sup>11</sup> 391 Order Opening Docket, Ordering Clause (C).

<sup>12</sup> Notice of Filing of Confidential Report (Jan. 16, 2013).

<sup>13</sup> February 13, 2013 Order, ¶ 4.

391 Docket on March 5, 2013.<sup>14</sup> CURB was granted unlimited intervention in the 391 Docket on January 2, 2013, and is entitled to receive the 391 Report as well as all other future filings in the 391 Docket, as provided by Commission Order.<sup>15</sup> CURB is not entitled to the information underlying the Commission's report to the legislature, as neither it nor the parties it represents are required to report to the legislature under K.S.A. 2012 Supp. 66-1260. Therefore, as CURB is not directly affected by K.S.A. 2012 Supp. 66-1260, the Commission's limitation on CURB's intervention and denial of CURB's Motion for Protective Order in this docket is proper, and the Commission should deny CURB's PFR in this compliance docket.

8. Staff further urges the Commission that permitting CURB to access information that was intended to permit the Commission alone to file a statutorily-required report to the legislature is poor public policy. It is Staff's position that granting such access to CURB could have a chilling effect upon jurisdictional and non-jurisdictional utilities' willingness to comply with such Commission orders in the future due to the market-sensitive nature of the information the utilities may be required to provide to the Commission.

9. Staff additionally asserts that CURB's reliance upon the Kansas Open Records Act (KORA), K.S.A. 45-216, *et seq.*, is without merit. K.S.A. 45-221(a) provides, in pertinent part:

(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose: . . . (11) Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent.

Therefore, the Commission is not required under KORA to disclose its records if doing so would interfere with a prospective adjudication, and Staff respectfully requests the Commission deny CURB's PFR.


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<sup>14</sup> Notice of Filing of Annual Statewide Retail Rate Impact Report (Mar. 5, 2013).

<sup>15</sup> Order Granting Intervention to Citizens' Utility Ratepayer Board (Jan. 2, 2013), ¶ 4.

WHEREFORE, for the reasons stated above, Staff respectfully requests the Commission deny the Citizens' Utility Ratepayer Board's Petition for Reconsideration and for such other and further relief as the Commission deems just and proper.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

13-MDWE-466-CPL

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Staff's Reply to Citizens' Utility Ratepayer Board's Petition for Reconsideration was served by electronic service on this 11th day of March, 2013, to the following parties who have waived receipt of follow-up hard copies.

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