BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

BRIEF OF COMMISSION STAFF

COMES NOW, the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and submits its Brief in the above-captioned matter.

I. BACKGROUND

On January 29, 2007, Midwest Energy, Inc. (Midwest) filed a tariff rider to implement a pilot energy efficiency program in its electric service areas. The rider was originally identified as the Pay-As-You-Save Rider, but the designation has been changed to the How\$mart^{sm} Rider in the amended tariff rider and implementing documents.

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, residential and 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 then 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. 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 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 and Agreement, May 17, 2007, ¶3.

On May 17, 2007, Midwest, Staff and the Citizens' Utility Ratepayer Board (CURB), the only other party to the docket, entered into a Stipulation and Agreement, resolving all issues related to the How$mart^{sm} Rider except for an issue raised by CURB. CURB does not agree that the How$mart^{sm} program should be offered as a tariffed service. CURB believes that if the How$mart^{sm} program is offered as a tariffed service, then the How$mart^{sm} program should be considered a special service un the Commission's Billing Standards, and should not be considered a regular utility service that could result in: (a) disconnection for failure to pay charges due under the How$mart^{sm} program per the Commission's Billing Standards; and (b) bad debts incurred under the How$mart^{sm} program being recoverable in future rate filings. The parties requested that the Commission approve the resolved issues and set a briefing schedule to address CURB's issue.

II. ISSUES

A. Should the How$mart^{sm} Program Be Offered As A Tarriffed Service?

It is unclear whether CURB is arguing that the How$mart^{sm} program ***can't*** be offered as a tariffed service or ***shouldn't*** be offered as a tariffed service. K.S.A. 66-117 is the statute that addresses tariffs. It requires that utilities give notice and obtain Commission approval of changes rates or "any rule or regulation or practice pertaining to the service or rates of such public utility." Staff argues that an energy efficiency measure is appropriately applied to the phrase "pertaining to service," which would allow the Commission to approve the How$mart℠ program as a tariffed service.

First, K.S.A. 66-117(e), which specifically authorizes certain rate treatment for investment in programs designed to (1) produce energy from a renewable resource, (2) result in energy conservation or (3) result in the more efficient use of energy by a public utility's customers, clearly demonstrates that energy efficiency measures do "pertain" to utility services.

In addition, the Kansas Legislature adopted Substitute for House Bill 2278 during the 2007 Session. This Bill 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(a). Importantly, the Commission is given the authority to approve tariffs that will recover the utility's financing and program costs. Section 1(b). Substitute for House Bill 2278 will become effective on July 1, 2007.

It is clear to Staff that there is no statutory or other legal impediment which would prohibit the Commission from allowing Midwest to offer the How$mart℠ program as a tariffed service. Rather, this represents a policy determination. Based on the established language appearing in K.S.A. 66-117, and the Legislature's recent enactment of a statute authorizing Midwest to do what it seeks to do in this docket, Staff believes that the Commission should allow and encourage these types of energy efficiency programs, and that such programs are appropriately offered as a tariffed service.

B. Should the How$mart℠ Program Be Treated As A Special Service Under the Commission's Billing Standards So That Disconnection for Nonpayment and Recovery of Bad Debts Is Not Allowed?

1. Disconnection for Nonpayment

Under the Billing Standards, a regulated utility may discontinue service when a utility bill becomes delinquent after certain procedural safeguards (i.e., proper notice) are observed. KCC Electric, Natural Gas and Water Billing Standards, July 9, 2002, Section IV.A.(3). Discontinuance of service is not allowed for a customer's failure to pay for certain "special charges as defined in Section I.A.(3)." Section IV.B.(1). The Billing Standards define special charges as "those not authorized by tariff or otherwise specifically regulated by the Commission." Section I.A.(3). Midwest's How$mart^{sm} program is clearly intended as an authorized tariff subject to regulation by the Commission. Thus, it appears that treatment of the How$mart^{sm} program as a special service, as defined in Section I.A.(3) of the Billing Standards, is inappropriate. Further, it appears that the definition of "special services" reflects an intent to not allow disconnection for nonpayment of unregulated services (e.g., appliance sales under K.S.A. 66-129a). If the Commission, as a policy determination, intends to regulate the provision of energy efficiency programs, like the How$mart^{sm} program, then the How$mart^{sm} program does not qualify for inclusion as a "special service" under the Billing Standards.

2. Recovery of Bad Debts

The How$mart^{sm} program was designed to allow Midwest the opportunity to seek recovery of bad debts associated with the program in subsequent rate cases. By its opposition to this provision, CURB appears to make the cost causer/cost payer argument – that unrecovered costs incurred for one ratepayer should not be absorbed by other ratepayers on the system. First, it is important to note that Midwest's proposed tariff only allows Midwest the ***opportunity*** to seek recovery of associated bad debt expense in a subsequent rate case. Bad debt expense recovery associated with the How$mart^{sm} program is not guaranteed. In addition, one key feature of the How$mart^{sm} program is that the monthly charge for participants in the program will be ***less than*** the estimated monthly average savings attributable to the efficiency investment. If a How$mart^{sm} program participant creates a bad debt with Midwest, it could be argued that the participant likely would have created a bad debt absent the efficiency measure and in a greater amount.

III. CONCLUSION

Staff believes that approval of the How$mart^{sm} program is a policy decision that depends on whether the Commission wishes to promote this type of energy efficiency program. Staff suggests that the benefits to the individual participants in the program and likely benefits overall to Midwest's system outweigh CURB's concerns.

WHEREFORE, Staff respectfully requests that the Commission issue an order finding that the How$mart^{sm} program can and should be offered as a tariffed service as proposed, which includes permitting Midwest to disconnect for nonpayment of How$mart^{sm} charges and allowing Midwest to seek recovery of the associated bad debt expenses in subsequent rate cases.

Respectfully submitted,

Susan B. Cunningham

Susan B. Cunningham, #14083
General Counsel
Kansas Corporation Commission
1500 SW Arrowhead Rd.
Topeka, KS 66604
785.271.3272 (telephone)
785.271.3167 (telecopy)

Attorney for the Commission Staff and Public Generally

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

Susan B. Cunningham, being duly sworn upon her oath, deposes and states that she is the General Counsel for the State Corporation Commission of the State of Kansas, that she has read and is familiar with the foregoing *Brief of Commission Staff*, and that the statements contained therein are true and correct to the best of her knowledge, information and belief.

Susan B. Cunningham

Susan B. Cunningham, #14083
General Counsel
State Corporation Commission of the
State of Kansas

SUBSCRIBED AND SWORN to before me this 15th day of June, 2007.

PAMELA J. GRIFFETH
Notary Public - State of Kansas
My Appt. Expires 08-17-2007

Pamela J. Griffeth
Notary Public

My Appointment Expires: August 17, 2007