

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

In the Matter of a General Investigation)
Regarding the Acceleration of) Docket No. 15-GIMG-343-GIG
Replacement of Natural Gas Pipelines)
Constructed of Obsolete Materials)
Considered to be a Safety Risk.)

CURB's PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

The Citizens' Utility Ratepayer Board (CURB) herein files its Petition for Reconsideration and/or Clarification of the Kansas Corporation Commission's *Order on Jurisdictional Issue*, issued in Docket No. 15-GIMG-343-GIG on June 18, 2015.

I. Introduction

1. On March 12, 2015, the Kansas Corporation Commission (Commission) opened this docket, entitling it "In the Matter of a General Investigation Regarding the Acceleration of Replacement of Natural Gas Pipelines Constructed of Obsolete Materials Considered to be a Safety Risk." (Docket No. 15-GIMG-343-GIG). The investigation was requested by Commission Staff in the wake of the Commission's denial of a proposal for an accelerated recovery mechanism for a natural gas pipeline replacement program in Atmos Energy's 2014 rate case. In making that decision, the Commission stated that it would

entertain the possibility of roundtable discussions with industry to discuss proposing to the legislature either an adjustment to the GSRS Act or an additional system integrity RA as well as any specific projects, goals and concerns that it would address. Additionally, the Commission finds its decision on the RA in this case does not prevent its consideration of other

infrastructure improvement mechanisms which Atmos or other utilities may propose in the future.

Docket No. 14-ATMG-320-RTS, Order of Sept. 4, 2014, at ¶ 56.

2. Before the Commission commenced investigative proceedings, on March 12, 2015, the Commission issued an order requesting comments on the question, “Does the Commission have the jurisdictional authority to establish alternative rate making methodologies for pipe replacement that go beyond the parameters established by the Gas Safety and Reliability Policy Act [GSRSA]?” (Order, at ¶ 3, 4). Several parties including the Commission Staff and CURB filed briefs on this issue. CURB’s brief argued that the Commission does not have jurisdiction to do so.

3. On June 18, 2015, the Commission issued its *Order on Jurisdictional Issue* (Order), which held that “The Commission has jurisdictional authority to establish an alternative ratemaking mechanism for accelerated replacement of natural gas pipelines constructed of obsolete materials considered to be a safety risk.” (Order, Ordering ¶ A). CURB petitions the Commission for reconsideration and/or clarification of this holding.

II. Grounds for petition for reconsideration and/or clarification;

4. A. This petition for reconsideration is made on the grounds that:

(1) **The Commission’s holding asserting jurisdiction is based on a determination of fact, made or implied by the agency, that is not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole, and**

(2) is based on an erroneous interpretation of the law, pursuant to K.S.A. 77-621(c)(7) and (c)(4).

B. In the alternative, if the Commission denies CURB's petition for reconsideration and reasserts that it has jurisdiction, then

(3) CURB petitions for clarification of the precise meaning of the Commission's statement, "The Commission finds any new and separate infrastructure mechanism it may implement would not change the monetary cap and would thus not conflict with the plain language of the GSRS." (Order, at ¶ 7).

III. Jurisdiction to hear petition

5. This petition for reconsideration and/or clarification is timely filed, having been filed with the Commission within 15 days of the issuance of the Order. (Ordering ¶ C). Thus, the Commission may rule on this petition, although CURB argues that the Commission has no jurisdiction to establish alternative rate making methodologies for pipe replacement that go beyond the parameters established by the GSRS. "Issues relating to the court's subject matter jurisdiction to hear a particular claim may be raised at any time, as such claims go to the power of the court to hear a case." [*Kingsley v. Kansas Department of Revenue*, 288 Kan. 390, 395 (2009), citing to *Vorhees v. Baltazar*, 283 Kan. 389, 297 (2007)].

6. The question as to whether subject matter jurisdiction exists is a question of law over which this court's scope of review is unlimited. [*Id.*, citing to *Back-Wenzel v. Williams*, 279 Kan. 346, 347, 109 P.3d 1194 (2005)]. Because subject matter jurisdiction is ordinarily conferred by statute, it should be noted that the interpretation of a statute is

also a question of law subject to unlimited review. [*Id.*, citing to *Griffin v. Suzuki Motor Corp.*, 280 Kan. 447, 451, 124 P.3d 57 (2005)]. “Parties cannot confer subject matter jurisdiction by consent, waiver, or estoppel, and parties cannot convey subject matter jurisdiction on a court by failing to object to the court’s lack of jurisdiction. [*Id.*, citing to *Kansas Bd. Of Regents v. Skinner*, 267 Kan. 808, Syl. ¶ 5 (1999)].

IV. Findings of fact not supported by substantial evidence in the record as a whole and based on an erroneous interpretation of the law

1. “The purpose of the GSRS is entirely separate and distinct from the scope of a system-wide obsolete pipeline replacement program.” (Order, ¶ 8).

7. CURB argued in its brief that the Commission does not have jurisdiction to establish an alternative mechanism for providing natural gas utilities accelerated cost recovery for any project that is eligible for accelerated cost recovery under the GSRS, because in enacting the GSRS Act, the legislature has taken away the KCC’s broad discretion to implement alternate ratemaking mechanisms for the types of projects eligible for recovery through the GSRS surcharge. The Order characterizes CURB’s argument against the KCC’s jurisdiction in on this issue as “arguing the GSRS is the sole avenue for *pipeline replacement* and cost recovery outside of general rate cases” (Order, ¶ 3, emphasis added). However, this mischaracterizes the focus of CURB’s argument. CURB argued specifically that the GSRS statute provides the sole avenue for cost recovery outside rate cases for pipeline projects that are undergone to improve *safety and reliability* and which would not enhance revenues, and would therefore include any project or program that replaces aging or obsolete infrastructure and improves system

integrity, such as “system-wide obsolete pipeline replacement programs”, “accelerated pipeline replacement programs”, “accelerated replacement of natural gas pipelines considered to be a safety risk” and “accelerated replacement of gas pipelines constructed of obsolete materials”—all of which the Commission asserts are not eligible for recovery through the GSRS and could be recovered through a Commission-created mechanism. The Commission erroneously finds that these types of programs are “entirely separate and distinct” from the types of projects within the scope of the GSRS and therefore asserts that the Commission retains jurisdiction to devise an accelerated cost recovery mechanism for programs and projects to replace obsolete or aging pipeline infrastructure. This finding is erroneous and not based on substantial facts in the record.

8. As noted in CURB’s brief, the utilities authored and proposed the GSRS to the Kansas Legislature. (CURB Brief, at 2). The eligibility provisions below were authored by the utility-proponents, and understood by them all to provide recovery for the kinds of programs that the Commission claims are within its jurisdiction to provide another alternative ratemaking mechanism:

(1) Mains, valves service lines, regulator stations, vaults and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities; and

(2) main relining projects, service line insertion projects, joint encapsulation projects and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements.

(K.S.A. 66-2202(f)(1) and (2), defining “natural gas utility plant projects” that are eligible for cost recovery through the GSRS under the provisions of the Act)¹. The terms in subsection (1) “replacements for existing facilities” and in subsection (2) “extending

¹Note: the eligibility requirements set forth in subsection (f)(3) are not in dispute.

the useful life of or enhancing the integrity of pipeline system components” both provide limitations that exclude projects constructing new facilities that would add customers—and thus increase revenues. Both provisions require that the projects should be ones undergone to comply with state or federal safety requirements or to enhance the integrity of the components.

9. The testimony of the proponents at the legislature used the following terms to describe the infrastructure problems that prompted them to propose the GSRS²:

- “aging gas utility infrastructure” (Aquila, KGS; CURB Brief at 2, 3).
- “safety and reliability” (Atmos; CURB Brief at 2).
- “safety needs” (KGS; CURB Brief at 2).
- “maintaining integrity” (Aquila, CURB Brief at 3).

The utilities also used these terms to describe what kind of projects and programs would be recovered through the GSRS:

- “safety and reliability investments” (Midwest Energy; CURB Brief at 3).
- “safety related and infrastructure enhancement programs” (KGS, CURB Brief at 3).
- “safety related pipeline replacement projects” (Aquila; CURB Brief at 3).

10. Furthermore, all of the utilities that testified spoke in favor of the benefits to the utilities (and customers) of the accelerated cost recovery they would enjoy through the GSRS. (CURB Brief, 3, 4). But in spite of the utilities’ testimony on the bill they authored and presumably understood what kinds of problems and projects it was designed

² All of these bulleted items come from the testimonies of the representatives of the companies identified at the Senate Utilities Committee hearing on SB 414, which was the legislation that enacted the GSRS Act. Citations to testimony are provided at the cited locations in CURB’s Brief. Documents pertaining to the

to address, the KCC instead finds that the eligibility requirements in subsections (f)(1) and (2) of the GSRS do not include:

- “system-wide obsolete pipeline replacement programs” (Order, ¶ 8).
- “accelerated pipeline replacement programs” (Order, ¶ 8).
- “accelerated replacement of natural gas pipelines considered to be a safety risk” (Order, ¶ 11).
- “accelerated replacement of gas pipelines constructed of obsolete materials” (Order, ¶ 10).

11. The record shows that the proponents who authored and testified on behalf of the GSRS bill believed one of the main purposes of the GSRS was to provide accelerated recovery for replacement of obsolete pipelines to address safety and reliability concerns, and the utilities were unified in their view of these concerns as system-wide concerns, but not insurmountable problems. As Ron Gaches noted in his Senate Utilities Committee testimony on SB 414, “In some cases the investments [to maximize safety and reliability] are mandated by federal or state agencies and in other instances there is some level of discretion associated with the scheduling and timing of these investments.” Richard Loomis told the committee, “Generally, these types of investments are not controversial issues, but are a regular part of maintaining integrity throughout the gas systems.” (Loomis, Aquila, Senate Testimony, Feb. 2, 2006). Kansas Gas Service agreed: “Kansas Gas Service and the other utilities operating in Kansas are continually replacing aging infrastructure and relocating infrastructure to meet safety needs and infrastructure enhancements.” (Dixon, KGS, Senate Testimony, Feb. 2, 2006). Thus, the utilities were already addressing the safety and integrity of infrastructure on a

system-wide basis, but wanted more accelerated recovery of the costs because these kinds of costs don't bring in new revenues. The lack of additional revenues as a result of completing these projects and the lag time involved in recouping their investments were the real problems, in the utilities' view—not their ability to address their system-wide problems with aging and obsolete infrastructure.

12. The legislature's two utility committees had heard testimony about these system-wide problems before the Senate Utility Committee added the cap which survived the final vote on the bill. (*Supplemental Note on House [sic]*³*Bill No. 414 As Amended by House Committee on Utilities*, 2006 Session). Consumer Counsel David Springe and the KCC's then-Director of Utilities, Don Low, both spoke to their concerns that the broad category of costs that could be recovered through the GSRS could develop into huge yearly increases for customers. CURB testified that the language of the bill "is broad enough to make every capital expenditure made by a utility on plant replacement or upgrade . . . an eligible infrastructure system replacement." (CURB testimony; see FN 2). On behalf of the KCC, Don Low testified that without the Commission's oversight, "the surcharge could result in customers paying unreasonable rates." (KCC testimony; see FN 2).

13. As a result of the discussion of the committee members after the testimony on February 2, the Senate Utilities apparently decided that it would like to see a cap added to the bill, along with other changes. This can be inferred from the minutes of February 15, which indicate that a representative of KGS offered a revised version of the bill with the committee's requested revisions. [See Appendix—*Minutes of the Senate Utilities Committee*, Feb.9 and Feb. 15, 2006, and marked up copy of *SB 414* (the

³ See footnote 1.

“balloon” referred to in the Feb. 15 minutes, dated Feb. 10, 2006 in upper left hand corner). These amendments, including the 40 cent per customer per month cap on annual recovery, were adopted by the committee on February 20, and became a part of the legislation that was passed by both houses. (See Appendix—*Minutes of the Senate Utilities Committee*, Feb. 20, 2006). It should be noted that the minutes indicate that KCC’s Utility Director testified to the House Utilities committee that he believed the 40 cent cap was too large, given that there was no KCC oversight over expenditures as there is in a rate case. (See Appendix—*Minutes of the House Utilities Committee*, Mar. 14, 2006). The minutes also indicate that CURB testified that “citizens would not benefit from the passage of this bill as it creates an annual surcharge on consumer bills to pay for normal utility expenditures.” (*Id.*). The eligibility requirements for recovery of the project costs in what would become subsections (f)(1) and (2) of K.S.A. 66-2202 were passed without revision. Thus, having heard testimony from the utilities, CURB and the KCC about the fact that these provisions would provide cost recovery for system-wide replacements and upgrades of infrastructure, the committee left the language of these subsections intact. Thus, the Commission’s finding that “the purpose of the GSRS is entirely separate and distinct from the scope of a system-wide obsolete pipeline replacement program” is a finding that is not supported by the record, and is a finding that is an erroneous interpretation of K.S.A. 66-2202. Programs under the GSRS subsections (f)(1) and (2) clearly include projects relating to compliance with safety requirements, such as replacement of aging or obsolete pipelines. It is reasonable to conclude that the legislature intended the GSRS Act to provide recovery for system-wide projects.

14. Further, the Commission’s finding that “system-wide obsolete pipeline replacement programs”, “accelerated pipeline replacement programs”, and “accelerated replacement of natural gas pipelines considered to be a safety risk” are not eligible for cost recovery under the eligibility provisions at K.S.A. 66-2202(f)(1) and (2) is not supported by any explanation to support this finding. Whether one seeks evidence in the record to support this finding, or relies on a basic understanding of what these terms actually entail, this is a clearly erroneous finding that ignores the plain meaning of words and is illogical as well as inconsistent with the evidence in the record. The utilities testified that they were seeking accelerated cost recovery through the GSRS to help them address the problem of making investments throughout their systems to replace or enhance the integrity of aging infrastructure, obsolete pipeline materials, and other risks to public safety as well as reliability—when these investments do not pay off by adding new customers and increasing revenues. That’s the exact same reason that the Commission wants to create yet another accelerated cost recovery program. We must assume that the legislature understood that to be the reason, as well, because the language of the eligibility provisions in subsections (f)(1) and (2) is unchanged from the language proposed by the utilities. The distinction made by the Commission simply isn’t supported by the record, and the Commission has offered no other explanation that would support the finding.

2. “The Commission finds any new and separate infrastructure mechanism it may implement would not change the monetary cap and would thus not conflict with the plain language of the GSRS statute.” (Order, at Ordering ¶ A).

15. With this statement, the Commission clearly finds that it may implement an accelerated cost recovery mechanism for system-wide infrastructure replacement programs in addition to the GSRS. This statement clearly refers to the cap on annual increases to the GSRS of 40 cents per month per customer. But beyond that, the Commission offers no explanation whatsoever as to the statement's context in relation to the rest of its Order. CURB has separate arguments to make concerning three possible interpretations of this finding, but requests clarification of the Commission's meaning only if CURB's petition for reconsideration on the Commission's findings and holding is denied.

A. Interpretation of the cap as an additional eligibility limitation is erroneous

16. At first reading, it appears that the Commission finds that because there is only 40 cents per month per customer in annual recovery—i.e., the “monetary cap” through the GSRS—the purpose of the GSRS doesn't include recovery of system-wide programs, and therefore there is no jurisdictional problem or conflict with the KCC creating a surcharge for system-wide programs. If so, this interpretation of the cap as a limitation intended to exclude system-wide programs or projects is erroneous, because there is no limitation whatsoever in the GSRS Act that prohibits recovery of the costs of system-wide programs. Such programs are not “separate and distinct” from the purpose of the GSRS. The cap on expenditures may limit the amount that can be recovered annually for expenditures on system-wide programs through the GSRS, but that does not

mean that expenditures on system-wide programs are ineligible for recovery through the the GSRS.

17. Since the statement is ambiguous and the Commission did not provide further explanation, in the event that the Commission denies this petition for reconsideration of its finding and holding, CURB requests that the Commission clarify the meaning and intent of this statement.

B. Interpretation of the cap of 40 cents per month per customer in annual cost recovery as the only legislative mandate that the Commission must follow in implementing a mechanism for system-wide infrastructure replacement programs is erroneous

18. Another possible interpretation of this statement is that the Commission finds that it has jurisdiction to implement a mechanism for system-wide infrastructure replacement programs so long as it observes the limit of a 40 cents per month per customer cap in annual cost recovery. If so, CURB disagrees with that finding, and addresses that issue in section 3, below.

C. Interpretation of the cap as a limitation on a utility's total annual recovery through the GSRS plus the KCC-created mechanism is erroneous

19. Another possible interpretation of this statement is that the Commission finds that it may assert jurisdiction to authorize another mechanism so long as a utility's total annual recovery through the GSRS plus the KCC-created mechanism does not exceed 40 cents per month per customer. If so, then CURB disagrees with this

interpretation, but notes that at least this interpretation would leave customers no worse off than with the GSRS alone. That small comfort is not a reason to ignore the fact that the Commission has no authority to do so. CURB makes its argument below that the Commission has no authority to prescribe a ratemaking methodology that would allow the utilities accelerated cost recovery of the same sorts of projects that may be recovered through the legislatively-created GSRS, whether or not it exceeded the amount of the cap on the GSRS.

3. The Commission's holding that it has jurisdictional authority to establish an alternative ratemaking mechanism for accelerated replacement of natural gas pipelines constructed of obsolete materials considered to be a safety risk is an erroneous interpretation of law because the KCC has no jurisdictional authority where the legislature has already prescribed a mechanism for that particular purpose.

20. The Commission cites *Kansas Industrial Consumers v. Kansas Corp. Comm'n*, 36 Kan.App.2d 83, 97 (2006) [*KIC* case] for the proposition that under its broad ratemaking authority, the KCC may create an alternative mechanism for accelerated cost recovery of certain costs. CURB does not dispute that the KCC has broad ratemaking authority, but disputes that it has jurisdiction or authority to prescribe an alternative ratemaking mechanism to serve the same purpose as a mechanism that the legislature has already prescribed and upon which has set specific limits.

21. In the *KIC* case, the challenge to the KCC's authority was whether the Commission could authorize a utility to implement a surcharge for recovery of

environmental costs that hadn't been created by the legislature. Under the statutory interpretation doctrine *expressio unius* that provides that the inclusion of one thing in legislation includes indicates exclusion of another, KIC argued that since the legislature had created surcharges for ad valorem taxes, transmission costs and security costs, the legislature intended only those costs to be recovered through surcharges, so the KCC could not create a surcharge on its own for environmental costs. KIC lost on that issue because the court reasoned that the legislature's intent to provide surcharges for taxes, transmission and security costs did not infer an intent to curtail KCC's broad ratemaking authority to create other surcharges. 36 Kan.App.2d at 95-97. If the legislature had already created an environmental surcharge with a cap on recovery, the court's decision on this issue very likely would have been different. But in the KIC case, the legislature had not spoken to the issue of environmental cost recovery.

22. CURB's challenge to the KCC's authority in this case is different than the challenge in the KIC case. The question here is whether the KCC has jurisdiction or authority to authorize a utility to implement a surcharge to recover the same types of costs that a legislatively-created surcharge recovers. Because the legislature has spoken to the issue of replacing and enhancing infrastructure that does not add customers or increase revenues in enacting the GSRS statute, and specifically addressed the limits on what may be approved with the 40-cent cap, KCC's broad authority must yield to the legislature's determination of what is an appropriate method of providing accelerated cost recovery for replacements or enhancements of infrastructure that do not add customers or revenues. The KCC may not create a similar surcharge to the GSRS, or a completely different surcharge intended to recover the same times of costs, and certainly may not

authorize the utilities more accelerated cost recovery than the cap that the legislature has mandated. The KIC case offers no guidance on the questions of the KCC's jurisdiction to create a surcharge where the legislature has already imposed specific limits on cost recovery.

23. CURB is not arguing that the Commission mechanism would "change the cap" of the GSRS (Order, ¶ 7), but that it would conflict with the policy established when the legislature imposed a cap that wasn't included in the original legislation. (*Supplemental Note on House [sic]⁴ Bill No. 414 As Amended by House Committee on Utilities*, 2006 Session). The Commission has no authority to make a decision in conflict with a policy that the legislature has already determined to be appropriate. The KCC surcharge would be creating a mechanism that would allow the utilities accelerated cost recovery of additional amounts between rate cases beyond the amounts approved by the legislature for safety and reliability projects that do not add revenues or customers. But when the legislature provided the relief requested by the utilities in enacting the GSRS, it also expressly limited the amount of relief that it believed the utilities needed by imposing a cap. In fact, the Commission expressly acknowledged in its Order that the benefits to the utilities of the "favorable terms" of the GSRS are balanced by the cap on annual recovery. (Order, at ¶ 7). But it makes no difference whether the Commission's mechanism would observe the 40 cent per month per customer limitation or not; it has no authority to create a mechanism where the legislature has already done so.

24. A decision in Texas is illustrative of this principle and concerns a rider quite similar to the Transmission Delivery Charge in Kansas statutes (K.S.A. 66-1237 *et*

⁴ Although the title of this *Supplemental Note* identifies the bill as a House bill, the text refers to SB 414 and states that the GSRS legislation originated in the Senate; the identification in the title is clearly an error.

seq.). The Texas legislature had mandated a rider for electric utilities to recover changes in transmission-related FERC rates that are passed through to utilities by the state's regional transmission organization, ERCOT. A utility (a member of a different regional transmission organization) applied for a similar rider but sought to move all of its current transmission-related costs out of base rates into a similar rider. The utility commission found that including all of the rates—not just the changes in rates—did not comport with the methodology provided by the legislature. The commission ruled that it had no authority to authorize a different methodology than that prescribed by the legislature. [*In re Application of Entergy Texas, Inc. for Approval of Transmission Cost Recovery Rider*, Docket No. 41235 (2013 WL 191281 (Tex.P.U.C.))]. In doing so, the commission said that its broad power of ratemaking did not imply a power “to supplant a method or procedure that the legislature itself has designated for the circumstances. The legislature's method or procedure prevails over that of the agency; ‘the prescribed method excludes all others, and must be followed.’ ” [*Cobra Oil & Gas Corp. v. Sadler*, 447 S.W.2d 887, 892 (Tex.1968)*172 *Foster v. City of Waco*, 113 Tex. 352, 255 S.W. 1104, 1105 (1923); *Balios v. Texas Dep't of Public Safety*, 733 S.W.2d 308, 311 (Tex.App.1987, writ ref'd)].

25. Similarly, the KCC's broad ratemaking powers are conferred by the legislature, and also limited by the legislature. Just as the Commission has no authority to prescribe a different transmission delivery charge from that prescribed by the legislature, the Commission has no authority to prescribe a different GSRS—even if it is called something else and has different terms, so long as it is designed to serve a similar purpose. If the Commission grants the utilities alternative relief, or more relief than the legislature chose to grant them in this particular area of costs, the KCC will be upsetting

that balance that the legislature determined was appropriate in enacting the GSRS. The KCC has no authority to upset that balance which would exceed its authority and jurisdiction. Where the legislature exercises its prerogative to prescribe an alternative ratemaking mechanism for utilities that provides limited benefits to the utilities, the KCC has no authority or jurisdiction to modify or increase those benefits to utilities through an additional alternative ratemaking mechanism.

26. Staff's opined that an additional KCC-created surcharge is needed because "Delaying pipe replacement until a threat to public safety is obvious is not good public policy." (CURB Brief, at 1). CURB agrees, but Staff is ignoring the fact that the legislature has already determined what "good public policy" is on this particular issue. The appropriate remedy is to seek an amendment from the legislature if the GSRS cap is limiting the utilities' ability to address threats to public safety. No one testified at the committee hearings on the GSRS bill that public safety is threatened; perhaps if the legislature had evidence to the contrary, it would consider a change to the cap. CURB worked together with the utilities to devise a legislative proposal for a modest increase in the GSRS cap, but the proposal to all go down together to support an amendment went nowhere without Commission's support. So CURB is not opposed to asking the legislature to increase the cap to accommodate a faster pace of replacement of aging infrastructure. But we must assume that the legislature is satisfied at present that good public policy calls for the utilities to have the opportunity to seek accelerated recovery of the costs of non-revenue enhancing infrastructure projects up to the cap on the GSRS, and have an opportunity to seek recovery of the balance spent through the traditional rate case proceeding. The cap wasn't the utilities' proposal; it was the proposal of the

legislators who heard the testimony and read the bill; they were concerned about giving the utilities the go-ahead to do system-wide replacements without some sort of limit on how much rates could increase between rate cases. The balance struck by the legislature is not the Commission's to reweigh.

27. The Commission does not have jurisdiction to add an additional mechanism for accelerated recovery of the same sort of projects that are eligible for recovery through the GSRS, whether or not the mechanism itself is similar or dissimilar to the GSRS. The KIC case supports this conclusion, because the legislature has already provided the remedy it deems appropriate for the purpose that the GSRS is intended to serve. By its actions, the legislature has decided that it is good public policy for the Commission to continue ensuring that the natural gas utilities continue meeting their obligation to protect the public safety under K.S.A. 66-66-1,208 through its approvals of prudent expenditures for safety and reliability to be recovered through the GSRS and through the traditional ratemaking process. Not only is it not good public policy for the Commission to attempt to expand the limits that the legislature imposed on the GSRS by devising another mechanism, the Commission simply has no jurisdiction to choose to do so.

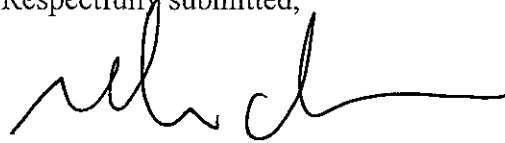
V. Conclusions and request for relief

28. (1) The Commission's holding that it "has jurisdictional authority to establish an alternative ratemaking mechanism for accelerated replacement of natural gas pipelines constructed of obsolete materials considered to be a safety risk" is based on a determination of fact, made or implied by the agency, that is not supported to the

appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole, and is based on an erroneous interpretation of the law, pursuant to K.S.A. 77-621(c)(7) and (c)(4). CURB seeks reconsideration of this holding, and requests the Commission reverse the holding.

(2) In the alternative, if the Commission denies CURB's petition for reconsideration and reasserts that it has jurisdiction, then CURB petitions the Commission for clarification of the precise meaning of the Commission's statement, "The Commission finds any new and separate infrastructure mechanism it may implement would not change the monetary cap and would thus not conflict with the plain language of the GSRS."

Respectfully submitted,



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VERIFICATION

STATE OF KANSAS)

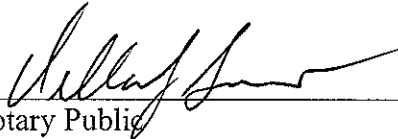
COUNTY OF SHAWNEE) ss:

I, Niki Christopher, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.



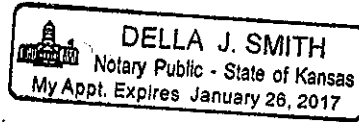
Niki Christopher

SUBSCRIBED AND SWORN to before me this 6th day of July, 2015.



Notary Public

My Commission expires: 01-26-2017.



APPENDIX A

Supplemental Note on House Bill No. 414

Minutes of the Senate Utilities Committee

February 2, 2006

February 9, 2006

February 15, 2006

February 20, 2006

Minutes of the House Utilities Committee

March 14, 2006

**Presentation of the Kansas Corporation Commission
Before the Senate Utilities Committee – February 2, 2006**

**SB-414, Testimony of Larry Berg,
Vice President of Corporate Relations
Midwest Energy, Inc. before the Senate Utilities Committee
February 2, 2006**

**SB-414, Testimony of Brad Dixon, President Kansas Gas Service
Before the Senate Utilities Committee
February 2, 2006**

**Testimony in Support of Senate Bill 414
Remarks of Richard C. Loomis, Vice President, Kansas and Colorado Gas
Aquila, Inc.**

**Before the Senate Utilities Committee
Presentation of the Kansas Corporation Commission
February 2, 2006**

**Senate Utilities Committee – S.B. 414, Testimony on Behalf of the Citizens'
Utility Ratepayer Board by David Springe, Consumer Counsel
February 2, 2006**

**Order on Jurisdictional Issue
June 18, 2015**

SESSION OF 2006

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 414

As Amended by House Committee on
Utilities

Brief*

SB 414 would enact the Gas Safety and Reliability Policy Act. Beginning July 1, 2006, a natural gas public utility would be able to petition and propose rate schedules with the Kansas Corporation Commission (KCC) to establish or change gas system reliability surcharge (GSRs) rate schedules. These changes would allow for the adjustment of rates in order to recover the costs for eligible infrastructure system replacements.

The bill would define eligible infrastructure system replacements to mean natural gas utility plant projects that:

- Do not increase revenues by directly connecting the infrastructure replacement to new customers;
- Are in service and used and required to be used; and
- Were not included in the natural gas public utility's rate base in its most recent general rate case.

The "natural gas utility plant projects" would be defined under the bill to consist only of the following:

- Mains, valves, service lines, regulator stations, vaults and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities;
- Main relining projects, service line insertion projects, joint encapsulation projects and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

requirements; and

- Facility relocations required due to construction or improvement of certain public works on behalf of the United States, this state, a political subdivision of the state or another entity having the power of eminent domain provided the costs have not been reimbursed to the natural gas utility.

The KCC could not approve a GSRS to the extent it would produce a total annualized GSRS revenue below the lesser of \$1,000,000 or ½ percent of the utility's base revenue level or exceeding 10 percent of the base revenue approved by the KCC at the utility's most recent general rate proceeding.

The bill would prohibit the KCC from approving a GSRS for a utility that has not had a general rate proceeding decided or dismissed within the past 60 months, unless the utility has filed for one or is the subject of a new proceeding. The bill would prohibit a utility from collecting a GSRS for any period exceeding 60 months unless a filing has been made or is subject to a new proceeding.

The bill also would require the utility which files a petition with the KCC for a GSRS, to submit a proposed GSRS and supporting documentation. Staff of the KCC would be required to confirm underlying costs and submit a report not later than 60 days after the filing. The bill would permit the KCC to hold a hearing and require that it issue an order not later than 120 days after the filing. The bill would prohibit a utility from effectuating a change in its rates no more often than once every 12 months.

The KCC would determine the appropriate amount of pretax revenue. The bill would establish the factors in determining the appropriate amount of pretax revenue.

The monthly GSRS change would be allocated among classes of customers in the same manner as was allocated at the utility's last general rate proceeding. The GSRS would be charged to customers as a monthly fixed charge and not based on volumetric consumption. The monthly charge could not increase more than \$.40 per residential customer per year.

Nothing in the bill could be construed to limit the authority of the KCC to review and consider infrastructure system replacement costs along with other costs during any general rate proceeding.

Background

At the Senate Committee hearing on the bill, proponents included representatives of Kansas Gas Service, Aquila, Midwest Energy, and Atmos. Opponents included representative of the KCC and the Citizens' Utility Ratepayers Board.

The Senate Committee on Utilities amended the bill by deleting a portion of the definition of "eligible infrastructure system replacement" dealing with the replacing or extending the useful life of an existing facility; by deleting language relating to worn or deteriorated condition when referring to the system components installed for safety purposes under the definition of "natural gas utility plant projects"; by requiring rather than permitting the KCC staff to examine information to confirm underlying costs; by requiring rather than permitting the KCC staff to submit a report regarding its examination to the KCC; by limiting a utility to effectuate a change in GSRS no more often than once every twelve months rather than twice every twelve months; by limiting the GSRS to be charged to customers and not based on volumetric consumption; and by limiting the increase to not more than \$.40 per residential customer per month over the base rates in effect.

The House Committee amended the bill to clarify the language of the Senate Committee amendment placing a limitation on the amount of increase allowable for the GSRS charge.

The fiscal note on the original bill states that the KCC believes that this bill would have no effect on agency operations. The Citizens' Utility Ratepayer Board (CURB) believes the bill is unclear as to whether or not the agency would be allowed to participate in the GSRS proceedings. Consequently, the agency estimates this bill would have a fiscal effect ranging from zero, if it were not participating at all, to \$40,000-\$80,000. CURB indicates that if it were participating and a full review of the costs and rates is allowed, then it could potentially need an additional \$10,00 per case for outside consulting. The agency estimates that it could participate in four to eight reviews per year. Any fiscal effect resulting from this bill would be in addition to the amounts included in *The FY 2007 Governor's Budget Report*.

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on February 2, 2006 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Athena Andaya, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes' Office
Diana Lee, Revisor of Statutes' Office
Ann McMorris, Committee Secretary
Leann Hirschfeld, Intern

Conferees appearing before the committee:

Brad Dixon, president, Kansas Gas Service
Richard C. Loomis, Aquila, Inc.
Larry Berg, Midwest Energy, Inc.
Ron Gaches, Atmos Energy
David Springe, CURB
Don Low, KCC

Others in attendance: See attached list.

Chairman Emler opened the hearing on

SB 414 - Enacting the gas safety and reliability policy act.

Proponents

Brad Dixon, President, Kansas Gas Service, spoke in favor of **SB 414** because it furthers the ability of natural gas utilities operating in Kansas to provide safe and reliable gas service. The provisions in this bill will enable natural gas public utilities to comply more effectively and efficiently with state and federal requirements. This bill provides a more streamlined approach to provide for non-revenue generating investments. (Attachment 1)

Richard C. Loomis, Aquila, Inc. favored this bill because it allows recovery of utility investment in non-revenue generating projects through a gas system replacement surcharge. (Attachment 2)

Larry Berg, Vice President of Corporate Relations, Midwest Energy, Inc., agreed with the reasons presented by Kansas Gas Service and Aquila and also noted the ability to pass through the cost of prudent safety and reliability investments in a timely manner is crucial to their on-going financial health and the customer base that remains. (Attachment 3)

Ron Gaches, Atmos Energy, urged passage of **SB 414** as this will encourage natural gas companies to increase the investment levels necessary to maximize the safety and reliability of their systems. (Attachment 4)

Questions from the committee regarding a cap and asking each company what their cost would be in a rate case. The responses on rate case cost ranged from \$250,000 to \$1.2 million, depending on the size of the company, not including KCC or CURB assessments.

Opponents

David Springe, consumer counsel, Citizens' Utility Ratepayer Board (CURB), spoke against **SB 414** saying that the bill is over-broad, ill-defined and one-sided in favor of the utilities and offers no protection for consumers. Without withdrawing or waiving CURB's outright opposition, CURB provided the Committee some suggested mark-up's to the bill to remove what CURB considers the most egregious language in the bill. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE Senate Utilities Committee at 9:30 A.M. on February 2, 2006 in Room 526-S of the Capitol.

Don Low, Director of the Utilities Division for the Kansas Corporation Commission, spoke in opposition of **SB 414** because it does not allow for a determination of the reasonableness of and need for a surcharge based on the individual circumstances of each natural gas utility. The KCC concern is that, without vesting discretion in the Commission to weigh the equities, circumstances could arise whereby the surcharge could result in customers paying unreasonable rates. (Attachment 6)

Due to the lack of time, the committee members were unable to complete their questioning and the Chairman scheduled the continuation of the hearing to February 9, 2006 at 9:30 a.m. in Room 235-S.

Approval of Minutes

Moved by Senator Reitz, seconded by Senator Lee, the minutes of the meetings of the Senate Utilities Committee held on January 31, 2006 and February 1, 2006 be approved. Motion carried.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 6

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on February 9, 2006 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Athena Andaya, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes' Office
Diana Lee, Revisor of Statutes' Office
Ann McMorris, Committee Secretary
Leeann Hirshfield, Intern for Sen. Emler

Conferees appearing before the committee:

Others in attendance: See attached list

Continuation of hearing on
SB 414 - Enacting the gas safety and reliability policy act.

Steve Johnson, Kansas Gas Service, explained the proposed amendments to **S.B. 414**, which would clarify how charges are made and limit the charge to 40 cents per customer, per month, per year. (Attachment 1)

Committee questioned representatives from KCC and CURB on the various changes and asked for further explanation on how the rate is determined and if refunds are made if there is an overcharged rate.

Chairman closed the hearing on **SB 414**.

Chairman indicated further discussion and possible action on **SB 414** would be scheduled for Wednesday, February 15.

Chairman announced that further discussion and possible action on **SB 463** would be placed on the agenda for Monday, February 13.

Approval of Minutes

Moved by Senator Reitz, seconded by Senator Apple, minutes of the meetings of the Senate Utilities Committee held on February 7, 2006 and February 8, 2006 be approved. Motion carried.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 1

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on February 15, 2006 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Athena Andaya, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes' Office
Ann McMorris, Committee Secretary

Conferees appearing before the committee: None

Others in attendance: See attached list

Chair opened for discussion and possible action on
HB 2590 - VoIP enhanced 911 Act

Rep. Mike Petersen presented proposed amendments to **HB 2590** and it was noted that the two amendments were not placed correctly and should be New Sec. 4(a) and New Sec. 5(a). (Attachment 1) These amendments would eliminate dual billing and are good for the consumer. KCC, AT&T and the Cable Industry agreed.

Moved by Senator Petersen, seconded by Senator Apple, HB 2590 be amended as set forth in Attachment 1. Motion carried.

Moved by Senator Taddiken, seconded by Senator Petersen, HB 2590 be passed out favorably as amended. Motion carried.

Chair opened for discussion and possible action on
SB 414 - Enacting the gas safety and reliability policy act

Steve Johnson of Kansas Gas Service reviewed a balloon version of **SB 414** showing their proposed amendments. (Attachment 2) He noted the proposed changes are for safety requirements in various areas. Senator Francisco suggested additional language to be inserted on page 1, line 43 after the word replacement insert "enacted since the filing of their most recent rate case".

Discussion on prorating of expense for worn out pipe, amortization of 30 year pipe, recovering expenses in a more timely manner, and how capital expenditures and other expenses are reimbursed. CURB David Springe reviewed their suggested amendments as a need to help the consumer.

Due to the lack of time, Chair continued this discussion on **SB 414** to the Monday, February 20 meeting of the Senate Utilities Committee.

Adjournment.

Respectfully submitted

Ann McMorris, Secretary

Attachments - 2

SENATE BILL No. 414

By Committee on Utilities

1-19

9 AN ACT concerning public utilities; relating to natural gas; enacting the
10 gas safety and reliability policy act.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. This act may be cited as the gas safety and reliability
14 policy act.

15 Sec. 2. For the purposes of this act:

16 (a) "CSRS" means gas system reliability surcharge;

17 (b) "appropriate pretax revenues" means the revenues necessary to
18 produce net operating income equal to:

19 (1) The natural gas public utility's weighted cost of capital multiplied
20 by the net original cost of eligible infrastructure system replacements,
21 including recognition of accumulated deferred income taxes and accu-
22 mulated depreciation associated with eligible infrastructure system re-
23 placements which are included in a currently effective CSRS;

24 (2) recover state, federal and local income or excise taxes applicable
25 to such income;

26 (3) recover depreciation expenses;

27 (c) "commission" means the state corporation commission;

28 (d) "eligible infrastructure system replacement" means natural gas
29 public utility plant projects that:

30 (1) Do not increase revenues by directly connecting the infrastruc-
31 ture replacement to new customers;

32 (2) are in service and used and required to be used; ~~_____~~ and

33 (3) were not included in the natural gas public utility's rate base in
34 its most recent general rate case; ~~_____~~

35 ~~(4) replace or extend the useful life of an existing infrastructure;~~

36 (e) "natural gas public utility" shall have the same meaning respec-
37 tively ascribed thereto by subsection (a) of K.S.A. 66-1,200, and amend-
38 ments thereto;

39 (f) "natural gas utility plant projects" may consist only of the
40 following:

41 (1) Mains, valves, service lines, regulator stations, vaults and other
42 pipeline system components installed to comply with state or federal
43 safety requirements as replacements for existing facilities ~~that have worn~~

1 ~~out or are in deteriorated condition];~~

2 (2) main relining projects, service line insertion projects, joint encap-
3 sulation projects and other similar projects extending the useful life or
4 enhancing the integrity of pipeline system components undertaken to
5 comply with state or federal safety requirements; and

6 (3) ~~facilities,~~ relocations required due to construction or improve-
7 ment of a highway, road, street, public way or other public work by or on
8 behalf of the United States, this state, a political subdivision of this state
9 or another entity having the power of eminent domain provided that the
10 costs related to such projects have not been reimbursed to the natural
11 gas public utility;

facility

12 (g) "CSRS revenues" means revenues produced through a CSRS ex-
13 clusive of revenues from all other rates and charges.

14 Sec. 3. (a) Notwithstanding any other provisions of chapter 66 of the
15 Kansas Statutes Annotated, and amendments thereto, beginning July 1,
16 2006, a natural gas public utility providing gas service may file a petition
17 and proposed rate schedules with the commission to establish or change
18 CSRS rate schedules that will allow for the adjustment of the natural gas
19 public utility's rates and charges to provide for the recovery of costs for
20 eligible infrastructure system replacements. The commission may not ap-
21 prove a CSRS to the extent it would produce total annualized CSRS
22 revenues below the lesser of \$1,000,000 or ½% of the natural gas public
23 utility's base revenue level approved by the commission in the natural gas
24 public utility's most recent general rate proceeding. The commission may
25 not approve a CSRS to the extent it would produce total annualized CSRS
26 revenues exceeding 10% of the natural gas public utility's base revenue
27 level approved by the commission in the natural gas public utility's most
28 recent general rate proceeding. A CSRS and any future changes thereto
29 shall be calculated and implemented in accordance with the provisions of
30 sections 2 through 4, and amendments thereto. CSRS revenues shall be
31 subject to a refund based upon a finding and order of the commission to
32 the extent provided in subsections (e) and (h) of section 4, and amend-
33 ments thereto.

34 (b) The commission shall not approve a CSRS for any natural gas
35 public utility that has not had a general rate proceeding decided or dis-
36 missed by issuance of a commission order within the past 60 months,
37 unless the natural gas public utility has filed for or is the subject of a new
38 general rate proceeding.

39 (c) In no event shall a natural gas public utility collect a CSRS for a
40 period exceeding 60 months unless the natural gas public utility has filed
41 for or is the subject of a new general rate proceeding; except that the
42 CSRS may be collected until the effective date of new rate schedules
43 established as a result of the new general rate proceeding, or until the

1 subject general rate proceeding is otherwise decided or dismissed by is-
2 suance of a commission order without new rates being established.

3 Sec. 4. (a) At the time that a natural gas public utility files a petition
4 with the commission seeking to establish or change a GSRS, it shall sub-
5 mit proposed GSRS rate schedules and its supporting documentation
6 regarding the calculation of the proposed GSRS with the petition and
7 shall serve commission staff and the citizens utility ratepayer board with
8 a copy of its petition, its proposed rate schedules and its supporting
9 documentation.

10 (b) (1) When a petition, along with any associated proposed rate
11 schedules, is filed pursuant to the provisions of sections 2 through 4, and
12 amendments thereto, the commission shall conduct an examination of the
13 proposed GSRS;

shall

14 (2) the staff of the commission ~~may~~ examine information of the nat-
15 ural gas public utility to confirm that the underlying costs are in accord-
16 ance with the provisions of sections 2 through 4, and amendments
17 thereto, and to confirm proper calculation of the proposed charge. The
18 staff ~~may~~ submit a report regarding its examination to the commission
19 not later than 60 days after the petition is filed. No other revenue re-
20 quirement or ratemaking issues may be examined in consideration of the
21 petition or associated proposed rate schedules filed pursuant to the pro-
22 visions of sections 2 through 4, and amendments thereto;

shall

23 (3) the commission may hold a hearing on the petition and any as-
24 sociated rate schedules and shall issue an order to become effective not
25 later than 120 days after the petition is filed; and

26 (4) if the commission finds that a petition complies with the require-
27 ments of sections 2 through 4, and amendments thereto, the commission
28 shall enter an order authorizing the natural gas public utility to impose a
29 GSRS that is sufficient to recover appropriate pretax revenue, as deter-
30 mined by the commission pursuant to the provisions of sections 2 through
31 4, and amendments thereto.

32 (c) A natural gas utility may effectuate a change in its rate pursuant
33 to the provisions of this section no more often than ~~two times~~ every 12
34 months.

once

35 (d) In determining the appropriate pretax revenue, the commission
36 shall consider only the following factors:

37 (1) The net original cost of eligible infrastructure system replace-
38 ments. The net original cost shall be defined as the original cost of eligible
39 infrastructure system replacements less associated retirements of existing
40 infrastructure;

41 (2) the accumulated deferred income taxes associated with the eli-
42 gible infrastructure system replacements;

43 (3) the accumulated depreciation associated with the eligible infra-

1 structure system replacements;

2 (4) the current state, federal and local income tax or excise rates;

3 (5) the natural gas public utility's actual regulatory capital structure
4 as determined during the most recent general rate proceeding of the
5 natural gas public utility;

6 (6) the actual cost rates for the natural gas public utility's debt and
7 preferred stock as determined during the most recent general rate pro-
8 ceeding of the natural gas public utility;

9 (7) the natural gas public utility's cost of common equity as deter-
10 mined during the most recent general rate proceeding of the natural gas
11 public utility;

12 (8) the current depreciation rates applicable to the eligible infrastruc-
13 ture system replacements; and

14 (9) in the event information pursuant to paragraphs (5), (6) and (7)
15 are unavailable and the commission is not provided with such information
16 on an agreed-upon basis, the commission shall utilize the average of the
17 recommendations contained in the testimony submitted by the natural
18 gas public utility and commission staff during the most recent general
19 rate proceeding of the natural gas public utility to determine the capital
20 structure, recommended cost rates for debt and preferred stock and rec-
21 ommended cost of common equity to determine the average weighted
22 cost of capital.

23 (e) (1) The monthly GSRS charge shall be allocated among the nat-
24 ural gas public utility's classes of customers in the same manner as costs
25 for the same type of facilities was allocated among classes of customers
26 in the natural gas public utility's most recent general rate proceeding. If
27 that allocation is not available or determinable, the commission shall util-
28 ize the average of the recommendations contained in the testimony sub-
29 mitted by the natural gas public utility and the commission staff regarding
30 class allocation of costs.

31 (2) at the end of each twelve-month calendar period the GSRS is in
32 effect, the natural gas public utility shall reconcile the differences be-
33 tween the revenues resulting from a GSRS and the appropriate pretax
34 revenues as found by the commission for that period and shall submit the
35 reconciliation and a proposed GSRS adjustment to the commission for
36 approval to recover or refund the difference, as appropriate, through ad-
37 justments of the GSRS charge.

38 (f) (1) A natural gas public utility that has implemented a GSRS pur-
39 suant to the provisions of sections 2 through 4, and amendments thereto,
40 shall file revised rate schedules to reset the GSRS to zero when new base
41 rates and charges become effective for the natural gas public utility fol-
42 lowing a commission order establishing customer rates in a general rate
43 proceeding that incorporates in the utility's base rates, subject to subsec-

. A GSRS shall be charged to customers as a monthly fixed charge and not based on volumetric consumption. Such charge shall not increase more than \$.40 per residential customer per month over the base rates in effect for the initial filing of a GSRS. Thereafter, each filing shall not increase more than \$.40 per residential customer per month over the most recent filing of a GSRS

1 tions (h) and (i), eligible costs previously reflected in the currently effective
2 CSRS;

3 (2) upon the inclusion in a natural gas public utility's base rates subject
4 to subsections (h) and (i) of eligible costs previously reflected in a
5 CSRS, the natural gas public utility shall immediately thereafter reconcile
6 any previously unreconciled CSRS revenues as necessary to ensure that
7 revenues resulting from the CSRS match as closely as possible the appropriate
8 pretax revenues as found by the commission for that period.

9 (g) A natural gas public utility's filing of a petition or change to a
10 CSRS pursuant to the provisions of sections 2 through 4, and amendments thereto,
11 shall not be deemed to be a rate increase for purposes of
12 K.S.A. 66-117, and amendments thereto.

13 (h) Commission approval of a petition, and any associated rate schedules,
14 to establish or change a CSRS pursuant to the provisions of sections
15 2 through 4, and amendments thereto, shall in no way be binding upon
16 the commission in determining the ratemaking treatment to be applied
17 to eligible infrastructure system replacements during a subsequent general
18 rate proceeding when the commission may undertake to review the
19 reasonableness and prudence of such costs. In the event the commission
20 disallows, during a subsequent general rate proceeding, recovery of costs
21 associated with eligible infrastructure system replacements previously included
22 in a CSRS, the natural gas public utility shall offset its CSRS in
23 the future as necessary to recognize and account for any such over
24 collections.

25 (i) Nothing in this section shall be construed as limiting the authority
26 of the commission to review and consider infrastructure system replacement
27 costs along with other costs during any general rate proceeding of
28 any natural gas public utility.

29 Sec. 5. This act shall take effect and be in force from and after its
30 publication in the statute book.

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on February 20, 2006 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Raney Gilliland, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes' Office
Ann McMorris, Committee Secretary

Conferees appearing before the committee:

Others in attendance: See attached list.

Chairman opened for discussion on

SB 414 - Enacting the gas safety and reliability policy act

Kansas Gas Service had offered amendments to **SB 414** which the Chair reviewed, citing each addition or deletion throughout the text of the bill. He opened for discussion and possible action.

Moved by Senator Taddiken, seconded by Senator Reitz, adoption of the amendments to SB 414 proposed by Kansas Gas Service. Motion carried. (Attachment 1)

KCC answered questions on how the Commission handled rate case requests for recovering unforeseen expenses more quickly. Also questions asked on what advantages did the consumer get. CURB voiced their opposition and referred to their proposed amendments presented at the February 2, 2006 hearing on **SB 414**.

Opposition was voiced on the language regarding GSRs charges and additional language was proposed by Senator Francisco. (Attachment 2)

Moved by Senator Francisco, to amend SB 414 by including all the amendments proposed by CURB. This motion died for lack of a second.

Moved by Senator Francisco, seconded by Senator Lee, to amend SB 414, by inserting the language "enacted or adopted following the filing of the most recent rate case for the natural gas public utility requesting the GSRs" on page 1 line 43 following the word 'facilities' and on page 2, line 5 following the word 'requirements'. Motion failed. (Attachment 2)

Moved by Senator Taddiken, seconded by Senator Reitz, to pass SB 414 out favorably as amended. Motion carried. "NO" votes recorded for Senators Lee and Francisco. (Attachment 1)

Approval of Minutes

Moved by Senator Apple, seconded by Senator Reitz, approval of the minutes of the meeting of the Senate Utilities Committee held on February 16, 2006. Motion carried.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 2

MINUTES OF THE HOUSE UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 A.M. on March 14, 2006 in Room 231-N of the Capitol.

All members were present except:
Jim Ward- excused

Committee staff present:
Mary Galligan, Kansas Legislative Research
Dennis Hodgins, Kansas Legislative Research
Heather Klaasen, Research Intern
Renaë Hansen, Committee Secretary

Conferees appearing before the committee:
Steve Johnson, Kansas Gas Service
Kimberly Gencur, Aquila
Steve Jurek, Vice President, Regulatory Services, Aquila
Ron Gauches, Atmos Energy
Larry Berg, Midwest Energy
Dave Springe, CURB
Don Low, KCC

Others attending:
See attached list.

Hearing on:

SB 414 **Enacting the gas safety and reliability policy act.**

Proponents:

Steve Johnson, Kansas Gas Service, (Attachment 1), presented testimony in favor of **SB 414** because it furthers the ability of Kansas Gas Service and other natural gas utilities operating in the state to achieve the named purpose of the bill: that is to provide safe and reliable gas service.

Kimberly Gencur, Aquila, introduced Steve Jurek, Vice President, Regulatory Services, (Attachment 2), who offered comments in favor of **SB 414**.

Ron Gauches, Atmos Energy, (Attachment 3), presented testimony before the committee that outlined **SB 414** with simple language of the benefits that this bill would provide to consumers and producers.

Larry Berg, Midwest Energy, (Attachment 4), echoed the comments made by previous proponents adding that the benefits for Western Kansas from **SB 414** would be helpful as their load growth is much smaller than the companies that have customers on the Eastern part of the state and **SB 414** would help them with manage their financial health in a more timely manner.

Opponents:

Dave Springe, Citizens' Utility Ratepayer Board, CURB, (Attachment 5), offered testimony in opposition to **SB 414**, stating how the citizens would not benefit from the passage of this bill as it creates an annual surcharge on consumer bills to pay for normal utility expenditures.

Don Low, Kansas Corporation Commission, KCC, (Attachment 6), spoke in opposition to **SB 414** as it allows gas companies to increase rates by up to 40 cents a month each year to recover the costs of eligible projects, without a rate case.

Questions were asked and comments were made by Representatives: Rob Olson, Tom Sloan, Lynne Oharah, Oletha Faust-Goudeau, Carl Krehbiel, and Carl Holmes.

CONTINUATION SHEET

MINUTES OF THE House Utilities Committee at 9:00 A.M. on March 14, 2006 in Room 231-N of the Capitol.

The hearing on SB 414 was closed.

The next meeting is scheduled for March 15, 2006.

Meeting Adjourned.

KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR

BRIAN J. MOLINE, CHAIR

ROBERT E. KRÉHBIEL, COMMISSIONER

MICHAEL C. MOFFET, COMMISSIONER

BEFORE THE SENATE UTILITIES COMMITTEE
PRESENTATION OF THE
KANSAS CORPORATION COMMISSION
February 2, 2006

SB 414

Thank you, Chairman and members of the Committee. I am Don Low, Director of the Utilities Division for the Kansas Corporation Commission. I appreciate the opportunity to testify on SB 414 on behalf of the Commission. The Commission opposes this legislation because it does not allow for a determination of the reasonableness of and need for a surcharge based on the individual circumstances of each natural gas utility.

Surcharges such as the proposed GSRS represent what is known as "single issue ratemaking." Single issue ratemaking occurs when customer rates are changed based on only a single aspect of the numerous factors that normally go into determining the revenue requirements for a traditionally regulated company. Single issue ratemaking is a departure from the normal practice of determining appropriate rates by looking at all the expenses, investment, cost of capital and revenues of a utility in a test period. The concern that must be addressed in evaluating single issue rates is that changing rates based on only one factor necessarily ignores potential offsetting changes in other factors. For example, increases in some costs may be offset by decreases in other costs or by increased revenues. If there are such offsetting changes, the rates resulting from the examination of only one factor might not accurately reflect the real financial needs of the company.

This is not to say that such a ratemaking approach is never justified. Indeed, the KCC and other state commissions generally allow for "single issue ratemaking" when there is enough justification to override the general concern that resulting rates might be unreasonable.

The Kansas legislature has provided specific authorization for single issue ratemaking in two situations. K.S.A. 66-117(f) provides for a surcharge by electric and natural gas utilities to reflect changes in the utility's ad valorem tax expenses. K.S.A. 6-1230 *et seq* provided for a similar surcharge for right-of-way fees imposed by cities but it was limited to costs incurred during a short period in 2002 and 2003. In addition, K.S.A. 66-1237 provides for the unbundling of transmission costs and subsequent changes in rates. Although the transmission rate changes are dependent on approval by FERC, they might be viewed as a form of single issue ratemaking.

The KCC has also exercised its discretion under existing law to allow specific surcharges or pass-through mechanisms. The Purchased Gas Adjustment (PGA) and Energy Cost Adjustment (ECA) mechanisms first were allowed in the late 1970's when natural gas and energy costs were volatile and largely beyond the control of the utilities. The ECA was eliminated for some electric companies in the early 90's when energy costs were more stable but has recently been reinstated. The Commission also recently approved of an Environmental Cost Recovery Rider to allow for quicker recovery of Westar's expected investments in pollution control facilities. That ECRR is expected to reduce the overall final costs to ratepayers of the equipments.

In deciding to allow these mechanisms, the Commission has carefully considered whether there was good reason to override the general concerns about single-issue ratemaking. Our concern with SB 414 is that it would not let the KCC undertake that balancing with regard to the specific circumstances of each company. Under subsection 4(b)(4) of the bill, the KCC is required to allow a GSRS for the company if the costs involved meet the bill's criteria. Thus, even if the company were experiencing declines in other expenses or investment that more than offset the costs addressed in the GSRS, the KCC would not have the ability to deny a surcharge. We recognize that there are limitations on the size and duration of the GSRS imposed by the bill. Nonetheless, the concern is that, without vesting discretion in the Commission to weigh the equities, circumstances could arise whereby the surcharge could result in customers paying unreasonable rates. Consequently, the Commission opposes the mandatory nature of this bill.

Before the Senate Utilities Committee
SB 414
Testimony of Larry Berg, Vice President of Corporate Relations
Midwest Energy, Inc.
1330 Canterbury Road, Hays, Kansas
785-623-8148 (cell)
February 2, 2006

Chairman Emler and Members of the Committee,

I appreciate the opportunity to testify in support of Senate Bill 414, the Gas Safety and Reliability Act. Midwest Energy is a customer-owned utility that provides natural gas service to nearly 42,000 customers in small towns and rural areas of Western Kansas. This legislation would help us to continue the provision of safe and reliable natural gas service.

For the sake of brevity, I will not repeat the supporting reasons already presented by representatives from Kansas Gas Service and Aquila. We are in agreement.

In addition to those comments, Midwest Energy faces unique challenges. The demographic trends in Western Kansas are no secret. Midwest Energy does not enjoy the load growth present in more populated areas. Most of our towns are losing population. Therefore, in addition to the usual inflationary pressures, we have fewer customers using natural gas. In the last three years, we have lost three percent of our customer base.

Compounding that problem is the low customer density of our service area. Midwest Energy only serves about 14 customers per mile of gas pipe. Compare that to the number of homes or business that might be served by a single block of pipe in an urban setting.

The ability to pass through the cost of prudent safety and reliability investments in a timely manner is crucial to our on-going financial health and the customer base that remains. Although rate cases are necessary from time to time, we believe any measure that helps delay the costs of preparing, filing and litigating rate cases is good for our customers.

Midwest Energy is open to proposals that would address concerns of the Kansas Corporation Commission. I appreciate this opportunity and will take questions at the appropriate time. Thank you.



KANSAS GAS SERVICE

A DIVISION OF ONEOK

Before the Senate Utilities Committee

SB 414

Testimony of Brad Dixon, President

Kansas Gas Service

7421 W. 129th Street, Overland Park, Kansas

913-319-8600

February 2, 2006

Chairman Emler and Members of the Committee,

I appreciate the opportunity to testify in support of Senate Bill 414, which is known as the Gas Safety and Reliability Act. Kansas Gas Service, which provides natural gas service to over 650,000 customers in the State of Kansas, supports this bill because it furthers the ability of Kansas Gas Service and other natural gas utilities operating in the state to achieve the named purpose of the bill: that is to provide safe and reliable gas service.

Pursuant to this bill, natural gas public utilities operating in the state of Kansas will be able to more effectively and efficiently comply with state and federal requirements for natural gas safety. The legislation will also enable natural gas public utilities to comply with the requests of federal, state and local jurisdictions that request the utilities to relocate their facilities which may be located in streets and highways to facilitate street and highway improvement projects which occur throughout the state.

Kansas Gas Service and the other natural gas utilities operating in the state spend significant sums on an annual basis to provide safe reliable service. We also spend significant sums to relocate our facilities in streets and highways to facilitate highway and street improvement projects. For the years, 2003, 2004 and 2005, Kansas Gas Service spent approximately \$24 million per year on these groups of expenditures. This would equate to an annual charge of less than \$5.00.

These expenditures are not revenue enhancing to Kansas Gas Service and the natural gas utilities. The expenditures do not relate to providing service to new load. The expenditures are made to fulfill mandates required by governmental units. We do not contest the need for these mandates. They are appropriate. These mandates enhance safety, and promote the public well being through enhanced infrastructure in our local communities. These expenditures however, as I said, do not generate additional revenue for the natural gas utilities operating in the state.

Under Senate Bill 414, natural gas public utilities will be able to make timely recovery of these expenditures. The bill will enable natural gas utilities to make filings before the Kansas Corporation Commission showing how much money has been expended and the amount to be recovered. This bill has been modeled upon legislation passed in the state of Missouri in 2003.

In addition to enhancing safety through more timely recovery of non-revenue enhancing safety expenditures, the legislation will assist in reducing regulatory expense and large rate increases. By allowing more timely recovery for safety related and infrastructure enhancement programs through the mechanism set forth in Senate Bill 414, there will be less frequent need for expensive contested rate case filings, the costs of which are passed on to customers. When such filings are made, the rate increases requested will also be less than they would otherwise be thereby reducing rate shock to customers at the time of their regular filings.

There are provisions to protect consumers against inappropriate expenditures. Utilities are limited in the number of filings they can make under this legislation. The filings will be subject to a review by the Kansas Corporation Commission. The legislation requires the utility to make a major rate case filing every five years. To the extent that the Commission determines in the major filing that any expenditures were inappropriate, they will be subject to disallowance and refund. The utilities are limited by the amount of revenues that they could request under this filing procedure to no more than 10% of their base revenues as determined in their last rate case. To the extent that there is any over collection of the surcharge, such over collection will be credited back to consumers on an annual basis.

You may question why do we need this legislation when you could simply file for a rate increase. It is our opinion that the traditional regulatory model does not efficiently fit the current financial environment for natural gas utilities in meeting their obligations to provide safe and reliable natural gas service. Kansas Gas Service and the other utilities operating in Kansas are continuously replacing aging infrastructure and relocating infrastructure to meet safety needs and infrastructure enhancements. These investments do not enhance revenues. The assets that they are replacing were initially installed at a significantly reduced cost compared to today and they were installed to meet a growing customer base. Today, we might replace a main line extension on a major thoroughfare that was initially installed more than 50 years ago. That line may have been installed at a cost of approximately \$1.00 per foot and today is replaced at a cost of approximately \$28.00 per foot. When the line was installed, it was there to meet the growing needs of a thriving community. Today, there is no additional load associated with that line, simply the same amount of consumption as was there before. We are past the days in the natural gas industry when an increasing customer load will offset the cost of infrastructure placements obviating the need for rate cases. We are past the time when a natural gas utility can make investments and make up for these investments through load growth or cost cutting. We are faced with a situation where we are in a constant need for additional capital to make necessary capital replacements.

To file for an annual increase to meet these increasing costs over which we have no control is inefficient and costly. Annual rate cases are time consuming and costly. This bill provides a more streamlined approach to provide for non-revenue generating investments. Customers will be protected under this bill against charges for imprudent investments. The customer will avoid the significant regulatory cost of annual rate filings which would be necessary to timely recover our investments to provide service to our customer.

Thank you for the opportunity to address you today and I will be available for questions.



Aquila

Testimony in Support of Senate Bill 414

Remarks of Richard C. Loomis

Aquila, Inc.

Vice President, Kansas and Colorado Gas

Good morning Mr. Chairman and Members of the Senate Utilities Committee.

Thank you for the opportunity to present testimony this morning. My name is Chuck Loomis, Vice President of Kansas and Colorado Gas Operations for Aquila, Inc. I am based in Lawrence, Kansas which serves as the headquarters for Aquila's Kansas Gas Operations.

Aquila's natural gas operations in Kansas serve approximately 105,000 customers in over 40 communities across the state, including Lawrence, parts of Wichita, Dodge City, Garden City, Liberal and Goodland.

Aquila stands in support of Senate Bill 414. It is fair to say that replacing and improving infrastructure is a challenge for many. State highways, city streets, sewer systems, water systems all serve as examples of infrastructure that must be replaced and improved over time. Typically, gas utility franchises allow gas lines to be installed in public right of way. When a city or the state undertakes an infrastructure improvement project, the gas utility may be required to move its gas lines in the public right of way. Senate Bill 414 allows gas utilities to recover the cost of these relocation projects in a more timely manner. Aquila's investment in

relocation of gas mains has averaged approximately \$400,000 annually in the past three years.

Aging gas utility infrastructure is a challenge for gas utilities as well. Original installation of natural gas mains and service lines occurred many years ago, and due to age, corrosion, and other factors have led to deterioration over time. To ensure a safe, reliable gas distribution system, Aquila invests \$2 - \$3 million annually for gas main, service line and other facility replacements. Senate Bill 414 helps to address a challenge faced by gas utilities relating to recovering the cost of investing in safety related pipeline replacement projects in a more timely manner than occurs in the historical regulatory process.

As a utility invests capital in pipeline relocation and replacement projects, there is a lag in cost recovery from the time the investment is made until such investment is included in the utility's rate base, typically through a rate case filing. This lag is often referred to as regulatory lag. Generally, these types of investments are not controversial issues, but are a regular part of maintaining integrity throughout the gas systems. This bill allows recovery of utility investment in these non-revenue generating projects through a gas system replacement surcharge, while maintaining the necessary and appropriate checks and balances in the regulatory system to ensure utility investments are prudent.

Aquila also recognizes another potential benefit from passage of this bill. During 2005, nearly 100 rural customers in Southwest Kansas were disconnected from natural gas service due to potentially unsafe levels of hydrogen sulfide in the gas supply. Most of the customers were converted to propane. Under this bill, Aquila

may be able to extend service to customers to allow continued provision of safe, reliable natural gas service.

Aquila believes that implementation of a Gas System Replacement Surcharge as envisioned in this bill will result in a more efficient and effective regulatory process. We remain committed to discussing and resolving concerns that the Kansas Corporation Commission or other parties may have. I appreciate the opportunity to present remarks to you this morning and am happy to stand for questions at the appropriate time. Thank you.

KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR

BRIAN J. MOLINE, CHAIR

ROBERT E. KREHBIEL, COMMISSIONER

MICHAEL C. MOFFET, COMMISSIONER

BEFORE THE SENATE UTILITIES COMMITTEE
PRESENTATION OF THE
KANSAS CORPORATION COMMISSION
February 2, 2006

SB 414

Thank you, Chairman and members of the Committee. I am Don Low, Director of the Utilities Division for the Kansas Corporation Commission. I appreciate the opportunity to testify on SB 414 on behalf of the Commission. The Commission opposes this legislation because it does not allow for a determination of the reasonableness of and need for a surcharge based on the individual circumstances of each natural gas utility.

Surcharges such as the proposed GSRS represent what is known as "single issue ratemaking." Single issue ratemaking occurs when customer rates are changed based on only a single aspect of the numerous factors that normally go into determining the revenue requirements for a traditionally regulated company. Single issue ratemaking is a departure from the normal practice of determining appropriate rates by looking at all the expenses, investment, cost of capital and revenues of a utility in a test period. The concern that must be addressed in evaluating single issue rates is that changing rates based on only one factor necessarily ignores potential offsetting changes in other factors. For example, increases in some costs may be offset by decreases in other costs or by increased revenues. If there are such offsetting changes, the rates resulting from the examination of only one factor might not accurately reflect the real financial needs of the company.

This is not to say that such a ratemaking approach is never justified. Indeed, the KCC and other state commissions generally allow for "single issue ratemaking" when there is enough justification to override the general concern that resulting rates might be unreasonable.

The Kansas legislature has provided specific authorization for single issue ratemaking in two situations. K.S.A. 66-117(f) provides for a surcharge by electric and natural gas utilities to reflect changes in the utility's ad valorem tax expenses. K.S.A. 6-1230 *et seq* provided for a similar surcharge for right-of-way fees imposed by cities but it was limited to costs incurred during a short period in 2002 and 2003. In addition, K.S.A. 66-1237 provides for the unbundling of transmission costs and subsequent changes in rates. Although the transmission rate changes are dependent on approval by FERC, they might be viewed as a form of single issue ratemaking.

The KCC has also exercised its discretion under existing law to allow specific surcharges or pass-through mechanisms. The Purchased Gas Adjustment (PGA) and Energy Cost Adjustment (ECA) mechanisms first were allowed in the late 1970's when natural gas and energy costs were volatile and largely beyond the control of the utilities. The ECA was eliminated for some electric companies in the early 90's when energy costs were more stable but has recently been reinstated. The Commission also recently approved of an Environmental Cost Recovery Rider to allow for quicker recovery of Westar's expected investments in pollution control facilities. That ECRR is expected to reduce the overall final costs to ratepayers of the equipments.

In deciding to allow these mechanisms, the Commission has carefully considered whether there was good reason to override the general concerns about single-issue ratemaking. Our concern with SB 414 is that it would not let the KCC undertake that balancing with regard to the specific circumstances of each company. Under subsection 4(b)(4) of the bill, the KCC is required to allow a GSRS for the company if the costs involved meet the bill's criteria. Thus, even if the company were experiencing declines in other expenses or investment that more than offset the costs addressed in the GSRS, the KCC would not have the ability to deny a surcharge. We recognize that there are limitations on the size and duration of the GSRS imposed by the bill. Nonetheless, the concern is that, without vesting discretion in the Commission to weigh the equities, circumstances could arise whereby the surcharge could result in customers paying unreasonable rates. Consequently, the Commission opposes the mandatory nature of this bill.

Citizens' Utility Ratepayer Board

Board Members:

Gene Merry, Chair
A. W. Dirks, Vice-Chair
Carol I. Faucher, Member
Laura L. McClure, Member
Douglas R. Brown, Member



State of Kansas

Kathleen Sebelius, Governor

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SENATE UTILITIES COMMITTEE S.B. 414

Testimony on Behalf of the Citizens' Utility Ratepayer Board
By David Springe, Consumer Counsel
February 2, 2006

Chairman Emler and members of the committee:

Thank you for this opportunity to offer testimony on S.B. 414. The Citizens' Utility Ratepayer Board is opposed to this bill for the following reasons:

First, CURB does not support codifying in statute the type of mechanism in statute. While CURB would likely oppose before the Commission the implementation of an unnecessarily broad and one sided mechanism, as is proposed in this bill, codifying this type of mechanism in statute removes the Commission's flexibility to design a fair and balanced approach to capital recovery. Further, CURB believes that this type of mechanism is unnecessary. The utilities throughout history have had to deal with unexpected extraordinary capital expenditures. The Commission has historically granted accounting orders for extraordinary capital expenditures that are outside of the utility's normal operating parameters, or are outside of a utility test year. There is simply no reason to create this type annual surcharge. In fact, through the flexibility of the regulatory process, we did in fact place a small surcharge on Aquila bills in Aquila's last gas rate case to pay for a specific right of way project (21st street in Wichita). CURB would note that this was limited, specific, and the product of an agreement of all parties, meaning that customers also received other benefits within the agreement. It was a balance approach to a specific issue that benefited all parties, unlike the current bill.

Second, providing this type of one sided cost recovery mechanism favors the utility by shifting further risk onto ratepayers. Natural gas utilities already pass 100% of the gas costs directly to consumers each month. Of the total annual revenues that the utility needs to collect to pay its operating costs and profits for shareholders, the monthly customer charge provides accounts for over 40%. The monthly customer charge revenues are safe and risk free and non-volatile sources of capital recovery for the utility. Strategically every utility attempts to increase the customer charge to higher levels in each ratecase to "front load" costs into higher customer charges to reduce financial risk exposure. The remaining 50%-60% of annual revenues due a natural gas utility are collected through volumetric charges collected when customer uses the natural gas. However, through agreements with each gas utility, we have created a Weather Normalization Adjustment, that guarantees that the utility will collect its annual revenue requirement, regardless of whether it is colder or warmer than normal. This is a

mechanism that removes financial risk of changing weather from the utility. (CURB would note that the WNA mechanisms are a balanced risk reduction, benefiting consumers when weather is colder than normal) The Commission passes property tax changes through to consumers annually. And recently the Commission changed 30 years of policy and is now allowing natural gas utilities to recover the gas portion of uncollectible bills every year through the PGA mechanism. It is clear that in the broadest sense, natural gas utility rates, and policies implemented by the Commission, have served to minimize the financial risk that Kansas natural gas utilities face.

It is within this broad context that this bill must be understood. What this bill proposes to do is take one of the few remaining financial risks to the utility, that is timing difference between when the utility expends capital and when it can begin recovering capital in a rate case (regulatory lag), and create a mechanism to move that risk directly onto consumer bills. This bill will allow the utilities to increase rates twice a year as they spend money, without having the Commission or CURB examine the utility's other costs. From an accounting standpoint, the depreciation expense that is already in consumer rates should be adequate to fund the capital expenditures necessary to replace worn out or unsafe facilities. Using the depreciation expense to fund new capital expenditure replaces depreciated utility ratebase with new utility ratebase. (For example, assume a utility has a rate case every year, and has \$10 million in depreciation expense and \$10 million in new capital expenditures. Consumers should be held harmless, since rates would go down as rate base decreased by \$10 million through depreciation, but that ratebase is replaced by the new \$10 million capital expenditure, causing the consumer rates to go back up to the level they started. Under this bill, consumer rates would go up to account for the \$10 million spent by the utility, but rates would not be allowed to reflect the reduction for the \$10 million of depreciated rate base. Consumers pay higher rates, but don't get the benefit of any offsetting reductions.)

Third, while the utilities suggest that this bill, and the surcharge it creates will apply narrowly to a small subset of capital expenditures (safety and right of way), as drafted, the language in the bill will allow a natural gas utility to place almost all of its annual capital expenditures into this surcharge. For example, to be an "eligible infrastructure system replacement" and therefore eligible for the surcharge, the capital expenditure can be to "replace or extend the useful life of an existing infrastructure". (Section 2(d)(4) at page 1, line 35) With the exception of new lines placed in service to supply brand new developments, this language is broad enough to make every capital expenditure made by a utility on plant replacement or upgrade in every year an eligible infrastructure system replacement.

Also, the "natural gas utility plant projects", the cost of which will be placed in the surcharge are "mains, valves, service lines regulator stations vaults and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorating condition" (Section 2(f)(1) at page 1, line 41) Given that every utility has an ongoing obligation to operate a safe and reliable system, and must replace "worn out and deteriorating" facilities to maintain safety levels, again, every capital expenditure would fall within this

category and be eligible for inclusion in the surcharge. This bill is not narrow or specifically tailored.

Under the bill, utilities can avoid a rate review for up to 60 months, or longer, while increasing rates to consumers through the surcharge up to twice a year. (Section 3(b)-(c) and Section 4(c)) The bill only allows staff to review whether the “underlying costs are in accordance with the provisions” of the act and to “confirm the proper calculation”, and specifically states that “no other revenue requirement or ratemaking issues may be examined” in consideration of the petition. (Section 4(b)(2)) These provision are remarkably one sided and unfair to consumers. The bill goes on to state specifically what the Commission “shall only” consider in determining the “appropriate pretax revenue” to be generated by the surcharge. (Section 4(d)) Designating these categories as the only things that the Commission can consider specifically precludes CURB or the staff of the Commission from bringing forth evidence that may result in offsetting cost savings to the proposed rate increases. In fact, in calculating some of the costs, the bill specifically excludes any input from CURB. For example, if the utility’s last case was settled in a “black box” (a number is negotiated, but the specific adjustments are not specified) then to calculate the surcharge the bill requires the use of the average of the Staff and Company recommendations from the last case. (Section 4(d)(9)). Using only staff and the company completely ignores CURB’s recommendations in the last case, and will tend to bias upwards what consumers pay under the surcharge. Again, this provides protection and benefit to the utility, but provides nothing to the consumers that have to pay the costs.

This bill is clearly over-broad, ill-defined and one-sided in favor of the utilities. Nothing in this bill benefits, aids or provides protection and balance for consumers. The bill is clearly designed to create a regulatory system that simply reimburses the gas utilities for nearly everything they expend in an immediate and risk free fashion. As such CURB recommends that the Committee protect consumers and not pass this bill.

Thank you.

Without withdrawing or waiving CURB’s outright opposition to this bill, CURB is providing the Committee some suggested mark-up’s to the bill to remove what CURB considers some of the most egregious language in the bill. While CURB does not recommend the Committee pass this bill, if the Committee does decide to move forward with a bill of this nature, CURB request that the Committee make the following changes, at minimum, to bring some level o balance and protection back into the bill.

An Act concerning public utilities; relating to natural gas.

Be it enacted by the Legislature of the State of Kansas:

New Sec. 1 **Citation of act.** This act may be cited as the Gas Safety and Reliability Policy Act.

New Sec. 2 **Definitions.** For the purposes of this act.

(a) "GSRS" means gas system reliability surcharge.

(b) "Appropriate pretax revenues", means the revenues necessary to produce net operating income equal to:

(1) The natural gas public utility's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective GSRS; and

(2) Recover state, federal, and local income or excise taxes applicable to such income; and

(3) Recover depreciation expenses.

(c) "Commission" means the state corporation commission.

(d) "Eligible infrastructure system replacement" means natural gas public utility plant projects that:

(1) Do not increase revenues by directly connecting the infrastructure replacement to new customers;

(2) Are in service and used and required to be used;

(3) Were not included in the natural gas public utility's rate base in its most recent general rate case; and

(4) ~~Replace or extend the useful life of an existing infrastructure;~~

(e) "Natural Gas Public Utility" shall have the same meaning respectively ascribed thereto by K.S.A. 66-1,200(a).

(f) "Natural Gas Utility Plant Projects" may consist only of the following:

(1) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed pursuant to Commission approval to comply with new or extraordinary state or federal safety requirements ~~as replacements for existing facilities that have worn out or are in deteriorated condition; that were not in effect at the time of the utility's last rate hearing;~~

~~(2) Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and~~

(3) ~~(2) Facilities;~~ Facility relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the natural gas public utility.

(g) "GSRs revenues", means revenues produced through a GSRs exclusive of revenues from all other rates and charges.

New Section 3. Rate schedules, procedures to establish or change.

(a) Notwithstanding any provisions of K.S.A. 66-117, and this chapter to the contrary, beginning July 1, 2006, a natural gas public utility ~~providing gas service~~ may file a petition and ~~proposed rate schedules~~ with the commission to establish or change a GSRs rate schedules that will allow for the adjustment of the natural gas public utility's rates and charges to provide for the recovery of costs for eligible infrastructure system replacements. ~~The commission may not approve an GSRs to the extent it would produce total annualized GSRs revenues below the lesser of one million dollars or one-half of one percent of the natural gas public utility's base revenue level approved by the commission in the natural gas public utility's most recent general rate proceeding. The commission may not approve a GSRs to the extent it would produce total annualized GSRs revenues exceeding ten percent of the natural gas public utility's base revenue level approved by the commission in the natural gas public utility's most recent general rate proceeding. A GSRs and any future changes thereto shall be calculated and implemented in accordance with the provisions of New Sections 2 through 4. GSRs revenues shall be subject to a refund based upon a finding and order of the commission to the extent provided in subsections (e) and (h) of New Section 4.~~

(b) The commission shall not approve a GSRs for any natural gas public utility that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the past 60 months, unless the natural gas public utility has filed for or is the subject of a new general rate proceeding.

(c) In no event shall a natural gas public utility collect a GSRs for a period exceeding sixty months unless the natural gas public utility has filed for or is the subject of a new general rate proceeding; provided that the GSRs may be collected until the effective date of new rate schedules established as a result of the new general rate proceeding, or until the subject general rate proceeding is otherwise decided or dismissed by issuance of a commission order without new rates being established.

New Section 4 Documentation to be submitted—notice to be published—examination of proposal—authorization by commission, when—pretax revenues, factors to be considered—revised rate schedule, filed when—rulemaking authority.

(a) At the time that a natural gas public utility files a petition with the commission seeking to establish or change a GSRs, it shall submit proposed GSRs rate schedules and its supporting documentation regarding the calculation of the proposed GSRs with the petition, and shall serve a copy of said petition upon the Commission Staff and the Citizens Utility Ratepayer Board. ~~with a copy of its petition, its proposed rate schedules, and its supporting documentation.~~

(b) (1) When a petition, ~~along with any associated proposed rate schedules,~~ is filed pursuant to the provisions of New Sections 2 through 4, the commission shall conduct an examination of the proposed GSRs.

(2) The staff of the commission ~~may examine information of the Natural gas public utility to confirm that the underlying costs are in accordance with the provisions of New Sections 2 through 4 and to confirm proper calculation of the proposed~~

charge, and may shall submit a report regarding its examination to the commission not later than sixty days after the petition is filed. ~~No other revenue requirement or ratemaking issues may be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of New sections 2 through 4.~~

3) ~~(2)~~ The commission may hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred twenty days after the petition is filed.

~~(4)~~ ~~(3)~~ If the Commission finds that a petition complies with the requirements of New Sections 2 through 4, the commission shall enter an order authorizing the natural gas public utility to impose a GSRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of New sections 2 through 4.

(c) A natural gas utility may effectuate a change in its rate pursuant to the provisions of this section no more often than ~~two times~~ once every twelve months.

(d) In determining the appropriate pretax revenue, the commission shall consider only the following factors:

(1) The net original cost of eligible infrastructure system replacements. The net original cost shall be defined as the original cost of eligible infrastructure system replacements less associated retirements of existing infrastructure;

(2) The accumulated deferred income taxes associated with the eligible infrastructure system replacements;

(3) The accumulated depreciation associated with the eligible infrastructure system replacements;

(4) The current state, federal, and local income tax or excise rates;

(5) The natural gas public utility's actual regulatory capital structure as determined during the most recent general rate proceeding of the natural gas public utility;

(6) The actual cost rates for the natural gas public utility's debt and preferred stock as determined during the most recent general rate proceeding of the natural gas public utility.

(7) The natural gas public utility's cost of common equity as determined during the most recent general rate proceeding of the natural gas public utility.

(8) The current depreciation rates applicable to the eligible infrastructure system replacements; and

(9) In the event information pursuant to subdivisions (5), (6), and (7) of this subsection is unavailable and the commission is not provided with such information on an agreed-upon basis, the Commission shall utilize the ~~average of the recommendations contained in the testimony submitted by the natural gas public utility, and~~ Commission staff during the most recent general rate proceeding of the natural gas public utility to determine the capital structure, recommended cost rates for debt and preferred stock, and recommended cost of common equity to determine the average weighted cost of capital.

(e) (1) The monthly GSRS charge shall be allocated among the natural gas public utility's classes of customers in the same manner as costs for the same type of facilities was allocated among classes of customers in the natural gas public utility's most recent general rate proceeding. If that allocation is not available or determinable, the

Commission shall utilize ~~the average of the recommendations contained in the testimony submitted by the natural gas public utility and the commission staff during the most recent general rate proceeding of the natural gas public utility~~ regarding class allocation of costs.

(2) At the end of each twelve-month calendar period the GSRS is in effect, the natural gas public utility shall reconcile the differences between the revenues resulting from a GSRS and the appropriate pretax revenues as found by the commission for that period and shall submit the reconciliation and a proposed GSRS adjustment to the commission for approval to recover or refund the difference, as appropriate, through adjustments of the GSRS charge.

(f) (1) A natural gas public utility that has implemented an GSRS pursuant to the provisions of New Sections 2 through 4 shall file revised rate schedules to reset the GSRS to zero when new base rates and charges become effective for the natural gas public utility following a commission order establishing customer rates in a general rate proceeding that incorporates in the utility's base rates, subject to subsections (h) and (i) of this section, eligible costs previously reflected in the currently effective GSRS.

(2) Upon the inclusion in a natural gas public utility's base rates subject to subsections (h) and (i) of this section of eligible costs previously reflected in a GSRS, the natural gas public utility shall immediately thereafter reconcile any previously unreconciled GSRS revenues as necessary to ensure that revenues resulting from the GSRS match as closely as possible the appropriate pretax revenues as found by the commission for that period.

~~(g) A natural gas public utility's filing of a petition or change to an GSRS pursuant to the provisions of New Sections 2 through 4 shall not be deemed to be a rate increase for purposes of K.S.A. 66-117.~~

(h) (g) Commission approval of a petition, and any associated rate schedules, to establish or change a GSRS pursuant to the provisions of New Sections 2 through 4 shall in no way be binding upon the commission in determining the ratemaking treatment to be applied to eligible infrastructure system replacements during a subsequent general rate proceeding when the commission may undertake to review the reasonableness and prudence of such costs. In the event the commission disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible infrastructure system replacements previously included in a GSRS, the natural gas public utility shall offset its GSRS in the future as necessary to recognize and account for any such over collections.

(h) (h) Nothing in this section shall be construed as limiting the authority of the commission to review and consider infrastructure system replacement costs along with other costs during any general rate proceeding of any natural gas public utility.

New Section 5: Notwithstanding the above sections, the Commission shall retain the option of expensing directly on consumer bills, the cost of eligible infrastructure system replacement costs for natural gas utility projects, rather than calculating and imposing the GSRS in a manner that recovers the appropriate pretax revenues as defined in the bill.

New Section 6 5. Effective Date. This act shall take effect and be in force from and after its publication in the statute book.

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Pat Apple

In the Matter of a General Investigation)
Regarding the Acceleration of Replacement)
of Natural Gas Pipelines Constructed of) Docket No. 15-GIMG-343-GIG
Obsolete Materials Considered to be a Safety)
Risk.)

ORDER ON JURISDICTIONAL ISSUE

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and records, and being duly advised in the premises, the Commission finds:

I. Background

1. On February 2, 2015, Commission Staff (Staff) submitted a Report and Recommendation (R&R) recommending the Commission open a general investigation docket to receive comments on proposed parameters of an accelerated natural gas pipeline replacement program.¹

2. On March 12, 2015, the Commission issued an Order Opening General Investigation (Order) adopting the recommendations set forth in Staff's R&R.² The Order agreed with Staff's recommendation to request comments on seven specific issues, and requested the parties initially address the question of whether the Commission has jurisdictional authority to establish alternative ratemaking methodologies for pipe replacement that go beyond the

¹ Staff Report & Recommendation, February 2, 2015, p.1 (Staff R&R).

² Order Opening General Investigation, March 12, 2015 (Order).

parameters established under the Gas Safety and Reliability Policy Act (GSRS)³ before addressing the other issues.⁴ The Order stated the Commission may request further comments following a decision on the jurisdictional question.⁵

3. On April 17, 2015, the respective parties to this docket filed their briefs on the jurisdictional issue. In general, the Local Distribution Companies (LDCs) and Commission Staff (Staff) argued the GSRS does not preclude the Commission from implementing an additional ratemaking methodology to replace pipelines considered to be a safety risk and recover the costs of such replacement from ratepayers. The Citizens' Utility Ratepayer Board (CURB) disagreed, arguing the GSRS is the sole avenue for pipeline replacement and cost recovery outside of general rate cases, and thus limits the Commission's authority to establish an alternative program.

II. Findings and Conclusions

4. The Commission's general ratemaking authority is broad and plainly authorized under Kansas law. The Kansas Legislature has granted the Commission "full power, authority and jurisdiction to supervise and control the natural gas public utilities"⁶ In exercising such power, the Commission has the "power to . . . require all natural gas public utilities . . . to establish and maintain just and reasonable rates when the same are reasonably necessary in order to maintain reasonably sufficient and efficient service"⁷ Furthermore, "...all grants of power, authority and jurisdiction...made to the commission [within the Natural Gas Act] shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of [the]

³ K.S.A. 66-2201, *et seq.*

⁴ Order, p. 3.

⁵ *Id.*

⁶ K.S.A. 66-1,201.

⁷ K.S.A. 66-1,202.

act are expressly granted to and conferred upon the commission.”⁸

5. Additionally, although K.S.A. 66-117 generally requires any change in rates to be approved upon individual application, the statute’s language expressly allows the Commission to prescribe alternative methodologies.⁹ In fact, the Kansas Court of Appeals has specifically recognized this authority and found such methodologies may include mechanisms such as surcharges and riders that allow for automatic rate adjustments outside of a general rate proceeding.¹⁰

6. The GSRS statute, by its express terms, does not purport to be the exclusive means of cost-recovery for all infrastructure system replacement. The statute merely provides one optional avenue of cost recovery in the time between rate cases for a specific subset of infrastructure repair and replacement.

7. The GSRS program contains several very favorable terms to LDCs that restrict the Commission’s traditional ratemaking powers. These terms are balanced out by a \$0.40 per customer cap that limits the use of the GSRS. The Commission finds any new and separate infrastructure mechanism it may implement would not change the monetary cap and would thus not conflict with the plain language of the GSRS statute.

8. Furthermore, the purpose of the GSRS is entirely separate and distinct from the scope of a system-wide obsolete pipeline replacement program. GSRS projects are very specifically defined to include only 1) infrastructure projects to comply with state or federal safety requirements and 2) facility relocations required due to public works projects.

⁸ K.S.A. 66-1,207.

⁹ See K.S.A. 66-117(a).

¹⁰ *Kansas Indus. Consumers Group, Inc. v. The State Corp. Comm’n of the State of Kansas*, 36 Kan. App. 2d 83, 92-94, 138 P.3d 338, 347-48 (2006) (KIC case).

Alternatively, Staff's proposed accelerated pipeline replacement program would cover system-wide replacement of all pipeline infrastructure constructed of obsolete materials considered to be a safety risk. Therefore, both the scopes and goals of the GSRS program and Staff's proposed program are quite different.

9. The *expressio unius* doctrine – to express or include one thing implies the exclusion of the other¹¹ – is a canon of interpretation used to determine legislative intent when it is not otherwise discernible from the words of the statute.¹² The plain language of the GSRS statute is not ambiguous; therefore, the Commission need not apply the doctrine. Furthermore, in the KIC case, the Kansas Court of Appeals held that the doctrine should not be applied to the Commission's ratemaking powers because the legislature has granted the Commission broad quasi-legislative ratemaking authority, and that broad grant of power overcomes any argument that the Commission has not been expressly authorized to prescribe a specific ratemaking methodology.¹³ Therefore, the Commission's broad ratemaking authority acts as a backstop where the legislature has not explicitly prescribed the method in which that ratemaking authority should be wielded.

10. The Kansas legislature has created various surcharges by statute. However, the legislature has not specifically authorized a surcharge for accelerated replacement of gas pipelines constructed of obsolete materials. Under the holding in the KIC Case, the absence of specific statutory authorization does not limit the Commission's ability to create a surcharge for accelerated replacement of gas pipelines constructed of obsolete materials. Only an express statutory limitation will defeat the legislature's grant of broad ratemaking authority to the

¹¹ *Expressio unius est exclusio alterius*, Black's Law Dictionary (10th ed. 2014).

¹² *In re Marriage of Killman*, 264 Kan. 33, 42, 955 P. 2d 1228 (1998).

¹³ See *KIC v. KCC*, 36 Kan. App. 2d at 97.

Commission, and the GSRS statute does not contain such an express statutory limitation.

11. The Commission agrees with the LDCs and Staff that the GSRS is an optional mechanism for cost recovery for certain infrastructure replacement projects and does not limit the Commission's authority to implement additional alternative ratemaking methodologies for recovery of costs related to accelerated replacement of natural gas pipelines considered to be a safety risk. The Commission therefore concludes it has jurisdictional authority to establish alternative ratemaking mechanisms, including both surcharges and deferred cost recovery mechanisms, for recovery of costs associated with accelerated replacement of natural gas pipelines constructed of obsolete materials considered to be a safety risk.

12. As the Commission discussed above, the GSRS and any proposed pipeline replacement program would be separate in their scope and policy goals. The Commission concludes it does not have jurisdictional authority to expand or change the GSRS. The Commission respects the legislative process that created the GSRS and will not expand or change that program.

THEREFORE, THE COMMISSION ORDERS:

A. The Commission has jurisdictional authority to establish an alternative ratemaking mechanism for accelerated replacement of natural gas pipelines constructed of obsolete materials considered to be a safety risk.

B. Prehearing Officer Jay Van Blaricum will contact the parties to develop a procedural schedule for the remainder of this proceeding.

C. Parties have 15 days, plus three days if service is by mail, from the date of service of this Order in which to petition the Commission for reconsideration.¹⁴

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

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner.

Dated: JUN 18 2015

Amy L. Gilbert

ORDER MAILED JUN 19 2015

Amy L. Gilbert
Secretary

JV

¹⁴ K.S.A. 66-118b; K.S.A. 2014 Supp. 77-529(a)(1).

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

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ORDER MAILED JUN 19 2015

The Docket Room hereby certified that on this ___ day of _____, 20___, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.

IN RE: DOCKET NO. 15-GIMG-343-GIG

DATE JUN 18 2015

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
WALKER HENDRIX, DIR, REG LAW KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC. 7421 W 129TH ST OVERLAND PARK, KS 66213-2634		

ORDER MAILED JUN 19 2015

The Docket Room hereby certified that on this _____ day of _____, 20_____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.

CERTIFICATE OF SERVICE

15-GIMG-343-GIG

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service or placed in the United States mail, postage prepaid on this 6th day of July, 2015, to the following:

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