THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

REDACTED POST-HEARING BRIEF OF

THE CITIZENS' UTILITY RATEPAYER BOARD

Comes Now the Citizens' Utility Ratepayer Board (CURB) and submits its post-hearing brief. In support hereof, the CURB states as follows:

I. Introduction

1. The Commission's Staff (Staff) requested that the Commission open this docket to consider approving a system integrity surcharge. In explaining the need for a surcharge, Staff's memo noted that much of the state's natural gas infrastructure is old and obsolete. The memo raised Staff's concern that the rate of replacement may not be sufficient to stem the threat of leakage from old pipes. The Commission Ordered that an investigation be opened in this docket on March 12, 2015, and on March 19, 2015, an Order Setting Procedural Schedule was issued, whereby evidentiary hearing dates and deadlines for filing post-hearing briefs were established. On March 29 and March 30, 2016, this matter came before the Commission for hearing.

2. The following issues were addressed at the hearing:

a) Is it in the public interest for the Kansas gas utilities to accelerate replacement of pipelines constructed of obsolete materials?

b) If the Commission finds programs for the accelerated replacement of obsolete pipe to be in the public interest:

1) What are the necessary and appropriate parameters of the programs; and

2) Should the gas utilities be allowed to recover the costs of the programs through an alternative ratemaking mechanism; and

3) What type of alternative ratemaking mechanism is most appropriate for recovery of program costs?

3. At the hearing, the local distribution companies (LDCs) proposed very robust accelerated pipeline replacement programs which they contended are in the public interest. Black Hills/Kansas Gas Utility Company, LLC (Black Hills), proposed to replace all of its bare steel and Aldyl-A service and yard lines within ten (10) years and all bare steel mains within 31 years.[1] Atmos Energy Corporation (Atmos) proposed to replace all of its bare steel, PVC, Aldyl-A, and Century pipelines over a period of thirty-five (35) years.[2] Kansas Gas Service (KGS) is currently operating under two Commission-approved pipeline replacement programs, one for bare steel service lines and the other for cast iron pipelines.[3] KGS does not intend to submit another formal pipeline replacement program at this time, but would like to be permitted to submit a future request based upon its risk-based integrity management system.[4]

4. On May 4, 2016, the LDCs filed their post-hearing briefs. All three LDC post-hearing briefs argue that, due to safety concerns arising out of the age of certain pipelines in their systems, there is a need for their accelerated pipeline replacement programs and that now is an opportune time to initiate the programs. In their post-hearing

[1] Direct Testimony of Todd J. Jacobs, p. 6, line 3.
[2] Direct Testimony of Christian L. Paige, p. 9, lines 2-3.
[3] Direct Testimony of Randal B. Spector, p. 6, line 1.
[4] Direct Testimony of David N. Dittemore, p. 5, lines 29-31.

briefs, the LDCs argue that the alternative ratemaking mechanisms proposed in their various programs are necessary to avoid what they characterize as a disincentive to the investment in pipeline replacement programs caused by cost recovery through traditional rate cases. Black Hills and ATMOS support the System Integrity Program (SIP) proposed by ATMOS witness Gary L. Smith. KGS takes issue with certain provisions of the SIP in its brief, but supports alternative ratemaking mechanisms generally with respect to pipeline replacement.

5. This post-hearing brief is filed in response to the LDCs' briefs. The CURB's brief is divided into three sections. In the first section, the CURB shows that the accelerated pipeline replacement programs (as proposed by the LDCs) are contrary to the public interest. In the second section, the CURB shows that cost recovery of pipeline replacement programs (outside of the GSRS statute) should be allowed only through traditional rate cases filed with the Commission. Thus, the principal thrust of this brief is that the accelerated pipeline replacement programs, including the alternative ratemaking mechanisms contained in these programs (as they are proposed by the LDCs) should be rejected by the Commission.

6. The third section of this brief addresses the potential of a multi-year study program, assuming that the Commission may determine it appropriate to further study the issues involved herein and to establish policy with respect to accelerated pipeline replacement based upon data derived from a comprehensive study. In these regards, the CURB realizes that there has been no comprehensive study conducted on the condition of the pipelines which compose the LDCs' systems, and the CURB recognizes some benefit in the study which was included in the five-year pilot program proposed by the Staff.

Therefore, in the third section of this brief, the CURB suggests that several safeguards should be established in such a study (pilot) program to protect the residential and small business ratepayers. By Prehearing Officer Order, dated April 20, 2016, the Commission asked the parties to address certain issues. To the extent that these issues can be addressed by the CURB, responses are included in Appendix "A," attached hereto.

II. Arguments and Authorities

A. It is not in the public interest for Kansas gas utilities to accelerate replacement of pipelines constructed of obsolete materials in the manner proposed by the Kansas gas utilities.

7. The gas utilities attempt to justify the rapid acceleration of the replacement of pipelines which were identified at the hearing as composed of bare steel, PVC, Aldyl-A, and Century pipelines ("subject pipelines") by positing three reasons. First, they assert that these pipelines are old, prone to failure over time, and, therefore, may pose a safety risk.[5] Secondly, the LDCs assert that a proactive plan to replace the subject pipelines is more efficient than one that is simply reactive to pipeline leaks as they occur.[6] The LDCs also assert that a proactive plan will result in savings of Operations and Maintenance (O&M) expenses.[7] Finally, they suggest that the impact upon the ratepayer will be softened by current low natural gas prices.[8]

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[5] Direct Testimony of Jerry A. Watkins, p. 7, line 13); Direct Testimony of John S. McDill, p. 9, lines 1-3); Direct Testimony of Randal B. Spector, p. 5, lines 4-5.
[6] Direct Testimony of Christian L. Paige, p. 15, lines 2-6; Direct Testimony of Jerry Watkins, p. 9, lines 11-12.
[7] Direct Testimony of Jerry Watkins, p. 10, lines 14-16.
[8] Direct Testimony of David N. Dittemore, p. 13, lines 24-26; Direct Testimony of Christian L. Paige, p. 18, lines 6-13.

8. The burden of proof on these issues rests on the LDCs. Generally, the burden of proof (or burden of persuasion) falls upon the party asserting a point; that party must prove the allegations of its petition by a preponderance of the evidence.[9] Accordingly, the LDCs must prove that their plans to rapidly accelerate the replacement of the subject pipelines protect consumer interests. Utility rates are not considered just and reasonable unless consumer interests are protected.[10] The protection of consumer interests must be shown by substantial and competent evidence.[11]

9. The evidence submitted by the LDCs does not justify the rapid pace of their accelerated pipeline replacement programs. There is no substantial, competent evidence in the record which shows any substantial benefit arising from the rapid pipeline replacement proposed by the LDCs. In fact, CURB witnesses Andrea C. Crane and Edward A. McGee provided compelling proof to the contrary. Their combined testimony and the admissions made by the utility witnesses provide three reasons why the accelerated pipeline replacement programs sponsored by the utilities should not be approved by the Commission.

10. Firstly, there is no immediate need for an accelerated pipeline replacement of the scope and pace proposed by the LDCs. The evidence shows that each utility's pipeline system is being operated safely and reliably without a highly accelerated pipeline replacement program. There is no imminent danger of catastrophic failure. Pipeline leaks

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[9] *In re Estate of Robinson,* 236 Kan. 431,439, 690 P.2d 1383 (1984). Order of the Commission. Docket No. 2011-KCPE-581-PRE (8/19/2011), p. 13.
[10] *FPC v. Memphis Light, Gas & Water Div.,* 411 U.S. 458, 474, 36 L. Ed. 2d 426, 93 S. Ct. 1723 (1973).
[11] *Cities Service Gas Company v. Kansas Corporation Commission,* 201 Kan. 223, 440 P.2d 660 (1968).

and incidents have been generally decreasing under the present system.[12] Despite the contention that the present system is woefully inadequate, no comprehensive study has been done by any LDC which demonstrates how much accelerated pipeline replacement will benefit the ratepayer versus adding unnecessary costs.

11. Secondly, there is a workable system already in place which allows the gas utilities to proactively accelerate the replacement of their aging pipelines. Kansas enacted the Gas Safety and Reliability Policy Act which has a gas system reliability surcharge (GSRS). Significantly, an accelerated pipeline replacement plan which is formed as part of a utility's Distribution Integrity Management Program (DIMP) under federal law qualifies for the GSRS.[13] Beyond the GSRS, the costs of any proactive replacement plan can be recovered through rate cases.[14] Notably, the accelerated replacement of the subject pipelines is not required under federal regulations.[15] The replacement of pipelines which are not required by law is elective to the LDCs, and elective utility costs have traditionally been recovered through rate cases.

12. Thirdly, it is manifestly unfair for the utilities now to demand that the Commission impose the burden of highly accelerated pipeline replacement programs upon the ratepayer by means of semi-annual surcharges. The evidence shows that the problem, if any, of the large number of subject pipelines needing to be replaced is due to a lack of attention to safety and reliability concerns by none other than the utilities themselves. Providing safe and reliable delivery of gas is clearly the core business purpose of the utilities. Certainly, all parties at the hearing did not disagree that the

[12] Direct Testimony of Edward A. McGee, p. 12, lines 10-11 and p. 17, lines 3-7.
[13] Direct Testimony of Leo M. Haynos, p. 8, lines 16-19.
[14] K.S.A. 66-2204(i).
[15] Testimony of John S. McDill, Transcript Vol I, p. 43, lines 24-25.

ratepayer is not at fault. Given this evidence, the highly accelerated pipeline replacement programs cause an undue impact upon the ratepayer and should be rejected.

1. There Is No Immediate Need For Accelerated Pipeline Replacement as Proposed by the Utilities and Commission Staff

13. The LDC witnesses testified that they currently operate safe and reliable systems.[16] John S. McDill and Gary L. Smith testified that there is no danger of imminent catastrophic failure in the Atmos system.[17] No gas utility sponsored any evidence that, in the absence of their highly accelerated pipeline replacement programs, a catastrophic failure will occur.

14. Moreover, the accelerated pipeline replacement programs will not eliminate the threat of such a catastrophic failure.[18] As Kansas Gas Service witness Randall Spector plainly testified, "simply removing large amounts of pipe does not necessarily change the risk equation."[19] He testified that a variety of factors must be considered to determine whether a particular pipeline should be replaced.[20] This function is already being done. CURB witness Edward A. McGee notes that Kansas ratepayers are presently being kept safe because LDCs are presently monitoring their pipeline systems carefully so that the risk of any leak-related incident has decreased significantly.[21] In

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[16] Direct Testimony of Gary L. Smith, p. 8, line 9); Direct Testimony of Randal B. Spector, p. 3, lines 22-24); Direct Testimony of Jerry A. Watkins, p. 5, lines 1-2.
[17] Direct Testimony of John S. McDill, p. 8, line 22 – p. 9, line 1); Direct Testimony of Gary L. Smith, p. 6, line 1.
[18] Direct Testimony of Gary L. Smith, p. 8, lines 10-12; Direct Testimony of John R. McDill, p. 9, lines 6-8.
[19] Direct Testimony of Randall B. Spector, p. 8, lines 8-9.
[20] Direct Testimony of Randall B. Spector, p. 8, lines 9-17.
[21] Direct Testimony of Edward A. McGee, p. 17, lines 14-17.

short, the massive replacement of all subject pipelines is not needed to keep Kansans safe from any catastrophic failure of a gas utility pipeline.[22] The truth of the matter is that there are no assurances that Kansas will (or will not) suffer a catastrophic incident, regardless of the pace of replacing pipelines and the amount of money spent.

15. Indeed, CURB witness Edward A. McGee testified the time to accelerate pipeline replacement is when leak rates and incident rates are continually increasing which would indicate that the utility is not managing its risks well.[23] This avoids waste, in the form of the premature replacement of pipelines which are safe and still have a useful life. Therefore, Mr. McGee recommended careful study (under a customized plan) before an accelerated pipeline replacement program is implemented by any utility.[24] No utility witness sponsored any comprehensive study on the condition of the pipelines across their systems.

16. The LDCs want the Commission to approve their accelerated pipeline replacement programs upon the simple premise that the subject pipelines are old, and since older pipelines are prone to leak, they should be replaced at an accelerated pace now.[25] However, there is no substantial, competent evidence to suggest that many of these pipelines will not be safe and reliable for several years to come. There is no evidence in the record to suggest that a proactive pipeline replacement program with a considerably slower pace than the 30 to 35-year pace proposed by the LDCs will not keep Kansans safe.

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[22] Direct Testimony of Edward A. McGee, p. 11, lines 5-7.
[23] Direct Testimony of Edward A. McGee, p. 11, lines 10-13; Transcript, Vol I, p. 112, lines 15-23.
[24] Direct Testimony of Edward A. McGee, p. 15, lines 11-16. Transcript, Vol I, p. 113, lines 16-21.
[25] Direct Testimony of Christian L. Paige, p. 9, lines 6-12.

17. Indeed, CURB witness Edward A. McGee's experience with the proactive replacement of pipeline programs is that the majority of the pipe that is replaced has never experienced a leak, has never been involved in any incident, and hasn't necessarily reached the end of its life.[26] The "show and tell" pipelines brought in by the gas utilities are anecdotal evidence at best. No witness testified as to the percentage of pipelines in their systems which are in the same condition as, or worse than the pipelines exhibited at the hearing. Moreover, it should be pointed out that no utility brought in any Aldyl-A pipeline that had suffered a rupture due to brittleness. **

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** Yet this LDC proposes to replace its entire inventory of this material in a very short period of time.

18. Moreover, no utility witness testified that the condition of the "show and tell" pipelines is in any materially different condition than could have been observed many years ago. In fact, CURB witness Edward A. McGee mused that these pipelines are

[26] Testimony of Edward A. McGee, Transcript, Vol I, p. 113, lines 8-12.

likely in the same shape as could have been observed many years before now.[27] Thus, these pipelines are likely no more of an immediate safety threat than they were many years before now. Consequently, one would question how the LDCs have kept Kansans safe since they have waited until now to claim that the subject pipelines must be replaced under extraordinary pipeline replacement programs. It appears that the logic in their claims that their extraordinary pipeline replacement programs are now needed is lacking.

19. The CURB believes that a plan to replace a whole network of pipelines over a predetermined period of time, without a comprehensive study (preferably by an independent party), regardless of whether or not the pipelines are at the end of their functional life, and when federal safety regulations do not require it, is imprudent on its face. Prudence in relation to utility regulation by the Commission has a common and ordinary meaning.[28] Prudence is defined as "carefulness, precaution, attentiveness and good judgment."[29] In these regards, the costs of acquisition, construction or operation which are unnecessarily incurred are excludable from the rate base.[30] The massive pipeline replacement programs proposed by the LDCs, in consideration of the cost and pace of the same, have not been proven to be necessary, and they should be rejected.

20. The CURB is not asserting that the subject pipelines should not be replaced when replacement is necessary. Moreover, the CURB does not argue that simply reacting to leaks as they occur is a better way to replace pipelines which need to be replaced than is a proactive approach (which involves strategic planning and budgetary

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[27] Testimony of Edward A. McGee, Transcript, Vol I, p. 101, lines 20 – p. 102, line 1.
[28] *Kansas Gas & Electric Co. v. Kansas Corporation Commission*, 239 Kan. 483, 503, 720 P. 2d 1063 (1986).
[29] *Kansas Gas & Electric Co. v. Kansas Corporation Commission*, 239 Kan. 483, at 495, (citing *Black's Law Dictionary* 1104 (5th Ed., 1979).
[30] *K.S.A. 66-128c.*

oversight to repair and replace pipelines). In fact, CURB witness Andrea Crane testified that the gas utilities should have been ardently engaged in the proactive replacement of pipelines long before now.[31] Indeed, she identifies the LDCs' lack of proactive replacement of pipelines prior to the GSRS as the inherent problem with the LDCs' cases. She adroitly noted that there is no way to define what accelerated pipeline replacement is without knowing what reasonable and customary pipeline replacement should have been as part of the LDCs' normal business operations.[32]

21. This is where the LDCs particularly fail to meet their burden of proof. Not one of the LDCs presented evidence which would show what incremental benefit derives for incremental pipeline replacement (being the amount of pipeline replacement which is beyond that which should already have been done as part of reasonable and customary pipeline maintenance). No LDC chose to put on any evidence as to what reasonable and customary pipeline replacement is (so as to present a base level over which pipeline replacement could factually be characterized as "accelerated"). Thus, there is no evidence in the record to show that the cost to be absorbed by the ratepayer is exceeded by a quantified benefit of either risk aversion or reduced O&M expense due to incremental pipeline replacement.

22. Indeed, any benefit of the accelerated pipeline replacement programs is simply based upon speculation and conjecture. There is no reasonable quantification of risk avoidance which can be shown to arise from the proposed pipeline replacement programs. Moreover, there is no reasonable quantification of reductions in O&M expense which can be shown to arise from the proposed pipeline replacement programs.

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[31] Testimony of Andrea C. Crane, Transcript, Vol. II, p. 318, lines 6-18.
[32] Ibid.

Adjustments in rate cases cannot be made on speculation and conjecture.[33] Yet, this is exactly what the LDCs are asking. They have requested that the Commission approve capital expenditures in the millions of dollars without showing any concomitant benefit to the ratepayer. Such a request runs completely afoul of good regulatory policy.

23. The CURB does not oppose the planned, proactive replacement of pipelines; it should have been occurring all along as part of the LDCs' obligations to provide safe and reliable service. The CURB does not oppose an accelerated pipeline replacement plan provided that is does not result in the wasteful replacement of several pipelines before the end of their useful lives. The CURB merely opposes the specific pipeline replacement programs as they have been proposed, and believes that, without a comprehensive study to prove how the acceleration of pipeline replacement (beyond that which should be required as part of a LDC's reasonable and customary investment in their pipelines), these specific programs should be rejected because they do not protect the residential and small business ratepayer from an undue impact. In these regards, the protections offered by the status quo must be considered.

2. The Status Quo, including the GSRS, adequately allows the gas utilities to accelerate replacement of leaking pipelines as needed to maintain the safety and reliability of the subject pipelines

24. In 2006, the Kansas enacted the Gas Reliability and Safety Policy Act.[34] The Act allows Kansas gas utilities to recover costs which they incur for eligible

[33] Southwest Bell Telephone Company v. State Corporation Commission, 192 Kan. 39, 83, 386 P.2d 515 (1963).
[34] *K.S.A. 66-2201, et seq.*

infrastructure system replacements through a gas system reliability surcharge (GSRS), subject to a cap of $0.40 per residential ratepayer per year.[35] These eligible infrastructure system replacements include pipeline replacement projects if they are undertaken to comply with state or federal safety requirements.[36]

25. All three of the LDCs use the GSRS.[37] KGS witness David N. Dittemore testified that the GSRS has reduced the impact of regulatory lag upon the company, although the impact has not been entirely eliminated.[38] Black Hills witness Jerry A. Watkins testified that the GSRS and mechanisms like it are beneficial.[39] Staff witness Justin T. Grady reasonably believes that the LDCs will still be able to use the GSRS in the immediate future.[40] In short, the Gas Reliability and Safety Policy Act was enacted to incentivize the replacement of pipelines as needed under federal safety regulations, and the Act is very useful.

26. Yet, the LDCs complain that the Kansas Gas Reliability and Safety Policy Act is insufficient for purposes of their pipeline replacement programs. They complain that it does not fully compensate them for the costs of their expenditures.[41] They complain that the scope of the Act is too narrow to allow proactive replacement of pipelines.[42] The LDCs also complain that the cap of $0.40 per residential ratepayer per year hasn't been adjusted for inflation.[43] These complaints are very interesting since the

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[35] *K.S.A. 66-2203; K.S.A. 66-2204(e)(1).*
[36] *K.S.A. 66-2201(f)(1).*
[37] Direct Testimony of Justin T. Grady, p. 6, lines 19-20.
[38] Direct Testimony of David N. Dittemore, p. 7, lines 18-20.
[39] Direct Testimony of Jerry A. Watkins, p. 11, lines 6-7.
[40] Direct Testimony of Justin T. Grady, p. 6, lines 20-21.
[41] Direct Testimony of David N. Dittemore, p. 11, lines 19-20.
[42] Direct Testimony of Christian L. Paige, p. 26, lines 5-9
[43] Direct Testimony of Jerry A. Watkins, p. 11, lines 8-9.

Kansas Gas Reliability and Safety Policy Act was enacted at the behest of the LDCs.[44] The LDCs have not sought to have the Kansas legislature expand the scope or cap of the GSRS, although that is clearly an option to them. Two of the LDCs have utilized the GSRS to the entire amount of the cap in the Act.

27. Even so, the LDCs' contention that the scope of the Kansas Gas Reliability and Safety Policy Act is too narrow to allow their proactive replacement of pipelines is wrong. KCC staff witness Haynos testified that the Act, in conjunction with each company's Distribution Integrity Management Plan (DIMP), allows the proactive replacement of pipelines.[45] As explained by Atmos witness John S. McDill, a DIMP specifies how a utility "will identify, assess, prioritize and evaluate risk to the integrity of distribution lines and the manner in which those risks will be mitigated or eliminated."[46] These pipeline regulations give the utility the discretion to decide if any part of its pipeline needs to be replaced.[47]

28. Indeed, the record evidence shows that the GSRS (in conjunction with each LDC's DIMP) would be very useful to recover the costs of the LDC pipeline replacement programs. Atmos witness John S. McDill notes that the federal regulations, including the DIMP requirements, "make the systematic and proactive assessment and replacement of pipelines essential."[48] Thus, mandating the use of the GSRS in conjunction with a utility's DIMP is good policy. It coordinates federal and state law with monitoring and planning pipeline repairs and replacements by the LDCs. It allows a

[44] Direct Testimony of Andrea C. Crane, P. 30, lines 11-14.
[45] Direct Testimony of Leo Haynos, p. 8, lines 16-19.
[46] Direct Testimony of John S. McDill, p. 18, lines 16-18.
[47] Direct Testimony of Leo Haynos, p. 8, lines 15-16.
[48] Direct Testimony of John S. McDill, p. 11, lines5-6.

pipeline replacement plan to be customized, with the benefit of the focus being upon minimizing incidents, as espoused by CURB witness Edward A. McGee.[49] It requires study and evaluation to ensure that plant additions are not imprudent.

29. Moreover, the Kansas legislature imposed a limit that the GSRS be allowed only for pipeline replacement undertaken to comply with state or federal safety requirements for good reason. In these regards, this Commission has recognized that costs which are appropriate to be included in a surcharge are typically limited to expenses or capital expenditures that are: (1) outside the control of the utility; (2) are variable and their incurrence are unpredictable; and (3) are likely to cause material harm if subjected to the normal ratemaking process.[50] Permitting normal costs to be recovered through a surcharge inhibits a utility's incentives to minimize cost.[51]

30. By tying the GSRS to costs which are incurred by utilities for pipeline replacement undertaken to comply with state or federal safety requirements, the Kansas legislature wisely prevented the recovery through surcharges of the types of costs which are normally recovered through rate cases. As has been noted by the Commission with respect to tracker mechanisms, "If not demonstrated to be required by PHMSA or EPA regulations, such costs [costs to modernize pipelines and infrastructure] however laudable, are ultimately elective, and as is the case of all discretionary costs, should be

[49] Direct Testimony of Edward A. McGee, p. 15, lines 11-16.
[50] F.E.R.C. Docket No. PL-15-1-000, Comments of the Kansas Corporation Commission, p.6 (1/26/2014).
[51] Ibid.

subject to traditional ratemaking practice." [52] Yet, the LDCs want the Commission to ignore the purpose of this important limitation.

31. Moreover, the LDCs' complaints that the GSRS cap is too restrictive to allow proactive replacement of pipelines are unjustified. The cap obviously meets two policy objectives. First, the cap requires utilities to minimize cost, as any non-regulated business would. This is precisely what utility rate regulation is intended to do. Secondly, it moderates the impact upon residential consumers of the surcharge, which is also good policy and accords with Kansas law. An excessive rate impact upon the consumer is unlawful.[53]

32. The Commission is well aware that the Kansas Gas Reliability and Safety Policy Act does not place a cap on the total costs which may be recovered by utilities for their proactive replacement of pipelines. The Act merely places a cap on the amount that can be collected through a surcharge. The Act allows costs incurred by utilities for proactive replacement of pipelines (beyond the cap) to be recovered through general rate cases filed with the Commission by the utilities.[54] With respect to the cap, it is important to remember that LDCs traditionally have recovered the cost of capital investments through traditional rate cases. In these regards, it bears noting that no evidence in this case has established an amount of pipeline replacement which should be accomplished through reasonable and customary procedures, for which the costs thereof should be recovered through rate cases. Certainly, it is not reasonable that all pipeline replacement costs (which pertain to the core purposes of the LDCs to provide safe and reliable

[52] F.E.R.C. Docket No. PL-15-1-000, Comments of the Kansas Corporation Commission, p. 12.
[53] *Kansas Gas & Electric Co.,* 239 Kan. 483, 490, 720 P.2d 1063 (1986).
[54] *K.S.A. 66-2204(i).*

service) should be recovered through surcharges when these costs have traditionally be recovered through rate cases.

33. Moreover, there is no evidence in the record which would compel the conclusion that it is necessary to exceed the $0.40 cap in the Kansas Gas Reliability and Safety Policy Act to avoid a catastrophic accident on any utility's pipeline. The Act has only been in existence for such a short time that a meaningful trend analysis could not be, and has not been performed. The LDCs did not provide any substantial, competent evidence that the GSRS and traditional rate cases would not be sufficient to keep their systems safe and reliable over time.

34. Rather, the empirical evidence shows that pipeline leaks have generally been declining for the last 16 years.[55] Furthermore, the empirical evidence shows that the number of reportable incidents has declined from 1980 levels.[56] As part of his direct testimony, CURB witness McGee sponsored Schedules EM-5 and EM-6. Schedule EM-5 shows that the total number of leak repairs on each LDC's mains has generally been declining since 1999.[57] Schedule EM-6 shows that the total number of leak repairs on each utility party's service lines has generally been declining since 1999. The number of leaks on mains caused by corrosion has also generally declined since 1999.[58]

35. CURB witness Edward A. McGee also analyzed the number of Kansas reportable incidents from 1980 to 2014. These incidents have dropped from 114 incidents

[55] Direct Testimony of Edward A. McGee, p. 12, lines 10-11.
[56] Direct Testimony of Edward A. McGee, p. 17, lines 3-7.
[57] Direct Testimony of Edward A. McGee, p. 12, lines 20-21.
[58] Direct Testimony of Edward A. McGee, p. 13, lines 1-3.

in the five-year period from 1980 through 1984 to 13 in the five-year period from 2010 through 2014.[59] This represents a decrease in the rate of incidents of nearly 90 percent.

36. According to CURB witness Edward A. McGee, these decreases show that Kansas utilities have been successfully managing their systems to keep them safe and reliable.[60] In view of this evidence, it is difficult to quantify what benefits would derive from an accelerated pipeline replacement program of the scope and cost proposed by the LDCs. Indeed, prudent gas utilities employ a variety of leak detection, leak repair and damage prevention programs to maintain a safe and reliable system.[61] In short, the status quo, including the GSRS, provides an adequate means for the LDCs to maintain their systems as safe and reliable.

3. The proposed accelerated pipeline replacement programs impose an undue burden on the ratepayer because any need to accelerate the replacement of pipelines is due to the fault of the gas utilities

37. At the hearing in this matter, Commissioner Apple fittingly asked whose fault it is that proactive replacement of the subject pipelines has not occurred until now.[62] Each of the LDCs admitted fault.[63] Yet, the evidence is abundantly clear that the ratepayer bears no fault with respect to the condition of the subject pipelines.[64]

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[59] Direct Testimony of Edward A. McGee, p. 17, lines 3-6.
[60] Direct Testimony of Edward A. McGee, p. 17, lines 14-17.
[61] Direct Testimony of Edward A. McGee, p. 11, lines 5-6.
[62] Transcript Vol. 1, p. 197, lines 7-10.
[63] Testimony of Randall B. Spector, Transcript Vol. I, p. 199, lines 13-14; Testimony of Jerry A. Watkins, Transcript Vol. I, p. 199, line 25 – p. 200; Testimony of John S. McDill, Transcript Vol. I, p.200 , line 25 – p. 200, 1line 11-12.
[64] Testimony of Andrea C. Crane, Transcript, Vol. II, p. 303, lines 19-23.

38. In view of this evidence, the most salient aspect of this issue becomes manifest. The utilities admit fault for allowing their pipeline systems to deteriorate for so long without periodically investing the capital needed to replace those portions of the system which they now claim to need replacement. All along, these pipelines have been granted depreciation on their assets so as to allow them to reinvest capital into their system. All along these utilities could have been engaged in a proactive pipeline replacement program, the cost of which (prior to the 2006 GSRS) would have been recovered through rate cases.

39. Yet, having failed to maintain their pipelines periodically over time (so that, as they claim, they now need to engage in a massive replacement program), they now ask the ratepayer to insulate their rates of return.[65] The utilities claim that they now need an alternative rate mechanism so as to not discourage investment in the maintenance of a safe and reliable system. These utilities demand to be completely relieved of any regulatory lag.[66] They demand so, even though providing safe and reliable service is the very essence of their business purpose.[67] In addition, the LDCs want the Commission to ignore that the utilities' shareholders will benefit nicely with respect to these investments.[68] These investments help to increase their earnings. [69]

40. The position of the LDCs to now require the ratepayer to bear through surcharges the costs of a proactive pipeline program which could have been pursued

[65] Testimony of Andrea C. Crane, Transcript, Vol. II, p. 303, lines 22-24.
[66] Testimony of David N. Dittemore, Transcript, Vol. I, p. 271, lines 12-13.
[67] Testimony of David N. Dittemore, Transcript, Vol. I, p. 271, lines 3-4.
[68] Direct Testimony of Andrea C. Crane, p. 23, line 20 – p. 24, lines 1-2.
[69] Direct Testimony of Andrea C. Crane, p. 25, lines 18-19.

under traditional rate regulation long ago is unreasonable.[70] In light of their admission of fault in allowing their systems to deteriorate to present levels, the LDCs' request to collect the entire cost of their pipeline replacement programs through semi-annual surcharges unduly impacts the ratepayer. Under Kansas law, it should be rejected.[71]

B. It Is Not In The Public Interest To Allow The Costs Of Any Accelerated Pipeline Replacement Program To Be Recovered Through An Alternative Rate Mechanism

41. The CURB believes that protection of the consumer's interest requires that the cost of accelerated pipeline replacement be recovered through traditional rate cases. Rate of return regulation (i.e. traditional rate cases) is the historical method by which the Commission determines just and reasonable rates for utilities.[72] Indeed, this Commission has recognized that tracker mechanisms and other alternative ratemaking mechanisms are the exception rather than the rule with respect to utility regulation.[73] The Commission further recognizes that trackers benefit the utility.[74]

42. Thus, the burden of justifying the use of an alternative rate mechanism, as opposed to a traditional rate case, falls upon the utility.[75] The burden of justifying the use of an alternative rate mechanism, as opposed to a traditional rate case, should be a

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[70] Testimony of Andrea C. Crane, Transcript, Vol. II, p. 303, lines 22-25 – p. 304, lines 1-6.
[71] Kansas Gas & Electric Co., 239 Kan. 483, 488, 720 P.2d 1063 (1986).
[72] "Responsible Regulation: Incentive Rates for Natural Gas Pipelines," 28 Tula L.J. 349, 373 (1993.
[73] F.E.R.C. Docket No. PL-15-1-000, Comments of the Kansas Corporation Commission, p. 8 (1/26/2014.
[74] Ibid.
[75] Ibid.

demanding one. Traditional rate of return regulation has a number of historically recognized benefits. Moreover, trackers and other alternative ratemaking mechanisms have a number of elements which may be detrimental to sound regulatory practices.

43. The benefits of traditional rate of return regulation are well known. Firstly, traditional rate of return regulation is well established. It has been used since utilities were first regulated. A plethora of court cases delineates the boundaries of fair rate regulation.[76] In short, there is certainty regarding the regulatory principles pertaining to fair rates under traditional rate regulation.

44. Secondly, rates remain stable between rate cases. This aspect of traditional rate cases benefits consumers who must rely upon steady utility tariffs in pursuing business and other ventures. Trackers are subject to change and may cause confusion among ratepayers.[77]

45. Thirdly, the regulatory lag associated with traditional rate of return regulation helps to bring a competitive element to rate regulation of utilities. In these regards, it is well understood that in a competitive environment, a business must constantly look for ways to keep costs low and to increase quality of service (innovate) in order to stay in business. Regulatory lag imposes upon the utility an incentive to look for ways to economize their operations and to innovate when possible in order to earn their authorized rate of return.

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[76] See, for example, *Power Comm'n v. Hope Gas Co.,* 320 U.S. 591, 64 S.Ct. 281, 88 *L.Ed. 333 (1944); Southwestern Bell Tel. v. State Corporation Commission,* 192 Kan. 39, 386 P. 2d 515 (1963); *Kansas Gas & Electric Co. v. Kansas Corporation Commission,* 239 Kan. 483, 720 P. 2d 1063 (1986).

[77] Direct Testimony of Andrea C. Crane, p. 30, lines 1-3.

46. Fourthly, traditional rate of return regulation matches the revenues and expenses associated with an increase in the rate base. This matching principle is necessary for revenues to remain at levels which allow utilities a reasonable opportunity to earn fair rates of return. This matching principle avoids the problems associated with single issue ratemaking. As the Commission has noted, a number of pipelines have utilized trackers to avoid regulatory review of the justness and reasonableness of their rates.[78] If utilities' costs are recovered through a tracking mechanism, there is little incentive to file a new rate case when revenues exceed those determined through the previous rate case.

47. Finally, traditional rate regulation balances the rights and responsibilities of all parties affected by utility rates: The utility, present ratepayers and future ratepayers, and the public interest.[79] The balancing of these interests is essential to lawful and reasonable rates. Public utility regulation does not guarantee an actual return on equity.[80]

48. On the other hand, there is limited regulatory review associated with tracking mechanisms. Further, since regulatory lag is reduced with respect to the recovery of expenses, the utility's incentive to economize is also reduced. Therefore, since the ratepayer is giving up many of the benefits associated with traditional rate regulation, it is incumbent upon the utility to show that the benefits to the ratepayer under a tracking mechanism are substantial enough to justify the tracker.

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[78] F.E.R.C. Docket No. PL-15-1-000, Comments of the Kansas Corporation Commission, p.10 (1/26/2014).
[79] *Kansas Gas & Electric Co. v. Kansas Corporation Commission,* 239 Kan. 483,488, 720 P. 2d 1063 (1986).
[80] *Kansas Gas & Electric Co. v. Kansas Corporation Commission,* 239 Kan. 483, at 489-490, *citing Power Commission v. Hope Gas Co.,* 320 U.S. 591, 88 L. Ed. 333, 64 S. Ct 281 (1944).

49. The LDCs did not present substantial and competent evidence in this docket to show that a surcharge is appropriate to recover the costs of accelerated pipeline replacement. The LDCs did not show that the conditions which warrant cost recovery through a surcharge are present.[81] First, the costs which will be incurred are not mandated by federal or state regulations and are, therefore, elective. Thus, the costs are within the control of the utilities. Secondly, the costs cannot be said to be unpredictable. Indeed, each of the LDCs have programs by which the replacement of pipelines are planned. Finally, recovery of the costs through traditional rate cases is possible without material financial harm to the LDCs. Indeed, CURB witness Andrea C. Crane pointed out that the pipelines would recover their capital investment over the long life of the pipelines, but initial recovery would merely take a while longer under a traditional rate case than the trackers proposed by the utilities.[82]

50. Furthermore, CURB witness Andrea C. Crane testified that there are certain factors which the Commission should consider in evaluating the propriety of an alternative rate mechanism in this case. These include whether or not utilities have been reasonable in their past capital investment strategies, the impact upon utility stockholders if accelerated cost recovery is not granted, the impact of accelerated cost recovery upon ratepayers, and the availability of other accelerated cost recovery programs which can be

[81] This Commission has stated that three conditions should exist in order for a tracking mechanism to be an appropriate means to recover a utility's expenses or capital improvements: (a) the costs to be recovered are outside of the control of the utility; (b) the costs are variable and their incurrence is unpredictable; and (c) the costs are likely to cause material financial harm if subjected to the normal ratemaking process. F.E.R.C. Docket No. PL-15-1-000, Comments of the Kansas Corporation Commission, p. 6. (1/26/2014).

[82] Direct Testimony of Andrea C. Crane, p. 22, lines 16-20.

used relative to pipeline replacement.[83] Consideration of these factors in the present docket reasonably leads to the conclusion that the surcharges requested by the LDCs to recover pipeline replacement costs are inappropriate.

51. Firstly, the LDCs' efforts to replace the pipelines, which they now assert need to be replaced very rapidly, have not been stellar. To their credit, the utilities take the blame for their past approach to pipeline replacement.[84] Yet, these utilities insist that they share none of the financial consequences of the accelerated pipeline replacement programs which they now assert to be necessary. This is undoubtedly inequitable. Ratepayers should not be forced to bear the impact of a surcharge which is intended to eliminate normal and customary regulatory lag associated with cost recovery of pipeline replacement which was neglected for an inordinate amount of time by the LDCs.

52. Secondly, there is no benefit to the ratepayer from the surcharges requested by the LDCs. The only evidence of any benefit inuring to the ratepayer through the alternative ratemaking mechanisms proposed by the LDCs is the potential reduction of rate case costs, if rate cases would indeed be filed more frequently. However, the LDCs argument is premised upon very rapid pipeline replacement programs which have not been proven to be necessary. If pipeline replacement were conducted at a reasonable pace, frequent rate cases could be obviated. Moreover, the LDCs ignore the many benefits that rate cases provide, including the avoidance of single issue ratemaking.

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[83] Direct Testimony of Andrea C. Crane, p. 21, lines 6-12.
[84] Testimony of Randall B. Spector, Transcript Vol. I, p. 199, lines 13-14; Testimony of Jerry A. Watkins, Transcript Vol. I, p. 199, line 25 – p. 200; Testimony of John S. McDill, Transcript Vol. I, p.200, line 25 – p. 200, 1line 11-12.

53. Thirdly, it is important to note that the utility shareholders benefit from capital investments. As CURB witness Andrea Crane explains, the capital investments in the pipelines will result in higher earnings.[85] The CURB does not contend that these earnings are the sole impetus for the pipeline replacement program. However, the CURB believes that the potential growth in earnings should be taken into account in structuring a cost recovery program.

54. Fourthly, as discussed above, the decision of the Commission not to grant accelerated cost recovery in this docket would not substantially harm the utility stockholders. The costs of pipeline replacement can be recovered by the pipelines over time through traditional ratemaking procedures. Although the utilities argue that traditional ratemaking mechanism creates a disincentive which keeps them from expending the capital necessary to render the utilities' systems to be safe and reliable, it simply ought not to be necessary to cajole the utilities into merely accomplishing their core values (of providing safe and reliable service) with alternative ratemaking procedures.

55. Finally, the history of the GSRS should be taken into account. When the GSRS was enacted in 2006, the LDCs in this docket testified in support of that statute and made representations that the GSRS would result in obviating the need for annual rate cases. Yet, the utilities are now calling for an indefinite increase in the amount of surcharges for pipeline replacement than is allowed by the GSRS with the threat of annual rate cases if their request is not granted. The CURB believes that it is in the public interest to hold the LDCs to the promises made to the Kansas legislature.

[85] Direct Testimony of Andrea C. Crane, p. 25, lines 18-19.

56. The CURB reiterates that it is not arguing that proactive pipeline replacement should not occur. The CURB merely contends that proactive pipeline replacement should be part of routine operation necessary to provide safe and reliable service, and that the costs thereof should be recovered through traditional rate cases. The extraordinary ratemaking mechanism sought by the LDCs is unnecessary. In these regards, CURB witness Andrea C. Crane notes that Kansas' largest utility has already implemented an accelerated pipeline replacement program without the extraordinary ratemaking treatment wanted by the LDCs.[86]

57. In its brief, Black Hills attempts to distinguish the KGS system from the Black Hills and Atmos systems because KGS has a larger customer base making the GSRS a good fit. That argument should not be determined to be compelling. The Black Hills and ATMOS systems were acquired with knowledge of the age of the pipelines and the current status of the law with respect to cost recovery. What Black Hills and Atmos are attempting to do now is change the rules of the game, to the ratepayers' detriment.

C. If the Commission determines that a multi-year program is appropriate to study the issues presented in this docket and to form policy with respect to the accelerated replacement of pipelines, certain safeguards are appropriate to protect the interest of the ratepayer.

58. The CURB believes that the LDCs have failed to prove that their accelerated pipeline replacement programs (in consideration of the scope and cost of the same) are necessary. The CURB believes that under sound regulatory principles, the cost

[86] Direct Testimony of Andrea C. Crane, p. 21, lines 13-14.

of any proactive pipeline replacement program (which should be reasonable in scope) should be recovered through traditional rate cases filed with the Commission. Therefore, the CURB urges the Commission to reject the accelerated pipeline programs as they have been proposed by the LDCs.

59. However, the CURB recognizes that there has been no comprehensive study of the condition of the pipelines in the LDCs' systems, such that nobody knows the extent to which the subject pipelines in their systems resemble those presented by the Commission at the beginning of the hearing. In these regards, the CURB recognizes that there is some value in a study program (similar to the pilot program proposed by Staff) if it provides the data which will show the actual need and costs/benefits of an accelerated pipeline replacement program, the appropriate pace and scope of the program, and the equitable means by which the costs of these programs could be recovered.

60. Thus, even though the CURB believes that the Commission should reject the highly accelerated pipeline replacement programs of the LDCs, it may be reasonable for the Commission to commit to further study of the issue of pipeline replacement. In these regards, such a study program (which could, but would not need to be for a term of five years as suggested by Staff in its pilot program) must realize relevant and usable data and have rigorous metrics by which the need, costs and benefits of an accelerated pipeline program will be determined. The metrics should be established based upon the input of the LDC, the Staff and the CURB, and should be subject to Commission approval. The pace of the program must be annually determined in consideration of the impact of the program upon the ratepayers, and should be subject to approval by the Commission.

61. If the Commission were to determine to implement a multi-year study (pilot) program, the CURB would respectfully suggest the following provisions. First, the CURB would suggest that cost recovery of pipeline replacement be determined upon an incremental basis, such that a baseline is established which corresponds with the normal and customary pipeline replacement expected of a utility. Pipeline replacement costs which do not exceed the baseline would be recovered through rate cases.

62. The cost of accelerated pipeline replacement investments which exceed the baseline during the multi-year study should not be borne entirely by the ratepayer through surcharges. The Commission could determine that this burden be shared between the LDC and the ratepayer. The sharing of this burden could be accomplished in a number of ways. For example, cost recovery (for accelerated pipeline replacement beyond the baseline) could be accomplished through an annual surcharge similar to the GSRS, but with a corresponding reduction in the utility's rate of return to account for the reduction in investment risk caused by the surcharges during the study program.

63. Another manner to share the time value cost of the incremental accelerated pipeline replacement investments during the study program could be to divide the capital costs of the accelerated pipeline replacement program (beyond the baseline) in equal parts, one part which would be recovered through surcharges and the remaining part which would be carried by the utility until a rate case is filed. Assuming that rate cases would be filed on a three-year basis, the regulatory lag would not be overly burdensome upon the LDC and the ratepayer would not be unreasonably impacted. There is an intuitive fairness in splitting a burden equally between the parties affected. Importantly,

the Staff noted that the Commission should be free to structure cost recovery in any equitable manner.

64. The inequity of requiring the ratepayer to alone bear the entire cost of investments made to replace pipelines through surcharges should not be overlooked. As shown above, the shape of the subject pipelines at the present time is due to the fact that the utilities involved in this docket did not engage in replacing them in a more proactive manner for several years. Had the LDCs historically been proactively engaged in replacing the subject pipelines at a reasonable pace, then the costs would likely have been recovered thought rate case filings. Nobody disagrees that the ratepayer bears no blame for the delay. It is unreasonable to suffer upon the ratepayer an impact which would have been avoided had the LDCs replaced the subject pipelines prior to the present time.

65. It is important that an appropriate expenditure cap be established. If the Staff and CURB will have an opportunity to review and have input in the pace of the pipeline replacement programs, then the cap can be determined annually with program results in prior years being determinative of the pace of pipeline replacement in subsequent years. However, the CURB would suggest that the pace of the pilot program start very slow, to allow the ratepayer to adjust to absorbing the likely onslaught of annual increases in their gas bills during the study period. The CURB would also suggest that the LDCs prioritize their pipeline replacements from most necessary to the least on an annual basis. This prioritization would come about naturally if the Commission sets a meaningful cap on annual pipeline replacement expenditures.

66. CURB would also suggest that it be made clear that the study (pilot) program will expire at the end of the multi-year term unless it is expressly extended by

Order of the Commission. At the end of the multi-year study, each LDC should submit a customized plan for replacement of pipelines as the study shows as being necessary for the safety and reliability of their system. The burden should be on the LDC to show the actual need for replacement of pipelines under its proposed schedule to provide safety and reliability, rather than merely building plant. Moreover, each LDC should attempt to determine a time frame by which future pipeline replacement (beyond the multi-year study program) could be accomplished without the need for any surcharge (or attempt to minimize the amount of the surcharge if it cannot be eliminated). After all, pipeline maintenance (including replacement) is part of providing safe and reliable service to ratepayers. It is simply not reasonable to believe that the utilities acquired these assets with the belief that replacement would be recovered by any means other than traditional rate cases.

67. Outlining these conditions for a multi-year study is not intended and should not be construed as consent to the LDCs' accelerated pipeline replacement programs. The LDCs failed to meet their burden of proving that their accelerated pipeline replacement programs, in consideration of the cost and breadth of the same, do not unduly impact the ratepayer. Furthermore, the LDCs have not met their burden of proving that surcharges (versus cost recovery through traditional rate cases) are necessary to recover the cost of any pipeline replacement program at this time. Their accelerated pipeline replacement plans should be rejected.

68. However, the CURB recognizes the Commission as the policy maker herein, and notes that the Commission could reasonably determine that the parameters of a policy pertaining to future pipeline replacement could be made with better clarity after a

well-designed study (pilot) program. Determining the actual condition of the LDCs' pipeline systems should help to calculate how much the pipelines are in need of immediate replacement and how much replacement is elective at this time. Thus, the CURB believes that the Commission could reasonably determine that the public interest would be served by a comprehensive study of the LDC pipelines, provided that the study has the parameters outlined above.

III. Conclusion

69. The key issue in this docket is not about pipeline replacement. Each LDC recognizes its duty to provide safe and reliable service, including repairing and replacing pipelines as needed. Nobody argues that the LDCs should not have been ardently engaged in the proactive replacement of their pipelines for a long time prior to the present. However, there is also no argument that a comprehensive study of the actual condition of the subject pipelines has not been performed. In these regards, the CURB believes that the evidence fails to show the need for the highly accelerated pipeline replacement programs as they have been proposed by the LDCs. In short, the LDCs boast that their systems are safe and reliable presently. Although the LDCs argue that without their accelerated pipeline replacement programs a catastrophic incident could occur, they admit that such an incident could occur anyway. It is clear that such argumentation is conjectural.

70. Rather the key issue in this docket is how the costs of pipeline replacement should be recovered. At the heart of the LDCs' cases is their refusal to be required to recover any part of the costs of pipeline replacement through traditional rate

cases. With respect, if one were to coin a phrase describing the LDCs' cases, it would be "bag the lag." The LDCs want to portray the regulatory lag associated with rate cases as bad policy, even where their core responsibility of providing safe and reliable service is concerned. They want to characterize the regulatory lag associated with rate cases as being confiscatory. They contend that rate cases cannot reasonably be used to recover costs involved in a program of proactive pipeline replacement. Even though pipeline replacement has traditionally be recovered through rate cases, the LDCs now assert that the regulatory lag involved in traditional rate case cost recovery is unfair. Amazingly, the LDCs contend that they should not be subject to any regulatory lag even though they admit fault for the condition of the pipelines they now assert need to be immediately replaced.

71. When a utility fails to meet its core values of maintaining a safe and reliable system, penalizing the utility's rate of return is a more appropriate remedy than is protecting that rate of return through an alternative rate mechanism.[87] In these regards, it would certainly be reasonable for the utilities to endure more regulatory lag than semi-annual surcharges, considering the risk premium on their rates of return on capital investments which should have been made long ago.[88] In view of the evidence, therefore, the CURB believes that the Commission should not be compelled by the LDCs' chorus of "bag the lag."

72. Significantly, the Commission has espoused a three-part test to determine whether or not an alternative ratemaking mechanism is appropriate. The utility must

[87] Testimony of Andrea C. Crane, Transcript, Vol. II, p. 303, lines 22-25 – p. 301, lines 10-15.
[88] Testimony of Andrea C. Crane, Transcript, Vol. II, p. 305, lines 13-23.

prove by substantial, competent evidence that: (a) the costs to be recovered are outside of the control of the utility; (b) the costs are variable and their incurrence is unpredictable; and (c) the costs are likely to cause material financial harm if subjected to the normal ratemaking process.[89] It is very clear from the record that the LDCs have not submitted substantial competent evidence that this test has been met.

73. Still, the LDCs argue that several other utility commissions have approved alternative ratemaking mechanisms for pipeline replacement. "What other jurisdictions have done" is not the test under the pertinent Kansas statutes. The Kansas statutory test requires prudence with respect to any capital investment made by the LDC and further requires the Commission to balance the ratepayer's interest and the utility's interest. With respect to the evidence in this docket, it should be clear that placing the entire burden of the cost of a massive accelerated pipeline replacement program upon the ratepayer through surcharges unduly impacts the ratepayer. Further, in regards to what other jurisdictions have done, the words of Judge Learned Hand are appropriate:

> "In most cases reasonable prudence is in fact common prudence; but strictly it is never its measure; a whole calling may have unduly lagged in the adoption of new and available devices. It never may set its own tests....Courts must in the end say what is required; there are precautions so imperative that even their universal disregard will not excuse their omission."[90]

The Commission is not bound to approve pipeline replacement programs which unduly impact the ratepayer just because other jurisdictions have done so. Moreover, there is no

[89] F.E.R.C. Docket No. PL-15-1-000, Comments of the Kansas Corporation Commission, p.6 (1/26/2014).
[90] Judge Learned Hand in *The T.J. Hooper*, 60 F.2d 737, 740 (2d Cir.), cert. denied, 287 U.S. 662 (1932.

evidence in the record which shows that the other jurisdictions have the same circumstances that are present in this docket.

74. It is noteworthy that LDC witnesses testified that, even if their accelerated pipeline replacement programs are not approved by the Commission, the LDCs would continue to invest in their systems so as to maintain safety and reliability.[91] Yet, this testimony hardly deserves accolades. This type of investment should absolutely be expected of them. Providing safe and reliable gas to their customers is (and should be) the core value of each utility. As testified by CURB witness Andrea Crane, the gas utilities should have been wholly committed to providing the capital investments to maintain a safe and reliable gas delivery system all along.[92]

75. It would be an extremely sad day in the history of utility regulation if the Commission now has to reward a gas utility with an alternative rate mechanism in order for the gas utility to do merely what is required in order to adequately and sufficiently serve its customers. Moreover, the precedence set by such a concession would eat away at the Commission's ability to protect ratepayers through traditional rate mechanisms. As the Commission has noted, "in the absence of a rate refiling requirement, it is very difficult to show that a pipeline is over-earning its authorized rate of return." [93] As shown above, traditional rate regulation has a very important place in these proceedings; it should not be done away with as suggested by the LDCs.

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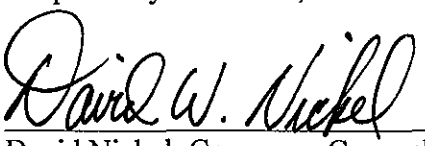
[91] Testimony of John S. McDill, Transcript Vol. I, p. 43, lines 2-7; Testimony of Jerry A. Watkins, Transcript Vol. I, p. 82, lines 13-16; Direct Testimony of Randall Spector, p. 5, lines 8-13.
[92] Testimony of Andrea C. Crane, Transcript Vol. II, p. 301, lines 10-15.
[93] F.E.R.C. Docket No. PL-15-1-000, Comments of the Kansas Corporation Commission, p. 10.

76. WHEREFORE the CURB earnestly requests that the Commission deny the massive pipeline replacement programs urged by the LDCs. Moreover, the CURB earnestly requests that the Commission rule that the costs of proactive pipeline replacement, beyond costs recovered through the GSRS, should be recovered through traditional rate cases and those costs will be subject to scrutiny as to prudence of the associated investments. Finally, the CURB earnestly requests that if the Commission determines that pipeline replacement should be the subject of further study, the Commission outlines a study program with the safeguards outlined herein.

Respectfully submitted,



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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, David W. Nickel, 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.

David W. Nickel

SUBSCRIBED AND SWORN to before me this 13th day of May, 2016.

DELLA J. SMITH
Notary Public - State of Kansas
My Appt. Expires January 26, 2017

Notary Public

My Commission expires: 01-26-2017.

APPENDIX "A"

EXAMPLE OF PRIORITIZATION OF OBSOLETE MATERIALS

BACKGROUND:

The Kansas LDC's have proposed that massive amounts of their systems should be replaced under an accelerated replacement and recovery program since they represent "obsolete" piping. Obsolete piping in each of the three Kansas LDC's varies between 20.4% and 40.3% of the total mains in their entire distribution systems. (Schedule EM-01 in exhibits of McGee testimony). CURB believes that materials proposed for replacement should be selected in a manner that tailors them to the problems (e.g. leaks or incidents) that the LDC is having. These materials should also be prioritized and certain of them should be considered for possible lower-priority replacement or removal from the program. An example is shown for a particular material highlighted by the Kansas Commission.

COMMISSION QUESTIONS RELATED TO ONE MATERIAL:

The Commission has asked a number of questions that they would like the parties to address in their briefs. Questions A. through D. relate to one particular type of vintage plastic material – Aldyl-A. These questions are:

A. Is there empirical evidence that Aldyl-A pipe in your system is leaking at a greater rate than in the past five years?
B. Do you track leaks by pipe type?
C. Are repair parts available for the Aldyl-A pipe?
D. Can Aldyl-A pipe be repaired or must it be replaced?

All three Company responses indicate that this material is not leaking at a greater rate than in the past five years. (Black Hills Brief, Appendix A, Response A.; Atmos Energy Brief, Appendix A, Response A.; Kansas Gas Service Brief, Commissioner Questions, Response to Question A.)

Additional responses of two Kansas LDC's indicate that repairs are not possible for leaking pipes composed of this material; and replacement with polyethylene plastic pipe must instead be done. (Black Hills Brief, Appendix A, Response D.; Atmos Energy Brief, Appendix A, Responses C. and D.)

Since the above responses indicate that leaks on Aldyl-A must be fixed through replacement in the systems of two of the LDC's, we present in the next section replacement information that illustrates the limited size of the leakage problems on

Aldyl-A piping for one of these two LDC's, which could be a key factor in relegating this material to a lower replacement priority.

QUANTIFICATION OF LEAK PROBLEM ON ALDYL-A PIPING:

The following table based on a CONFIDENTIAL discovery response presents quantitatively the amount of replacement (or lack of replacement) of Aldyl-A piping that has been carried out during past years for one Kansas LDC. This in turn is a measure of leaks on the piping since Aldyl-A must be replaced by this LDC rather than repaired (see previous section).

**

REDACTED

REDACTED

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C.U.R.B. CONCLUSION REGARDING COMMISSION QUESTIONS ABOUT ALDYL-A PIPING:

C.U.R.B. concludes that the Kansas LDC's have not shown sufficient reasons for accelerated replacement of their entire inventory of certain materials such as Aldyl-A or Century plastic that exist in their particular systems. The limited amount of leakage experienced to-date – as evidenced by extremely limited replacement of this material by one LDC – does not appear to justify this extensive and expensive proposed measure. For this reason, CURB suggests prioritization of "obsolete" materials, which would result in varying priorities for different materials or even removal from the proposed program.

Question H: If the Commission were to approve a program which allowed for collection of acceleration infrastructure replacement costs through a periodic rider outside of a general rate case, does the rule against single issue ratemaking apply?

As stated in *Citizens' Utility Ratepayer Board v. Kansas Corporation Commission*[94] "the rule against single-issue ratemaking recognizes that the revenue formula is designed to determine the revenue requirement based on the aggregate cost and demands of the utility. Therefore, it would be improper to consider changes to components of the revenue requirement in isolation. Oftentimes a change in one item of the revenue formula is offset by a corresponding change in another component of the formula."[95]

Clearly, single issue ratemaking is improper because by treating one component of the rate formula in isolation, it fails to fairly account for the actual impact of a rate change upon a party. For example, if the Commission were to only consider capital expenditures made by a utility without consideration of offsetting savings (such as O & M expense savings), ratepayers could pay higher rates than may be justified. An appropriate balance of the interests of the utilities, ratepayers and the public interest is essential to lawful and reasonable utility rate regulation. Single issue ratemaking cannot accomplish this balance.

Undeniably, the problem of single issue ratemaking could be present in this docket. The CURB points out in its brief that one of the benefits of traditional rate cases in determining utility rates is that revenue requirements are matched with other

[94] *Citizens' Utility Ratepayer Board v. Kansas Corporation Commission,* 47 Kan.App. 2d 1112, 1134 (2012).
[95] Ibid.

components of the rate making formula.[96] Traditional rate cases are the appropriate means by which the LDCs can recover pipeline replacement costs. It is important that this is so noted, but the better question is whether or not the three conditions, which the Commission has espoused in F.E.R.C. Docket No. PL-15-1-000, are present in this docket.[97] Since the proposed pipeline replacements are not necessarily required by law, and the costs of replacement are not unpredictable, and regulatory lag associated with a reasonable pace of pipeline replacement will not unduly harm the LDCs, a surcharge is not appropriate in this docket by the Commission's standard. Therefore, one need not argue that the surcharge would essentially be single issue ratemaking. It is the CURB's position that the GSRS and traditional rate cases are sufficient to allow fair recovery of costs of the pipeline replacement necessary to keep Kansans safe. However, if the Commission were to determine that pipeline replacement should be recovered through surcharges (other than through the GSRS) then single issue ratemaking may become an issue.

[96] See paragraph 46 on pages 21-21 of the CURB post-hearing brief.
[97] F.E.R.C. Docket No. PL-15-1-000, Comments of the Kansas Corporation Commission, p.6 (1/26/2014).

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 on this 16th day of May, 2016, to the following:

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