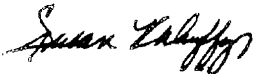


BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Brian Moline, Chair
Robert E. Krehbiel, Commissioner
Michael C. Moffet, Commissioner

STATE CORPORATION COMMISSION

MAR 05 2007

 Docket
Room

In the Matter of a General Investigation into)
Billing Standards Related to Security Deposits) Docket No. 07-GIMX-446-GIV
For Residential and Nonresidential Customers of)
Gas, Electric and Water Public Utilities)

REPLY COMMENTS OF THE CITIZENS' UTILITY RATEPAYER BOARD

COMES NOW the Citizens' Utility Ratepayer Board (CURB) and files the following reply comments pursuant to the Kansas Corporation Commission's (KCC or Commission) November 6, 2006, Order opening this docket and requesting comments regarding security deposits for residential and nonresidential customers of gas, electric and water public utilities.

I. INTRODUCTION

1. In its initial comments, CURB urged the Commission to require parties seeking amendment of the current billing standards on security deposits to establish the need for their proposed amendments by producing current, historical, and detailed supporting documentation derived from utility books and records. CURB also urged the Commission to provide parties the opportunity to conduct discovery and cross-examine witnesses producing such data, since no procedure for discovery or testimony has been established. Without current, historical, and detailed supporting documentation and the opportunity to conduct discovery and cross-examine on such data, the changes requested by utilities in initial comments cannot be fairly evaluated.

2. CURB anticipated that utilities would propose changes to the security deposit standards (amount required, retention, subsequent imposition of security deposits, etc.), without providing any data supporting their proposed changes. Unfortunately, the initial comments filed by the utilities fully met CURB's expectations – the utilities proposed significant changes without providing any relevant data indicating a need for the proposed changes. For example, not one utility provided any information indicating that its bad debt as a percentage of total revenues has increased in recent years or since the security deposit standards were established to support their proposals to increase the amount of the security deposit.

3. CURB again urges the Commission to require utilities to provide data showing a need for their proposed changes and to allow discovery in this docket before any consideration is given to proposed changes to the current Billing Standards. Regulatory agencies may make major changes in prior policies or positions, but the subsequent policy or position must be based on substantial competent evidence.¹

II. COMMENTS

A. Current deposit requirements for residential and small commercial customers shall not exceed the amount of that customer's projected average two (2) months' bill(s). For other customers the security deposit shall not exceed the amount of that customer's projected largest two months bills. Are these amounts adequate to cover the utility's risk exposure for non-payment?

4. Atmos Energy (Atmos), Aquila, Inc., d/b/a Aquila Networks – KGO and Aquila Networks – WPK (Aquila), Empire District Electric Company (Empire), Kansas Gas Service (KGS), and Westar Energy, Inc. and Kansas Gas and Electric Company, d/b/a Westar Energy (Westar), all propose to make the deposit policy uniform for all customer classes and to permit the deposit not to exceed the largest two months' bills. However, none of these utilities provide

¹ Western Resources, Inc. v. Kansas Corporation Comm'n, 30 Kan. App.2d 348, 360, 42 P.3d 162 (2002).

any data to support their conclusion that the current policy for residential and small commercial deposits is not adequate to cover the risks associated with providing service to those customers in the event of default. None of the companies proposing to change the current security deposit requirements to the largest two months' bills has provided any data with regard to bad debt as a percent of total revenues. More importantly, none of these companies have provided any data indicating that its bad debt as a percent of total revenues has increased since the time the security deposit requirements were originally established by the Commission.

5. Midwest Energy, Inc. (Midwest Energy) and the Kansas Electric Cooperatives, Inc. (KEC) recommend that utilities be allowed to collect a three-month average bill deposit for residential and small commercial customers.² KEC states that a three-month average bill deposit “may be more appropriate” because existing security deposit amounts “may not be sufficient.”³ To its credit, Midwest Energy did provide some data on bad debt expense as a percent of total revenues, but failed to provide any data showing whether that percent has increased or decreased since the existing security deposits were established.

6. A utility’s right to seek a security deposit has historically been limited by a duty to demand only a reasonable amount. As a result, the Commission must require the utilities proposing an increase in security deposits to provide substantial competent evidence demonstrating bad debt as a percent of total revenues for residential and small commercial customers has increased significantly since the time the security deposit requirements were originally established by the Commission.

² The current billing standards appear to allow cooperatives to collect a security deposit not to exceed the three month average for residential and three month largest for other customers when the customer is a member of a cooperative utilizing turn-around billing for the customer, but it is unclear what that means.

³ Initial Comments of Kansas Electric Cooperatives, Inc., p. 1 (KEC failed to number its paragraphs or its page numbers, as required by K.A.R. 82-1-219(c). CURB will therefore reference only the page number.)

7. Unless utilities demonstrate with substantial competent evidence that there is a need to increase the current security deposit amounts, and that the change will result in reducing uncollectibles, the Commission should not change the current standards.

B. "Other customers" are defined as customers using more than 3,240 kwh of electricity or 50 Mcf of natural gas in an average month. Should nonresidential customers be subdivided into groups based on annual usage?

8. Aquila, Atmos, and Empire all indicate that there is no need to further subdivide nonresidential customers based on annual usage. CURB agrees.

9. Westar and KGS recommend against further subdivision, but instead propose to eliminate the current subdivision for small commercial customers. Westar argues that the risk posed to customers who faithfully pay their bills is the same regardless of the size of a business or the amount of electricity the business uses. CURB disagrees. The degree and amount of risk posed by a large commercial or industrial business using large amounts of electricity or gas is not the same as the risk posed by a small retail business.

10. Midwest Energy appears to propose further subdivision, but rather than uniform rules for all utilities, Midwest recommends that deposit guidelines be crafted for each rate class. CURB opposes Midwest's proposal on the grounds that security deposits would vary significantly company to company, resulting in similarly situated customers paying different deposits simply because of differing rate classes among utilities.

11. Because Midwest has failed to require security deposits for many of its nonresidential accounts, Midwest further proposes that it be allowed to collect deposits from existing nonresidential "no-deposit" customers who were not required to pay a deposit, have no outstanding balance, a history of service diversion, or three consecutive delinquent payments. Midwest fails to articulate under exactly what circumstances it would impose a security deposit

on existing nonresidential customers, but CURB opposes this proposal in any event. Customers with good payment records should not be required to subsequently pay a security deposit.

12. KEC states that “it may be appropriate to allow for, but not necessarily require, additional subgroups for deposits purposes.” Because KEC fails to provide any detail for this statement, CURB will not respond other than to oppose the proposal for lack of specificity.

13. As stated in CURB’s initial comments, CURB sees no reason to change the standards for residential and small commercial customers.

C. The Billing Standards allow the utility to require a deposit from customers under certain circumstances. The conditions are different for customers at the time of application for service and any time after application for service. Does the term "application for service" refer to new customers, existing customers filing for bankruptcy, former customers who live at the same premises but have been disconnected, etc.?

14. Midwest states that “application for service” refers to the initial account establishment for a customer at the specified service address, existing customers re-establishing service after bankruptcy proceedings, and customers who live at the same premises who are re-establishing service after a non-payment disconnection. CURB agrees.

15. KEC’s comments appear to be in agreement with Midwest’s, although KEC believes the Commission needs to clarify the rules that apply when a customer applies for bankruptcy.

16. Atmos, Aquila, and Empire all state that “application for service” refers to new customers, existing customers filing for bankruptcy, existing customers requesting service at another premise and former customers who previously had service with the company. CURB is in general agreement, with the exception that an existing residential customer in good standing requesting service at another premise should not be treated as an “application for service.”

17. Westar notes that the Commission has construed “application for service” narrowly to refer only to service to a “new” customer, but recommends that utilities be allowed to impose deposit requirements on existing customers who open new service accounts due to a bankruptcy filing, former customers who live at or operate a business at the same premises but apply for service after having been disconnected at that location, existing customers who apply for a new service at a concurrent and separate metering point or residence or location, and new customers in the case of a change of ownership or leasehold of an existing premise (with or without any change of operation), a change of ownership of the corporate or business entity that is the customer or a change in the character of the customer’s usage, such as a change from a residential to commercial use or from small commercial to large commercial or industrial usage. CURB is not opposed to these proposals, but does oppose Westar’s subsequent proposal that “rather than attempting to list all the possible circumstances that may arise, the Commission allow utilities to assess new security deposits or adjust existing security deposits when they have reasonable grounds to believe that a customer’s ability to pay its bills has been significantly reduced.” This last proposal is overly broad and contains no articulable standards that would protect ratepayers from arbitrary and discriminatory actions by utilities. Moreover, it is much broader than the initial list of circumstances cited by Westar. A utility should not be able to assess new security deposits or adjust existing security deposits when the customer has a good record of payment, regardless of the utility’s perception that the customer’s ability to pay has been reduced.

18. KGS asserts that in defining “application for service”, the Commission “should focus on the nature of the utility service being provided. If an individual is not receiving gas

distribution service, the individual is not a customer nor is there a mutually accepted business relationship.” CURB agrees.

- D. Does "any time after the application for service" refer to existing customers only? How should "existing customer" be defined? Is a customer that has been disconnected an existing customer? How long does a customer have to be disconnected before the customer is no longer considered an existing customer? Is there a middle ground between a new customer and an existing customer?**

19. The differing positions on this issue taken by the seven utilities indicate that some definition to this phrase should be provided in the Billing Standards. KGS considers a customer to have existing-customer status for ten days after service has ended. Empire gives a customer this status for five days after disconnect. Aquila gives the customer this status for only three days after disconnect. Atmos, KEC, Midwest, and Westar do not consider the customer an existing customer after disconnect. If the disconnection is not for nonpayment (such as when a residential customer is moving to another residence), the customer should be considered an existing customer for a reasonable amount of time and the request for service at the new residence should not be a new application for service.

- E. Should the existing customer security deposit requirements be the same for residential and non-residential customers?**

20. Atmos, Aquila, Empire, KEC, and Midwest all indicate that different security deposit requirements for different classes of customers are appropriate. CURB agrees.

21. CURB opposes the position advocated by Westar and KGS, that utilities be authorized to impose security deposits on existing customers for reasons other than those contained in the current billing standards. Westar proposes that “unsatisfactory credit or other indications that a security deposit is necessary” should trigger the imposition of a security deposit. Westar has failed to provide any substantial competent evidence to justify this proposed

change in security deposit policy by the Commission. Instead, Westar's proposal constitutes an arbitrary and discriminatory process without any evidence justifying the change in policy.

F. Positive identification (defined as a photo with name) may be requested from residential customers. Should this be expanded to small general service customers whose business account is in the name of the business owner?

22. CURB noted in its initial comments the problem with identifying whose identification would be required with regard to small general service customers that are incorporated. It also appears from the comments of KGS that many connection transactions are completed over the phone and photo ID requirements may not have much relevance.

G. Creditworthiness - can utilities use credit score methods to evaluate satisfactory credit ratings? If so, should the methodology be consistent between all utilities?

23. Westar's comments that "there may be a variety of scoring methods available to utilities to evaluate the credit worthiness of customers" and that "[u]tility companies should not be required to use a methodology that is consistent or uniform among all utilities" is significant and highlights the concerns raised by CURB in its initial comments. The use of credit scoring methods by utilities to evaluate satisfactory credit worthiness of consumers is notoriously inaccurate. Westar's recommendation (allow inconsistent and non-uniform methodologies) will allow the inconsistencies noted in the 2002 study conducted by the Consumer Federation of America (CFA) and the National Credit Reporting Association (NCRA)⁴ to determine whether a security deposit is required. Should credit scores with the following defects be used to determine whether a customer should pay a security deposit?

⁴ Consumer Fed'n of Am. And Nat'l Credit Reporting Assoc., *Credit Score Accuracy and Implications for Consumers*, (December 17, 2002), available at: http://www.consumerfed.org/pdfs/121702CFA_NCRA_Credit_Score_Report_Final.pdf. See also, FCA press release, *Millions of Americans Jeopardized by Inaccurate Credit Scores*, Consumer Federation of America, http://www.consumerfed.org/releases2.cfm?filename=121702_creditscorereport.txt.

- 20% of consumers have credit scores that differ by at least 50 points between credit bureaus, and 4% of consumers have credit scores that differ by at least 100 points.⁵
- Credit scores and information vary significantly among the three national credit reporting bureaus.⁶
- One in five consumers (22%) risks being mischaracterized as a poor credit risk due to inaccurate information.⁷
- Nearly ten percent of customers risk exclusion from the credit marketplace because of incomplete, duplicate, or mixed credit files.⁸
- The study examined 51 representative files for consistencies or inconsistencies to explain the reasons for the differences in credit scores among the different credit bureaus and determined:
 - 78.4% of the files were missing a revolving account in good standing.⁹
 - 33.3% of the files were missing a mortgage account that had never been late.¹⁰
 - 66.7% of the files were missing another type of installment account that had never been late.¹¹
 - 15.7% of the files were missing other accounts, such as non-revolving credit cards, with no derogatory information.¹²
 - 43.1% of the files contained conflicting information on how often the consumer had been late by 30 days.¹³
 - 29.4% of the files contained conflicting information about how many times the consumer had been late by 60 days.¹⁴
 - 23.5% of the files contained conflicting information about 90-day delinquencies.¹⁵

24. Further, another study (by the Federal Reserve) cited in CURB's initial comments found that accounts with a significant derogatory piece of information as the most recent addition, almost three-fifths of the reports were not current.¹⁶ "The authors' evaluation suggests that many of these accounts, particularly mortgages and installment loans, are likely to have been either closed or transferred but were not reported as such."¹⁷

⁵ *Id.*, at 24.

⁶ *Id.*, at 22.

⁷ *Id.*, at 38.

⁸ *Id.*, at 39-40.

⁹ *Id.*, at 30.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*, at 32.

¹⁴ *Id.*, at 32-33.

¹⁵ *Id.*, at 33.

¹⁶ Robert Avery, Paul Calem, Glenn Canner, & Raphael Bostic, *An Overview of Consumer Data and Credit Reporting*, Fed. Reserve Bulletin, Feb. 2003, at 71. Also available at: <http://www.federalreserve.gov/pubs/bulletin/2003/0203lead.pdf>.

¹⁷ *Id.*

25. These two studies demonstrate significant inaccuracies associated with credit scores (and the credit reports they are based upon). Because utility service is a “necessity of modern life,” the discontinuance of which for “even short periods of time may threaten health or safety.”¹⁸ These two studies demonstrate that the use of credit scores is both arbitrary and discriminatory. CURB urges the Commission to prohibit the use of credit scores to evaluate satisfactory credit worthiness of consumers for purposes of security deposits. At the very least, the Commission should open an investigation to determine whether the use of credit scores is arbitrary and discriminatory.

26. Interestingly, KGS does not even use credit scores. The Commission may find it helpful to compare KGS’s bad debt ratio to those of utilities that are using credit scoring. Unless or until discovery is scheduled in this docket, this type of information is not currently available.

27. Empire indicates that credit scoring should be allowed and could be used to “ensure consistent treatment among the various companies.” CURB fails to see how consistent treatment among the various companies can be obtained when credit scores and information vary significantly among the three national credit reporting bureaus credit, one in five consumers (22%) risks being mischaracterized as a poor credit risk due to inaccurate information, 20% of consumers have credit scores that differ by at least 50 points between credit bureaus, and 4% of consumers have credit scores that differ by at least 100 points.

28. Both Atmos and Aquila support the use of credit scores, and both advocate “flexibility” in determining and applying credit scores. This proposal, in light of the data on the inaccuracy of credit scores cited by CURB, would result in discriminatory treatment of customers.

¹⁸ Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 18 (1978). Stanford v. Gas Service Co., 346 F. Supp, 717, 721 (D. Kan. 1972).

29. KEC appears to recognize, to a degree, the issue of inconsistency of credit scores in its statement that “Consistency between utilities may be advantageous for those using credit scores to minimize confusion to customers moving from one utility to another.”

30. While Midwest does not believe that all utilities should be required to use the same method, it acknowledges that “general guidelines may be helpful.”

31. CURBs recommended in its initial comments that Section III of the Billing Standards be modified to provide that security deposits will not be required of new customers unless the applicant (a) as a prior customer, received three or more delinquency notices or was disconnected for nonpayment; (b) is not able to demonstrate continuous employment during the prior twelve consecutive months and is neither currently employed nor has a regular source of income; and (c) has an unpaid, overdue balance owing to any electric, gas, or water utility for residential service.¹⁹ This recommendation, if adopted by the Commission, would eliminate the need for the arbitrary and discriminatory use of credit scoring by utilities in Kansas.

32. If the Commission allows credit scoring over CURB’s strenuous objection, the Commission should require consistent and objective credit scoring methodology to be used by all utilities to evaluate satisfactory credit ratings. CURB will not repeat here the list of objective requirements CURB proposed in its initial comments, but incorporates them herein by reference.

H. Do changes in character or volume of service need to be defined? If so, how should those changes be defined? Should the standards be different for residential and non-residential customers?

33. Atmos, Aquila, Empire, and Westar all state that changes in character or volume of service do not need to be defined.

¹⁹ CURB’s proposed amendments are similar to Washington security deposit standards for gas service. *See*, WAC 480-90-113.

34. However, Westar argues in the alternative that if the Commission finds that the term should be further defined, the definition should be clarified to include factors such as customer class, private, public or business use of the premises, applicable tariffs, average and seasonal usage, and revenue produced. Midwest Energy's proposal is similar to Westar's, although it appears to be applicable only to nonresidential customers. CURB opposes any definition that will allow changes in the price of electricity or gas to be deemed a change in character or volume of service and used to seek additional deposits from existing customers in good standing. This is consistent with the Commission's February 2, 2005 Order in Docket No. 04-WSEE-924-COM.

I. What methods of payment can be used to provide security deposits - cash, credit card, debit card, electronic payment, bonds, guarantor, letter of credit, etc.?

35. Most parties indicate that cash, credit card, debit card, electronic payment, bonds, guarantor, and letters of credit are acceptable.

36. Although unsolicited, Westar argues in this section of its comments that utilities should not be required to accept installment payments of security deposits as currently required by the Billing Standards. CURB opposes this proposal. It would be a substantial hardship to many residential customers to pay the utility deposit in full before service is provided, and would in fact deny service to many residential customers. CURB requests that the Commission require Westar and other utilities to provide substantial evidence supporting its proposal, including evidence on bad debts related to unpaid security deposits, before deciding whether to change the current Billing Standard applicable to installment payments of security deposits.

J. Use, retention and return of deposits. If the nonresidential customers are divided into more than two groups, should the retention and return of security deposits be reviewed and treated the same for each group?

37. CURB continues to believe the residential and small commercial customer categories should be retained as they currently exist in the Billing Standards, including the retention and return of security deposits.

38. Atmos, Aquila, and Empire all propose to change the current standard applicable to small commercial customers (deposits under \$5,000 returned after 36 months of on-time payment) to when the customer has had at least 20 on time payments within a 24 month period (and defining “on time payment” as a payment received no later than the bill due date). CURB does not see a great need for this proposed change, nor have these parties provided any data supporting the proposal. However, the definition poses a problem as some utilities consider the “due date” as the date the bill is issued, which would make “on time payment” a virtual impossibility for the customer.

39. KGS and Westar both propose changing the current standard to allowing the utility to retain the deposit until service is terminated. CURB opposes this proposal, and requests that the Commission require KGS and Westar provide data supporting the need for this proposed change.

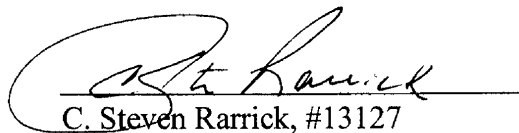
40. Midwest does not appear to be proposing a change in when deposits are returned to nonresidential customers, only changes in how deposits are assessed (based on rate class designation per its proposal in response to Question B).

41. KEC likewise does not appear to be proposing a change in when deposits are returned to nonresidential customers.

III. CONCLUSION

42. The Commission should prohibit the use of credit scores in determining whether security deposits should be required for electric, gas, and water utility service in Kansas. CURB's proposal for determining the need for security deposits based on utility payment history and employment records will eliminate any need for using credit scores and eliminate this arbitrary and unduly discriminatory practice by Kansas public utilities. CURB urges the Commission to require utilities to provide substantial competent evidence supporting any proposed changes in the Billing Standards. CURB appreciates the opportunity to submit comments on behalf of Kansas small business and residential ratepayers regarding security deposit requirements for residential and nonresidential customers of gas, electric and water public utilities.

Respectfully submitted,




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VERIFICATION


STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

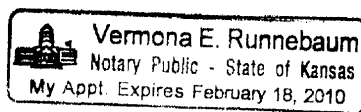
That he is an attorney for the Citizens' Utility Ratepayer Board; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.


C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 5th day of March, 2007.


Notary of Public

My Commission expires:



CERTIFICATE OF SERVICE

07-GIMX-446-GIV

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, or hand-delivered this 5th day of March, 2007, to the following:

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