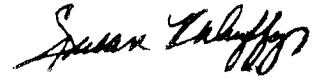


BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

SEP 09 2008



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

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 )

**COMMENTS OF THE CITIZENS' UTILITY RATEPAYER BOARD  
IN RESPONSE TO STAFF'S REPORT AND RECOMMENDATION**

COMES NOW the Citizens' Utility Ratepayer Board (CURB) and files the following comments in response to Staff's Report and Recommendation filed on June 26, 2008 as authorized by the Commission's Order dated July 10, 2008.

**I. INTRODUCTION.**

1. As CURB urged in prior comments, the Commission should decline to change the current billing standards on security deposits absent substantial competent evidence demonstrating a need for proposed changes. Parties have failed to support the need for their proposed changes by producing current, historical, and detailed supporting documentation derived from utility books and records. Further, parties have not been afforded the opportunity to conduct discovery or cross-examine witnesses producing such data (to date, no procedure for discovery or testimony has been scheduled). Without current, historical, and detailed supporting documentation and the opportunity to conduct discovery and cross-examine on such data, any referenced data is only marginally useful in devising billing standards of such importance to

Kansas ratepayers. Regulatory agencies may make major changes in prior policies or positions, but the subsequent policy or position must be based on substantial competent evidence.<sup>1</sup>

## II. COMMENTS

**Question 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?**

### Staff Recommendations – Question A

1. *Residential customers - no change to existing rules - the amount of the cash deposit or surety bond required shall not exceed the amount of that customer's projected average two (2) months' bill(s).*
2. *Non-residential customers (small) - the amount of the cash deposit or surety bond shall not exceed the amount of that customer's projected largest two (2) months' bill(s). This revision would apply only to customers requesting initial service and to existing customers who qualify for a security deposit modification after the time of application for service. Existing customers with good payment history would not be subject to a revision of their maximum security deposit.*
3. *Non-residential customers (large) - no change to existing rules - the amount of the cash deposit or surety bond required shall not exceed the amount of that customer's projected largest two (2) months' bill(s).*

2. CURB supports Staff's recommendation not to change the current standard which uses the average two months' bill amount to calculate the security deposit for residential customers. The current deposit amounts are adequate to cover a utility's risk exposure for non-payment and should not be increased. Setting onerous and unnecessary security deposits can jeopardize continuing service to low-income households and actually pose a serious threat to the home, health, and even the lives of consumers. As the United States Supreme Court has noted, "utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health or safety."<sup>2</sup> Similar findings have been made by

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

<sup>2</sup> 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).

Kansas courts.<sup>3</sup> A utility's right to seek a security deposit has historically been limited by a duty to demand only a reasonable amount.

3. However, CURB opposes Staff's recommendation to change the deposit amount for small non-residential customers to the customer's projected two largest bills. The record is not supported by substantial competent evidence supporting the industry's request to increase the deposit for small non-residential customers to the customer's projected two largest bills. Further, the increase in security deposit amounts could be catastrophic for small Kansas businesses. Absent substantial competent evidence supporting a need to make this change, the Commission should not change the current standard applicable to small non-residential customer deposits.

**Question 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 non-residential customers be subdivided into groups based on annual usage?**

*Staff Recommendations – Question B*

1. *A small non-residential customer is one which uses less than 3,240 kWh of electricity or 50 Mcf of natural gas in an average month.*
2. *A large non-residential customer is one which uses 3,240 kWh of electricity or more or 50 Mcf of natural gas or more in an average month.*

4. CURB opposes Staff's recommendation on Question B to the extent it changes the current standard applicable to small non-residential customer deposits. Absent substantial competent evidence demonstrating a need to change the standards, the Commission should not change the standards applicable to small non-residential customers.

**Question 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.?**

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<sup>3</sup> Stanford v. Gas Service Co., 346 F. Supp, 717, 721 (D. Kan. 1972).

**Question 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?

Staff Recommendations – Questions C and D

At the time of application for service

1. Former residential customers who have not had active connected service at the same premises during the most recent 45 day period will be considered new applicants for the purpose of determining deposit requirements.
2. Former non-residential customers whose account has been terminated will be considered new applicants for the purpose of determining deposit requirements.
3. At the time of application for service applies to the following situations where a new service agreement is required: applicant's request for initial service; existing customer filing for bankruptcy reorganization; existing customers who apply for a new service at a 'concurrent and separate metering point, residence or location'; new applicant in the case of a change of ownership or leasehold of an existing premise; and, existing customers where there is a change of ownership of the corporate or business entity that is the customer.

Any time after the time of application for service

1. Former residential customers, disconnected for non-payment, and who have had active connected service during the most recent 45 day period at the same premises will be considered existing customers for the purpose of determining deposit requirements. The meter must have remained connected at the premises. If the customer had a deposit on file that was applied to the final bill, the utility may assess the same deposit amount.
2. Former non-residential customers, disconnected for non-payment and whose bill has not been finalized will be considered existing customers for the purpose of determining deposit requirements. The meter must also have remained connected at the premises.
3. If the customer's existing security deposit is to be adjusted or modified, the customer's maximum security deposit requirement will be calculated in the same manner as an initial deposit. The entire deposit requirement will be treated as an initial deposit subject to Billing Standard rules for installment payments and retention.
4. The utility may at any time after application for service, upon five (5) days written notice, require a deposit to guarantee payment of bills for utility service rendered if:
  - a. the customer fails to pay an undisputed bill before the bill due date for three (3) consecutive billing periods, one of which is at least 30 days in arrears - the first day of the arrearage period is the first day after the due date on the bill;
  - b. the customer has a change in the character of service - defined as a change in the nature or classification of use;
  - c. The customer was disconnected for non-payment two or more times within the most recent twelve month period;
  - d. The customer has defaulted on a payment agreement(s) two or more times in the last twelve months;
  - e. The customer has tendered two or more insufficient funds payments in the most recent twelve months;

- f. *The customer has sought debt restructuring relief under federal bankruptcy laws. Within 60 days after the bankruptcy has been discharged, if the deposit on file is less than the maximum security deposit requirement for the same premise, the utility may recalculate the customer's security deposit based on the most recent twelve (12) month's usage.*

5. CURB does not oppose Staff's recommendation on Questions C and D. CURB opposes, however, any suggestions to shorten the 45-day "grace period" recommended by Staff.

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

*Staff Recommendations – Question E*

1. *Staff proposes that security deposit requirements for residential customers should not be the same as security deposit requirements for non-residential customers. There are reasons to distinguish the amount of a security deposit, retention of security deposits and other requirements as will be discussed in this memorandum.*

6. CURB supports Staff's recommendation on Question E with respect to residential customers. However, CURB opposes Staff's recommendation to the extent it changes the deposit standards for small non-residential customers as these proposed changes are not supported by substantial competent evidence.

**Question 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?**

*Staff Recommendations – Question F*

1. *Utilities may require residential applicants to provide positive identification to the utility before service is made available. Positive identification may be, but is not limited to, personal taxpayer identification number, driver's license, other form of photo ID, birth certificate, etc. If positive identification is not immediately available, a customer providing a full deposit should have thirty (30) days to secure positive identification and remit it to the utility.*
2. *Utilities may request, but not require as a condition of service, the names of each adult occupant residing at the location.*
3. *Utilities may require non-residential, non-incorporated applicants to provide personal and business information to the utility before service is made available: name of the person(s) responsible for payment of the account and their personal taxpayer identification number(s), name of the business, type of business and employer tax identification number.*

7. CURB does not oppose Staff's recommendation on Question F.

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

Staff Recommendations – Question G

1. *At this time, Staff does not support using credit score methods to evaluate satisfactory credit ratings for utility consumers.*
2. *When obstacles to credit score methods have been resolved, the Commission may want to open a generic investigation to consider how credit scoring may be applied to utility customers.*

8. CURB supports Staff's first recommendation on Question G. CURB opposes the use of credit scores because credit scoring methods are notoriously inaccurate, as demonstrated in CURB's initial and reply comments.

9. In 2002, the Consumer Federation of America (CFA) and the National Credit Reporting Association (NCRA) conducted an extensive study of credit scores, examining over 500,000 consumer credit files.<sup>4</sup> The study noted the following defects in the sampling of credit scores studied:

- 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.<sup>5</sup>
- Credit scores and information vary significantly among the three national credit reporting bureaus.<sup>6</sup>
- One in five consumers (22%) risks being mischaracterized as a poor credit risk due to inaccurate information.<sup>7</sup>
- Nearly ten percent of customers risk exclusion from the credit marketplace because of incomplete, duplicate, or mixed credit files.<sup>8</sup>

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<sup>4</sup> 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](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](http://www.consumerfed.org/releases2.cfm?filename=121702_creditscorereport.txt).

<sup>5</sup> *Id.*, at 24.

<sup>6</sup> *Id.*, at 22.

<sup>7</sup> *Id.*, at 38.

<sup>8</sup> *Id.*, at 39-40.

- 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.<sup>9</sup>
  - 33.3% of the files were missing a mortgage account that had never been late.<sup>10</sup>
  - 66.7% of the files were missing another type of installment account that had never been late.<sup>11</sup>
  - 15.7% of the files were missing other accounts, such as non-revolving credit cards, with no derogatory information.<sup>12</sup>
  - 43.1% of the files contained conflicting information on how often the consumer had been late by 30 days.<sup>13</sup>
  - 29.4% of the files contained conflicting information about how many times the consumer had been late by 60 days.<sup>14</sup>
  - 23.5% of the files contained conflicting information about 90-day delinquencies.<sup>15</sup>

10. Further, another study (by the Federal Reserve) cited in CURB’s initial and reply 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.<sup>16</sup> “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.”<sup>17</sup>

11. CURB submits that credit scores with the foregoing defects should never be used to determine whether a customer should pay a security deposit for essential utility service. Consumers who are denied essential utility services because of an unreliable credit score are denied what the United States Supreme Court has declared to be “a necessity of modern life” the denial of which “for even short periods of time may threaten health or safety.”<sup>18</sup>

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<sup>9</sup> *Id.*, at 30.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*, at 32.

<sup>14</sup> *Id.*, at 32-33.

<sup>15</sup> *Id.*, at 33.

<sup>16</sup> 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>.

<sup>17</sup> *Id.*

<sup>18</sup> 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).

12. Regarding Staff's recommendation that when "obstacles to credit score methods have been resolved, the Commission may want to open a generic investigation to consider how credit scoring may be applied to utility customers", CURB is uncertain that the systemic obstacles to credit scoring methods will ever be resolved. As a result, CURB urges the Commission to adopt Staff's recommendation to prohibit the use of credit scoring methods to evaluate satisfactory credit ratings for utility consumers.

**Question 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?**

*Staff Recommendations – Question H*

1. *Remove the term "volume" from "character or volume of the customer's service." The term "character of service" is defined to be a change in the nature or classification of the service.*
2. *The amount of the cash deposit or surety bond may be recalculated if the customer's character of service should change.*

13. CURB supports Staff's recommendation to remove the term "volume" from the phrase "character or volume of the customer's service." CURB continues to oppose any interpretation that would allow changes in the price of electricity or gas to be deemed a change in the character of service.

**Question 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.?**

*Staff Recommendations – Question I*

1. *Security deposits paid to the utility by any payment method approved for the payment of bills (cash, check, credit card, debit card or electronic payment, etc.) shall be considered as paid in "cash" to the utility. These deposits shall accrue interest according to Section III.11.*
2. *In lieu of a "cash" security deposit, a utility shall accept the written guarantee of any of its residential customers that qualify as a customer of good standing. The guarantor shall have service in his/her name and shall have made ten (10) of the last twelve (12) on time with no undisputed payment remaining unpaid after 30 days. The utility shall require the*



*guarantor to sign an agreement allowing the utility to transfer the customer's debt to the guarantor's account.*

3. *In lieu of a "cash" security deposit, a utility has the discretion to accept the written guarantee of any responsible party or obtain a letter of credit as surety for a residential customer service account.*
4. *In lieu of a "cash" security deposit for non-residential customers, a utility may accept a surety bond, irrevocable letter of credit, or other written guarantee from a responsible individual or company that will be responsible for paying the customer's utility bill in the event of nonpayment.*

14. CURB does not oppose Staff's recommendation on Question I.

**Question J. Use, retention and return of deposits. If the non-residential 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?**

Staff Recommendations – Question J

1. *Residential customers will qualify for a deposit refund if they make 10 of the last 12 payments on time, and no undisputed bill was unpaid after 30 days beyond the bill due date.*
2. *Small non-residential customers will qualify for a deposit refund if they make 20 of the last 24 payments on time, and no undisputed bill was unpaid after 30 days beyond the bill due date. This revision would apply to all existing customers with security deposits currently on file and to all new requests for service.*
3. *Remove the \$5,000 dollar restriction related to deposit retention.*
4. *Large non-residential customer security deposits will be retained by the utility until termination of service.*
5. *Large non-residential customers will have their deposit requirements recalculated every three years or when the non cash security deposit expires. The maximum deposit requirement shall be increased or decreased as appropriate for each customer. Customers may request that the utility recalculate their deposit at a shorter interval. The utility and/or customers shall have 30 days to correct the deposit on file.*

15. CURB opposes Staff's recommendation on Question J on the grounds there is no substantial competent evidence demonstrating a need for the proposed change.

**OTHER ISSUES FOR CONSIDERATION**

**Issue K. Number of Installment Payments**

Staff Recommendations – Number of Installment Payments

1. *Residential and small non-residential customers will continue to have the option of making installment payments on deposits in accordance with existing Billing Standards.*

2. *Utilities are still required to tell customers that:*
  - a. *They are allowed to pay the deposit requirement in four (4) equal monthly installments if they so chose.*
  - b. *During the Cold Weather Rule (CWR) period, they are allowed to pay the deposit requirement over the period of the payment plan in accordance with existing Billing Standards.*
  
16. CURB supports Staff's recommendation on Issue K.

#### **Issue L. Deposit Review for Nonresidential Customers**

##### *Staff Recommendations – Deposit Review for Nonresidential Customers*

1. *Large non-residential customers (average monthly consumption is at least 50 Mcf or 3,240 kWh) that have cash or non-cash deposits on file with the utility shall have their deposit requirements reviewed every three years or when the non-cash security deposit expires. The maximum deposit requirement shall be increased or decreased as appropriate for each customer. Customers may request that the utility recalculate their deposit at a shorter interval. The utility and/or customer shall have thirty (30) days to correct the deposit on file.*
  
17. CURB takes no position on Staff's recommendation on Issue L.

#### **Issue M. CURB Proposal for Security Deposit Modification**

##### *Staff recommendation – CURB Proposal for Security Deposit Modification*

1. *Reject CURB's proposal, items (a), (b) and (c) listed above.*
  
18. Staff's unwillingness to seriously consider CURB's proposal for security deposit modification was evident in its brief discussion of the proposal. Because of this and the context of these proceedings, CURB withdraws its proposal.

#### **Issue N. Definition of Terms.**

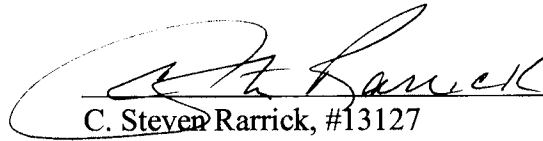
##### *Staff recommendation*

1. *Staff believes that it is the customer's responsibility to pay utility bills on or before the date stated on the bill regardless of whether the customer pays in cash, has a credit or debit card, or is on a budget billing plan.*
2. *Staff recommends that the first day of the arrears period is the day after the date due on the bill.*
  
19. CURB does not oppose Staff's recommendation on Issue N.

### III. CONCLUSION

20. CURB appreciates the opportunity provided in this docket 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,



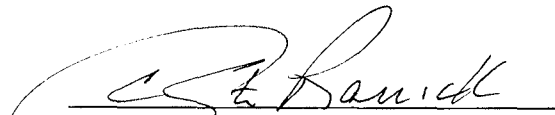
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**VERIFICATION**

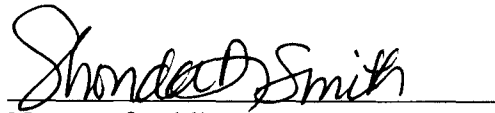
STATE OF KANSAS                     )  
  )  
COUNTY OF SHAWNEE            )        ss:

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

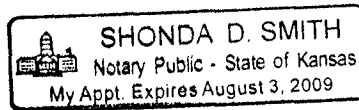
That he is an attorney for the Citizens' Utility Ratepayer Board; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.

  
\_\_\_\_\_  
C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 9th day of September, 2008.

  
\_\_\_\_\_  
Notary of Public

My Commission expires: 8-03-09



**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 9th day of September, 2008, to the following:

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