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Kansas Corporation Commission

/s/ Patrice [unclear]

SEP 27 2011

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

by  
State Corporation Commission  
of Kansas

In the Matter of a General Investigation into )  
the Kansas Universal Service Fund pursuant ) Docket No. 12-GIMT-170-GIT  
to K.S.A. 2010 Supp. 66-2008(c). )

**PETITION TO INTERVENE, MOTION FOR PROTECTIVE ORDER,  
AND PETITION FOR RECONSIDERATION AND/OR CLARIFICATION**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and moves the Corporation Commission of the State of the Kansas ("Commission") for an Order permitting it to intervene in the above-captioned proceeding and for a protective order to be issued. In addition, pursuant to K.S.A. 66-118b, K.S.A. 77-529, and K.A.R. § 82-1-235, CURB petitions the Commission for reconsideration and/or clarification of several aspects of the Commission's September 12, 2011, Order Opening Docket, Designating Prehearing Officer, and Directing Active Parties to File Entry of Appearance ("September 12<sup>th</sup> Order"). Specifically, CURB requests that the Commission reconsider and/or clarify paragraph 14 of its order regarding disclosure of confidential information. In support of the above petitions and motions, CURB states as follows:

**I. Petition to Intervene and Motion for Protective Order.**

1. CURB is composed of five volunteer consumer advocate members and is statutorily authorized to represent the interests of Kansas residential and small commercial ratepayers in utility proceedings.

2. CURB's Consumer Counsel has been given the discretion to intervene and represent the interests of Kansas residential and small commercial ratepayers in any utility proceeding before

the Commission under K.S.A. 66-1223 et seq.

3. On September 12, 2011, the Kansas Corporation Commission filed an Order Opening Docket, Designating Prehearing Officer, and Directing Active Parties to File Entry of Appearance in the Matter of a General Investigation into the Kansas Universal Service Fund pursuant to K.S.A. 2010 Supp. 66-2008(c).

4. CURB is requesting permission to intervene in this docket to represent the interests of the residential and small commercial ratepayers of Kansas. The rates paid and the service received by those customers will or may be affected by any Commission order or activity in this proceeding.

5. In addition to undersigned counsel, please include the following CURB representatives with all electronic notices, pleadings, and correspondence regarding this Application as follows:

Shonda Smith  
Office Manager  
Citizens' Utility Ratepayer Board  
1500 SW Arrowhead Road  
Topeka, KS 66604  
Email: [sd.smith@curb.kansas.gov](mailto:sd.smith@curb.kansas.gov)

Della Smith  
Administrative Specialist  
Citizens' Utility Ratepayer Board  
1500 SW Arrowhead Road  
Topeka, KS 66604  
Email: [d.smith@curb.kansas.gov](mailto:d.smith@curb.kansas.gov)

6. The representation of CURB's interests in this proceeding by existing parties is or may be inadequate.

7. The residential and small commercial ratepayers whose interests CURB represents will or may be bound by any Commission order or activity in this proceeding and will or may be adversely affected thereby.

8. CURB requests that the Commission issue a Protective Order in this docket to allow CURB and its consultant access to any confidential and/or proprietary information provided by parties to this docket.

**II. The Commission Should Reconsider and/or Clarify Its Decision Regarding Confidential Information.**

9. CURB respectfully requests that the Commission reconsider and/or clarify its decision that information identified as confidential by any party will not be disclosed to anyone other than the Commission and members of the Commission's staff:

If a party identifies information requested by the Commission as particularly sensitive due to competition in the industry, the Commission shall not disclose this information to anyone other than the Commission and members of the Commission's staff. The Commission will carefully consider whether disclosure is proper if anyone not approved by the party requests permission to allow inspect such information.<sup>1</sup>

10. CURB has filed to intervene in this matter, and has traditionally been granted access to confidential information filed by carriers in similar matters pursuant to orders opening dockets or protective orders. Furthermore, Kansas appellate courts have held that denying access to proprietary information to CURB is unreasonable, arbitrary, and capricious.<sup>2</sup>

11. CURB notes that the Commission has not expressly denied CURB access to the confidential information, but that the language of the order indicating that the "Commission will carefully consider whether disclosure is proper if anyone not approved by the party requests permission to allow inspect (sic) such information" gives the impression that carriers would have the ability to approve or disapprove CURB's review of proprietary information. This is a departure from

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<sup>1</sup> Order Opening Docket, Designating Prehearing Officer, and Directing Active Parties to File Entry of Appearance, September 12, 2011, ¶ 14.

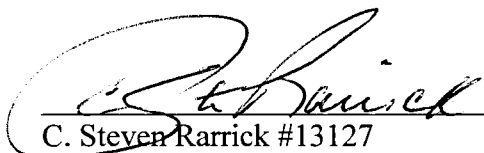
<sup>2</sup> *Citizens' Utility Ratepayer Board v. State Corp. Comm'n*, 24 Kan. App.2d 63, 71, 941 P.2d 424 (1997).

past Commission practice, which has been to allow CURB to access confidential and proprietary information subject to the provisions of a protective order.

**III. Conclusion.**

12. CURB therefore respectfully requests that the Commission issue an order granting CURB's petition to intervene, request for a protective order, and petition to reconsider and/or clarify paragraph 14 of the Commission's September 12<sup>th</sup> Order.

Respectfully submitted,



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C. Steven Rarrick #13127  
Citizens' Utility Ratepayer Board  
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Topeka, KS 66604  
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(785) 271-3116 Fax

VERIFICATION

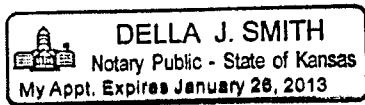
STATE OF KANSAS )  
 ) ss:  
COUNTY OF SHAWNEE )

I, 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 27<sup>th</sup> day of September, 2011.



  
Notary Public

My Commission expires: 01-26-2013.

**CERTIFICATE OF SERVICE**

12-GIMT-170-GIT

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 27<sup>th</sup> day of September, 2011, to the following:

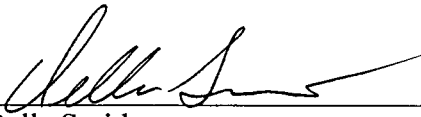
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Della Smith  
Administrative Specialist