



# **CURBside News**

NEWS FROM THE WATCHDOG FOR RESIDENTIAL AND SMALL COMMERCIAL CONSUMERS OF UTILITIES – JANUARY 2003

## **KCP&L Cuts Rates**

Kansas City Power & Light has filed to reduce its rates by \$12.4 million dollars annually. If the KCC approves, residential and small commercial customers will see a 3.237% across-the-board reduction in their rates beginning January 1, 2003.

The filing by KCP&L is pursuant to an agreement reached in May 2002 between KCP&L, CURB and the Staff of the KCC. KCP&L agreed not to request recovery from ratepayers of the cost of the January 2002 ice storm that crippled KCP&L's electric system.

In addition, KCP&L agreed to reduce rates by \$12 million to \$13 million annually, depending upon the impact of changing the depreciation life of the Wolf Creek power plant to 60 years, consistent with the Commission's decision in the Westar Energy rate case.

Staff and CURB agreed to forgo filing a petition to review KCP&L's rates until May 2006, when KCP&L agreed to file a general rate case. In the interim, KCP&L must make reasonable efforts to increase its common equity percentage from 35% to 42% to improve its financial health.

*KCC Docket No. 02-KCPE-840-RTS*

## **Charged by Feds, Westar CEO Resigns**

David Wittig resigned November 22, 2002, from all of the positions he held with Westar Energy and its affiliates. The former President, CEO and Chairman of the Board of Westar is facing federal charges for conspiracy, money laundering and filing misleading loan documents.

His resignation followed the United States Attorney's announcement on November 7, 2002, that a grand jury had handed down indictments alleging that Wittig and the former president of Topeka's Capital City Bank, Clinton Odell "Del" Weidner II, conspired to increase Wittig's credit line at the bank by \$1.5 million. The indictment alleges that Wittig then loaned the money to Weidner to finance a real estate deal in Arizona.

The indictment also alleges that both men are guilty of money laundering and fraudulently attempting to conceal the true purpose of the loan by routing it through a Milwaukee bank and filing documents claiming that Wittig used the money for other purposes.

*(See Wittig Resigns, Page 3)*

## **Huge Gas Rate Increase Sought by Midwest Energy**

Natural gas customers of Midwest Energy will see rate increases of up to \$5.5 million dollars annually if Midwest Energy is successful in its current rate case before the Commission. Residential and small commercial customers on Midwest's gas system could see increases of up to 200% in their gas bills, if the KCC approves.

CURB is fighting the size of the requested increase. The evidence supports only an annual increase of \$2.1 million

One of CURB's chief concerns is Midwest's request to recover over \$900,000 annually from customers to pay for the acquisition of the KN gas distribution system in 1998. At that time, the CEO of Midwest staved off opposition to the acquisition by testifying that Midwest would not need a rate increase for 15 years.

Now, only three years later, Midwest claims this rate increase is necessary to cover substantial cost increases and the costs of upgrading its deteriorating distribution system.

*(See Midwest Gas Increase, Page 2)*

## Midwest Gas Increase

(Continued from Page 1)

CURB is also concerned that Midwest customers are being asked to pay for the company's unprofitable investments in unregulated subsidiaries.

CURB believes that the proposed rate increases fall disproportionately hard on the residential and small commercial sales customers. However, the Kansas Corn Growers Association and the Kansas Livestock Association have also intervened in an attempt to shield large transport customers from the rate increases.

CURB urges Midwest's residential and small commercial customers to contact the Commission if they are concerned about this rate increase.

The case went to hearing before the KCC during the second week of December, with a decision expected in early January 2003.

*KCC Docket No. 02-MDWG-922-RTS*

## Midwest Seeks to Buy Westar Customers

Midwest Energy has filed an application with the KCC, seeking approval to purchase about 10,000 Westar customers, along with the facilities to serve them. CURB is beginning to review this filing.

The purchase would affect some Westar customers located in Ellsworth, Rice, Pratt, Barton, Stafford, Pawnee and Edwards counties, and would involve the purchase of certain assets in Reno County.

Westar Energy positively views the sale and pledges to use the proceeds to pay down debt to comply with KCC orders in the Westar investigation.

Midwest Energy asserts that these customers will receive better service from Midwest than they currently receive from Westar, given their proximity to Midwest's facilities.

A major concern for CURB is the price Midwest is proposing to pay for the customers: almost \$33 million. A substantial portion of this price is in the form of an acquisition premium, which is the amount over book value paid for the assets. If Midwest seeks recovery of this acquisition premium, it could mean a substantial increase in Midwest's rates for its electric customers. Another concern is the potential impact on the Westar customers to be purchased by Midwest.

Since Westar's current rates are quite a bit lower than Midwest's, former Westar customers could see a steep rate increase when they become Midwest's customers -- unless Midwest gradually phases-in the new rates.

Worse yet, if Midwest also succeeds in convincing the KCC to allow it to raise its electric rates next year, the acquired customers may suffer severe "rate shock" when they are transferred from Westar service to Midwest. It isn't clear whether Midwest plans to mitigate the harm of rate shock to its new customers.

Additionally, Midwest has proposed to implement an energy cost adjustment rider to flow through changes in purchased-power costs to customers, but

also proposed to eliminate a property tax rider to flow through changes in property taxes to customers.

CURB will continue to monitor and participate in this case. No procedural schedule has been proposed at this time.

*KCC Docket No. 03-MDWE-421-ACQ*

## CURB Urges Electric Rate Cut for Midwest

CURB filed testimony with the KCC on December 2, 2003, requesting that Midwest Energy decrease its rates to electric customers by a minimum of \$1.67 million annually.

Midwest is seeking to increase rates to its electric customers by \$1.9 million annually, mostly as a result of changes in its depreciation schedule. CURB hired a consultant to review Midwest's proposed depreciation changes. As a result of the consultant's recommendations, as well as adjustments to Midwest's cost of service, CURB believes that Midwest is over-earning.

Midwest is expected to file rebuttal testimony in the case on January 16, 2003. The Commission has scheduled a hearing on the matter beginning February 10. A decision is expected sometime in February or March.

*KCC Docket No. 03-MDWE-001-RTS*

## KGS Transportation Contract Approved

The Commission has approved a new upstream transport

tation contract for Kansas Gas Service Company to bring gas out of the Wyoming basin. Concerned about decreasing gas supply in the Hugoton gas fields in southwestern Kansas, a major source of supply for KGS, the company began evaluating alternative supply options for the future.

The Wyoming basin gas supply is currently one of the largest and fastest growing gas supply basins in the country

Wyoming gas is also attractively priced at present due to limited transportation capacity to move the gas out of Wyoming.

After evaluating several alternatives, KGS signed a contract with Colorado Interstate Gas, which proposed running a pipeline down through Denver and across eastern Colorado to the Hugoton area.

KGS can access the Wyoming gas through this line, and move the gas to its distribution properties in eastern Kansas using existing transportation contracts with Williams Natural Gas.

Expanding access to additional natural gas supplies should prove to be favorable to KGS customers, because production from the Hugoton field continues to steadily decline.

**KCC Docket No. 03-KGSG-095-CON**

## Wittig Resigns

*(Continued from Page 1)*

Wittig and Weidner have both pleaded not guilty to the charges. If further requests for delays requested by the

defendants are not granted, their trial will begin in April.

While the federal indictment has nothing to do with the operations of Westar Energy, Westar has admitted that the U.S. Attorney's office is continuing to investigate the use of corporate aircraft and compensation agreements for Wittig and Douglas Lake, Westar's Chief Strategic Officer

Additionally, the Securities and Exchange Commission is investigating the circumstances behind a multi-million dollar accounting error reported by Westar earlier this year. Rumors floating around the capital say that the Internal Revenue Service has been nosing around Westar, as well.

Westar also is under investigation by the Federal Energy Regulatory Commission for suspected "round-trip" power trading with Cleco Corporation.

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## Jim Haines Returns to Westar as CEO

The Board of Directors of Westar Energy announced on November 23 that Jim Haines has been appointed CEO of Westar Energy, Inc.

Once the Chief Operating Officer of Western Resources (now known as Westar Energy), Haines left the company in 1996 to run the El Paso Electric Company. He retired from El Paso in November 2001. He has since held positions with the University of Texas at El Paso as an adjunct professor and as the Skov Professor of Business

Ethics in UTEP's College of Business Administration.

Mr. Haines graduated with a law degree in 1975 from the University of Missouri at Columbia. He began his law career as an assistant attorney general for the State of Missouri.

Thereafter, Haines served four years as a lawyer for the Missouri Public Service Commission before joining Kansas Gas and Electric's legal team in 1980. He became KG&E's Vice President of Regulatory Affairs in 1984, Vice President of KG&E in 1985, and in 1992 became Executive Vice President and Chief Administrative Officer of Western Resources.

Haines became Western's Chief Operating Officer in 1995, and remained in that position until he left for El Paso Electric.

Mr. Haines will begin work at Westar on December 9, 2002.

CURB welcomes the new management at Westar and views Haines' appointment as a positive development for rate-payers. We wish him luck in turning around the troubled company.

The KCC Public Affairs and Consumer Protection Office is there to answer your questions and address your utility bill concerns: call toll free! 1-800-662-0027

## Aquila Begins Gas Hedging Program

Aquila has requested and received KCC approval to spend up to \$1.2 million to purchase  
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call options as a hedge against natural gas price spikes this winter.

Aquila becomes the third natural gas distribution company in Kansas to implement a hedging program for natural gas prices, following the lead of Kansas Gas Service Company and Atmos/Greeley Gas Company.

If the price for natural gas spikes this winter, the call options will provide some protection for Aquila's customers by providing a price cap on some of Aquila's gas supply.

The prices on a portion of Aquila's gas supply portfolio vary with the market price for natural gas. To prevent steep spikes in prices on these supplies, Aquila plans to spend approximately one dollar per customer per month to purchase call options to cap the price.

Aquila's customers in the Wichita area are served by People's Natural Gas. Aquila's customers in the Lawrence area are served by Kansas Public Service Company.

*KCC Docket No. 02-AQLG-950-ACT*

## **Westar Jettisons IT Department Move**

Westar Energy has withdrawn its application to outsource its Information Technology (IT) department to Protection One, its unregulated affiliate. Westar owns 85% of the financially-troubled monitored security services company.

Westar signed a contract dated July 1, 2002, to move its Information Technology department to Protection One.

Westar argued that the move would save money, and even proposed to credit ratepayers with the accumulated savings in the next rate case.

However, after Westar announced the move, CURB, Staff and other intervenors filed objections to the contract, arguing that it was a management contract with an affiliated company, which requires the Commission's approval.

Westar then sought approval of the arrangement from the Commission, while reiterating its position that the KCC had no jurisdiction over the matter.

However, a few weeks later, the Boards of Directors of Protection One and Westar recognized that they faced strong opposition on all sides, and jointly agreed to cancel the contract.

While the arrangement might have saved Westar some money, CURB was concerned that a vital function of the state's largest utility would be placed outside the jurisdiction of the KCC.

*KCC Docket No. 03-KG&E-103-ACT*

## **Expect Busy SW Bell Agenda in 2003 Session**

CURB is anticipating an active telecommunications agenda in the next legislative session. Southwestern Bell is expected to push legislation that will deregulate prices for its services, and that will reduce overall regulatory requirements.

In addition, SWBT is expected to push for exemptions for high-speed data services from the provisions in the federal and

state telecommunications acts that require them to resell and unbundle those services.

## **KCC Seeks Standards for Deregulation**

The KCC is investigating procedures and criteria that should be used to review price deregulation applications for telecommunications services. The docket also addresses how to handle requests for individual customer pricing and customer-specific pricing applications.

The Commission is reviewing issues such as establishing fixed filing timelines, what kind of data that must be submitted with a price deregulation request, and whether a public interest test must be established.

All parties filed simultaneous direct testimony this past November 15.

CURB has emphasized the burden on applicants to file full supporting data, the need for all applications to meet a public interest test, the danger of deregulation where competition may not be sustainable, and the need for the Commission to retain full authority to reject any non-compliant filing.

CURB has been engaged in vigorous disputes with Southwestern Bell over its refusal to respond to information requests submitted by CURB. The KCC recently granted CURB's motion to compel SWB to produce some of the data that will assist in developing the standards to use in price deregulation applications. Hearings begin Jan. 28.

*KCC Docket No. 02-GIMT-555-GIT*

## Westar Ordered to Separate Utility from Affiliates, Reduce Debt

In an order issued November 8, 2002, the Kansas Corporation Commission ordered Westar Energy to separate its regulated utility business from its unregulated subsidiaries.

Reiterating its disapproval of the company's proposals to improve Westar's financial condition, the KCC chided Westar for failing to protect ratepayers from the adverse consequences of its heavy debt.

The Commission noted that ratepayers are subject to undue risk and uncertainty as a result of the company's poor financial condition, which analysts have attributed to Westar's over-leveraging of its utility assets to prop up its monitored security business, Protection One

Despite Westar's plowing almost \$2 billion into the subsidiary, it has yet to turn a profit.

"The public utility possesses no unqualified right to engage in other nonutility businesses to the extent harm to the public utility results or is likely to result," said the Commission. It ordered Westar to file plans within 90 days that outline how the company will separate its utilities from its unregulated subsidiaries.

Additionally, the Commission ordered the company to reverse transactions that have enriched its subsidiaries at the expense of the utilities, and rejected a proposed rights offering to shareholders of stock in Westar's unregulated subsidiary, Westar Industries.

The Commission also imposed more stringent accounting and reporting of affiliate transactions to protect ratepayers from subsidizing unregulated activities in rates, and ordered the company to come forward with procedures that ensure that costs will be tracked and allocated more accurately.

Finally, the Commission ordered Westar to make a greater effort to pay down its debt, and to present a financial plan that is consistent with the mandates of the order. The Commission also asked the parties to file comments within 30 days on numerous issues concerning affiliate transactions.

Although CURB was generally pleased with the order, we were disappointed with its lack of detail. Several parties, including Westar, have filed petitions for reconsideration of the order.

CURB supported KIC's petition, which included requests that the Commission identify in more detail the transactions to be reversed, specify that the ONEOK stock that had been transferred to Westar Industries will be returned to the utility, and institute procedures that will afford the parties opportunity to review and comment on the revised plans.

Other parties, including KIC, demanded that the KCC reconsider its decision not to conduct a management audit in light of the recent revelations concerning federal investigations of the company and its top executives.

Initially, CURB also supported KIC's request that the Commission order a rate investigation, because there is clear evidence that the company has drastically cut its payroll by 600 employees since rates were revised last year.

However, in light of changes in Westar's management since KIC's petition was filed (discussed elsewhere in this issue), KIC withdrew its request and said it would be willing to allow new management to settle in a while before requesting a rate decrease sometime next year.

The intervenors would like to see Westar cut its next dividend as part of its efforts to reduce debt. CURB agrees with KIC that it would be a welcome development to see Westar shareholders shouldering their share of the burden of reducing Westar's debt.

The KCC apparently thinks so, too. On December 23, the Commission, in a sternly worded answer to Westar's petition for reconsideration of the November order, strongly suggested that it will order Westar to cut its dividend if it does not do so voluntarily.

CURB plans to keep a close eye on the company's progress towards financial health, and will determine in the months to come whether it would be appropriate for consumers to file a complaint about Westar's rates.

*KCC Docket No. 01-WSRE-949-GIE*

## Hendrix Resigns: Dave Springe is New Consumer Counsel

Walker Hendrix, Consumer Counsel of CURB since 1995, informed CURB's Board of Directors in early December of his intention to resign his position on December 20.

The Board selected David Springe, a licensed attorney who has served as Chief Economist for CURB for the last four years, to replace Hendrix, who left to take a position as an attorney for the Kansas Gas Service Company.

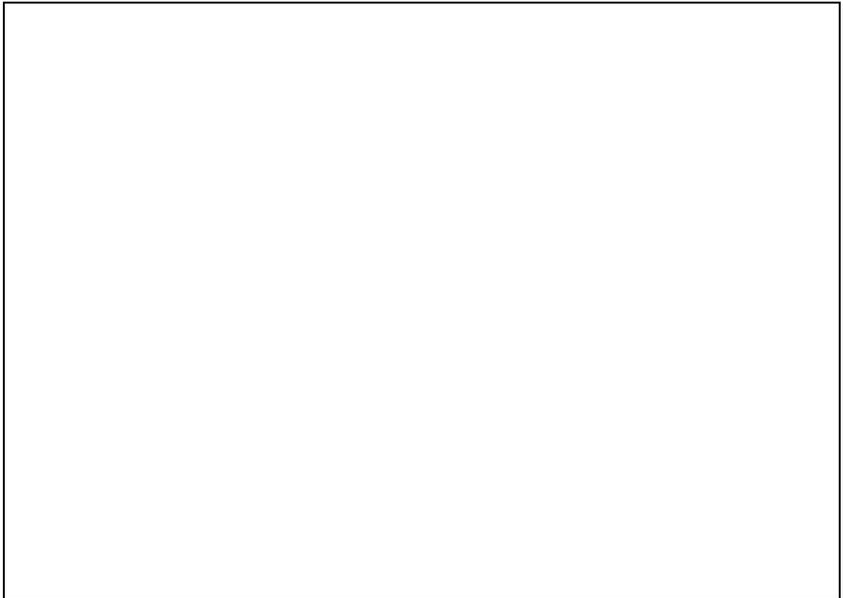
Springe, who held a position with the KCC's economics staff prior to joining CURB, graduated from the University of Kansas, where he earned a law degree, and undergraduate and graduate degrees in economics.

"I hope to take what Walker built here and move it forward," said Springe.

Of Hendrix' decision, which surprised many of his colleagues, Hendrix said, "It is time for a new challenge for me, and time for fresh leadership at CURB. I am confident that the current staff will continue to carry on the good work we've done here for the past seven years."

CURB thanks Walker for his great work, and wishes good luck to Walker in his new endeavors.

Congratulations to Dave, and the best of good luck to you in the coming new year!



*Pictured above, L to R: Kansas House Utility Committee Chair, Carl Holmes (R, Liberal); Walker Hendrix of CURB; Cynthia Claus, Commissioner, KCC.*

## Utility Regulators, Advocates Meet in Chicago

This past November, Chicago was swarming with state utility commission officials and consumer advocates for ratepayers as both groups met for their annual meetings.

CURB was represented at the meeting of the National Association of State Utility Consumer Advocates by Gene Merry, CURB Chair; Bill Dirks, CURB Vice-Chair; then-Consumer Counsel, Walker Hendrix; soon-to-be Consumer Counsel Dave Springe; and Audrey Bosley, administrative assistant.

Meeting at the same time in a nearby hotel, the National Association of Regulatory Utility Commissioners also drew participants from all over the nation.

Among the notables attending were several members of the Kansas legislative utility committees, including Carl Holmes, and Kansas Corporation Commissioner Cynthia Claus, pictured above.



### David Springe, Consumer Counsel

Many of you may remember David Springe as CURB's Chief Economist, but he began serving as Consumer Counsel in December, 2002. He's pictured here in a 2001 photo, listening to concerns of KPL customers at a public hearing.

*(Photo: Chris Viola, Capital-Journal)*