2007.12.20 16:39:41
Kansas Corporation Commission
/S/ Susan K. Duffy

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before Commissioners: Thomas E. Wright, Chairman
Michael C. Moffet
Joseph F. Harkins

In the Matter of Midwest Energy Seeking Commission Approval To Implement A Pay-As-You-Save Program For Its Natural Gas Service)	Docket No. 07-MDWG-784-TAR
In the Matter of Midwest Energy Seeking Commission Approval To Implement A Pay-As-You-Save Program For Its Electric Service)	Docket No. 07-MDWE-788-TAR

ORDER UPON RECONSIDERATION

The above captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, and being duly advised in the premises, the Commission makes the following findings:

I. Background

1. In Docket No. 07-MDWG-784-TAR (784 Docket), Midwest Energy, Inc. (Midwest) filed a tariff rider on January 29, 2007, to implement a pilot energy efficiency program in its natural gas service areas. The rider was originally identified as the Pay-As-You-Save Rider (PAYS®), but the designation has been changed to the How$mart^{sm} Rider in the amended tariff rider and implementing documents. On the same day in

Docket No. 07-MDWE-788-TAR (788 Docket), Midwest filed a similar tariff rider for its electric service areas.

2. Citizens' Utility Ratepayer Board's (CURB) Motions to Intervene in both dockets were granted by the Commission on March 2, 2007. Suspension Orders were issued on February 9, 2007 in the 788 Docket and on February 12, 2007 in the 784 Docket suspending tariff filings until September 26, 2007.

3. On May 17, 2007, Midwest, CURB, and the Commission Staff (Staff) (collectively, "the Parties") filed a Stipulation and Agreement (Stipulation) in both dockets, requesting the Commission accept the Stipulation on most issues regarding the How$mart^{sm} Rider. However, two issues remained in controversy. Generally stated, Midwest sought approval of disconnection for nonpayment of the How$mart^{sm} charges and permission to seek recovery of How$mart^{sm} associated bad debt expenses in subsequent rate proceedings. Staff supported Midwest's positions and CURB opposed them. On June 15, 2007, Staff, CURB, and Midwest filed briefs addressing these two remaining issues in contention.

4. In its consolidated Order Adopting Stipulation addressing both dockets, filed August 16, 2007 (Order), the Commission approved the stipulation filed by Midwest, Staff, and CURB. The Commission also resolved the two outstanding issues related to the stipulation. First, the Commission approved the How$mart^{sm} program as a tariffed service and authorized disconnection of utility services for nonpayment of the How$mart^{sm} charge. Second, the Commission determined that Midwest may seek to recover any bad debt expense arising from the How$mart^{sm} program in its next rate case,

and, if Midwest did so, the Commission would render a decision on the issue in that context. The Commission applauded Midwest for proposing and supporting a program that should result in energy conservation in a way that can lower customer bills.

5. On August 31, 2007, CURB filed a consolidated Petition for Reconsideration (Petition). CURB asserted that the Commission's Order allowing disconnection for nonpayment of How$mart^{sm} was erroneous, not supported by substantial evidence, unreasonable, arbitrary and capricious, unjustly discriminatory, and unduly preferential. Secondly, CURB argued the Commission's Order allowing Midwest the opportunity to seek recovery of How$mart^{sm} associated bad debt expenses in subsequent rate proceedings was erroneous, unjustly discriminatory and unduly preferential. CURB requested that the Commission reconsider its Order to (1) allow disconnection for nonpayment of How$mart^{sm} services and (2) allow Midwest the opportunity to request recovery of How$mart^{sm} associated bad debt expenses in subsequent rate proceedings.

6. On September 13, 2007, Midwest filed a consolidated Response to CURB's Petition for Reconsideration (Response). Midwest addressed the issues raised by CURB and argued the Commission's Order was valid and correct. Midwest requested that CURB's Petition for Reconsideration be denied.

7. On September 24, 2007, the Commission granted CURB's request in its Petition that the Commission reconsider its Order Adopting Stipulation to the extent that oral arguments were scheduled for Thursday, October 11, 2007.

8. At the hearing on these arguments, CURB indicated that its objection to that portion of the Commission's Order permitting Midwest to request recovery in a subsequent rate case of How$mart^{sm} associated bad debt expense could be resolved if Midwest would agree to remove the language from its How$mart^{sm} tariffs that specifically stated Midwest "shall be allowed to seek recovery of bad debt incurred as a result of this Rider in subsequent rate filings." Transcript of Proceedings, October 11, 2007, page 60-61 (Tr., pp 60-61). Midwest offered to remove this language with the understanding this would not bar them from any subsequent request in a future rate application, and the Commission directed the Parties to confer and submit revised How$mart^{sm} tariff sheets reflecting their agreement. Tr., pp 61-62, 65-66. On October 18, 2007, the Parties filed their Joint Motion for Approval of Modified How$mart^{sm} Tariffs (Joint Motion). The Parties referred to their verbal agreement at the oral argument on October 11, 2007, and attached to their motion and made a part thereof revised tariff sheets with the language regarding Midwest's ability to seek recovery of bad debt expense in subsequent rate cases removed. Joint Motion, 3. The Parties requested the Commission remove the current applicable tariff sheets and replace them with the agreed-upon tariff sheets. Joint Motion, 3.

II. Should the Commission authorize disconnection for nonpayment of tariffed How$mart^{sm} program costs?

Arguments

9. CURB argues usual and customary business collections methods, such as sending past-due reminder notices, making telephone calls to customers, and sending

unpaid bills to a collection agency, are adequate for motivating payment. Petition, 2-3; Tr., pp 46-57. CURB also challenges what it perceives as the Commission's decision to reverse longstanding policy of prohibiting termination of service for nonpayment of special services. Petition, 3; Tr., pp 38-39. CURB asserts the How$mart[sm] services are indistinguishable from other special services performed by Midwest for which termination for nonpayment is not permitted. Petition, 4; Tr. p 47. CURB argues the Legislature did not intend to permit termination of service for nonpayment in Substitute for House Bill 2278 (HB 2278), L. 2007, ch.58, § 1 (effective July 1, 2007). Tr., pp 39-40.

10. Midwest points out that the one-year pilot program is voluntary and available to all residential and commercial customers within the program area. Tr., p 5. The program is designed to overcome the market barrier of reluctance by landlords and tenants to invest in energy efficiency measures. Tr., p 6. Midwest argues traditional collection methods are not efficient, and that because How$mart[sm] is a tariffed service, not a special service as defined by the Commission's billing standards, the billing standards do not bar disconnection for nonpayment. Tr., p 8. Midwest asserts that HB 2278 authorizes public utilities to enter into financing arrangements with customers and landlords for the purchase and installation of energy conservations measures, such as the How$mart[sm] program, and further provides the Commission with authority to approve tariffs that would recover program and financing costs. Response, 5; Tr., pp 8-9. Midwest asserts HB 2278 provides substantial competent evidence supporting the Commission's Order in that the statute is a Legislative directive approving energy

efficiency programs like How$mart^sm as tariffed programs and evidences a clear public policy directive favoring energy efficiency programs. Petition, 6.

11. In addition to the authority of the Commission to approve the program as a tariffed service under HB 2278, Midwest argues the Commission has broad authority to approve tariffs and this broad authority also provides a basis for approval of How$mart^sm as a tariffed program. Response, 4, 5; Tr., p 9. Midwest argues disconnection for nonpayment is appropriate because the How$mart^sm program may be considered an integral part of utility service. Tr., p 10. Midwest noted Midwest's Board approved a PAYS®-type program, and one of the elements of such programs is that customers may be disconnected for nonpayment of the line item charge. Tr., p 16; See Order, 4. Midwest expected a lower percentage of disconnects under the program than usual, however, because the average bills would be lower. Tr., pp 20, 24.

12. Staff points out that customers in low income and rental units that the program was primarily intended to target were not likely to have access or means to implement energy efficiency measures without a program such as How$mart^sm. Tr., p 25. Staff observes customers are informed in advance that failure to pay will result in disconnection. Tr., p 27. Staff argues How$mart^sm should be considered a tariffed service, not a special service under the billing standards, because K.S.A. 66-117 permits approval of programs such as How$mart^sm as tariffed services. Staff asserts HB 2278 authorizes programs like How$mart^sm and approves tariffs to recover costs for those programs. Tr., p 28. Staff also argues the Commission has authority to approve How$mart^sm type programs and has clearly evidenced an intent to regulate and approve

such programs, as set forth in the Commission's Order in 07-GIMX-247-GIV. Tr., p 27. Staff asserts encouraging energy conservation programs is a Commission policy decision, and is consistent with the intent of the Legislature to approve How$mart^{sm} -type programs as tariffed services under HB 2278. Tr., pp 28-29.

Analysis and Conclusion

13. The Commission stands by its conclusion that disconnection is the most reasonable and efficient method of collection. See Order, 5-6, 11-12.

14. The Commission believes that the payment obligation, tied to the meter, on customers' bills for cost effective, resource efficient energy conservation products is directly related to providing reasonably efficient and sufficient service. The payment obligation is also directly tied to efficiency-related overall cost reductions to customers on their bill. As noted in the Commission's Order, there is a link between the energy efficiency benefit and the repayment obligation. Order, 7-8, 11-12. The obligation is complementary and interlocked with the provision of utility services and is an integral part of the utility service. See New Hampshire Public Service Commission, Order 23,758 at 9-10 (August 7, 2001). For these reasons, it is appropriate to permit disconnection for nonpayment of the How$mart^{sm} charge.

15. The structure of the How$mart^{sm} program differentiates it from the type of billed special services referred to by CURB and discussed in the Billing Standards. How$mart^{sm} is an experimental pilot program with new features designed primarily to overcome the landlord/tenant barrier to energy efficiency improvements. See Order, 5-6. The program involves certification by the utility of savings arising from the energy

efficiency measures to be applied resulting in a lower bill and a linkage between the energy efficiency measures at the meter location, the energy used at that meter, and the cost reflected on the bill. The How$mart^{sm} program is distinguishable from "special programs" referred to in the Billing Standards that may involve installation of similar energy efficiency measures but do not involve the other features of the program. Moreover, because of the design of the program, it is clearly an energy efficiency program the Commission intends to regulate.

16. The How$mart^{sm} program is designed to result in lower overall bills, including the How$mart^{sm} charge. All things equal, this will result in fewer disconnections - a benefit that will be enjoyed by ratepayers. Furthermore, the disconnection issue is factually remote – to be disconnected for nonpayment of the How$mart^{sm} portion of the bill, a customer would have to pay all but the How$mart^{sm} line item portion, which, again, is designed to be a portion of a *reduced* overall bill. The protections of payment arrangements and the cold weather rule would apply as usual.

17. HB 2278 provides the Commission may approve a How$mart^{sm} -type program as a tariffed service. The bill provides that Midwest "may enter into agreements with customers and landlords of customers for the financing of the purchase price and installation cost of energy conservation measures by such utilities." L. 2007, ch.58, § 1. The bill further provides that Midwest "may recover the cost of such financing and related program costs through tariffs approved by the [Commission] pursuant to K.S.A. 66-117 . . .." The Bill supports the Commission's determination that the How$mart^{sm} program may be approved as a tariffed service. See Order, 10. Because the Commission

approves the How$mart℠ program as a tariffed service and authorizes disconnection as a regular utility service, the Commission's Billing Standards do not bar Midwest from disconnecting service for nonpayment of charges. Billing Standards, Section I.A.(3) and IV.B.(1).

18. The Commission has broad authority to include energy efficiency measures in tariffs and to approve and provide for recovery of costs for such programs, as determined in the Commission's Final Order in 07-GIMX-247-GIV and as set forth in its prior Order in this docket. Order, 6, 10. The Commission, as noted in its Order, has exercised this authority on numerous occasions. Order, 10. This authority also provides a basis for the Commission's decision to approve How$mart℠ as a tariffed service and to approve disconnection for nonpayment.

19. To the extent the Commission's Order approving disconnection for nonpayment of How$mart℠ charges is considered a departure from prior policy, the Commission finds such a change of policy with regard to a PAYS®-type program like How$mart℠ is supported by the Legislative directive found in Substitute House Bill 2278, the decisions of other jurisdictions, and its own policy favoring energy efficiency programs. See Order, 10. How$mart℠ is the type of innovative energy efficiency program the Commission wishes to encourage. Facilitating a utility's ability to recover costs incurred for the program without incurring additional expenses from other bill collection methods is consistent with this goal. Disconnection for non-payment is an integral part of a PAYS®-type program like How$mart℠. Energy efficiency programs such as How$mart℠ are of value because they have the potential to substitute for

investment in plant and transmission. These reductions provide a benefit for all ratepayers. The Commission declines to alter the findings and conclusions of its prior Order.

III. Should the Commission permit Midwest to seek recovery of How$mart^{sm} program costs in Midwest's bad debts expense?

20. Consideration of this issue is now moot in light of the agreement by CURB, Staff, and Midwest that CURB would withdraw its objection to that part of the Commission's Order that permits Midwest to request recovery in a subsequent rate case of How$mart^{sm} -associated bad debt expense if Midwest would agree to remove language from the tariffs that specifically state that Midwest "shall be allowed to seek recovery of bad debt incurred as a result of this Rider in subsequent rate filings." Joint Motion, 3. The Commission accepts the Joint Movants' agreement and directs the revised tariff pages attached to the Joint Motion replace the current How$mart^{sm} tariff pages as requested by the Joint Movants. In so doing, the Commission's notes its understanding of the agreement is that: 1) CURB's objection to this issue is resolved as indicated at the hearing and in the Joint Motion and no remaining controversy exists with regard to this issue in this docket; and (2) the Parties' agreement does not bar or limit Midwest from petitioning this Commission for recovery of costs in any future rate application nor limit any argument CURB or any other party may present should Midwest make such a request. Because this issue has been resolved for purposes of this docket by Staff, CURB, and Midwest as set forth in their Joint Motion, the Commission will not consider it further.

22. The Commission again recognizes Midwest's efforts to develop this new program. This pilot project, while not large in size, will provide an invaluable opportunity for Midwest and this Commission to evaluate the program and make adjustments. The knowledge gained will be useful to the Commission and other utilities, as well as Midwest, in the future. It is the Commission's hope that other utilities will follow Midwest's lead in pursuing innovative programs such as How$mart^{sm}.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. Having granted CURB's Petition for Reconsideration to the extent of ordering oral arguments, and having heard oral arguments on issues raised, the Commission denies CURB's request to modify its Order regarding the ability of Midwest to disconnect utility services for nonpayment of How$mart^{sm} charges, as set forth above.

B. The Parties' Joint Motion is granted, as set forth in greater detail above.

C. To the extent that this order constitutes final agency action that is subject to judicial review, K.S.A. 77-607(b)(1), the agency officer designated to receive service of any petition for judicial review is Susan K. Duffy, Executive Director. K.S.A. 77-529(c).

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn; Moffet, Com.; Harkins, Com.

Dated: DEC 2 0 2007

ORDER MAILED

DEC 2 0 2007

Susan K. Duffy Executive Director

Susan K. Duffy
Executive Director

crr