

Citizens' Utility Ratepayer Board

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Testimony on Behalf of the Citizens' Utility Ratepayer Board

By Steve Rarrick, Staff Attorney

Before the Senate Utility Committee

Re: Substitute for House Bill 2278

March 7, 2007

Chairman Emler and Members of the Committee:

Thank you for the opportunity to appear before you this morning on behalf of the Citizens' Utility Ratepayer Board (CURB) to testify in opposition to Substitute for House Bill 2278. My name is Steve Rarrick and I am an attorney with CURB.

Substitute for House Bill 2278 was proposed by Midwest Energy, a gas and electric utility that filed tariffs on January 29, 2007, seeking Kansas Corporation Commission (KCC) approval of a pilot energy conservation program similar to what is known as a Pay-As-You-Save ("PAYS") program. PAYS and similar programs are designed to assist and motivate ratepayers to buy cost effective, energy efficient products such as high efficiency heating and air conditioning units. The cost of the products are repaid over time, and the obligation to repay is tied to the meter rather than the homeowner or tenant. As a result, when an owner sells or a tenant moves, the PAYS obligation passes to the next owner or tenant paying for the utility. CURB supports the concept of PAYS programs and appreciates the efforts of Midwest Energy to implement a PAYS program. CURB has some concerns about Midwest's proposed program, including whether it provides sufficient notice to subsequent home owners or tenants about the ongoing obligation to pay, but has been working with Midwest Energy to resolve those concerns in the tariff docket before the KCC.

This is not enabling legislation. Midwest Energy has already filed two tariffs to implement its proposed energy conservation program. What this bill does is provide complete immunity to the utility and eliminate longstanding, existing remedies available in the event, however unlikely, that a utility violates the rights of Kansas consumers.

For example, let's assume for a moment that a utility implements an energy conservation program, and the employee doing the energy audit grossly oversells the potential energy savings, causing the consumer to assume a significant financial obligation without any resulting energy savings. This bill would leave the consumer without any remedy. While CURB does not believe Midwest Energy will do this, this bill will apply to all future energy conservation programs, and eliminates all of the remedies consumers currently have available should such an event occur.

CURB does not believe there is a need to provide complete immunity to utilities for implementing energy conservation measures. CURB understands the utility's concern about becoming liable for the installation, operation, and maintenance of the products installed. Unfortunately, this bill goes beyond that and unreasonably provides complete immunity to a utility from representations made during an energy audit which may contain grossly overstated energy savings to the detriment of the consumer.

However, should the Committee decide to move forward with this bill, I have attached to my testimony balloon amendments which will retain KCC oversight of the tariff/energy audit and preserve consumer rights against other parties to the transaction. Our proposed balloon amendments are as follows:

- Line 15, insert “and landlords of customers” after the word “customers.” This will accurately reflect that the contracts will often include both the tenant/customer and the landlord, who under the tariff will become liable for the PAYS obligation under certain circumstances.
- Line 21, strike “tariff approved by the” and at line 22, insert “through the approved tariff or otherwise.” We believe this will ensure the KCC retains oversight of both the tariff and the energy audit, and may in appropriate circumstances find an energy conservation tariff was unjust and unreasonable as applied to that ratepayer.
- Line 24, insert “or” and at line 25, delete “or its energy conservation efficiency.” This will preserve the rights of the ratepayer in the event an energy conservation program is grossly oversold, with little or no energy savings. However, the utility will still be shielded from warranty or other claims regarding the installation or the product installed.
- Line 27, insert “Nothing in this section shall be construed to limit any rights or remedies of utility customers and landlords of utility customers against other parties to a transaction involving the purchase and installation of energy conservation products and services.” This will make it clear that all rights and remedies of the customer or landlord are preserved with regard to the manufacturer or contractor for the products installed and services provided.
- Lines 13, 16, 21, and 27, we have suggested some paragraph headings to subdivide the section.

On behalf of CURB, I urge the Committee to vote against passage of Substitute for HB 2278, or at the very least, pass the amendments we have proposed to preserve some measure of protection for consumers. Mr. Chairman, I would stand for questions at the appropriate time.

**CURB PROPOSED
BALLOON AMENDMENTS**

Session of 2007

Substitute for HOUSE BILL No. 2278

By Committee on Energy and Utilities

2-9

9 AN ACT concerning electric and natural gas public utilities; relating to
10 financing of energy conservation equipment.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. ~~Electric and natural gas public utilities, as defined in~~
14 ~~K.S.A. 66-101a and 66-1,200, and amendments thereto, may enter into~~
15 ~~agreements with customers for the financing of the purchase price and~~
16 ~~installation cost of energy conservation measures by such utilities. Such~~
17 ~~utilities may recover the cost of such financing and related program costs~~
18 ~~through tariffs approved by the state corporation commission pursuant to~~
19 ~~K.S.A. 66-117, and amendments thereto, and paid for by the customers~~
20 ~~benefitting from the installation of the energy conservation measures.~~
21 ~~Except as otherwise required by the tariff approved by the state corpo-~~
22 ~~ration commission, such utilities shall assume no liability for the instal-~~
23 ~~lation, operation or maintenance of such measures, and shall not provide~~
24 ~~any warranty as to the merchantability of the measures, its fitness for a~~
25 ~~particular purpose or its energy conservation efficiency, and no action~~
26 ~~shall be maintained against any such utility the basis of which is such~~
27 ~~liability or warranty.~~

28 Sec. 2. This act shall take effect and be in force from and after its
29 publication in the statute book.

(a) *and landlords of customers*

(b)

(c) *through the approved tariff or
otherwise*

; or

(d) *Nothing in this section shall be
construed to limit any rights or
remedies of utility customers and
landlords of utility customers against
other parties to a transaction
involving the purchase and
installation of energy conservation
measures.*