

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

JAN 06 2014

by  
State Corporation Commission  
of Kansas

In the Matter of the Application of Westar )  
Energy, Inc. and Kansas Gas and Electric ) Docket No. 14-WSEE-148-TAR  
Company for Approval of Revisions to )  
Their General Terms and Conditions to )  
Implement an Optional Prepay Service Pilot )  
Program. )

**MOTION TO DISMISS APPLICATION**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and submits its motion to dismiss application. In support of its motion, CURB states and alleges as follows:

1. On October 1, 2013, Westar Energy, Inc. and Kansas Gas and Electric Company ("Westar") filed an application with the Kansas Corporation Commission for approval of proposed revisions to the general terms and conditions of their tariff in order to implement an optional prepay service pilot program ("Pilot Program").

2. Westar's application was not supported by any testimony to explain the proposed Pilot Program or how it is in the public interest to approve the proposed pilot program.

3. On December 11, 2013, the parties met and discussed Westar's failure to include any testimony to support its proposed Pilot Program. At that meeting, Westar agreed to file testimony to support its proposed pilot program on January 9, 2014, but subsequently withdrew its agreement to file testimony.

4. Kansas court decisions clearly place the burden of proof on Westar to revise its tariff to implement the proposed Pilot Program.<sup>1</sup> Commission decisions have likewise adopted this burden

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<sup>1</sup> *Citizens' Utility Ratepayer Bd. v. State Corporation Commission*, 28 Kan. App. 2d 313, 321, 16 P.3d 319 (2000);

of proof requirement, explaining that the burden of proof typically lies with the party who initiates a proceeding, including the requirement to make a *prima facie* showing.<sup>2</sup>

5. Westar is seeking to change its tariffs for its proposed Pilot Program. Under K.S.A. 66-115, "all orders, regulations, practices, services, rates, fares, charges, classifications, tolls, and joint rates fixed by the commission ... shall be prima facie reasonable unless, or until, changed or modified by the commission." Under K.S.A. § 66-117(a), unless the Commission orders otherwise, "no common carrier or public utility over which the commission has control shall make effective any changed rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or *practice pertaining to the service or rates* of such public utility or common carrier except by filing the same with the commission" (emphasis added). Accordingly, as the public utility seeking the change in its tariff, Westar bears the burden of proving that the proposed change is reasonable.<sup>3</sup>

6. It is Westar's burden to provide substantial, competent evidence demonstrating that its proposed pilot program is reasonable and in the public interest. Westar has failed to meet its burden to make a *prima facie* showing by failing to file *any* testimony in support of its proposed Pilot Program.

7. Substantial questions are raised by proposed pilot program, including but not limited to the following:

- Whether a waiver of the Commission's billing standards is necessary to implement the proposed Pilot Program, why such a waiver is not specified in the proposed Pilot Program, and whether such a waiver is reasonable and in the public interest?

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*Southwestern Bell Telephone Co. v. State Corporation Commission*, 4 Kan. App. 2d 44 (1979).

<sup>2</sup> Order Denying Reconsideration, March 26, 2002, p. 3, *In the Matter of Partial Suspension of the Monthly Cost Of Gas Rider of ONEOK, Inc.*, Docket No. 02-KGSG-329-PGA. See also, No. 3 Order on Reconsideration, July 18, 2000, pp. 2-3, *In the Matter of the Application of UtiliCorp United, Inc.*, Docket No. 99-WPEE-818-RTS.

<sup>3</sup> *Id.*

- Whether the load limiting feature of the proposed Pilot Program is reasonable and in the public interest?
- Whether the waiver of rights required under the proposed Pilot Program is reasonable and in the public interest?
- Why the application fails to explain how and to what extent the proposed Pilot Program interacts with or impacts the Cold Weather Rule, and whether any such interaction or impact is reasonable and in the public interest?
- Why the application fails to explain whether current Westar meters are capable to limit load within Cold Weather Rule period, and how “limited electric service” “sufficient to permit heating, lighting, and refrigeration during the Cold Weather Rule period” will be determined, and whether the determination is reasonable and in the public interest?
- Why one provision in the proposed tariff change provides that the “limited electric service” will be “sufficient to permit heating, lighting, and refrigeration during the Cold Weather Rule period, but the “Electric Service Agreement” states that the limited electric service will be “sufficient to supply electricity only for essential functions such as heating and food refrigeration?
- Why the application fails to explain how the limited load level is derived or actually limits customer usage, and whether such is reasonable and in the public interest?
- Why the application fails to explain how the proposed Pilot Program will be explained to customers, and whether any anticipated customer notice is reasonable and in the public interest?
- Why the application fails to explain the \$4 extra charge in the proposed Pilot Program, why customers should pay more rather than less for prepaying, and whether the fee is reasonable and in the public interest?
- Why the application fails to explain what the criteria will or should be used to judge success or failure of the proposed Pilot Program?
- Why the application fails to explain what issues, points, or data will be monitored to ascertain whether the program is a success?
- Whether the proposed Pilot Program is actually voluntary as asserted in the application, since Westar’s new policy requiring security deposits after 3 months of late payments will essentially make the prepay option an adhesion contract, giving customers no bargaining power to reject or accept the terms, as it will be the only option available to many customers?
- Why the application fails to explain the waiver of notice requirements and whether such waiver is reasonable and in the public interest?
- Why the application fails to explain the shut-off period and whether such the shut-off period proposed is reasonable and in the public interest?
- Why the application fails to reveal or explain the proposed use of a third party administrator (only revealed informally to Staff and CURB) to manage the proposed Pilot Program, what duties and requirements apply to the third party administrator, how the third party administrator will fulfill these undefined duties and

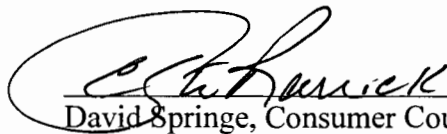
responsibilities, and whether the use of a third party administrator is reasonable and in the public interest?

- Whether the “Debt Recovery” mechanism, including the allocation of future payments to Debt Recovery arrears vs. future electric service is reasonable and in the public interest?
- How the allocation of future payments to Debt Recovery arrears vs. future electric service was determined, and whether the allocation is reasonable and in the public interest?
- Why the application fails to state the cost of developing and implementing the proposed Pilot Program and whether the unidentified costs are reasonable and in the public interest?

8. None of the above questions are answered by testimony filed with the application. As a result, the Commission should dismiss the application, and order Westar to submit testimony meeting its burden of proof in the event Westar chooses to re-file its application. Failure to dismiss the application will require Staff & CURB to ascertain elements of the proposed Pilot Program that are unanswered and unsupported by any testimony in the record, which essentially requires Staff and CURB to present Westar’s case in chief while at the same time presenting our own evidence.

WHEREFORE, CURB respectfully requests the Commission grant its motion to dismiss application in its entirety.

Respectfully submitted,



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CERTIFICATE OF SERVICE

14-WSEE-148-TAR

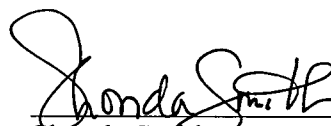
I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, emailed, or hand-delivered this 6<sup>th</sup> day of January, 2014, to the following:

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