

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Dwight D. Keen

In the Matter of the Application of Westar)
Energy, Inc. and Kansas Gas and Electric) Docket No. 18-WSEE-163-TAR
Company for Approval of Revisions to their)
Policy for Residential Subdivisions.)

ORDER DENYING APPLICATION

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the file and records, and being properly advised, the Commission finds:

1. On October 16, 2017, Westar Energy, Inc. and Kansas Gas and Energy Company (Westar) filed an Application to amend its tariff to revise its Policy for Residential Subdivisions to allow developers the option of providing an irrevocable letter of credit in place of a cash deposit.¹ Currently, Westar provides a \$40,000 allowance to developers of residential housing towards a conventional overhead distribution system and the developer is required to provide a cash deposit with Westar of an amount equal to the difference between the \$40,000 allowance and the cost of a conventional overhead distribution system.²

2. On October 31, 2017, the Commission issued a Suspension Order, giving itself until June 13, 2018 to issue an Order on the Application.

3. On May 2, 2018, Commission Staff (Staff) filed its Report and Recommendation, opposing the Application. Staff explained the cash deposit is supposed to allow Westar to recover

¹ Application, Oct. 16, 2017, ¶5.

² *Id.*, ¶ 2.

its costs in the event that construction on the subdivision is never completed.³ The cash deposit is treated as cost free capital and used as a rate base offset.⁴ Therefore, ratepayers are not responsible for stranded costs or financing the carrying costs associated with building out the infrastructure for residential housing developments.⁵ If irrevocable letters of credit are accepted, Westar shareholders finance the infrastructure extension until there is a rate case and then ratepayers finance the carrying costs going forward.⁶

4. Staff's investigation also revealed there is no universal policy regarding whether utilities accept irrevocable letters of credits in lieu of cash deposits.⁷ Therefore, Staff recommends opening a general investigation to determine the appropriateness of accepting irrevocable letters of credit in place of cash deposits.⁸

5. On May 14, 2018, Westar filed its Response to Staff Report and Recommendation, arguing deferring this issue to a general investigation would result in an unnecessary delay.⁹ Westar claims allowing developers to provide an irrevocable letter of credit will aid in economic development.¹⁰ Westar alleges the Staff's concerns over cash deposits being treated as an offset to rate base are unwarranted because the purpose of deposits is to provide a guarantee of reimbursement, not to offset rates.¹¹ Lastly, Westar argues by requiring developers to obtain letters of credit from a financially sound institution, there is little risk of non-payment in the event the Commission grants Westar's Application.¹²

³ Staff Report and Recommendation, May 2, 2018, p. 3.

⁴ *Id.*, p. 4.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*, p. 2.

⁸ *Id.*

⁹ Response to Staff Report and Recommendation, May 14, 2018, ¶ 4.

¹⁰ *Id.*, ¶ 5.

¹¹ *Id.*, ¶ 6.

¹² *Id.*, ¶ 7.

6. On May 22, 2018, Staff filed its Reply to Westar's Response, reiterating a general investigation is the proper forum to address whether utilities should be able to accept irrevocable letter of credits and that cash deposits are advantageous as they provide both a financial guarantee and a rate base offset.¹³

7. On May 29, 2018, the Wichita Area Builders Association, Inc. (WABA) filed a Petition to Intervene. WABA is a not-for-profit entity with approximately 960 members.¹⁴ WABA supports Westar's Application, claiming it would allow developers greater access to cash flow, allowing them to more fully develop the residential housing development.¹⁵

8. The Commission has broad discretion to grant a petition for intervention if it is in the interest of justice, if the intervention will not impair the orderly and prompt conduct of the proceedings, and if the party has stated facts demonstrating its legal rights, duties and privileges, immunities, or other legal interests may be substantially affected by the proceeding.¹⁶ Furthermore, at any time during a proceeding, the Commission may impose limitations on an intervenor's participation.¹⁷

9. WABA claims it is entitled to intervene because a decision in this Docket will substantially affect its legal rights, duties, privileges, immunities and other legal interests.¹⁸ It also notes since there is no procedural schedule, allowing it to intervene will not impair the orderly and prompt conduct of the proceeding.¹⁹

¹³ Staff Reply to Westar Energy, Inc. and Kansas Gas and Electric Company's Response to Staff's Report and Recommendation, May 22, 2018, ¶ 4.

¹⁴ Petition for Intervention of Wichita Area Builders Association, Inc. (WABA Petition), May 29, 2018, ¶ 2.

¹⁵ *Id.*, ¶ 8.

¹⁶ K.S.A. 77-521; K.A.R. 82-1-225.

¹⁷ K.S.A. 77-521(c).

¹⁸ WABA Petition, ¶ 3.

¹⁹ *Id.*, ¶ 4.

10. The Commission finds and concludes that WABA has met the requirements of K.A.R. 82-1-225 and K.S.A. 77-521 and should be granted intervention in this docket. The parties will be added to the mailing list, and electronic service of pleadings, communications, and correspondence should be delivered to counsel of record and intervenors' other designee as follows:

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11. The Commission shares Staff's concerns that if Westar's Application is granted, and irrevocable letters of credit are accepted, the carrying costs of the funds from utility operations would be included in rate base, with shareholders and ratepayers subsidizing developers.²⁰ Westar provides no support for its claim that allowing developers the option of providing an irrevocable letter of credit will promote economic development.

12. Neither Westar nor WABA alleviate the Commission's concerns. WABA does not address the issue of subsidization of the carrying costs associated with the acceptance of letters of credit instead of cash deposits. Westar argues Staff's concerns over cash deposits being treated as an offset to rate base are unwarranted because the purpose of cash deposits is to provide a guarantee of reimbursement, not to offset rate base.²¹ But in focusing on the intent behind the cash deposit, Westar ignores the actual impact of the irrevocable letter of credit on ratepayers. Since there is negative impact on ratepayers, the Commission denies the Application.

²⁰ Staff Report and Recommendation, p. 4.

²¹ *Id.*, ¶ 6.

13. The Commission's main objection to Westar's Application is ratepayers would be subsidizing builders. If Westar can propose a plan that does not negatively impact ratepayers, the Commission would be open to considering it in a general investigation. The Commission agrees with Staff that a general investigation would be the proper forum to address allowing letters of credit in place of cash deposits for developers of residential subdivisions. A general investigation would ensure uniformity among the utilities as it relates to accepting irrevocable letters of credit in lieu of cash deposits.

THEREFORE, THE COMMISSION ORDERS:

- A. The Wichita Area Builders Association is granted intervention.
- B. Westar's Application is denied.
- C. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).²²
- D. The Commission retains jurisdiction over the subject matter and parties for purposes of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner.

Dated: 06/12/2018 _____.



Lynn M. Retz
Secretary to the Commission

BGF

²² K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

18-WSEE-163-TAR

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 06/12/2018.

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