

THE STATE CORPORATION COMMISSION
OF THE STATE 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.)

**REPLY TO RESPONSE OF WESTAR
ENERGY, INC. AND KANSAS GAS AND ELECTRIC
COMPANY TO MOTION TO DISMISS APPLICATION**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and submits its reply to the response of Westar Energy, Inc. and Kansas Gas and Electric Company (collectively, "Westar") to CURB's motion to dismiss application. In support of its response, CURB states and alleges as follows:

1. CURB filed its Motion to Dismiss Application on January 6, 2014.
2. On January 8, 2014, Staff filed its Response to CURB's Motion to Dismiss Application ("Staff Response"). In its response, Staff supports the dismissal of Westar's application, noting the deficiencies in Westar's application that led the parties to request testimony by Westar to support the application, which Westar verbally agreed to provide on December 22, 2013.¹ Because Westar subsequently withdrew its agreement to file testimony and support a full procedural schedule, Staff shares CURB's concerns that significant policy considerations are implicated by Westar's proposed pilot program and likewise concludes that Westar's application does not provide necessary

¹ Staff Response, ¶ 3.

information demonstrating the proposed pilot program is reasonable and in the public interest.² Staff urges the Commission to dismiss the application and instruct Westar to re-file its application with supporting testimony more fully explaining the proposed pilot program. Staff states that this would allow a full procedural schedule to be developed in light of the significant unanswered questions remaining with respect to Westar's proposed pilot program.³

3. On January 16, 2014, the Response of Westar Energy, Inc. and Kansas Gas Electric Company to Motion to Dismiss was filed ("Westar Response"). Because Westar failed to number its paragraphs as required by Commission regulation,⁴ CURB is not able to reference specified numbered paragraphs but will instead simply indicate the page to which it is responding.

4. Westar met with CURB shortly after the application was filed, and CURB expressed concerns, many which are listed in CURB's Motion to Dismiss Application. CURB, in good faith, agreed to attempt to review the information but made no agreement that it would forgo a request for procedural schedule and testimony if needed. CURB and Staff subsequently decided that testimony would be needed and Westar agreed. Clearly if Westar, by fiat, can file the barest of applications and unilaterally refuse to provide testimony when legitimate questions arise on review, then CURB and Staff will be forced to request a full procedural schedule at the outset of every application, a result that doesn't seem terribly efficient.

5. Westar notes that CURB asserts Westar has not met its burden of proof because it failed to file testimony and had not answered a list of questions, questions Westar asserts it has

² *Id.*, ¶ 5.

³ *Id.*, ¶ 6.

⁴ K.A.R. 82-1-219(c).

answered through the discovery process.⁵ CURB disputes that the questions regarding Westar's proposed pilot program have been answered through discovery. As indicated in Staff's Response, the deficiencies in Westar's application have not been answered through discovery,⁶ and Westar's attempt to require Staff (or CURB) to evaluate the proposed pilot program and submit its analysis and recommendation via a Report and Recommendation essentially requires Staff (or Staff) to develop Westar's case-in-chief.⁷

6. Westar clearly bears the burden of proof to support its proposed Pilot Program with substantial competent evidence,⁸ something Westar admits.⁹ Westar would have the Commission believe, however, that the Commission can use its discretion¹⁰ to eliminate the requirements to provide substantial competent evidence on the numerous important policy issues and questions discussed in CURB's Motion to Dismiss Application¹¹ and Staff's Response.¹²

7. Most of the above important policy and implementation questions remain unanswered even after substantial discovery.¹³ It is Westar's burden to provide substantial competent evidence in its application to answer these important policy questions. Westar mistakenly believes it has met this burden by providing an application and draft of the proposed tariff language that merely identifies the requirements for a customer to participate in the program, the service fee that will be charged, the

⁵ Westar Response, p. 4.

⁶ Staff Response, ¶¶ 3, 6.

⁷ Staff Response, ¶ 5.

⁸ *Citizens' Utility Ratepayer Bd. v. State Corporation Commission*, 28 Kan. App. 2d 313, 321, 16 P.3d 319 (2000); *Southwestern Bell Telephone Co. v. State Corporation Commission*, 4 Kan. App. 2d 44 (1979). See also, *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*.

⁹ Westar Response, p. 5.

¹⁰ *Id.*, pp 5-6.

¹¹ CURB Motion to Dismiss Application, ¶ 7.

¹² Staff Response, ¶¶ 3-6.

¹³ *Id.*

disconnection and reconnection fees, the method through which notice will be provided, how payments will be applied when a customer's bill is in arrears, and how a customer electing to participate can return to Residential Standard Service.¹⁴ This information fails to answer the important policy and implementation questions raised by Westar's proposed pilot program.

8. Before a waiver of longstanding Commission billing standards is granted, Westar must demonstrate in advance with substantial competent evidence that such waiver is reasonable and in the public interest. Before the load limiting feature of the proposed Pilot Program is implemented, Westar must demonstrate that this feature is reasonable and in the public interest. Before longstanding Cold Weather Rule rights are impacted or waived, Westar must demonstrate 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. Before Westar is authorized to limit load within Cold Weather Rule period, Westar must demonstrate whether current Westar meters are capable of this task 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. Before Westar implements the vaguely described limited load level, it must demonstrate how the limited load level is derived or actually limits customer usage, and whether the limitation is reasonable and in the public interest. Before this pilot program is approved, Westar must demonstrate how the proposed Pilot Program will be explained to customers, and whether any anticipated customer notice is reasonable and in the public interest. Before Westar is authorized to charge customers \$4 a month for the privilege of paying their electric bill *in advance*, Westar must demonstrate that the \$4 extra charge is based on actual costs and why customers should

¹⁴ Westar Response, p. 2.

pay more rather than less for prepaying, and whether the \$4 fee is reasonable and in the public interest.

Westar bears the burden of providing the answers to these and the other important policy questions identified in CURB's Motion to Dismiss Application.

9. Westar recently requested a waiver of the Commission Billing Standards in KCC Docket No. 13-WSEE-707-TAR, including the requirements of sending service personnel to the customer premises with the authority to accept payment to allow the customer to avoid disconnection and additional reconnection fees, have the service personal make reasonable efforts to contact the customer, identify himself/herself and the purpose of disconnecting the customer, identify the person contact, accept payment to avoid disconnection, record customer statements disputing the accuracy of the delinquent bill and the utilities findings concerning the cause for disconnection, record the medical condition of any permanent resident of the premises, and if no contact with the customer is made – leave a notice on the premises disclosing the time and place of the disconnection and giving an address and telephone number where the customer may arrange for service to be restored. The requested waiver also included a waiver of the Cold Weather Rule requirement of a personal contact if efforts to contact the customer by telephone have been unsuccessful. The Commission denied the requested waiver on the grounds that without a more prevalent use of digital meters, it would create an unfair situation because a 9% minority of customers with digital meters would get one less chance to avoid disconnection than customers without digital meters.¹⁵ Similar waivers would appear to be required by Westar's proposed pilot program, yet Westar has failed to provide any evidence explaining why the waiver of these rights is reasonable and in the public interest.

¹⁵ Order Denying Application, December 3, 2013, ¶ 4, KCC Docket No. 13-WSEE-707-TAR.

10. Westar also states in its response that “[m]uch of the information that CURB and Staff suggest is missing from Westar’s Application will be *learned and developed through execution of the pilot program.*”¹⁶ Westar is apparently suggesting that the questions raised in CURB’s Motion to Dismiss Application should be answered *after-the-fact*. CURB respectfully disagrees that these important policy and implementation questions regarding the \$4 tariff fee, impacts or waiver of billing standards, etc., should be answered after-the-fact. However, if the success or failure of this pilot program is to be determined after-the-fact, Westar’s application fails to address or explain what would be monitored, what would be the required data gathering points, and what would be the metrics by which success or failure is determined.

11. CURB is not suggesting that the proposed pilot program is not really a voluntary program.¹⁷ CURB merely questions 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, leaving customers no bargaining power to reject or accept the terms.¹⁸

12. Westar states that CURB ignores the fact that customers other than those facing disconnection *may be* interested in participating in the pilot program.¹⁹ Consistent with its application, however, Westar fails to provide any evidence of this nebulous assertion. Westar alleges that there is national market research showing the 18-35 age demographic group *may* prefer these types of programs, yet fails to cite any authority or reference to support this assertion.²⁰

¹⁶ Westar Response, p. 7.

¹⁷ Westar Response, p. 8.

¹⁸ CURB Motion to Dismiss Application, ¶ 7.

¹⁹ Westar Response, p.8.

²⁰ *Id.*

13. Westar has not met its burden to provide substantial competent evidence demonstrating its proposed pilot program is reasonable and in the public interest, especially in light of the important policy considerations and questions raised by the proposed pilot program. It is not the burden of Staff or CURB to provide evidence on behalf of Westar. Testimony by Westar witness addressing these important policy issues and a full procedural schedule is necessary to adequately determine whether the proposed pilot program is reasonable and in the public interest. CURB therefore urges the Commission to grant its motion to dismiss Westar's application in its entirety.

Respectfully submitted,



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VERIFICATION

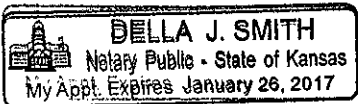
STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

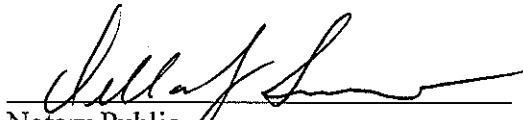
I, C. Steven Rarrick, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.



C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 27th day of January, 2014.





Notary Public

My Commission expires: 08-03-2017.

CERTIFICATE OF SERVICE

14-WSEE-148-TAR

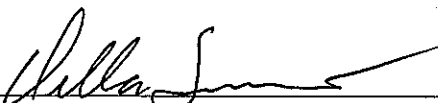
I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service this 27th day of January, 2014, to the following:

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