

**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 Joint Application of)
Westar Energy, Inc. and Kansas Gas and)
Electric Company for Approval to Make) Docket No. 18-WSEE-328-RTS
Certain Changes in their Charges for Electric)
Services.)

ORDER CONSOLIDATING VOTE SOLAR AND SIERRA CLUB INTERVENTIONS

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

Background

1. On February 1, 2018, Westar Energy, Inc. (Westar) and Kansas Gas and Electric Company (KG&E) (Westar and KG&E collectively referred to as "Westar") filed a Joint Application requesting authorization to make certain changes to their charges for electric service in Kansas pursuant to K.S.A. 66-117 and K.A.R. 82-1-231.¹

2. On April 2, 2018, Sierra Club petitioned to intervene in this docket, stating that it “advocates for robust renewable energy and energy efficiency investments that produce safe and sustainable jobs, while also reducing electric system costs for both utilities and ratepayers by reducing reliance on increasingly non-competitive coal-fired power plants.”²

¹ Joint Application, p. 1 (Feb. 1, 2018).

² Sierra Club Petition to Intervene, ¶ 3 (Apr. 2, 2018).

3. On April 19, 2018, Vote Solar petitioned to intervene in this proceeding, stating that Vote Solar exists “to foster economic opportunity by bringing solar energy into the mainstream.”³

4. On May 3, 2018, the Commission granted Sierra Club’s Petition to Intervene on a discretionary basis, finding “nothing contradicting Sierra Club’s claim that its intervention will ‘serve the interests of justice and will not impair the orderly and prompt conduct of the proceedings.’”⁴ Based on their Petitions to Intervene, both Sierra Club and Vote Solar are represented by attorney, Dan Zmijewski,⁵ and both requested that members of Earth Justice be served with all Commission notices and orders in this proceeding.⁶

5. In its Petition, Vote Solar stated its concerns about the impact of this proceeding on members using distributed solar generation and energy storage systems.⁷ Moreover, Vote Solar argued that its “members, as electricity consumers, also have a right to intervene provided by 16 U.S.C. § 2631.”⁸ Vote Solar stated its belief that its intervention “will serve the interests of justice and will not impair the orderly and prompt conduct of the proceedings.”⁹

6. On April 26, 2018, Westar filed a Response to Vote Solar’s Petition to Intervene. Westar argued that Vote Solar’s Petition should be denied, or in the alternative, its intervention limited “to issues related to whether the rate proposed for residential customers with distributed generation is just and reasonable.”¹⁰ Westar disagreed with Vote Solar’s claim that 16 U.S.C. §

³ Vote Solar Petition to Intervene, ¶ 2 (Apr. 19, 2018) (Petition).

⁴ *Order Granting Sierra Club’s Petition to Intervene*, ¶ 7 (May 3, 2018).

⁵ See Sierra Club Petition to Intervene, p. 4; Petition, p. 4.

⁶ See Sierra Club Petition to Intervene, p. 3; Petition, p. 4.

⁷ Petition, ¶ 6.

⁸ Petition, ¶ 6.

⁹ Petition, ¶ 8.

¹⁰ Response of Westar Energy, Inc. and Kansas Gas and Electric Company to Vote Solar’s Petition to Intervene, ¶ 1 (Apr. 26, 2018) (Response).

2631 gives its members a right to intervene, arguing that the statute relates to proceedings involving PURPA standards, not to Westar's rate case.¹¹

7. Westar noted it does not provide service to Vote Solar itself, and "Vote Solar . . . will not be directly impacted whatsoever by any of the proposals made in Westar's rate case."¹² Westar argued that "Vote Solar's members who are residential customers of Westar are not unique and are already adequately represented in the docket and therefore do not meet the requirements for intervention."¹³ According to Westar, Staff and CURB provide adequate representation for Westar's residential customers.¹⁴ Based on these factors, Westar argued that Vote Solar lacks standing for intervention.¹⁵

8. Westar noted Vote Solar's intervention in the Commission's 16-GIME-403-GIE distributed generation docket,¹⁶ which according to Westar, already addressed distributed energy rate structures for residential customers.¹⁷ Westar argued that the 16-403 Docket determined rate design issues for distributed generation, and thus, "Vote Solar's intervention to present evidence on this issue would result in re-litigation of issues already decided by the Commission in a docket where Vote Solar was a participant."¹⁸

9. On May 10, 2018, Vote Solar filed its Reply in Support of Its Petition to Intervene (Reply). Vote Solar alleged that it "meets the statutory standard" for intervention because "Vote Solar's members are residential ratepayers of Westar and have adopted, or have an interest in adopting, DG."¹⁹ Vote Solar also argued that because its DG-owning members could potentially

¹¹ Response, ¶ 1, fn. 1.

¹² Response, ¶¶ 2-3.

¹³ Response, ¶ 4.

¹⁴ Response, ¶ 4.

¹⁵ Response, ¶ 5.

¹⁶ Response, ¶ 6.

¹⁷ Response, ¶¶ 6-7.

¹⁸ Response, ¶ 8.

¹⁹ Reply, ¶ 6.

pay different rates for Westar electricity than non-DG-owning customers, and because ostensibly no other party represents its DG-owning members' interests in this case, Vote Solar should be granted intervention.²⁰ In a footnote, Vote Solar asserted that 16 U.S.C. § 2631 gives "any electric consumer of an affected electric utility" a right to intervene and participate in a state rate case.²¹ Vote Solar appealed to the Commission's grant of intervention to Kansas Industrial Consumers Group, Inc. (KIC) in this docket as an alleged rationale for why the Commission should approve Vote Solar's request for intervention.²² Vote Solar argued that CURB cannot adequately represent Vote Solar's members because CURB cannot properly represent DG and non-DG residential customers, whose interests may be in conflict.²³ Vote Solar also argued that its full intervention will comport with the interests of justice and the orderly and prompt conduct of the proceedings.²⁴ In addition, Vote Solar asserted that Westar misread the Commission's decision in the 16-403 Docket,²⁵ and that "the Commission's -403 Docket Final Order provides no basis for denying or limiting Vote Solar's intervention in the way Westar proposes."²⁶

Legal Standards

10. The Commission shall grant intervention if the petition: (1) is submitted in writing; (2) states facts demonstrating the petitioner's legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and (3) the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.²⁷ The Commission has discretion to grant intervention at any time where intervention is in the interests of justice and

²⁰ Reply, ¶ 6.

²¹ Reply, ¶ 6, fn. 3.

²² Reply, ¶¶ 8, 12.

²³ Reply, ¶ 10.

²⁴ Reply, ¶ 13.

²⁵ Reply, ¶ 16.

²⁶ Reply, ¶ 20.

²⁷ K.S.A. 77-521(a); K.A.R. 82-1-225(a).

will not impair the orderly and prompt conduct of the proceedings.²⁸ At any time during a proceeding, the Commission may impose limitations on an intervenor's participation, which may include limiting an intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition, limiting intervenor discovery, cross-examination and other procedures, and requiring intervenors to consolidate their participation in the proceedings.²⁹

Findings and Conclusions

11. Vote Solar submitted its intervention petition in writing and properly served it, pursuant to K.S.A. 77-521(a)(1).

12. As noted above, the Commission granted intervention to Sierra Club on a discretionary basis.³⁰ Similar to Sierra Club, Vote Solar is not a Westar customer, and therefore, it does not pay for Westar's services, nor is it an "electric consumer of an affected electric utility" in Kansas.³¹ Although Vote Solar has alleged that its members will be impacted economically and financially, from an investment standpoint, by the rates set in this case, this allegation does not demonstrate a *legal* interest in Westar's rate case proposals. All of Westar's retail customers, in one way or another, may have their investment decisions affected by the rates set in this case. Vote Solar may have a policy or an economic interest with respect to DG,³² but again, these are distinct from a legal interest. Thus, the Commission finds that Vote Solar has not met the standard whereby the Commission *shall* grant intervention.

13. However, the Commission *may* grant intervention where "the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the

²⁸ K.S.A. 77-521(b); K.A.R. 82-1-225(b).

²⁹ K.S.A. 77-521(c); K.A.R. 82-1-225(c).

³⁰ See *Order Granting Sierra Club's Petition to Intervene*, ¶ 7.

³¹ See Reply, ¶ 6, fn. 3, citing 16 U.S.C. § 2631.

³² See Petition, ¶ 7.

proceedings.”³³ Although the Commission agrees with Westar that the policy issues addressed in the 16-403 Docket must not be re-litigated in this proceeding,³⁴ the Commission finds that Vote Solar’s stated intention of providing evidence and argument on the results of Westar’s proposed rate design for DG customers³⁵ will not necessarily amount to re-litigation of the DG policy matters determined in the 16-403 Docket. Apart from this worry, Westar has provided no evidence that Vote Solar’s intervention is contrary to the interests of justice. Yet out of concern that Vote Solar’s intervention may impair the orderly and prompt conduct of this proceeding, the Commission finds it appropriate to consolidate Vote Solar’s intervention with that of Sierra Club.

14. In addition, the Commission finds that Sierra Club’s interest in energy policy, namely, “renewable energy and energy efficiency investments,”³⁶ is similar enough to Vote Solar’s interest in “distributed generation, energy efficien[cy], and energy storage,”³⁷ such that Sierra Club’s and Vote Solar’s interventions can be consolidated. Indeed, Westar raised no objection to Sierra Club’s full intervention, and Sierra Club and Vote Solar are represented by the same attorney. Given Sierra Club’s full intervention and participation already, the Commission finds that Vote Solar’s consolidated intervention with Sierra Club is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings. Thus, Vote Solar’s intervention is conditioned on combining its presentations of evidence and argument, cross-examination, discovery and other participation in the proceeding with Sierra Club, pursuant to K.S.A. 77-521(c)(3).

³³ K.S.A. 77-521(b).

³⁴ See Response, ¶¶ 6-8.

³⁵ See Reply, ¶ 18.

³⁶ Sierra Club Petition to Intervene, ¶ 3.

³⁷ Petition, ¶ 3.

15. The Commission finds that the consolidated parties must avoid requesting repetitive or duplicative discovery. The consolidated parties must also avoid filing repetitive testimony and/or briefs, although they can submit individual briefs on issues specific to them.

16. The Commission finds that Vote Solar has met the requirements for discretionary intervention pursuant to K.S.A. 77-521(b) and K.A.R. 82-1-225(b).

17. Vote Solar will be added to the mailing list. Service of electronic notices, pleadings, testimony, orders, communications, and other documents should be directed to the following:

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THEREFORE, THE COMMISSION ORDERS:

A. Vote Solar is granted intervention in this docket, conditioned on combining its activities in the docket with Sierra Club pursuant to K.S.A. 77-521(c)(3).

B. 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).³⁸

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

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 06/07/2018



Lynn M. Retz
Secretary to the Commission

MJD

³⁸ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

CERTIFICATE OF SERVICE

18-WSEE-328-RTS

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 06/07/2018.

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