

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of Westar Energy, Inc. and Kansas )  
Gas and Electric Company Seeking Commission )  
Approval to Implement Changes in their ) Docket No. 16-WSEE-375-TAR  
Transmission Delivery Charges Rate Schedules. )

In the Matter of Westar Energy, Inc. and Kansas )  
Gas and Electric Company Seeking Commission )  
Approval to Implement Changes in their ) Docket No. 17-WSEE-377-TAR  
Transmission Delivery Charge Rate Schedules. )

In the Matter of Westar Energy, Inc. and Kansas )  
Gas and Electric Company Seeking Commission )  
Approval to Implement Changes in their ) Docket No. 18-WSEE-355-TAR  
Transmission Delivery Charge Rate Schedules. )

**BRIEF OF HOLLY FRONTIER EL DORADO REFINING LLC**

Holly Frontier El Dorado Refining LLC ("Holly Frontier") submits the following legal brief pursuant to the Kansas Corporation Commission's ("Commission") Order dated May 3, 2018,<sup>1</sup> filed in the above-consolidated dockets.

1. On September 26, 2017, the Commission Staff ("Staff") recommended the Commission re-allocate the increase in Westar Energy, Inc.'s and Kansas Gas and Electric Company's ("Westar") 2016-2017 Transmission Delivery Charges ("TDC") among customer classes using 12 coincident peak ("12 CP") allocation factors that were different than the 12 CP allocation factors used in Westar's previous rate case, Docket No. 15-WSEE-115-RTS ("2015 Rate Case").<sup>2</sup> For example, the allocation

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<sup>1</sup>Order Establishing Briefing Schedule, Consolidated Docket No. 16-WSEE-375-TAR; Docket No. 17-WSEE-377-TAR; and Docket No. 18-WSEE-355-TAR, filed May 7, 2018 (collectively, "Consolidated Dockets").

<sup>2</sup>Notice of Filing of Staff's Report and Recommendation, Consolidated Dockets, filed September 26, 2017 ("Staff 2017 R&R"), page 9.

factor for the residential customer class used in the 2015 Rate Case was 47.51%.<sup>3</sup> Staff recommends that allocation factor be changed to 44.28%.<sup>4</sup> Staff's proposed changes to the allocation factors would increase the TDC charge under the 2016 and 2017 TDC tariff filings to the special contract customers, which includes Holly Frontier, by over \$450,000.00.<sup>5</sup>

2. Setting aside the merits of whether Staff's proposed changes in the allocation factors are reasonable (Holly Frontier contends that the proposed changes are not reasonable and will be prepared, if necessary, to submit evidence at the proper time to support its position), the preliminary legal issue in these consolidated dockets is not whether Staff can recommend a change in the Westar TDC allocation factors. Instead, the issue is whether an order approving that recommendation in these TDC filings would be lawful without the filing of a separate docket that specifically requests a change in Westar's TDC tariff that would allow Westar to deviate from the allocation factors used in its last rate case, with a 240-day clock, notice to all affected parties of the requested change, and approval of said change. To date, there has been no request by any party to make any change to Westar's TDC tariff and no notice issued of a proposed change in the TDC tariff. Instead, Staff has contended that no change in Westar's TDC tariff is necessary prior to any order from the Commission approving Staff's recommendation.<sup>6</sup> As outlined below, approval of Staff's recommendation to re-allocate

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<sup>3</sup>*Id.* at pages 7-8. *See, also*, Westar TDC tariff filing in Docket No. 16-WSEE-375-TAR, filed February 15, 2016, second to last page of filing for 12 CP allocation factors. *See, also*, Westar's Response to KCC Staff DR 102 in Docket No. 15-WSEE-115-RTS ("Westar's 2015 Rate Case"), attached to this Brief as Exhibit 1. The minor difference in the 12 CP allocation factors in the response to KCC Staff DR 102, which set forth the 12 CP allocation factors used in Westar's 2015 Rate Case and the 12 CP allocation factors in Westar's 2016 TDC tariff filing is due to the recalculation in the Stipulation and Agreement in Westar's 2015 Rate Case (paragraph 41(a)) approved by the Commission by Order dated September 24, 2015.

<sup>4</sup>*Id.* at pages 7-8.

<sup>5</sup>*Id.* at page 11.

<sup>6</sup>Staff's Response to Westar's Response to Staff's Report and Recommendation, Consolidated Dockets, filed August 22, 2016, pages 5-6, paragraph 15.

transmission revenues among classes using allocation factors different than those used in Westar's last rate case, prior to a request and notice to change the tariff and approval of that request, would result in unlawful rates.

3. Fortunately, the issue of whether Westar can use 12 CP allocation factors different than those used in its last rate case without first seeking a change in its TDC tariff has been previously decided by the Commission in Docket No. 12-WSEE-651-TAR ("Westar's 2012 TDC Docket").<sup>7</sup> In Westar's 2012 TDC Docket, Westar was concerned about cost shifts among customer classes if it used the 12 CP allocation factors from its then most recent rate case, Docket No. 12-WSEE-112-RTS ("Westar's 2012 Rate Case").<sup>8</sup> Based upon that concern, Westar proposed not to use the 12 CP allocation factors used in Westar's 2012 Rate Case.<sup>9</sup> However, Staff opposed Westar's proposal.<sup>10</sup> Staff argued that Westar's TDC Tariff required "Westar to use the 12-CP demand allocator from its most recent rate case or conduct a load research study every five years to calculate a new 12-CP demand allocator, whichever comes first. Therefore, Westar's hybrid approach would be a deviation from the current tariff."<sup>11</sup> Westar, Staff and CURB entered into a settlement,<sup>12</sup> which the Commission

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<sup>7</sup>Order Granting Joint Motion to Approve Stipulation and Agreement and to Dismiss Evidentiary Hearing, Docket No. 12-WSEE-651-TAR ("Westar's 2012 TDC Docket"), filed September 27, 2012, at paragraphs 8, 10, 14 and 15.

<sup>8</sup>Direct Testimony prepared by James T. Stamatson on behalf of KCC Staff, Westar's 2012 TDC Docket, filed July 30, 2012, at page 5, line 18 through page 6, line 10.

<sup>9</sup>*Id.*

<sup>10</sup>*Id.* at page 8, lines 12-15.

<sup>11</sup>*Id.* at page 6, lines 3-6.

<sup>12</sup>Joint Motion to Approve Stipulation and Agreement and to Dismiss Evidentiary Hearing, Westar 2012 TDC Docket, filed August 27, 2012.

found to be lawful and reasonable.<sup>13</sup> The terms approved by the Commission that are relevant to the current case were as follows:

(a) Westar's TDC revenue requirement should be allocated using the 12-CP allocation factors from Westar's 2012 Rate Case.

(b) The language in Westar's TDC tariff (which remains the same today) describing use of the most recent 12-CP allocation factors should remain unchanged.

(c) Westar, Staff and CURB agreed any future tariff change request will be made in a separate tariff change proceeding instead of a TDC update case. If Westar files a tariff change and TDC update simultaneously, they may be part of the same docket. However, the TDC update must be filed under the then-existing tariff and Westar must separately request a tariff change with supporting documentation. Following this process will allow the Commission to issue a suspension order addressing the proposed tariff change.

(d) Absent a Commission order to the contrary, Westar is required to follow the TDC tariff as written.<sup>14</sup>

The Commission in its order approving the settlement reached the following conclusion of law with respect to Westar's TDC tariff: "Westar must use the 12 CP allocation ratio from its most recent rate

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<sup>13</sup>Order Granting Joint Motion to Approve Stipulation and Agreement and to Dismiss Evidentiary Hearing, Westar 2012 TDC Docket, filed September 27, 2012.

<sup>14</sup>*See*, Footnote 7. The applicable language in Westar's TDC tariff, which has not changed since the Commission approved the Staff's interpretation of that language in Westar's 2012 TDC filing is as follows: "The allocation of the ATRR to the respective rate schedule is based on the 12 coincident peak (12 CP) allocation method. Specifically, the basis for allocating the ATRR to each rate schedule is the ratio of the rate schedule's average monthly system peak demand during the Company's monthly peak-hour demand to the average total monthly system peak-hour demand. The rate schedule class allocator is based on the twelve (12) months of the test year ended (fill in applicable rate case test year here). The Company shall adjust TDC Unit Charges for each rate schedule by applying the Adjustment Factor described by the terms of this tariff. However, the Company shall reset the TDC Unit Charges by reallocating costs using this 12 CP method based on current test-year load research each time it files a retail rate proceeding, and at a minimum once every five years to limit cost shifting among retail customers.

case to allocate the transmission revenue requirement among classes."<sup>15</sup>

4. In the present TDC cases, Staff's and Westar's positions have been reversed. It is the Staff who is now concerned about the cost shift to certain classes of customers if Westar is required under its TDC tariff to use the 12 CP allocation factors from its most recent rate case.<sup>16</sup> It is also the Staff who is suggesting that Westar is not required under its TDC tariff to use its most recent rate case 12 CP allocation factors without first having to file a separate application seeking to change its tariff and to provide proper notice of said change to its customers.<sup>17</sup> However, just because the positions are now reversed doesn't provide the basis for Staff to take a different position or the Commission to reach a different conclusion with respect to the interpretation of the language in Westar's TDC tariff that required Westar to use the 12 CP allocation factors from its most recent rate case absent any approved change to that tariff language. Yet, it appears that Staff and the Commission seek to take a different position in order to justify efforts to reduce the level of TDC revenues assigned to the residential class.<sup>18</sup> Given the fact that (1) the Commission's conclusion of law in its order in the Westar's 2012 TDC Docket clearly stated under Westar's TDC tariff (which has not changed since the Westar 2012 TDC Docket was decided) "Westar must use the 12 CP allocation ratio from its most recent rate case to allocate the transmission revenue requirement among classes;"<sup>19</sup> (2) Westar, Staff and CURB's agreement clearly stated that any change in that tariff requirement must be requested in

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<sup>15</sup>Order Granting Joint Motion to Approve Stipulation and Agreement and to Dismiss Evidentiary Hearing, Westar 2012 TDC Docket, filed September 27, 2012, page 6, paragraph 26.

<sup>16</sup>Staff 2017 R&R, filed September 26, 2017, pages 7-9.

<sup>17</sup>See, Footnote 6.

<sup>18</sup>Order Adopting Staff's August 2, 2016 Recommendation, Docket No. 16-WSEE-375-TAR, filed November 8, 2016.

<sup>19</sup>See, Footnote 15.

a separate tariff change proceeding instead of in a TDC docket;<sup>20</sup> and (3) no such separate application seeking a change in the Westar TDC tariff has been filed or requested to date; it would be unlawful for the Commission to consider Staff's recommendation in these consolidated proceedings.<sup>21</sup> Staff can certainly seek to change Westar's TDC tariff to allow Westar to deviate from the 12 CP allocation factors from its most recent rate case to change the allocation of transmission revenues among customer classes. However, those rate changes resulting from approval of the changes in the tariff can only be implemented prospectively from the date the tariff change is approved. Otherwise, those rate changes would violate the prohibition against retroactive ratemaking and would be unlawful.<sup>22</sup>

5. In conclusion, it is uncontroverted that the 12 CP allocation factor used in the Westar 2015 Rate Case for the residential customer class was 47.51%.<sup>23</sup> It is uncontroverted that Staff's proposal to shift transmission revenues among customer classes is based upon changing that Westar 2015 Rate Case residential customer allocation factor to 44.28%.<sup>24</sup> It is also uncontroverted that in the Westar 2012 TDC Docket the Commission concluded that "Westar must use the 12 CP allocation ratio from its most recent rate case to allocate the transmission revenue requirement among classes unless it first obtains permission to change its TDC tariff."<sup>25</sup> Finally, it is uncontroverted that the

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<sup>20</sup>See, Footnote 7.

<sup>21</sup>See, List of Documents filed in Consolidated Dockets.

<sup>22</sup>*Kansas Gas & Electric Company v. State Corp. Comm'n*, 14 Kan.App.2d 527, 332, 794 P.2d 1165 (1990) (The KCC's power to set just and reasonable rates, however, is subject to the general rule "that a statute will operate prospectively rather than retrospectively unless its language clearly indicates that the legislature intended the latter, and that retrospective application will not be given where vested rights will be implied. K.S.A. 66-101d does not operate retrospectively because it would fly in the face of well-established precedent against retroactive ratemaking.)

<sup>23</sup>See, Footnote 3.

<sup>24</sup>See, Footnote 4.

<sup>25</sup>See, Footnote 15.

relevant language in Westar's current TDC tariff has not changed since the Commission's decision in the Westar 2012 TDC Docket and no party has sought to change that tariff.<sup>26</sup> No matter how it is characterized, Staff's recommendation is based upon it using allocation factors that are different than the 12 CP allocation factors used in Westar's rate case.<sup>27</sup> The Commission in Westar's 2012 TDC Docket specifically found such action was unlawful absent a prior change in the TDC tariff. Based upon that earlier decision by the Commission, it is untenable to suggest Staff's recommendation can be approved and applied retroactively absent any prior request and approval of a change in Westar's TDC tariff, which has not occurred in this docket. The Commission can clearly determine the merits of whether Westar's TDC tariff provisions should be changed to allow Westar to use something other than the 12 CP allocation factors used in Westar's last rate case and Holly Frontier stands ready to provide evidence that the allocation factors used in the Westar 2015 Rate Case are reasonable and should not be changed. However, any rate change resulting from that review must be prospective only from the date the Westar TDC tariff is changed in order to avoid retroactive ratemaking.<sup>28</sup>

WHEREFORE, Holly Frontier requests the Commission issue an order denying Staff's recommendation to reallocate the transmission revenue under Westar's 2016-2018 TDC tariff filings

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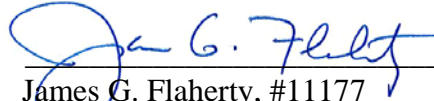
<sup>26</sup>See, Tariff from Westar, Westar 2012 TDC Docket, filed September 28, 2012, and Tariff from Westar, Docket No. 16-WSEE-375-TAR, filed February 15, 2016.

<sup>27</sup>Staff may argue that it is not "changing" the 12 CP allocation factors used in Westar's 2015 Rate Case, but instead, is merely "correcting" those allocation factors. However, any "correction" would be a "change" to those allocation factors and the Commission has previously held that using different allocation factors would first require a change in Westar's TDC tariff.

<sup>28</sup>The fact that Westar was allowed to recover its TDC charges subject to refund does not cure the retroactive ratemaking violation because to date no party has sought to change Westar's TDC tariff, and until that tariff is changed to allow the utility to use something other than the 12 CP allocation factors used in Westar's last rate case, the tariff must first be changed and then the changed rates recovered under that tariff collected only on a prospective basis. The fact that Westar has a new pending rate case, which is about to go to hearing, may make any effort to first change the tariff to allow a change in the 12 CP allocation factors going forward moot since the new 12 CP allocation factors used in Westar's 2018 rate case would apply to Westar's TDC filings subsequent to 2018.

for the reasons set forth herein.

Respectfully submitted,

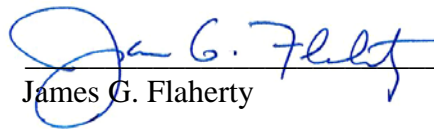


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**VERIFICATION**

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF FRANKLIN    )

James G. Flaherty, of lawful age, being first duly sworn on oath, states: That he is an attorney for Holly Frontier El Dorado Refining LLC; that he has read the above and foregoing Petition to Intervene, knows the contents thereof; and that the statements contained therein are true.

  
James G. Flaherty

SUBSCRIBED AND SWORN to before me this 1<sup>st</sup> day of June, 2018.



Appointment/Commission Expires:

Notary Public



## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing was sent via U. S. Mail, postage prepaid, hand-delivery, or electronically, this 1<sup>st</sup> day of June, 2018, addressed to:

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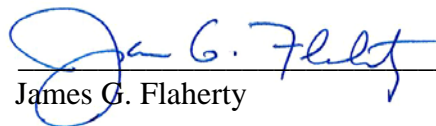
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James G. Flaherty



DATA  
REQUEST  
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Thursday, May 24, 2018  
Logged in as: [James G. Flaherty] [Logout](#)

**Docket:** [ 15-WSEE-115-RTS ] 2015 Rate Case  
**Requestor:** [ KCC ] [ Jon Wilson ]  
**Data Request:** KCC-102 :: Peak Allocators  
**Date:** 0000-00-00

*Question 1* (Prepared by Bernie St Louis)  
Regarding Class Cost of Service allocations. 1.For the customer classes listed in Westar Energy's Class Cost of Service study, please provide test year monthly peaks, by class, for 12 CP, 4CP and NCP. 2. Are any of the class demands in question 1 adjusted for weather normalization?

*Response:*  
Attached is the file, DR 102 Response-20150408.xlsx, containing the information requested. In response to question 2, no class demands were adjusted for weather normalization.

Attachment File Name	Attachment Note
<a href="#">DR 102 Response-20150408.xlsx</a>	

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EXHIBIT 1

# DR 102 - Question 1

(Data highlighted in yellow is the 4-CP information requested)

## Monthly Class Peaks - 12-CP

Day and Month	Hour End	Total	Residential	SGS	Churches	MGS	Schools
04-Oct	4:00 PM	3,542,448	1,531,545	640,377	3,428	617,478	134,615
22-Nov	6:00 PM	2,769,401	1,151,603	469,024	1,661	471,082	51,645
09-Dec	7:00 PM	3,171,424	1,435,789	580,182	1,562	506,679	48,374
06-Jan	7:00 PM	3,194,528	1,511,113	532,377	2,036	495,247	57,910
05-Feb	7:00 PM	3,163,140	1,518,291	516,895	1,804	480,290	40,198
02-Mar	8:00 PM	3,100,887	1,587,441	511,431	1,491	397,552	38,144
14-Apr	11:00 AM	2,513,748	823,733	515,920	1,195	517,598	71,464
29-May	5:00 PM	3,621,682	1,655,392	663,354	3,454	615,396	70,721
30-Jun	5:00 PM	4,147,489	2,127,837	692,003	4,455	614,244	86,643
22-Jul	5:00 PM	4,544,540	2,432,629	735,494	5,274	663,271	88,452
25-Aug	5:00 PM	4,630,730	2,419,148	720,990	6,105	670,642	149,035
04-Sep	5:00 PM	4,284,555	2,130,460	718,557	5,048	643,409	131,412
<b>Total</b>		42,684,572	20,324,982	7,296,605	37,515	6,692,887	968,613
<b>12-CP Ratio</b>		100.000%	47.617%	17.094%	0.088%	15.680%	2.269%
<b>4-CP Ratio</b>		100.000%	51.740%	16.283%	0.119%	14.719%	2.587%

## Monthly Class Peaks - 12-NCP

Month	Hour End	Total	Residential	SGS	Churches	MGS	Schools
Oct	various	3,946,084	1,562,899	731,937	6,414	691,489	247,350
Nov	various	3,295,889	1,310,475	648,682	6,616	555,493	120,851
Dec	various	3,533,185	1,496,434	714,053	5,837	560,706	102,034
Jan	various	3,591,264	1,535,654	678,718	4,958	572,432	102,124
Feb	various	3,577,699	1,518,291	683,566	4,682	574,514	119,377
Mar	various	3,599,989	1,595,022	636,128	4,112	566,847	114,752
Apr	various	2,954,877	957,982	595,127	6,686	589,368	113,307
May	various	4,028,134	1,728,666	758,887	7,794	651,188	159,589
Jun	various	4,505,824	2,168,770	795,410	8,308	691,545	119,045
Jul	various	4,855,934	2,449,871	836,227	9,975	702,029	111,965
Aug	various	4,937,075	2,448,915	826,575	9,028	706,454	194,610
Sep	various	4,684,223	2,175,920	873,398	9,807	693,000	190,130
<b>Total</b>		47,510,177	20,948,900	8,778,706	84,215	7,555,065	1,695,135
<b>12-NCP Ratio</b>		100.000%	44.094%	18.478%	0.177%	15.902%	3.568%
<b>4-NCP Ratio</b>		100.000%	48.693%	17.550%	0.196%	14.713%	3.244%

<b>HLF</b>	<b>Lighting</b>	<b>Special Contract</b>	<b>Goodyear</b>	<b>Atchison Casting</b>
458,667	515	133,359	18,960	3,504
411,017	53,756	131,886	17,294	10,434
392,486	53,756	133,862	16,035	2,699
400,067	53,756	126,128	15,591	302
399,650	53,756	136,730	15,220	306
354,704	53,756	140,294	15,887	187
422,282	515	135,771	16,739	8,532
454,120	515	135,143	17,479	6,107
467,423	515	139,578	14,628	164
463,469	515	134,136	17,849	3,451
480,351	515	162,659	16,442	4,842
459,837	515	169,966	16,627	8,724
5,164,073	272,382	1,679,513	198,751	49,252
12.098%	0.638%	3.935%	0.466%	0.115%
10.627%	0.012%	3.444%	0.372%	0.098%

<b>HLF</b>	<b>Lighting</b>	<b>Special Contract</b>	<b>Goodyear</b>	<b>Atchison Casting</b>
481,214	53,756	137,531	20,145	13,351
431,981	53,756	135,676	19,257	13,103
436,402	53,756	131,482	18,923	13,557
452,555	53,756	159,120	18,368	13,579
441,809	53,756	150,005	18,183	13,516
459,011	53,756	137,003	18,183	15,174
450,718	53,756	153,708	18,294	15,932
483,485	53,756	150,134	18,923	15,711
497,451	53,756	134,053	19,590	17,897
504,524	53,756	152,722	19,368	15,498
501,561	53,756	160,510	20,331	15,335
487,097	53,756	167,398	18,923	14,796
5,627,808	645,069	1,769,342	228,488	177,449
11.845%	1.358%	3.724%	0.481%	0.373%
10.486%	1.133%	3.238%	0.412%	0.335%