

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Complaint of Kansas Gas Service,)
a Division of ONE Gas, Inc., Against Westar Energy,)
Inc., Regarding Westar's Practice of Offering) Docket No. 19-KGSG-061 -COM
Payments to Developers in Exchange for the)
Developers Designing All Electric Subdivisions.)

COMPLAINT OF KANSAS GAS SERVICE AGAINST WESTAR ENERGY, INC.

Kansas Gas Service, a division of ONE Gas, Inc. ("Kansas Gas Service" or "Company"), submits this complaint against Westar Energy, Inc. ("Westar") in accordance with K.A.R. 82-1-220 and as authorized by K.S.A. 66-101c, K.S.A. 66-101e and K.S.A. 66-101f (hereafter referred to as "Complaint").

1. This Complaint arises from Westar's unauthorized practice of offering payments to developers who agree to design their residential subdivisions to contain only all electric housing. As evidenced by the Westar form contract titled "2016 Total Electric Subdivision Heat Pump Program," (attached hereto as **Exhibit A** and incorporated herein by reference), Westar is actively offering (and paying) developers and contractors, who are engaged in building new housing subdivisions located within Kansas Gas Service's certificated territory, financial benefits in exchange for their agreement not to install or allow the installation of natural gas facilities during the development and building phases in their new subdivisions (the act is hereafter referred to as "Practice" or "the Practice"). Westar's Practice of tying payments to developers for their agreement not to install or allow the installation of natural gas facilities in their subdivisions, is not contained in the electric utility's Commission approved "Policy For Residential Subdivisions" tariff. That tariff sets forth the terms upon which Westar will extend its facilities to serve new residential subdivisions. A copy of the referenced tariff is attached hereto as **Exhibit B** and incorporated herein by reference. Based upon

a review of Westar's Commission filings for the past 15 years, it does not appear Westar has ever sought or obtained Commission approval of the Practice. Because Westar has not obtained Commission approval of the Practice, which is a violation of K.S.A. 66-101c, Kansas Gas Service requests an order from the Commission finding Westar violated K.S.A. 66-101c by failing to obtain approval of the Practice from the Commission and requiring Westar to immediately cease the Practice. In addition to the complaint that Westar is operating a program that has not been approved by the Commission, Kansas Gas Service complains that Westar's Practice should cease because the results of such Practice are contrary to the public interest, unreasonable, unfair, unjust and in violation of K.S.A. 66-101e. Furthermore, Westar's act of promoting and issuing payments in exchange for all electric subdivisions, results in effectively barring those persons living in those subdivisions from the opportunity to obtain natural gas service and thus, they become captive customers to the electric utility. Kansas Gas Service asks the Commission to issue an order pursuant to K.S.A. 66-101f requiring Westar to cease the Practice on the basis that it is contrary to the public interest.

2. Westar's Practice goes well beyond offering incentives to encourage developers to install heat pumps in subdivisions. Instead, the Practice is anti competitive and actively damages rather than promotes the public interest. It creates economic waste by effectively prohibiting the installation of natural gas facilities in these new subdivisions, creating areas, (pockets, or islands within urban communities) where residents only have access to electricity for space, cooking and water heating purposes. Such Practice negatively impacts Kansas citizens, who will eventually reside within the subdivisions targeted by Westar, by eliminating their choice altogether as it relates to the type of energy available to them. This type of act or practice runs afoul of the Commission's rules as provided in K.S.A. 66-101b and should be prohibited and found to be unlawful and void under K.S.A. 66-101f:

The Commission recognizes that every unjust or unreasonably discriminatory or unduly preferential rule, regulation, classification, rate, charge or exaction is prohibited and is unlawful and void, and that the Commission has the power to require all electric public utilities to establish and maintain just and reasonable rates. K.S.A. 66-101b.

The Commission is mindful that if it finds any rate, rule and regulation, practice or act is found to be unjust, unreasonable, unfair, unjustly discriminatory or unduly preferential, or in violation of Kansas laws, the Commission has the power to establish, and order substituted therefor, such rates or rules and regulations as the Commission determines to be just, reasonable and necessary. K.S.A. 66-101f. (emphasis added).

3. The Commission is statutorily empowered to ensure that the business practices of utilities under its jurisdiction promote the public interest.¹ The Commission also has authority to require each utility to cease such business practices that it finds inconsistent with the public interest, and render any other sanctions or penalties it deems appropriate.² Therefore, it is without question that the Commission has the authority to fully investigate Westar's Practice and to determine whether the Practice should be prohibited due to it being contrary to promoting the public interest.

4. While Kansas Gas Service's primary complaint is that Westar's Practice is contrary to the public interest because it effectively creates areas where customers are unable to obtain natural gas service, the Commission should also explore how Westar reflects the costs of its Practice in its books and records and whether such costs have been built into the utility's base rates and are being paid for by Westar's non participating customers. Hypothetically, there are three potential scenarios surrounding how such costs could be accounted for on the utility's books and records:

a) the costs are considered similar to construction costs incurred to serve (and in this instance, build load) and thus were capitalized and incorporated into rate base;

¹See, K.S.A. 66-101b, 66-101d, 66-101e and 66-101g.

²K.S.A. 66-101f.

b) the costs could be charged as an operating expense and depending upon the test period, included within a base rate case proceeding as an 'above the line' operating expense;

or,

c) the costs could be charged as a non operating expense, "below the line" and therefore, not incorporated into base rate proceedings.

Regardless of the manner in which the utility accounts for the costs, the impact or ultimate result of the Practice is still contrary to the public interest for the reasons mentioned above and should be prohibited. However, if such unauthorized Practice is also being funded by Westar's non participating customers through the inclusion of those costs in base rates, without specific knowledge and approval from the Commission, then the Commission should also take that into account as part of this Complaint.

5. Kansas Gas Service has not hastily reached its decision to submit this Complaint. On the contrary, over the past few years or so, the Company's representatives have reached out to Westar with various questions surrounding the Practice. Westar responded with very minimal information, none of which indicated any intention of terminating the Practice, nor did it indicate how such costs were reflected in their books and records. Therefore, Kansas Gas Service had no other recourse other than to bring this issue to the Commission's attention and request that it thoroughly investigate the issues raised within this Complaint and to provide appropriate findings and remedies, including (but not limited to) a requirement that Westar cease the Practice immediately.

6. As further support for this Complaint, Kansas Gas Service points to the fact that on June 21, 2016, the Commission opened Docket No. 16-GIME-576-GIE, to investigate Kansas City Power & Light Company's ("KCPL") all electric discounted rates. The Commission is very familiar with the history of the all electric discounts offered within KCPL's service territory and has expressed

concerns with the magnitude of previous rate increases for those customers who must rely upon electricity to heat their homes. As part of this Complaint, the Commission should investigate how all electric subdivisions came into being in the first place, i.e., whether they were the result of acts or practices of the utility similar to Westar's Practices complained of herein; whether such acts or practices have resulted in areas (pockets or islands located within urban communities), where residents in those areas now have no access to natural gas service and are captive customers of the electric utility; and whether that result or consequence of such acts or practices is contrary to the public interest and should therefore be prohibited.

7. Kansas Gas Service also submits that part of the solution to the challenges facing the Commission regarding all electric rate design is to declare that the anti competitive business practices of Westar designed to prevent the installation of natural gas distribution systems be prohibited. This action would then eliminate the growth in customers that do not have fuel choice with regards to space, cooking and water heating. Rates charged to all electric customers could then be based on their costs to serve without concern over potential rate impacts for customers without choice.

8. As part of the investigation of this Complaint, Kansas Gas Service asks the Commission to determine how long Westar's Practice has been in effect; the number of dwellings subject to the Program; the amount of payments made (by year since the program was initiated); and obtain a full accounting of such costs and if such costs have been included in base rates and paid by non participating customers.

WHEREFORE, pursuant to K.A.R. 82-1-220(b)(3), Kansas Gas Service requests that the Commission grant to it the following specified relief:

(1) that the Commission find that Westar failed to obtain approval from the Commission of its Practice of paying developers cash rebates in exchange for building all electric housing in

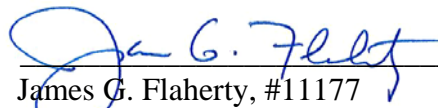
violation of K.S.A. 66-101c, that such Practice should cease and that Westar be required to pay sanctions and penalties for violating said statute;

(2) that the Commission find that Westar's Practice of paying developers cash rebates in exchange for building all electric housing is not in the public interest for the reasons set forth in this Complaint and that such Practice should cease;

(3) that the Commission after full investigation and hearing pursuant to K. S. A. 66-101e, make the determinations as requested in this Complaint as to Westar's Practice; and

(4) for such other relief that the Commission may find to be appropriate.

Respectfully Submitted,



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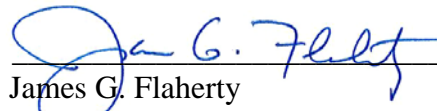
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Attorneys for Kansas Gas Service, A Division of ONE
Gas, Inc.

VERIFICATION

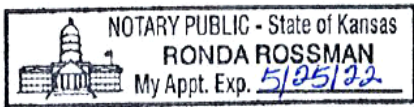
STATE OF KANSAS, COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being first duly sworn on oath, states that he is the attorney for Kansas Gas Service, A Division of ONE Gas, Inc.; that he has read the forgoing Complaint Against Westar Energy, Inc., and the statements contained therein are true.



James G. Flaherty

SUBSCRIBED AND SWORN to before me this 7th day of August, 2018.





Notary Public

Appointment/Commission Expires:



EXHIBIT A

2016 Total Electric Subdivision Heat Pump Program

Person's Name
Company Name
Company Address
City, KS zip

LETTER OF INTENT: Total Electric Heat Pump Subdivision
Development Name, Development City, KS

MAXIMUM NUMBER OF BUILDINGS:

XX buildings. All buildings within the subdivision to be built Total Electric with a Full Heat pump split system as the primary heating source. All buildings to be served directly by Westar Energy.

REBATE AMOUNTS:

Westar Energy Agrees to provide a cash rebate for each building, once a heat pump system and permanent residential meter have been set. The cash rebate amounts are as follows:

Building Type	PER BUILDING PAYOUT		Notes
	14 SEER HP	16+ SEER HP	
Single Family	\$1,200.00	\$1,500.00	1 or more heat pump system per building
Duplexes	\$1,600.00	\$2,000.00	2 or more heat pump systems per building
Quads	\$2,400.00	\$3,000.00	4 or more heat pump systems per building
Greater than Quad	\$500.00 per HP unit, 14+ SEER		Maximum \$20,000.00 rebate per building

COMPLETION DATE:

This agreement is in effect for five years from the date of signature.

ACCEPTANCE:

Westar Energy agrees to the above agreement and accepts the above conditions.

Tiffe Greathouse
Westar Energy
Account Manager, Trade and Ally Services

Date

Company Name agrees to the above agreement and accepts the above conditions.

Person's name

Date

Title

EXHIBIT B

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THE STATE CORPORATION COMMISSION OF KANSAS

WESTAR ENERGY, INC & KANSAS GAS & ELECTRIC COMPANY, d.b.a. WESTAR ENERGY

(Name of Issuing Utility)

SCHEDULE Policy for Residential Subdivisions

Replacing Schedule Policy for Res Sheet 1

WESTAR RATE AREA

(Territory to which schedule is applicable)

which was filed April 18, 2012

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 1 of 4 Sheets

POLICY FOR RESIDENTIAL SUBDIVISIONS

AVAILABLE

Electric service will be extended to new residential subdivisions consisting of average lot sizes of five acres or less at points on the Company's existing distribution facilities.

APPLICABLE

This policy is applicable to developers, contractors, and/or promoters (Developer) of residential housing areas above and beyond the scope of the Company's line extension policy. This policy is not applicable to Mobile Home Courts, multi-dwelling construction of more than four units, and construction of fewer than five residential units.

PURPOSE

This policy will encourage a more orderly development and provide for better coordination between Company and developer of residential subdivisions. This policy is intended to assist developer's request for new service installations and limit the investment in utility plant required by Company prior to eventual residential consumer demand for electricity.

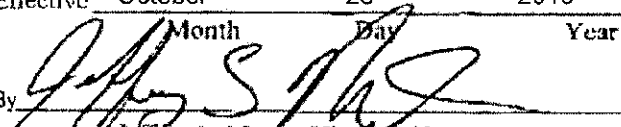
GENERAL REQUIREMENTS

Developer shall apply to Company for the design of the electric distribution for the entire subdivision or portion thereof to be built in a twelve-month period that Developer is contemplating building residential housing units upon. Company shall design the initial distribution system based upon the Developer's plan consisting of all contiguous building sites on both sides of the utility easements within the project area. Company will install, own and maintain the entire distribution system in the new residential subdivision.

Company installation costs shall be limited to the cost of a conventional overhead distribution system adequate to serve the anticipated load in the proposed residential subdivision. Developer shall pay a non-refundable contribution in advance for the entire cost in excess of a conventional overhead distribution system.

Issued _____
Month Day Year

Effective October 28 2015
Month Day Year

By 
Jeffrey L. Martin, Vice President

15-WSEE-115-RTS

Approved *lge*

Kansas Corporation Commission

October 28, 2015

/S/ Amy L. Green

THE STATE CORPORATION COMMISSION OF KANSAS

WESTAR ENERGY, INC & KANSAS GAS & ELECTRIC COMPANY, d.b.a. WESTAR ENERGY

(Name of Issuing Utility)

SCHEDULE Policy for Residential Subdivisions

Replacing Schedule Policy for Res. Sheet 2

WESTAR RATE AREA

(Territory to which schedule is applicable)

which was filed April 18, 2012

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 2 of 4 Sheets

POLICY FOR RESIDENTIAL SUBDIVISIONS

CALCULATION OF EXCESS COSTS

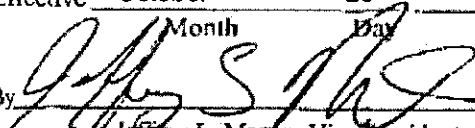
Company shall be solely responsible for the calculation of the differential between a conventional overhead distribution system which includes distribution lines, poles, and transformers, and the distribution system requested by Developer. Company may use the average cost per lot in calculating the differential between a conventional overhead and conventional underground electric distribution system. Developer shall be solely responsible and shall pay all costs of change orders requested by the Developer or required by city, county or other authority.

DEFINITIONS AND CONDITIONS

1. Developer shall supply all easement and rights-of-way required for the Company's facilities at no cost to the Company, on property owned and controlled by the Developer.
2. Developer shall clearly designate or have clearly designated utility easements suitable for electric facilities, right of ways, lot lines and location of other utility facilities placed in or to be placed in the utility easement. Easements shall be within six inches of final grade prior to installation of facilities.
3. Developer may upon prior approval of Company supply trenching, backfilling, transformer pads, and other items, thereby reducing the amount of special construction payment to Company. All such in-kind work shall be constructed or completed to the Company's construction specifications and in conjunction with Company's construction schedule. Company at its sole discretion shall require Developer's in-kind work to be redone if not constructed to Company's construction specifications.
4. Company will allow a \$40,000 allowance toward the conventional overhead distribution system per subdivision or portion thereof for each 12-month period. Developer shall deposit with Company all costs in excess of \$40,000. Developer may receive an additional \$40,000 allowance in a year as outlined in paragraph 5. The deposit for the conventional overhead electric distribution system in excess of the \$40,000 allowance will be refunded without interest to Developer on a per lot basis in the following manner:

Issued _____
Month Day Year

Effective October 28 2015
Month Day Year

By 
Jeffrey L. Martin, Vice President

15-WSEE-115-RTS

Approved *lje*

Kansas Corporation Commission

October 28, 2015

/S/ Amy L. Green

THE STATE CORPORATION COMMISSION OF KANSAS

WESTAR ENERGY, INC & KANSAS GAS & ELECTRIC COMPANY, d.b.a. WESTAR ENERGY

(Name of Issuing Utility)

SCHEDULE Policy for Residential Subdivisions

Replacing Schedule Policy for Res. Sheet 3

WESTAR RATE AREA

(Territory to which schedule is applicable)

which was filed April 18, 2012

No supplement or separate understanding shall modify the tariff as shown hereon.


Sheet 3 of 4 Sheets

POLICY FOR RESIDENTIAL SUBDIVISIONS

- a. The cost of conventional overhead electric distribution system shall be determined for Developer's subdivision.
 - b. A per lot average of conventional overhead electric distribution system shall be calculated by dividing the cost by number of lots for Developer's subdivision.
 - c. The number of lots covering Company's investment shall be determined by dividing Company's investment by the per lot average of a conventional overhead distribution system for Developer's subdivision.
 - d. Developer shall be eligible for a refund on a per lot basis after construction and setting of permanent meters on at least the number of lots sufficient to cover Company's investment. Refunds shall not exceed the Developer's original deposit nor will refunds be made beyond a five year period beginning from the date the deposit is made by Developer and Company installs the distribution system
5. The Company's allowance limit of \$40,000 is applicable to one allowance per 12-month period. Company may, at its sole discretion, provide a second allowance provided the Developer meets certain requirements including but not limited to a) requesting the design of the entire subdivision at one time in lieu of design work on each phase, b) notifying the Company during initial request to install electric facilities for a phased installation of said facilities during the year, c) Company's ability to accommodate the installation schedule of the Developer, d) Ninety percent of the lots have permanent meters installed in previous subdivisions phases and e) the total allowances do not exceed the original amount contemplated in the subdivision design.
6. In addition to any deposit required pursuant to paragraph 4 above, Developer shall pay a non-refundable contribution for the entire cost of the work requested or required in excess of a conventional overhead distribution system.
7. Payment of any deposit pursuant to paragraph 4 and any contribution pursuant to paragraph 5 shall be paid by Developer prior to the start of work.

Issued _____
Month Day Year

Effective October 28 2015
Month Day Year

By 
Jeffrey L. Martin, Vice President

15-WSEE-115-RTS
Approved *lje*

Kansas Corporation Commission
October 28, 2015
/S/ Amy L. Green

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THE STATE CORPORATION COMMISSION OF KANSAS

WESTAR ENERGY, INC & KANSAS GAS & ELECTRIC COMPANY, d.b.a. WESTAR ENERGY

(Name of Issuing Utility)

SCHEDULE Policy for Residential Subdivisions

Replacing Schedule Policy for Res Sheet 4

WESTAR RATE AREA

(Territory to which schedule is applicable)

which was filed April 18, 2012

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 4 of 4 Sheets

POLICY FOR RESIDENTIAL SUBDIVISIONS

- 8. Service under this rate schedule is subject to Company's General Terms and Conditions presently on file with the State Corporation Commission of Kansas and any modifications subsequently approved.
- 9. All provisions of this rate schedule are subject to changes made by order of the regulatory authority having jurisdiction.

Issued _____
Month Day Year

Effective October 28 2015
Month Day Year

By 
Jeffrey L. Martin, Vice President

15-WSEE-115-RTS *1je*
Approved

Kansas Corporation Commission
October 28, 2015
/S/ Amy L. Green