

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Thomas E. Wright, Chairman
 Michael C. Moffet
 Joseph F. Harkins

In the Matter of Westar Energy, Inc., and Kansas Gas)
and Electric Company (KGE), d/b/a Westar Energy) Docket No. 09-WSEE-737-TAR
Seeking Commission Approval to Revise its)
Environmental Cost Recovery (ECRR) Tariff.)

ORDER APPROVING REVISIONS TO WESTAR'S ECRR SURCHARGE
TARIFF AS RECOMMENDED BY STAFF

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and record, the Commission finds and concludes as follows:

1. This docket was initiated on March 17, 2009, when Westar Energy, Inc., and Kansas Gas & Electric Company, d/b/a Westar Energy (collectively Westar) filed proposed revisions to its Environmental Cost Recovery Rider (ECRR) Tariff. Westar proposed that its ECRR tariff be revised to include costs associated with its investment in pollution control equipment through December 31, 2008. The Citizens' Utility Ratepayer Board (CURB) was granted intervention on April 1, 2009.

2. Staff filed its Report and Recommendation on April 23, 2009, recommending the Commission approve collection of Westar's ECRR surcharge amounts as revised by Staff. On May 5, 2009, CURB filed a Motion for Extension of Time to File Comments. In an Order issued May 8, 2009, the Commission granted CURB's request in part and extended the time for CURB to file a response from May 15 until May 21, 2009, at 4:00 p.m. CURB filed its responsive Comments on May 18, 2009. Westar filed a Response to CURB's Comments on May 22, 2009.

3. The Commission has jurisdiction over this proceeding under its broad power and authority to regulate electric utilities. K.S.A. 66-101; K.S.A. 66-101g. See *Kansas Industrial Consumers v. Kansas Corporation Comm'n*, 36 Kan. App. 2d 83, 97, 138 P.3d 338 (2006).

I. Background

4. In a previous Westar rate case in KCC Docket No. 05-WSEE-981-RTS (05-981), the Commission approved use of an ECRR tariff to allow recovery of mandated environmental upgrades through a monthly surcharge rather than adding these costs to base rates after the projects are completed. Docket 05-981, *Order on Rate Applications*, filed December 28, 2005 (05-981 Order), ¶ 65. The Commission rejected challenges to the ECRR presented in Petitions for Reconsideration. Docket 05-981 Docket, *Order on Petitions for Reconsideration and Clarification*, filed February 13, 2006, ¶¶ 24-27. The Commission's decision on the ECRR was challenged in petitions for judicial review, but the Kansas Court of Appeals upheld the ECRR provision, noting Staff would review the ECRR projects for prudence and necessity and a true-up mechanism would ensure recovery of costs actually expended. 36 Kan. App. 2d at 97-98.

5. The Commission approved a procedure to use in considering ECRR tariffs as outlined in Direct Testimony of Don Low, Director of Utilities Staff, filed September 9, 2005, in Docket 05-981. 05-981 Order, ¶ 65, *citing* Low Direct, pp. 23-28. The Commission reviewed revisions to the ECRR tariff using this procedure in KCC Dockets No. 06-WSEE-1088-TAR, 07-WSEE-978-TAR (slightly modifying the review process in an Order filed May 10, 2007, ¶ 9), and 08-WSEE-849-TAR. In Westar's earlier ECRR tariff dockets, the Commission approved Westar's requests, as recommended by Staff, to collect costs for specific environmental upgrades through new rates and charges in the ECRR tariff. In Westar's recent rate case, Docket No. 08-WSEE-1041-RTS (08-1041), the Commission approved a Stipulation and Agreement (08-1041 S&A) that rolled costs being recovered through the ECRR into base rates at the effective date of tariffs resulting from the rate case. The 08-1041 S&A provided: "The ECRR will be zero-based at that time, except the true-up balance will roll to the ECRR filing." 08-1041 S&A, ¶ 32.

6. Under the ECRR procedures as revised in the 07-978 Docket, Westar must make an annual ECRR filing by March 31. Staff must file its Report and Recommendation by May 1. Intervening parties, including CURB, must file comments by May 15. The Commission must issue an order on or before May 29.

II. Filings

7. In the proposed revision to its ECRR tariff filed on March 17, 2009, Westar has asked the Commission to include costs associated with its investment in pollution control equipment through December 31, 2008, and to revise the ECRR tariff language to allow Westar to recover these environmental costs through ECRR surcharges to customers. Westar sought to recover revenue requirements associated with 15 environmental projects, resulting in a surcharge amount of \$25,802,236 for Westar North and \$7,923,510 for Westar South. This surcharge will be included on monthly bills of the rate schedule classes in the ECRR tariff schedule.

8. In Staff's Memorandum and Recommendation, filed April 23, 2009 (Staff Memo), Staff summarized the audit it performed in analyzing Westar's proposed revisions. In its review, Staff found computational errors in Westar's application and discovered Westar's filing inappropriately included costs recovered through Westar's Purchase Power Agreement (PPA) with Mid-Kansas Electric Company (MKEC). As a result, Staff revised Westar's ECRR surcharge amounts to \$25,063,238 for Westar North and \$7,389,942 for Westar South. Staff Memo, pp. 3-4 and Attachment A. Staff found the true-up mechanism Westar used in its revised filing complied with the methodology established in Westar's 2008 ECRR surcharge filing and set forth the true-up methodology for Westar's 2010 ECRR surcharge filing. Staff Memo, pp. 4-5 and Attachment B. Staff also noted that the surcharge for the North and South systems is allocated to each class using the test-year 4 coincident peak demand of each class, as established in Docket 08-1041. Staff explained the 2009 budgeted kWh billing statistics of each class are used to calculate the surcharge rate for the majority of the classes, but the class surcharge rates for higher load factor customers are calculated using 2009 budgeted kW or kVA billing statistics. Staff Memo, p. 5 and Attachment C.

9. Staff recommended the Commission approve collection of Westar's ECRR surcharge amounts, as revised by Staff. Staff recommended Westar be allowed to collect surcharge amounts of \$25,063,238 for Westar North and \$7,389,942 for Westar South using the rates and charges described in the Rate Design discussion in Staff's Memo, p. 6, with the following conditions:

1. Westar will file revised ECRR tariffs reflecting the new rates and charges prior to billing the new ECRR rates on June 1, 2009.
2. Staff will ensure that the true-up of actual ECRR revenue collected versus intended ECRR surcharge amounts be reflected in future years' ECRR surcharge filings under the methodology described in Staff's Memo.

10. As a result of its review of discovery responses and its discussions with Staff, CURB stated in its Comments filed May 18, 2009, that it did not recommend any adjustments to the surcharges as quantified by Staff's recommendations. CURB Comments, pp. 3-4. However, CURB noted several concerns about using ECRR surcharges, including the size of the rate increases being recovered through Westar's ECRR, the accuracy of Westar's projections of future capital expenditures, and the abbreviated process for review of requests to revise ECRR surcharges. CURB Comments, p. 4. After outlining the current process for reviewing revisions to ECRR surcharges, CURB recommended four changes to enhance CURB's ability to review annual filings on ECRR tariffs and to promote the public interest. CURB Comments, p. 6.

11. First, CURB requested that it be provided confidential information relating to environmental expenditures throughout the year, rather than requiring CURB to wait until a new ECRR docket is opened, its petition to intervene is granted, and a protective order is issued. Allowing CURB access to confidential information throughout the year will give CURB additional time to evaluate the company's expenditures to date and to anticipate issues that might arise in the annual ECRR filing. CURB Comments, p. 7.

12. Second, CURB proposed the company provide additional environmental cost information to the parties, including CURB and other interested parties, before the annual ECRR

filing on March 31. CURB noted that Westar currently submits a report with specified information to Staff six months before beginning a project for which it will propose recovery through the ECRR; CURB proposed that it also receive a copy of that report when it is given to Staff. CURB also recommended the company file a report each year containing an overview of all projects involving environmental expenditures to date, listing several specific items CURB suggests be included in the report. CURB Comments, pp. 7-8.

13. Third, CURB proposed that, within two weeks of an annual ECRR filing, the company meet, or conduct a conference call, with Staff and CURB to clarify any questions about the filing. This would allow CURB to develop a better understanding of the projects and costs being recovered through the ECRR. Citing its limited resources, CURB argued these three changes will assist CURB in its review without imposing burdensome requirements on Westar or expanding the procedural schedule currently used for ECRR filings. CURB Comments, pp. 8-9.

14. Fourth, CURB urged the Commission to require Westar to provide notice to its customers of its ECRR request within 30 days of its filing. CURB asserted such notice will promote the public interest, will give interested ratepayers an opportunity to gain further information about the surcharge, and will allow customers to budget for the increased costs. CURB Comments, 9-10.

15. Responding to CURB's Comments, Westar pointed out that CURB did not recommend any adjustment to the ECRR surcharges quantified in Staff's Memorandum. Westar agreed that Staff's recommendations are proper and asked the Commission to issue an order approving the ECRR surcharges as recommended by Staff. Westar Response, ¶ 2. Westar further stated it did not object to concepts proposed by CURB to modify the process by providing additional notice and transparency regarding its environmental programs and expenditures. Westar suggested that interested parties address CURB's proposals in a collaborative process to develop a joint recommendation to the Commission. Westar proposed the Commission defer ruling on CURB's recommendations and direct Staff, CURB, Westar and any other interested

parties to meet and provide a proposal no later than 60 days after issuing the order in this docket. Westar Response, ¶ 4.

III. Findings and Conclusions

16. Westar has urged the Commission to grant its request to increase its recovery for 2008 environmental costs through its ECRR tariff, as approved and recommended by Staff. Westar Response, ¶ 2. Westar followed the procedures for reviewing ECRR tariff revisions established in Docket 07-978. Although recommending changes to this process, CURB does not question information Westar provided or Staff's recommendations. CURB Comments, pp. 3-4.

17. In its Memorandum, Staff discussed its review and investigation of Westar's request and recommended the Commission approve Westar's application as discussed in Staff's Memorandum. Staff Memo, pp. 5-6. During its audit, Staff found computational errors and improper inclusion of costs recovered through Westar's PPA with MKEC. Staff incorporated these revisions, resulting in ECRR surcharge amounts of \$25,063,238 for Westar North and \$7,389,942 for Westar South. Staff Memo, p. 3 and Attachment A. Staff also reviewed and computed the true-up mechanism used by Westar. Staff Memo, pp. 3-4 and Attachment B. Finally, Staff calculated the class surcharge using the methodology established in the Docket 08-1041. Staff Memo, pp. 4-5 and Attachment C. Based upon its review and analysis of Westar's projects and costs, Staff in its Memorandum, p. 6, recommended as follows:

Staff recommends that the Commission approve the collection of Westar's ECRR surcharge amounts, as revised by Staff. Staff recommends that Westar North be allowed to collect \$225,063,238 and Westar South be allowed to collect \$7,389,942 – per the rates and charges described in the Rate Design section above with the following conditions:

1. Westar shall file revised ECRR tariffs reflecting the new rates and charges prior to billing the new ECRR rates on June 1, 2009.
2. Staff will insure that the true-up of actual ECRR revenue collected versus intended ECRR surcharge amounts will be reflected in future years' ECRR surcharge filings in accordance with the methodology described above.

18. The Commission has reviewed Staff's Memorandum and considered its analysis of Westar's projects and costs for environmental upgrades included in Westar's request to revise the

ECRR tariff for 2008 environment costs. Staff's Memorandum explained its analysis, including its review and correction of computations of costs incurred, its application of the true-up mechanism applied to recover costs under the ECRR tariff, and its calculation of the surcharge rate for each class undertaken to develop the rate design. Staff attached work papers to support its conclusions.

19. The Commission finds that Staff has thoroughly reviewed the projects and costs that Westar proposed for inclusion as 2008 environmental costs in the ECRR tariff effective June 1, 2009. CURB does not recommend an adjustment to the surcharges as quantified in Staff's Memorandum. The Commission finds CURB's recommended changes to the process used for ECRR filings did not undermine Staff's analysis. The Commission further notes Westar agreed that the surcharges incorporating Staff's recommendations are proper. Therefore, the Commission finds Westar's projects reviewed in this proceeding are prudent and the costs Westar incurred for those projects were reasonable.

20. The Commission approves Westar's proposal to collect its ECRR surcharge for 2008 environmental projects and costs as recommended by Staff. Based upon this conclusion, Westar will be allowed to collect \$25,063,238 for Westar North and \$7,389,942 for Westar South pursuant to the rates and charges described in the Rate Design section of Staff's Memorandum. In addition, Staff's first condition is granted; Westar shall file a revised ECRR tariff reflecting the new rates and charges before billing the new ECRR rates on June 1, 2009. The Commission also approves Staff's second condition, related to the true-up mechanism. Westar shall file its revised ECRR tariff incorporating the conditions adopted herein.

21. The Commission is mindful of the concerns expressed by CURB and appreciates its suggestions for improving the process used to evaluate ECRR filings. The Commission agrees with Westar's proposal that CURB, Staff, Westar and any other interested parties should meet to consider CURB's recommendations. These parties should collaborate in evaluating the expedited process currently used to review ECRR filings and in determining whether any of CURB's proposals should be incorporated into this process. To this end, the Commission directs these

parties participate in a collaborative process and provide any proposals they develop to the Commission by July 31, 2009. If the parties are unable to agree upon a proposal, Staff should submit a Status Report by that deadline. The Commission directs the parties to present any proposals or reports arising from these collaborative discussions as pleadings in this docket.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Commission grants Westar's request to include costs associated with its investment in pollution control equipment through December 2008 in its ECRR tariff effective June 1, 2009, as set forth above in paragraphs 19-20. Westar shall file a new ECRR tariff containing language consistent with this Order.

(B) The Commission defers ruling of CURB's recommendations regarding the process used to evaluate ECRR filings and directs Staff, CURB, Westar, and any other interested parties to meet in a collaborative process to evaluate this process. The parties shall provide a proposal regarding this process by July 31, 2009, as discussed above in paragraph 21.

(C) Parties have fifteen days, plus three days if service of this Order is by mail, from the date of filing this Order in which to petition the Commission for reconsideration. K.S.A. 66-118b; K.S.A. 2008 Supp. 77-529(a)(1).

(D) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn; Moffet, Com.; Harkins, Com.

Dated: MAY 29 2009

ORDERED MAILED

JUN 01 2009

 **EXECUTIVE
DIRECTOR**

Susan K. Duffy
Executive Director

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