

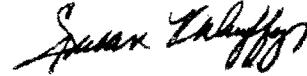
**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners:

Thomas E. Wright, Chairman  
Joseph F. Harkins  
Ward Loyd

STATE CORPORATION COMMISSION

JUL 14 2010



In the Matter of the Application of Westar )  
Energy, Inc. and Kansas Gas and Electric )  
Company for an Order Authorizing them to )  
Participate in Efficiency Kansas, Approve the )  
SimpleSavings Program Rider, and Related )  
Cost Recovery. )

Docket No: 10-WSEE-775-TAR

**REPORT AND RECOMMENDATIONS OF PREHEARING OFFICER**

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The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. On June 18, 2010, the Commission issued its Order Designating Prehearing Officer and Setting Prehearing Conference (June 18, 2010 Order). The Commission designated Melissa Doeblin, Advisory Counsel, to act as Prehearing Officer in this proceeding. June 18, 2010 Order, ¶ 5. Having reviewed the files and records, the Prehearing Officer makes the following findings and recommendations:

1. On June 4, 2010, Westar Energy, Inc. and Kansas Gas and Electric Company (Westar) filed an Application seeking authorization of the Commission to be a partner utility in the Efficiency Kansas Revolving Loan Program. Application, June 4, 2010, ¶ 2 (Application, ¶ 2). Westar also proposed a SimpleSavings Program Rider, and a shared savings mechanism along with a deferral of the shared net benefits from the proposed program for recovery in a

future Energy-Efficiency Rider. Application, ¶¶ 3, 8-9. The Commission set a Prehearing Conference to discuss procedural schedule for July 2, 2010, with Prehearing Officer Doeblin presiding. June 18, 2010 Order, ¶¶ 5-6. The Commission noted that the 240-day deadline for filing its Order is January 31, 2011. June 18, 2010 Order, ¶ 4. The Commission has jurisdiction over this Application under K.S.A. 66-117 and K.A.R. 82-1-231.

#### **I. Prehearing Conference**

2. The Prehearing Conference convened on July 2, 2010, at 10:30 a.m. The following appearances were made at the Prehearing Conference: Matt Spurgin and Colleen Harrell on behalf of the Commission Staff (Staff); Cathy Dinges and Marty Bregman on behalf of Westar; and Niki Christopher and David Springe on behalf of the Citizens' Utility Ratepayer Board (CURB). Transcript of Proceedings, July 2, 2010, page 3 (Tr., 3).

3. During the Prehearing Conference, the Prehearing Officer reviewed preliminary matters in the docket and discussed with the parties whether they were willing to use electronic service for testimony, briefs, and orders in this proceeding and waive receipt of a hard copy follow-up as required in K.A.R. 82-1-216(a)(6). The parties agreed to use of electronic service for testimony, briefs, and orders, as will be discussed in more detail below. Tr., 4-6.

4. The Prehearing Officer inquired of the parties whether they had discussed a proposed procedural schedule and come to an agreement. Staff recommended this docket be handled as a normal tariff filing with Staff filing a memorandum with report and recommendations and allowing for a response from the Applicant and any intervenors. Tr., 6-7. CURB requested a procedural schedule be established similar to other recent energy-efficiency dockets. Tr., 7. Westar agreed with the schedule proposed by Staff. Tr., 9. The Prehearing Officer took the proposed schedules and discussion under advisement, and informed the parties

that a recommended schedule would be provided in this Report and Recommendations of Prehearing Officer. Tr., 17. A modified procedural schedule is proposed below.

5. The Prehearing Officer addressed the issue of public hearings in this docket, and noted to the parties that the Commission has preferred to hold public hearings in recent energy-efficiency dockets. Tr., 15. The Prehearing Officer also addressed the issue of notice to be provided to Westar customers and the public concerning public hearings and the Application, as will be discussed in more detail below. Tr., 16-21.

6. In this Report and Recommendations, the Prehearing Officer reviews issues discussed at the Prehearing Conference and makes recommendations regarding the procedural schedule to be adopted in this proceeding.

## **II. Electronic Service**

7. During the Prehearing Conference, the parties agreed that all testimony, briefs, and orders be served electronically without hard copy follow-up, with confidential papers served either electronically if confidentiality can be retained or by some other method such as providing information on a compact disc. Tr., 4-6. The Prehearing Officer recommends that any service via electronic mail specifically state that this electronic service constitutes service and that a hard copy not follow. The Prehearing Officer recommends that the parties provide electronic service on the date due at or before 3:00 p.m., with the original and at least seven paper copies filed with the Commission. K.A.R. 82-1-215(a). The Prehearing Officer recommends the parties be directed to include electronic service of briefs and testimony to Prehearing Officer Doeblin, at [m.doeblin@kcc.ks.gov](mailto:m.doeblin@kcc.ks.gov).

8. The Prehearing Officer recommends that the Commission approve the use of electronic service for serving all testimony, briefs, and orders in this proceeding without

requiring provision of hard copy follow-up as required by K.A.R. 82-1-216(a)(6). The Prehearing Officer notes that parties have successfully used electronic service for testimony and briefs in several dockets and that these parties have agreed to expand the use of electronic service of orders as well.

### **III. Public Hearing**

9. The Commission has historically conducted public hearings in rate cases to give members of the public directly impacted by a utility's proposed changes: (1) the opportunity to inquire of the company, Staff, and Intervenors regarding the Application, and (2) an opportunity for the public to present statements to the Commission regarding the company's proposed changes. While the Legislature has specified that the Commission shall hold a public hearing when a utility applies to construct an electric transmission line, K.S.A. 66-1,178, no statute requires a public hearing in tariff cases. Therefore, the Commission may exercise its discretion in setting a public hearing in this tariff proceeding.

10. In recent dockets concerning applications by utilities proposing energy-efficiency programs, the Commission has conducted public hearings to allow the public a chance to learn about the proposal and provide comments to the Commission. Docket No. 10-KGSG-421-TAR; Docket No. 10-EPDE-497-TAR; Docket No. 10-639-BHEG-TAR.

#### *A. Issue of Public Hearing*

11. At the Prehearing Conference, the Prehearing Officer advised the parties that the Commission has conducted public hearings in recent energy-efficiency dockets. Tr., 15. The Prehearing Officer noted the potential date of September 23, 2010, for public hearings in this docket. Tr., 20. The Commissioners have indicated a preference to conduct a public hearing or hearings in this docket to the Prehearing Officer.

12. The Prehearing Officer consulted with the Commission's Director of Communications and Director of Public Affairs and Consumer Protection for a recommendation about public hearings. The Director of Communications and Director of Public Affairs and Consumer Protection jointly recommended a first public hearing in this docket be held on September 22, 2010, in Topeka, Kansas, and a second public hearing be held on September 23, 2010, in Wichita, Kansas.

13. The Director of Communications and Director of Public Affairs and Consumer Protection recommended that video-conferencing technology be utilized in the public hearings, so that a satellite location may participate in the hearings. The Director of Communications and Director of Public Affairs and Consumer Protection recommended that video-conferencing technology be utilized at the public hearing in Topeka, Kansas, on September 22, 2010, linking to a satellite location in Pittsburg, Kansas, to allow broader accessibility to Westar customers.

14. The Prehearing Officer recommends that a public hearing be conducted on September 22, 2010, in Topeka, Kansas, with video-conferencing technology utilized to link to a satellite location in Pittsburg, Kansas. The Prehearing Officer also recommends a second public hearing be conducted on September 23, 2010, in Wichita, Kansas.

*B. Issue of Notice*

15. The Prehearing Officer consulted with the Commission's Director of Communications and Director of Public Affairs and Consumer Protection for a recommendation about publication of notice regarding the public hearings and Westar's Application. The Director of Communications and Director of Public Affairs and Consumer Protection recommended that notice be provided as a bill insert with the monthly billing statement for each customer in Westar's service territory.

16. The Prehearing Officer recommends that notice of the public hearings and Westar's Application be included in a bill insert with the monthly billing statement for each customer in Westar's service territory. The Prehearing Officer recommends that the notice in the bill insert contain basic information about the public hearings and Westar's Application. The bill insert should comply with the Commission's regulations and explain the opportunity for the public to submit comments regarding the proposed changes. The Prehearing Officer recommends that the Commission's Director of Communications and the Director of Public Affairs and Consumer Protection provide a proposed bill insert to the Prehearing Officer by Monday, July 19, 2010. The Prehearing Officer will then provide the proposed bill insert to Westar, CURB and Staff by Tuesday, July 20, 2010. The parties will have until Friday, July 23, 2010, at 3:00 p.m., to provide the Prehearing Officer with input, if any, regarding the proposed bill insert. The Prehearing Officer shall consult with the Director of Communications and Director of Public Affairs and Consumer Protection on any input provided by the parties. The Prehearing Officer shall rule on any dispute regarding the bill insert, and provide a final notice to Westar by Wednesday, July 28, 2010.

17. The Prehearing Officer also recommends that Westar be required to provide information to the public about this proceeding by publishing notice in larger newspapers throughout its region. The Prehearing Officer recommends that Westar propose a list of newspapers for publishing such notice, and work with the Director of Communications and Director of Public Affairs and Consumer Protection to determine the timing of publication and the newspapers in which notice will be published. The Prehearing Officer also recommends that the Director of Communications and the Director of Public Affairs and Consumer Protection explore other avenues to notify the public in addition to publication notice in newspapers.

C. *Public Comment Period*

18. The Prehearing Officer recommends that the Commission encourage the public to submit public comments about this docket via electronic mail and in writing, and that the bill insert provide Westar customers with information indicating that the Commission is accepting comments regarding the application. The Prehearing Officer also recommends that the Commission's website, Westar's website, and CURB's website provide information regarding this proceeding and explain how the public can submit comments.

19. The Prehearing Officer recommends the public comment period begin immediately and end on November 15, 2010, at 5:00 p.m. The Prehearing Officer recommends the Office of Public Affairs and Consumer Protection (PACP Office) submit two reports summarizing public comments received, the initial report being due on September 15, 2010, and the final report being due on November 16, 2010.

**IV. Procedural Schedule**

20. As noted above, the parties proposed differing procedural schedules. Staff noted that normal tariff filings with the Commission are handled with Staff filing a memorandum with Staff's report and recommendation and then time is allowed for the applicant or any intervenors to file comments in the docket. Tr., 6-7. Westar agreed with Staff's position and noted that the Application was for a single program rather than a portfolio of programs as other energy-efficiency applications have been. Tr. 9. Staff then proposed the following procedural schedule (Tr., 11):

<u>Date</u>	<u>Action</u>
September 1, 2010	Staff/Intervenors file comments
October 1, 2010	Response by all parties to comments

<u>Date</u>	<u>Action</u>
October 8, 2010	Settlement conference
October 15, 2010	Deadline to request oral arguments
November 1, 2010	Oral arguments

21. CURB requested a procedure similar to those that have been established for recent energy-efficiency dockets as opposed to a normal tariff procedure, and noted that the Commission said it would be establishing policy on a case-by-case basis in energy-efficiency dockets. Tr. 7. Specifically, CURB expressed concerns with due process in the docket, with the time traditionally allowed under a tariff mechanism for examining the Application, and with the record on appeal. Tr. 9-10. CURB proposed the following procedural schedule (Tr., 12-15):

<u>Date</u>	<u>Action</u>
August 1, 2010	Westar Direct Testimony
September 15, 2010	PACP Office files initial report of Public Comments
2 evenings from September 15-30, 2010	Public Hearings in Topeka and Wichita
September 30, 2010	Staff and Intervenor's Direct Testimony
October 15, 2010	Staff and Intervenor's Cross-Answering Testimony
October 31, 2010	Westar Rebuttal Testimony
November 1, 2010	Public Comment Period Ends
November 16, 2010	Settlement Conference
November 18, 2010	Prehearing Conference
November 18, 2010	Discovery Cut-off
November 18, 2010	List of Disputed Issues
November 22-23, 2010	Evidentiary hearing



<u>Date</u>	<u>Action</u>
December 6, 2010	Westar Initial Post-Hearing Brief
December 20, 2010	Staff and Intervenor's Responsive Post-Hearing Briefs
December 31, 2010	Westar Reply Brief
January 31, 2011	Order Date

22. The Prehearing Officer examined the two proposed procedural schedules, and recommends the Commission adopt a procedural schedule similar to what CURB proposed. The Prehearing Officer recommends the Commission adopt the following modified procedural schedule, with changes and additions to CURB's proposed schedule in bold font:

<u>Date</u>	<u>Time</u>	<u>Action</u>
<b>August 13, 2010</b>	<b>3:00 p.m.</b>	Westar Direct Testimony
September 15, 2010		PACP Office files initial report of Public Comments
<b>September 22, 2010</b>	<b>6:00 p.m.</b>	<b>Public Hearing in Topeka</b>
<b>September 23, 2010</b>	<b>6:00 p.m.</b>	<b>Public Hearing in Wichita</b>
<b>October 1, 2010</b>	<b>3:00 p.m.</b>	Staff and Intervenor's Direct Testimony
October 15, 2010	3:00 p.m.	Staff and Intervenor's Cross-Answering Testimony
<b>October 29, 2010</b>	<b>3:00 p.m.</b>	Westar Rebuttal Testimony
<b>November 10, 2010</b>	<b>10:30 a.m.</b>	<b>Settlement Conference (3<sup>rd</sup> Floor Hearing Room)</b>
<b>November 12, 2010</b>	<b>10:30 a.m.</b>	<b>Prehearing Conference (3<sup>rd</sup> Floor Hearing Room)</b>
<b>November 12, 2010</b>	<b>3:00 p.m.</b>	Discovery Cut-off
<b>November 12, 2010</b>	<b>3:00 p.m.</b>	List of Disputed Issues
<b>November 12, 2010</b>	<b>3:00 p.m.</b>	<b>Prehearing Motions Cut-off</b>
<b>November 15, 2010</b>	<b>5:00 p.m.</b>	Public Comment Period Ends

<u>Date</u>	<u>Time</u>	<u>Action</u>
November 16, 2010		PACP Office files final report of Public Comments
November 22-23, 2010	10:00 a.m.	Evidentiary hearing (1 <sup>st</sup> Floor Hearing Room)
December 6, 2010	3:00 p.m.	Westar Initial Post-Hearing Brief
December 20, 2010	3:00 p.m.	Staff and Intervenor's Responsive Post-Hearing Briefs
December 31, 2010	3:00 p.m.	Westar Reply Brief
January 31, 2011		Order Date

23. The Prehearing Officer recommends that the Commission schedule a Prehearing Conference, to address any pending matters and to establish procedures to be used during the Evidentiary Hearing, on November 12, 2010, beginning at 10:30 a.m., in the Commission's Third Floor Hearing Room, 1500 SW Arrowhead Road, Topeka, KS 66604-4027. The Prehearing Officer presiding will be Melissa Doeblin, Advisory Counsel, telephone 785-271-3186, email address [m.doeblin@kcc.ks.gov](mailto:m.doeblin@kcc.ks.gov).

24. The Prehearing Officer further recommends that an Evidentiary Hearing, with the Commission presiding, be scheduled for November 22 through November 23, 2010, beginning at 10:00 a.m., in the Commission's First Floor Hearing Room, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, telephone 785-271-3100.

#### **V. Opportunity to Object and Comment**

25. Parties are given an opportunity to respond to matters set forth in this Report and Recommendations of Prehearing Officer. If parties wish to object to or comment on matters set forth in this Report and Recommendations, these responses must be filed by Friday, July 23, 2010, at 3:00 p.m.

26. The Prehearing Officer directs that a copy of this Report and Recommendations of Prehearing Officer be served electronically on all parties involved in this proceeding through email addresses listed for this docket.

WHEREFORE, the Prehearing Officer makes the following findings and recommendations:

A. The Prehearing Officer recommends the Commission approve the use of electronic service for serving all testimony, briefs, and orders in this proceeding without requiring provision of hard copy follow-up, as set forth in paragraphs 7 through 8.

B. The Prehearing Officer recommends that two public hearings be conducted in this docket, as set forth in paragraphs 9 through 14. The Prehearing Officer recommends that the first public hearing be held in Topeka, Kansas, on September 22, 2010, beginning at 6:00 p.m., with video-conferencing technology utilized to link to a satellite location in Pittsburg, Kansas. The Prehearing Officer recommends that the second public hearing be held in Wichita, Kansas, on September 23, 2010, beginning at 6:00 p.m.

C. The Prehearing Officer recommends that Westar be directed to provide notice of the public hearings in a bill insert included with the monthly billing statement for each customer in its service territory, as set forth in paragraphs 15-16. The Prehearing Officer recommends that the notice in the bill insert contain basic information about the public hearings and Westar's Application, and that the Director of Communications and Director of Public Affairs and Consumer protection work jointly to develop notice, as set forth in paragraphs 15-16. The Prehearing Officer recommends Westar be required to publish notice in larger newspapers throughout its region, and that Westar propose a list of newspapers and work with the Director of

Communications and Director of Public Affairs and Consumer Protection to determine the timing of publication and the newspapers in which notice will be published, as set forth in paragraph 17.

D. The Prehearing Officer recommends that the Commission encourage the public to submit public comments about this docket, as set forth in paragraph 18. The Prehearing Officer recommends that the Commission's website, Westar's website, and CURB's website provide information regarding this proceeding and explain how the public can submit comments.

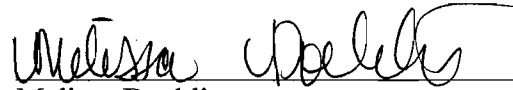
E. The Prehearing Officer recommends the public comment period begin immediately and end on November 15, 2010 at 5:00 p.m., which is seven business days before the evidentiary hearing begins on November 22, 2010. The Prehearing Officer recommends the PACP Office submit two reports summarizing public comments received, the initial report being due on September 15, 2010, before the public hearings are conducted, and the final report being due on November 16, 2010, as set forth in paragraph 19.

F. The Prehearing Officer recommends that the Commission adopt the modified procedural schedule set forth in paragraph 22. The Prehearing Officer recommends that the Commission schedule a Prehearing Conference on November 12, 2010, beginning at 10:30 a.m., as set forth in paragraph 23, and an Evidentiary Hearing for November 22 through November 23, 2010, beginning at 10:00 a.m., as set forth in paragraph 24.

G. The Prehearing Officer directs service of this Report and Recommendations of Prehearing Officer on the parties to this proceeding using electronic service through email addresses listed for this docket, as provided for in K.A.R. 82-1-216(a)(6), without hard copy follow-up as agreed to by the parties at the Prehearing Conference. The email notice to parties should note that no hard copy of this Report and Recommendations will follow. Parties are

given an opportunity to respond to matters set forth in this Report and Recommendations of Prehearing Officer. If parties wish to object to or comment on matters set forth in this Report and Recommendations, these responses must be filed by Friday, July 23, 2010, at 3:00 p.m.

Dated: 07/14/2010

  
Melissa Doebelin  
Advisory Counsel

mrd

**CERTIFICATE OF SERVICE**

10-WSEE-775-TAR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Report and Recommendations of Prehearing Officer was served by electronic mail this 14th day of July, 2010, on the following parties who have waived receipt of follow-up hard copies:

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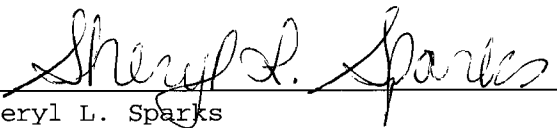
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