

**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 GRANTING INTERVENTION AND MOTION FOR LEAVE TO FILE
INTERVENOR TESTIMONY TO KEYCORP AND MIDWEST POWER
COMPANY**

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 May 25, 2018, KeyCorp (Key) and Midwest Power Company (MWP) (collectively, Petitioners) petitioned to intervene.

3. Key stated it does business in 31 states, with roughly 500 employees at its campus in Overland Park, Kansas.² MWP is an Ohio-based wholly-owned subsidiary of

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

² Petition to Intervene, ¶ 1 (May 25, 2018) (Petition).

Key.³ The Petitioners stated that Key/MWP acquired an interest in a Delaware trust (Trust) which owns an 8% undivided interest in Jeffrey Energy Center.⁴ According to the Petitioners, Wilmington Trust Company (WTC) is a trustee of the aforementioned Trust, and MWP is the sole participant and beneficiary of this Trust.⁵ The Petitioners stated that the Trust's 8% ownership interest in Jeffrey Energy Center is currently leased to Westar.⁶

4. The Petitioners pointed to a power purchase agreement (PPA) between Westar and Mid-Kansas Electric Cooperative (MKEC) for 8% of Jeffrey Energy Center's output, which is set to expire on January 3, 2019.⁷ According to the Petitioners, the expiration of the PPA will result in a \$41.5 million revenue requirement increase.⁸ The Petitioners noted Westar's lack of ownership over the 8% capacity under the PPA, "noting that [Westar] has a sale/leaseback with WTC which will expire on the same date the MKEC PPA expires."⁹

5. The Petitioners asserted that Westar is seeking the same rates from retail customers for Jeffrey Energy Center O&M expense *after* the expiration of January 3, 2019, lease expiration because "Westar will continue to serve as the operator of [Jeffrey Energy Center] and incur all of the O&M costs associated with running the plant."¹⁰ Moreover, the Petitioners cited Westar's belief that "it will have a claim against [WTC] to recover the O&M costs associated with Wilmington's 8% interest and Westar will seek recovery of such costs."¹¹ Hence, the Petitioners claimed their interest in this proceeding stems from

³ Petition, ¶ 2.

⁴ Petition, ¶ 3.

⁵ Petition, ¶ 3.

⁶ Petition, ¶ 3.

⁷ Petition, ¶ 5.

⁸ Petition, ¶ 5.

⁹ Petition, ¶ 5.

¹⁰ Petition, ¶ 6.

¹¹ Petition, ¶ 7.

“Westar’s establishment and recovery of O&M costs and the associated ratemaking treatment as it pertains to the [Jeffrey Energy Center].”¹²

6. The Petitioners argued they “have an interest in the Commission’s rate base decision for [Jeffrey Energy Center] in order to protect [their] investment in the plant.”¹³ Thus, the Petitioners seek intervention in order to monitor and/or participate in testimony, discovery, cross-examination, and briefing on ratemaking, O&M costs associated with Jeffrey Energy Center, and valuation of Westar’s rate-based assets.¹⁴ The Petitioners agreed to accept the current procedural schedule and stated that their intervention is in the interests of justice and will not impede the orderly and prompt conduct of the proceedings.¹⁵

7. On June 8, 2018, Westar filed a Response to the Petitioner’s intervention request (Response), arguing that it should be denied because: (1) Key is not a Westar customer;¹⁶ (2) Key is not authorized to operate in Kansas;¹⁷ (3) Westar does not serve Key’s subsidiary’s operations;¹⁸ (4) Overland Park, Kansas, is not part of Westar’s service territory;¹⁹ (5) Key and MWP have no support for their argument that the addition of Westar’s wind farm will increase O&M expenses at Jeffrey Energy Center;²⁰ (6) the value of Key’s and MWP’s interest in Jeffrey Energy Center will not be affected by this

¹² Petition, ¶ 8.

¹³ Petition, ¶ 11.

¹⁴ Petition, ¶ 12.

¹⁵ Petition, ¶ 14.

¹⁶ Response of Westar Energy, Inc. and Kansas Gas and Electric Company to KeyCorp’s and Midwest Power Company’s Petition to Intervene, ¶ 4 (June 8, 2018).

¹⁷ Response, ¶ 4.

¹⁸ Response, ¶ 4.

¹⁹ Response, ¶ 4.

²⁰ Response, ¶ 5.

proceeding;²¹ and (7) the alleged commercial dispute between Westar and the Petitioners over the Jeffrey Energy Center lease is beyond the Commission's jurisdiction.²²

8. On June 11, 2018, the Petitioners filed a Reply to Westar's Response (Reply) and a Motion for Leave to File Intervenor Testimony (Motion). In their Reply and Motion, the Petitioners argued the Commission should reject Westar's Response because it was filed "out-of-time, during the final hour of the final business day before intervenor direct testimony is due, and [was not served on] counsel for Key."²³

9. The Petitioners also argued that Westar's Response should be rejected on the merits.²⁴ Specifically, the Petitioners asserted that K.A.R. 82-1-225 does not require an intervenor to be a customer of the utility and that Key has established its legal interest in this proceeding "by stating facts that demonstrate its legal and financial interests in the Jeffrey Energy Center ("JEC") will be substantially affected by the proceeding."²⁵ The Petitioners argued that their lack of business registration in Kansas is irrelevant to whether they have a legal and financial interest in this proceeding.²⁶ The Petitioners likewise argued that Jeffrey Energy Center's dispatch of power by SPP is irrelevant because "the effect of adding Western Plains Wind farm ("WPW") is an increase in" O&M at the Jeffrey Energy Center, "regardless of who dispatches the facility."²⁷ The Petitioners asserted that Westar's use of the Jeffrey Energy Center will be impacted by this rate case, which will "directly affect the

²¹ Response, ¶ 7.

²² Response, ¶ 8.

²³ Reply to Westar Energy, Inc.'s Response to KeyCorp's and Midwest Power Company's Petition to Intervene, ¶¶ 1-5 (June 11, 2018); Motion for Leave to File Intervenor Testimony, ¶¶ 5-7 (June 11, 2018).

²⁴ Reply, p. 3.

²⁵ Reply, ¶ 6.

²⁶ Reply, ¶ 7.

²⁷ Reply, ¶ 8.

energy market and the JEC's value according to that market.”²⁸ The Petitioners stated that the data requests issued in this proceeding “regarding the JEC, O&M expenses, and Wilmington Trust Company (the trustee for the trust in which Key is the sole participant and beneficiary)” demonstrate Key's interests in this proceeding,²⁹ and “the commercial dispute between Westar and Key is irrelevant because Key is not asking the Commission to resolve the commercial dispute.”³⁰

10. In their Motion, the Petitioners noted their efforts to comply with the Commission's regulations, to accept the procedural deadlines promulgated by the Commission, and their communication with the Prehearing Officer regarding the suggestion to pre-file their testimony on the June 11, 2018, deadline.³¹ Based on the above, the Petitioners asked the Commission to allow them to pre-file their direct testimony on June 11, 2018, adding their belief that doing so will not prejudice any other party and will promote the development of a full record in this case.³²

Legal Standards

11. 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.³³ The Commission has discretion to grant intervention at any time

²⁸ Reply, ¶ 9.

²⁹ Reply, ¶ 10.

³⁰ Reply, ¶ 11.

³¹ Motion, ¶ 9.

³² Motion, ¶ 10.

³³ K.S.A. 77-521(a); K.A.R. 82-1-225(a).

where intervention is in the interests of justice and will not impair the orderly and prompt conduct of proceedings.³⁴ 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.³⁵

Findings and Conclusions

12. The Petitioners submitted their intervention petition in writing and properly served it, pursuant to K.S.A. 77-521(a)(1).

13. Although the Petitioners and Westar disagree on the relevance of various points, and Westar's late filed Response to the Petitioners' intervention request warrants the Commission's rejection of Westar's Response, the Commission finds the dispositive issues to be the Petitioners' uncontested assertion of an 8% interest in the Jeffrey Energy Center³⁶ and the Petitioners' claim that "Westar's proposed addition of the wind farm to rate base will result in increased O&M expenses . . . at the JEC . . . and decreased value of the Petitioners' 8% interest in the JEC."³⁷ While the Petitioners' assertion that their "legal and financial interests in the Jeffrey Energy Center . . . will be substantially affected by this proceeding"³⁸ have not been finally established as findings of fact, the Commission finds this assertion establishes a prima facie case that the Petitioners' legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by this

³⁴ K.S.A. 77-521(b); K.A.R. 82-1-225(b).

³⁵ K.S.A. 77-521(c); K.A.R. 82-1-225(c).

³⁶ See Response, ¶ 7.

³⁷ Petition, ¶ 10.

³⁸ Reply, ¶ 6.

proceeding.³⁹ The Commission also finds that, because the Petitioners have an interest in the Commission's rate base decision regarding Jeffrey Energy Center, their intervention will not impair the interests of justice, nor will their participation impede the orderly and prompt conduct of the proceedings, pursuant to K.S.A. 77-521(a)(3). Thus, the Commission finds that the Petitioners have met the requirements for intervention of K.S.A. 77-521 and K.A.R. 82-1-225 and should be granted intervention and full participation in all aspects of this docket.

14. Having been granted intervention, the Commission approves the Petitioners' Motion to pre-file its direct testimony on June 11, 2018.

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

Amy G. Paine
SVP Asset Management
Key Equipment Finance
1000 South McCaslin Boulevard
Superior, CO 80027
(720) 304-1413
amy.g.paine@key.com

Timothy Maxwell, CFA
Vice President, Specialty Finance
KEF Underwriting & Portfolio Mgmt
1000 South McCaslin Boulevard
Superior, CO 80027
(720) 304-1156
timothy_maxwell@keybank.com

Matthew B. McKeon
SVP & Senior Counsel II
Key Equipment Finance
17 Corporate Woods Boulevard
Albany, NY 12211
(518) 436-6853
matthew.b.mckeon@key.com

³⁹ See K.S.A. 77-521(a)(2); K.A.R. 82-1-225(a)(2). Compare Response ¶ 5 (asserting Petitioners' lack of support for their argument that the wind farm will increase O&M expenses at Jeffrey Energy Center) and Response ¶ 7 (showing Westar's own conclusory assertions in opposition to the Petitioners' arguments, with no explanatory support or citation).

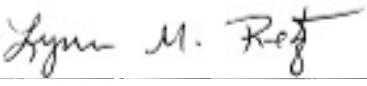
THEREFORE, THE COMMISSION ORDERS:

- A. The Petitioners are granted intervention.
- B. The Petitioners' Motion for Leave to File Intervenor Testimony is approved.
- C. 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).⁴⁰
- D. 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: 06/14/2018



Lynn M. Retz
Secretary to the Commission

MJD

⁴⁰ 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 06/14/2018.

JAMES G. FLAHERTY, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
Fax: 785-242-1279
jflaherty@andersonbyrd.com

KURT J. BOEHM, ATTORNEY
BOEHM, KURTZ & LOWRY
36 E SEVENTH ST STE 1510
CINCINNATI, OH 45202
Fax: 513-421-2764
kboehm@bkllawfirm.com

JODY KYLER COHN, ATTORNEY
BOEHM, KURTZ & LOWRY
36 E SEVENTH ST STE 1510
CINCINNATI, OH 45202
Fax: 513-421-2764
jkylersohn@bkllawfirm.com

MARTIN J. BREGMAN
BREGMAN LAW OFFICE, L.L.C.
311 PARKER CIRCLE
LAWRENCE, KS 66049
mjb@mjbregmanlaw.com

THOMAS J. CONNORS, ATTORNEY AT LAW
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
tj.connors@curb.kansas.gov

TODD E. LOVE, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
t.love@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.nickel@curb.kansas.gov

SHONDA RABB
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
s.rabb@curb.kansas.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.smith@curb.kansas.gov

DANIEL R. ZMIJEWSKI
DRZ LAW FIRM
9229 WARD PARKWAY STE 370
KANSAS CITY, MO 64114
Fax: 816-523-5667
dan@drzlawfirm.com

CERTIFICATE OF SERVICE

18-WSEE-328-RTS

DAVID BENDER
EARTHJUSTICE
3916 Nakoma Road
Madison, WI 63711
dbender@earthjustice.org

SHANNON FISK, ATTORNEY
EARTHJUSTICE
1617 JOHN F KENNEDY BLVD
SUITE 1675
PHILADELPHIA, PA 19103
sfisk@earthjustice.org

JILL TAUBER
EARTHJUSTICE
1625 Massachusetts Ave., NW
Suite 702
Washington, DC 20036
jtauber@earthjustice.org

ELIZABETH A. BAKER
6610 SW 29th St.
Topeka, KS 66614
betsy@bakerlawks.com

GREG WRIGHT
EMG, INC.
420 NE LYMAN RD.
TOPEKA, KS 66608
greg@emgnow.com

KEVIN HIGGINS
ENERGY STRATEGIES, LLC
PARKSIDE TOWERS
215 S STATE ST STE 200
SALT LAKE CITY, UT 84111
Fax: 801-521-9142
khiggins@energystat.com

DAVID BANKS, CEM, CEP
FLINT HILLS ENERGY CONSULTANT
117 S PARKRIDGE
WICHITA, KS 67209
david@fheconsultants.net

MATTHEW H. MARCHANT
HOLLYFRONTIER CORPORATION
2828 N HARWOOD STE 1300
DALLAS, TX 75201
matthew.marchant@hollyfrontier.com

DARIN L. RAINS
HOLLYFRONTIER CORPORATION
2828 N Harwood, Ste. 1300
Dallas, TX 75201
darin.rains@hollyfrontier.com

JUSTIN WATERS, ENERGY MANAGER
JUSTIN WATERS
USD 259 School Serv. Cntr.
3850 N. Hydraulic
Wichita, KS 67219
jwaters@usd259.net

PHOENIX ANSHUTZ, LITIGATION ATTORNEY
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
p.anshutz@kcc.ks.gov

MICHAEL DUENES, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
m.duenes@kcc.ks.gov

CERTIFICATE OF SERVICE

18-WSEE-328-RTS

AMBER SMITH, CHIEF LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3167
a.smith@kcc.ks.gov

TIMOTHY MAXWELL, VICE PRESIDENT, SPECIALTY
FINANCE
KEY UNDERWRITING & PORTFOLIO MGMT.
1000 South McCaslin Blvd.
Superior, CO 80027
timothy_maxwell@keybank.com

KEVIN HIGGINS
KEVIN C. HIGGINS
PARKSIDE TOWERS
215 S STATE ST STE 200
SALT LAKE CITY, UT 84111
khiggins@energystrat.com

MATTHEW B. McKEON, SVP & SENIOR COUNSEL II
KEY EQUIPMENT FINANCE
17 Corporate Woods Blvd.
Albany, NY 12211
matthew.b.mckeon@key.com

AMY G. PAINE, SVP ASSET MGMT.
KEY EQUIPMENT FINANCE
1000 South McCaslin Blvd.
Superior, CO 80027
amy.g.paine@key.com

GENE CARR, CO-CEO
NETFORTRIS ACQUISITION CO., INC.
6900 DALLAS PKWY STE 250
PLANO, TX 75024-9859
gcarr@telekenex.com

SJNIL BECTOR, ATTORNEY
SIERRA CLUB
2101 WEBSTER, SUITE 1300
OAKLAND, CA 94312-3011
Fax: 510-208-3140
sunil.bector@sierraclub.org

ANDREW J. FRENCH, ATTORNEY AT LAW
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH ST STE 750
OVERLAND PARK, KS 66210-2362
Fax: 913-661-9863
andrew@smizak-law.com

DIANE WALSH, PARALEGAL
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH ST STE 750
OVERLAND PARK, KS 66210-2362
Fax: 913-661-9863
diane@smizak-law.com

JAMES P. ZAKOURA, ATTORNEY
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH ST STE 750
OVERLAND PARK, KS 66210-2362
Fax: 913-661-9863
jim@smizak-law.com

TOM POWELL, GENERAL COUNSEL-USD 259
TOM POWELL
903 S. Edgemoor
Wichita, KS 67218
tpowell@usd259.net

JOHN M. CASSIDY, GENERAL COUNSEL
TOPEKA METROPOLITAN TRANSIT AUTHORITY
201 N. Kansas Avenue
Topeka, KS 66603
jcassidy@topekametro.org

CERTIFICATE OF SERVICE

18-WSEE-328-RTS

AMY FELLOWS CLINE, ATTORNEY
TRIPLETT, WOOLF & GARRETSON, LLC
2959 N ROCK RD STE 300
WICHITA, KS 67226
Fax: 316-630-8101
amycline@twgfirm.com

TIMOTHY E. MCKEE, ATTORNEY
TRIPLETT, WOOLF & GARRETSON, LLC
2959 N ROCK RD STE 300
WICHITA, KS 67226
Fax: 316-630-8101
temckee@twgfirm.com

EMILY MEDLYN, GENERAL ATTORNEY
U.S. ARMY LEGAL SERVICES AGENCY
REGULATORY LAW OFFICE
9275 GUNSTON RD., STE. 1300
FORT BELVOIR, VA 22060-5546
Fax: 703-696-2960
emily.w.medlyn.civ@mail.mil

KEVIN K. LACHANCE, CONTRACT LAW ATTORNEY
UNITED STATES DEPARTMENT OF DEFENSE
ADMIN & CIVIL LAW DIVISION
OFFICE OF STAFF JUDGE ADVOCATE
FORT RILEY, KS 66442
Fax: 785-239-0577
kevin.k.lachance.civ@mail.mil

CATHRYN J. DINGES, SENIOR CORPORATE COUNSEL
WESTAR ENERGY, INC.
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
Fax: 785-575-8136
cathy.dinges@westarenergy.com

JEFFREY L. MARTIN, VICE PRESIDENT, REGULATORY
AFFAIRS
WESTAR ENERGY, INC.
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
jeff.martin@westarenergy.com

DAVID L. WOODSMALL
WOODSMALL LAW OFFICE
308 E HIGH ST STE 204
JEFFERSON CITY, MO 65101
Fax: 573-635-7523
david.woodsmall@woodsmalllaw.com

/S/ DeeAnn Shupe
DeeAnn Shupe
