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

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by
State Corporation Commission
of Kansas

In the Matter of Westar Energy, Inc. and)
Kansas Gas and Electric Company Seeking)
Commission Approval to Implement Changes)
in Their Transmission Delivery Charge Rate)
Schedules.)

Docket No. 12-WSEE-651-TAR

**STAFF'S RESPONSE TO OCCIDENTAL CHEMICAL CORPORATION'S PETITION
FOR RECONSIDERATION**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), pursuant to K.S.A. 2011 Supp. 77-519 and K.A.R. 82-1-218(d), respectfully submits its Response to Occidental Chemical Corporation's (OXY's) Petition for Reconsideration. In support of its Response, Staff states:

I. Introduction

1. On February 24, 2012, Westar Energy, Inc. filed its Application seeking Commission approval of its updated Transmission Delivery Charge (TDC) rates within its TDC tariff. In addition to updating its TDC rates, Westar's Application seeks Commission approval of revisions to its TDC tariff language.

2. On March 6, 2012, Westar filed Supplemental Information Regarding Proposed Tariff Language Changes and workpapers regarding Westar's TDC filing.

3. On March 15, 2012, Staff filed a Motion for a Suspension Order and an Order Granting Temporary Waiver. In its Motion, Staff suggested that there were three options regarding the cost allocation methodology: (1) allocate the costs according to the current tariff language, which contemplates using new 12 coincident-peak (12-CP) data from Docket No. 12-WSEE-112-RTS; (2) allocate the costs as proposed by Westar in its Application, or; (3) maintain

the current allocation. Staff recommended proceeding with Option 3 in the interim, until Staff can properly analyze the data provided by Westar and make a recommendation to the Commission. Staff requested the Commission grant a temporary waiver of the tariff requirement to use updated 12-CP data. Staff also recommended that the new TDC rate and rate allocation be subject to refund pending the outcome of the investigation.

4. On March 21, 2012, OXY filed its Petition to Intervene and its Protest and Motion to Dismiss.

5. Also on March 21, 2012, the Commission issued an Order granting Staff's Motion and suspending the Application for 240 days, until October 22, 2012. The Order stated that the new TDC rate and rate allocation will be subject to refund upon completion of the investigation and subsequent Commission order.

6. On April 6, 2012, OXY filed its Petition for Reconsideration (PFR), alleging the following:

- a. that Westar failed to follow the correct procedures under K.S.A. 66-117 and K.S.A. 66-1237(a)-(b) (Paragraph 5);
- b. that the Commission erred by granting a waiver of the current tariff language, allowing use of the existing 12-CP data in a manner contrary to the plain language of the TDC tariff (Paragraph 7);
- c. that the Commission erred by failing to consider evidence demonstrating the impact to customers of Staff's recommendation to not use updated 12-CP data (Paragraph 8); and
- d. that the Commission erroneously relied on the Staff's position that directing Westar to allocate the costs of the current TDC amount and the increase based on

the current allocation methodology, subject to refund, preserves the status quo (Paragraph 9).

OXY requested that the Commission deny Westar's application, or alternatively, that the Commission should require Westar to use updated 12-CP data with no adjustments, as required by Westar's TDC tariff, until the Commission completes its full investigation.

7. On April 11, 2012, the Commission issued an Order denying OXY's Motion to Dismiss. The Commission's Order reasoned that since the allocation is subject to refund, and OXY has been permitted to fully participate in this docket and will thus have the opportunity to protect its interests, proceeding under Staff's recommendation will result in neither irrevocable harm nor prejudice to OXY.

II. Response to OXY's PFR

8. In Paragraph 5 of its PFR, OXY inaccurately states that K.S.A. 66-1237(a)-(b) govern updates to the TDC. In fact, K.S.A. 66-1237(c) governs updates to the TDC; subsections (a) and (b) address the initial establishment of a TDC. Regardless, OXY's statement that K.S.A. 66-117 governs tariff changes is accurate, and the Commission properly relied on that statute in its March 21, 2012 Order.

9. OXY's claim, in Paragraph 7 of its PFR, that the waiver granted by the Commission is inconsistent with the approved TDC tariff is merely a statement of the obvious. The Commission addressed the inconsistency by granting a waiver and implementing rates subject to refund. OXY's claim that the "tariff change" is in violation of K.S.A. 66-117 ignores the fact that no tariff change has been granted; the Commission merely granted a temporary waiver. OXY's claim that the "tariff change" is in violation of K.S.A. 66-1237 is unsubstantiated and ignores the fact that K.S.A. 66-1237(c) permits utilities with an existing

TDC tariff to change its TDC rates whenever there is a change in transmission-related costs resulting from any order of a regulatory authority having legal jurisdiction (in this case, the Federal Energy Regulatory Commission (FERC)). Due to K.S.A. 66-1237(c), the Commission is required to permit Westar to include the updated FERC-approved costs in its TDC. The primary relief sought by OXY would have the Commission violate K.S.A. 66-1237(c).

10. In Paragraph 8 of its PFR, OXY claims that the Commission erred by failing to consider evidence demonstrating the impact of Staff's recommendation. In fact, the Commission relied on the evidence available within the time restrictions imposed by K.S.A. 66-1237(c). Westar filed the support for the new transmission costs with its Application and the 12-CP allocators and billing determinants are available in Docket No. 12-WSEE-112-RTS. This information provides the basis for evaluating the impact of the various allocation options, as set forth in Staff's Motion filed on March 15, 2012. The Commission recognized that further evaluation is required before making a final determination, and therefore suspended Westar's Application to allow Staff and intervenors to conduct a full investigation. Finally, OXY does not address the fact that the additional costs at issue were approved by FERC and that the Commission must allow Westar to collect such costs pursuant to K.S.A. 66-1237(c).

11. In Paragraph 9 of its PFR, OXY argues that Staff's recommendation does not preserve the status quo. Staff used the term "status quo" in reference to the allocation methodology, but recognizes that regardless of the chosen allocation methodology, TDC rates increased across the board due to the additional costs approved by FERC.¹ The decision to use the current allocation methodology in the interim increases each customer class' rates by an equal percentage. Regardless, Staff's use of the term "status quo" has no substantive impact on the Commission's decision.

¹ Staff's Motion for a Suspension Order and an Order Granting Temporary Waiver, ¶ 12 (Mar. 15, 2012).

12. OXY's alternative proposal – to allow Westar to implement a rate under its application using updated 12-CP data pursuant to the tariff – is equivalent to Option 1, as set forth in Staff's Motion. Westar raised concerns with using this option due to the potential unintended consequences of rate consolidation.² By adopting Staff's recommendation to proceed with Option 3, subject to refund, the Commission permitted Staff and the intervenors to further evaluate these potential unintended consequences.

13. In addition, the Commission should deny OXY's PFR for the same reasons the Commission denied OXY's Motion to Dismiss. Since the allocation is subject to refund, and OXY has been permitted to fully participate in this docket and will thus have the opportunity to protect its interests, proceeding under Staff's recommendation will result in neither irrevocable harm nor prejudice to OXY.

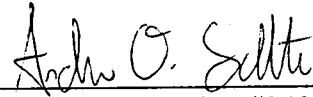
III. Conclusion

14. Staff respectfully requests that the Commission deny OXY's PFR. The Commission's Order issued on March 21, 2012 was based on sound interpretation of the relevant statutes and the evidence available. OXY has not provided grounds for the Commission to reconsider its decision.

WHEREFORE, Staff submits its Response to Occidental Chemical Corporation's Petition for Reconsideration.

² Westar's Transmission Delivery Charge Supplemental Information Regarding Proposed Tariff Language Changes, pp. 1-2 (Mar. 6, 2012).

Respectfully submitted,



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CERTIFICATE OF SERVICE

12-WSEE-651-TAR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Staff's Response to Occidental Chemical Corporation's Petition for Reconsideration was placed in the United States mail, postage prepaid, or hand-delivered this 20th day of April, 2012, to the following:

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