BEFORE THE STATE CORPORATION COMMISSION

OF THE STATE OF KANSAS

REBUTTAL TESTIMONY

OF

ANDY DEVIN

WESTAR ENERGY

DOCKET NO. 18-WSEE-328-RTS

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME.

A. Eric A. ("Andy") Devin.

Q. ARE YOU THE SAME ANDY DEVIN WHO FILED DIRECT TESTIMONY IN THIS MATTER?

A. Yes.

II. PURPOSE OF REBUTTAL TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I will respond to staff witness Mr. Grady's adjustment regarding the amortization of Excess Deferred Income Taxes (EDIT) associated with Westar's Net Operating Loss Deferred Tax Asset (NOL DTA). This issue is discussed on pages 26 through 29 of Mr. Grady's testimony. I will also respond to staff witness Ms. Luke Fry's adjustment regarding executive incentive compensation and the additional income tax benefit generated from the difference in the grant date value of the Restricted Share Units (RSUs) compared to the value of the stock awarded on the vesting date discussed on pages 26 and 27 of her testimony.

I will also respond to Mr. Grady's and CURB witness, Ms. Crane's, testimony regarding the removal of the Western Plains Wind Farm (WPWF) from Rate Base. Westar witnesses Larry Wilkus and John Bridson provide rebuttal testimony regarding the WPWF and its treatment in this rate case. My testimony will be limited to supporting the need to include the ADIT associated with the wind farm should it be adjusted out of rate base.

III. AMORTIZATION OF NOL DTA EDIT

Q. PLEASE EXPLAIN THE STAFF ADJUSTMENT AS SPONSORED BY STAFF WITNESS MR. GRADY.

A. Staff's recommendation is to amortize the EDIT associated with the NOL DTA over the expected useful life of utility plant which is the same time period as the EDIT associated with the protected plant-related Deferred Tax Liability (DTL).

Q. DO YOU AGREE WITH STAFF'S PROPOSAL TO AMORTIZE THE EDIT ASSOCIATED WITH THE NOL DTA OVER THE EXPECTED USEFUL LIFE OF UTILITY PLANT?

A. No.

Q. PLEASE EXPLAIN.

A. Under normalization rules for protected EDIT, Westar and other utilities are required to pay the money no longer owed the government to their customers in approximately the same pattern and over the same period as they expected to pay it to the government. With regard to the EDIT associated with plant, that period is the expected useful life of the assets that were acquired to generate it.

The same logic should apply to the EDIT associated with the NOL DTA. That is, the EDIT associated with the NOL DTA should be amortized in approximately the same pattern and over the same period as the NOLs are returned to the government. Unlike plant-related assets, the NOLs do not have an established life span. In our case, we expect to use our NOLs associated with the DTA to offset taxable income over the next five years. Therefore, amortizing the EDIT associated with the NOL DTA over five years is appropriate to achieve such matching.

Q. WHAT DO YOU RECOMMEND TO THE COMMISSION RELATED TO THE EDIT ASSOCIATED WITH THE NOL DTA?

A. I recommend the Commission adopt a consistent method of flow back for the EDIT associated with the NOL DTA and amortize them over the same period as the tax benefits are expected to be returned to the government. The result would be to amortize the NOL EDIT over five years consistent with our application and to reject Staff's approach which inappropriately disassociates the EDIT associated with the NOL DTA from the utilization of the NOLs.

IV. RESPONSE TO STAFF WITNESS MS. LUKE FRY CONCERNING ADJUSTMENT RELATING TO EXECUTIVE INCENTIVE COMPENSATION

Q. HOW IS THE TAX DEDUCTION RELATED TO EXECUTIVE INCENTIVE COMPENSATION DETERMINED?

A. Westar adjusts its tax expense each year RSUs vest based on the difference between the value of the stock awarded at time of vesting compared to the value of the RSUs at the time they were granted. During the test year, Westar recorded a tax benefit of $2,964,439 based on the difference between the value of the stock awarded at time of vesting and the value of the RSUs awarded on the grant date. This adjustment reflects the difference in stock price between the grant date and the vesting date which typically is over a three-year period. Because this adjustment is based on the market movement of the stock price, Westar adjusted the test year by backing out this benefit. Note that if the value of the stock awarded at time of vesting was less than the grant date value, Westar would have recorded additional tax expense from a reduced tax deduction.

Q. PLEASE EXPLAIN THE STAFF ADJUSTMENT AS SPONSORED BY STAFF WITNESS MS. LUKE FRY.

A. In her testimony, Ms. Luke Fry proposes an adjustment to decrease Westar's test year taxable income by $1,384,674 resulting in a tax benefit of $367,354. Ms. Luke Fry calculated her adjustment by taking the additional tax deduction related to 50% of the time-based RSU because that is the portion of the total RSU expense the Staff recommends to be borne by customers (see Luke Fry testimony pages 21-26). Alternatively, she proposes the full amount of the tax deduction be added to the test year resulting in a reduced revenue requirement of $4,054,724.

Q. DO YOU AGREE WITH MS. LUKE FRY?

A. No, but if the Commission adopts Staff's position in this case regarding the partial disallowance of executive incentive compensation, we are willing to accept her initial recommendation with the understanding that it could increase or decrease revenue requirement in future rate cases depending on stock price movement. However, we oppose her alternative proposal.

Q. PLEASE EXPLAIN.

A. Westar adjusted this tax benefit out of the test year income tax expense because it was directly tied to the performance of our stock and can result in either an increase or a decrease to income tax expense. We removed this benefit because it represents more of a shareholder risk than a customer risk. However, assuming Staff would take the same position in a test year where the adjustment increases income tax expense, we do not believe Ms. Luke Fry's proposed adjustment is unreasonable as it is consistent with Staff's position in this case regarding the partial disallowance of executive incentive compensation.

However, we oppose her alternative proposal. It would provide a benefit to customers – in this case – associated with expenses that Staff contends should be borne by shareholders and, if followed consistently, would place stock price movement risk on customers.

V. RESPONSE TO STAFF WITNESS MR. GRADY AND CURB WITNESS MS. CRANE CONCERNING A RATE BASE ADJUSTMENT RELATING TO THE WPWF

Q. PLEASE EXPLAIN THE RATE BASE ADJUSTMENTS AS PROPOSED BY MR. GRADY AND MS. CRANE REGARDING THE WPWF.

A. Both staff witness Mr. Grady and CURB witness Ms. Crane propose to remove the WPWF assets from Rate Base, however their basis for the removal differ. Westar witnesses Larry Wilkus and John Bridson's rebuttal testimony addresses Westar's position relating to those proposals.

Q. DO YOU AGREE WITH THE PROPOSED RATE BASE ADJUSTMENTS REGARDING THE WPWF?

A. No. Should the assets of the WPWF be removed from Rate Base, I propose the ADIT associated with the wind farm also be removed to be consistent with the intent of removing all amounts in Rate Base related to the investment in the wind farm.

Q. WHAT IS THE PROPOSED ADIT ADJUSTMENT?

A. The adjustment to ADIT in Rate Base is $19,570,722 which reflects the reversal of the deferred tax liability on the WPWF partially offset by an allocation of the NOL ADIT. The DTL related to the WPWF as of June 30, 2017 was $46.8 million based on the existing tax rate at that time. After adjusting for the tax rate change, the DTL is $31.4 million and is partially offset by the allocated NOL ADIT of $11.8 million.

Q. WHY DO YOU OFFSET THE DTL WITH THE ALLOCATED NOL ADIT AND HOW WAS THE NOL ADIT ALLOCATED?

A. The DTL associated with the WPWF was generated because of the accelerated tax depreciation benefits which Westar utilizes in its income tax return filings. The generation of accelerated tax benefits was offset in part by Westar generating net operating losses supported by the NOL ADIT. Therefore, we believe it is appropriate to allocate a portion of the NOL ADIT increase in 2017 (through the end of the test period) based on the proportion of the DTL increase for the WPWF in relation to the overall DTL increase over that same period.

Q. WHAT HAPPENS TO THE EDIT ASSOCIATED WITH THE WPWF AND THE NOL ADIT?

A. The EDIT for both items remain in Rate Base and will be amortized over the periods in accordance with the determination in this rate case.

Q. THANK YOU.

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

VERIFICATION

Andy Devin, being duly sworn upon his oath deposes and states that he is the Director Tax, for Westar Energy, Inc., that he has read and is familiar with the foregoing Rebuttal Testimony, and attests that the statements contained therein are true and correct to the best of his knowledge, information and belief.

Andy Devin

Subscribed and sworn to before me this 2nd day of July, 2018.

Notary Public

My Appointment Expires: 11-13-2020

Leila M. Schuh
NOTARY PUBLIC—STATE OF KANSAS
MY APPT EXP: 11-13-2020