

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Pat Apple

In the Matter of Westar Energy, Inc. and)
Kansas Gas and Electric Company Seeking) Docket No. 16-WSEE-375-TAR
Commission Approval to Implement Changes)
in their Transmission Delivery Charges Rate)
Schedules.)

In the Matter of Westar Energy, Inc. and)
Kansas Gas and Electric Company Seeking) Docket No. 17-WSEE-377-TAR
Commission Approval to Implement Changes)
in their Transmission Delivery Charge Rate)
Schedules.)

In the Matter of Westar Energy, Inc. and)
Kansas Gas and Electric Company Seeking) Docket No. 18-WSEE-355-TAR
Commission Approval to Implement Changes)
in their Transmission Delivery Charge Rate)
Schedules.)

**ORDER GRANTING STAFF’S MOTION TO JOIN
AND CONSOLIDATE PROCEEDINGS**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the file and records, the Commission finds:

1. On February 15, 2016, Westar Energy, Inc. and Kansas Gas and Electric Company (Westar) filed an Application in Docket No. 16-WSEE-375-TAR (16-375 Docket) to update its Transmission Delivery Charge (TDC) tariff to recover costs associated with Westar’s transmission of electric power.¹

¹ Tariff for Westar Energy and Kansas Gas and Electric for 2016 Transmission Delivery Charge, (TDC Application), Docket No.16-WSEE-375-TAR (16-375 Docket), Feb. 15, 2016, p. 1.

2. On March 31, 2016, the Commission issued an Order Granting Application to Implement Changes in Transmission Delivery Charge Subject-To-Refund, authorizing Westar's proposed TDC rates to take effect April 1, 2016, on a subject-to-refund basis while Staff continues its investigation.²

3. On June 21, 2016, Westar submitted a revised TDC incorporating the terms of the FERC-approved Settlement Agreement from FERC Docket No. EL14-93, which resulted in a reduction in Westar's Annual Transmission Revenue Requirement (ATRR).³

4. On June 28, 2016, the Commission issued an Order Granting Joint Motion to Amend Transmission Deliver Charge Tariff Subject-to-Refund, allowing Westar to bill its customers the updated TDC rates effective July 1, 2016, on a subject-to-refund basis.⁴

5. On August 2, 2016, Staff filed its Report and Recommendation, suggesting allowing Westar to continue collecting its revised TDC on a subject-to-refund basis, until a third-party consultant finishes his investigation of the load research sample used to generate the 12-CP allocator.⁵ Docket No. 15-WSEE-115-RTS (15-115 Docket) resulted in a new 12-CP allocator for Westar, which adds \$15.8 million to the Residential Class revenue requirement.⁶

6. On November 8, 2016, the Commission issued its Order Adopting Staff's August 2, 2016 Recommendation, interpreting the settlement in the 15-115 Docket to require Westar's next TDC filing to use the recalculated 12-CP, which takes into account the CP data from customers moving to the LGS class.⁷

² Order Granting Application to Implement Changes in Transmission Delivery Charge Subject-To-Refund, 16-375 Docket, Mar. 31, 2016, ¶ 12.

³ Westar Energy Revised Transmission Delivery Charge Tariff, 16-375 Docket, Jun. 21, 2016.

⁴ Order Granting Joint Motion to Amend Transmission Deliver Charge Tariff Subject-to-Refund, 16-375 Docket, Jun. 28, 2016, ¶ 26.

⁵ Notice of Staff's Report and Recommendation, 16-375 Docket, Aug. 2, 2016, p. 1.

⁶ *Id.*, p. 6.

⁷ Order Adopting Staff's August 2, 2016 Recommendation, 16-375 Docket, Nov. 8, 2016, ¶ 14.

7. On February 15, 2017, Westar filed its 2017 TDC update in Docket No. 17-WSEE-377-TAR. (17-377 Docket), requesting its proposed TDC take effect April 3, 2017.⁸

8. On September 26, 2017, Staff filed a Motion to Join and Consolidate Proceedings, explaining both the 16-375 and 17-377 Dockets relate to Westar's TDC and Westar's 2017 TDC is dependent on the 2016 calculations.⁹ Since any revisions to Westar's 2016 TDC will impact its 2017 TDC, Staff recommending making any adjustments to Westar's rates due to over- or under-billing in either Docket in a single proceeding.¹⁰

9. On October 2, 2017, the Kansas Industrial Consumers Group, Inc. (KIC)¹¹ moved to close or dismiss the 16-375 and 17-377 Dockets, arguing KCC Staff effectively proposes to retroactively increase the retail rates for KIC customers above those amounts that have already been paid and the Commission lacked statutory authority to make "amounts paid by retail customers as a TDC component of their bill, subject to refund pursuant to the provisions of K.S.A. 66-1237."¹² KIC's request to close or dismiss the 16-375 and 17-377 Dockets is still pending.

10. On January 4, 2018, the Commission issued Orders Granting Staff's Motion to Join and Consolidate Proceedings and Granting Interventions, finding good cause to consolidate the 16-375 and 17-377 Dockets.¹³

⁸ Tariff for Westar Energy and Kansas Gas and Electric for 2017 Transmission Delivery Charge, (TDC Application), Docket No.17-WSEE-377-TAR (17-377 Docket), Feb. 15, 2017, p. 1.

⁹ Staff's Motion to Join and Consolidate Proceedings, Sept. 26, 2017, ¶¶ 9-10.

¹⁰ *Id.*, ¶ 11.

¹¹ KIC was granted intervention on Jan. 25, 2018.

¹² Application for Intervention of Cargill Incorporated, CCPS Transportation, LLC, Coffeyville Resources Refining and Marketing, LLC, Occidental Chemical Company, Spirit Aerosystems, Inc. and the Kansas Industrial Consumers Group, Inc.; and Request for the Closing/Dismissal of these KCC Dockets, or in the Alternative Request for a Procedural Schedule and Hearing, Oct. 10, 2017, ¶¶ 12-13; Reply of the Kansas Industrial Consumers Group, Inc. (KIC) to the KCC Staff's Response to KIC Petitions and Motions, Oct. 17, 2017, ¶ 21.

¹³ Orders Granting Staff's Motion to Join and Consolidate Proceedings and Granting Interventions, Jan. 4, 2018, ¶ 20.

11. On February 15, 2018, Westar filed its 2018 TDC update in Docket No. 18-WSEE-355-TAR. (18-355 Docket), requesting its proposed TDC take effect April 3, 2018.¹⁴

12. On March 9, 2018, Staff filed a Motion to Join and Consolidate Proceedings, explaining good cause exists to join and consolidate the 18-355 Docket with the 16-375 and 17-377 Dockets because the 2018 TDC is dependent on the calculations from the previous two years.¹⁵ Staff's Motion is unopposed.

13. On March 13, 2018, the Commission issued an Order Acknowledging Effective Date of Transmission Delivery Charge Subject-To-Refund Pursuant to K.S.A. 66-1237, allowing Westar's updated TDC to go into effect, subject to refund on April 3, 2018.¹⁶

14. Pursuant to K.A.R. 82-1-224, the Commission finds good cause exists to consolidate the 16-375, the 17-377, and the 18-355 Dockets. The 18-355 will serve as the primary Docket. All subsequent filings in any of the consolidated Dockets shall be filed in the 18-355 Docket. Each party who has been granted intervention in any of the three consolidated Dockets are granted intervention in the 18-355 Docket and will be included in the 18-355 service list.

15. The Commission believes the question of whether Staff's request to implement refunds and charges to Westar's retail customers to properly account for previously billed transmission charges would constitute unlawful, retroactive ratemaking is a threshold legal issue. The Commission seeks legal briefs on the issue of retroactive ratemaking. Therefore, the Commission directs the Parties to submit a proposed briefing schedule by April 25, 2018.

¹⁴ Tariff for Westar Energy and Kansas Gas and Electric for 2018 Transmission Delivery Charge, (TDC Application), Docket No.18-WSEE-355-TAR (18-355 Docket), Feb. 15, 2018, p. 1.

¹⁵ Staff's Motion to Join and Consolidate Proceedings, March 9, 2018, ¶¶ 9-10.

¹⁶ Order Acknowledging Effective Date of Transmission Delivery Charge Subject-To-Refund Pursuant to K.S.A. 66-1237, 18-355 Docket, Mar. 13, 2018, ¶ 9.

16. The Commission may designate a prehearing officer to conduct prehearing conferences to address any matters appropriately considered in a prehearing conference, including all items listed in K.S.A. 77-517(b) of the Kansas Administrative Procedure Act (KAPA). Accordingly, the Commission designates Brian G. Fedotin, Deputy General Counsel, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, telephone number (785) 271-3105, b.fedotin@kcc.ks.gov to serve as Prehearing Officer in this proceeding.¹⁷

THEREFORE, THE COMMISSION ORDERS:

A. Staff's Motion to Join and Consolidate Proceedings is granted. The 18-355 Docket will serve as the primary Docket.

B. The Parties shall submit a proposed briefing schedule by April 25, 2018. The briefs should be limited to the threshold legal issue of whether implementing refunds and charges to Westar's retail customers to properly account for previously billed transmission charges would constitute unlawful, retroactive ratemaking.

C. The parties have 15 days from the date of the electronic service of this Order to petition for reconsideration.¹⁸

D. The Commission retains jurisdiction over the subject matter and the parties for the purpose for entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner.

Dated: 04/05/2018



Lynn M. Retz
Secretary to the Commission

BGF

¹⁷ K.S.A. 77-514; K.S.A. 77-516; K.S.A. 77-551.

¹⁸ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

18-WSEE-355-TAR

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 0405/2018.

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