

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

In the Matter of the Application of Westar                     )  
Energy, Inc. and Kansas Gas and Electric                     )       Docket No. 18-WSEE-163-TAR  
Company for Approval of Revisions to their                     )  
Policy for Residential Subdivisions.                             )

**STAFF REPLY TO WESTAR ENERGY, INC. AND KANSAS GAS AND ELECTRIC  
COMPANY'S RESPONSE TO STAFF'S REPORT AND RECOMMENDATION**

COMES NOW the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) and files its Reply to Westar Energy, Inc. and Kansas Gas and Electric Company's (Westar) Response to Staff's Report and Recommendation.

**I. BACKGROUND**

1. On October 16, 2017, Westar filed an Application in the above-captioned Docket requesting approval to change its existing Policy for Residential Subdivisions to allow developers to provide an irrevocable letter of credit (ILOC)<sup>1</sup> in lieu of a cash deposit. According to Westar, developers have requested the ability to utilize an ILOC because it would allow them to have less cash tied up as they develop residential subdivisions.<sup>2</sup> Under Westar's current Policy for Residential Subdivisions, developers are required to provide a cash deposit to cover distribution system costs exceeding the \$40,000 dollar allowance Westar provides. The developers are potentially eligible for refunds of their deposits during the five-year period after the deposit is made, based on the setting of permanent meters on at least the minimum number of lots sufficient to cover Westar's investment.

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<sup>1</sup> An ILOC is an official correspondence from a bank that guarantees payment for goods or services being purchased by an individual or entity (the applicant) who requests the ILOC from the issuing bank.

<sup>2</sup> Application, ¶3 (Oct. 16, 2017).

2. On May 2, 2018, Staff filed its Report and Recommendation (R&R), recommending the Commission open a general investigation docket to examine the appropriateness of accepting an ILOC in lieu of a cash deposit from developers of residential subdivisions. Staff's basis for this recommendation is that there is not an established Commission policy on the issue and the lack of consistency in jurisdictional utilities' practices related to accepting ILOCs in lieu of cash deposits.<sup>3</sup> Staff also expressed concern regarding a fundamental difference between the accounting treatment of ILOCs and cash deposits when accepted for subdivision buildouts: a cash deposit is treated as a Customer Advance for Construction and used as a rate base offset; whereas, if an ILOC is accepted instead, there would not be any up-front cash from the developer available to fund the investment in infrastructure. Therefore, if an ILOC is accepted, the funds would come from utility operations.<sup>4</sup>

3. On May 14, 2018, Westar filed its Response to Staff's R&R. In its Response, Westar disagreed with Staff's recommendation to defer a decision on the issue to a general investigation because it could take a significant amount of time to complete and would delay the economic benefit that could result from allowing flexibility for developers.<sup>5</sup> To avoid delay, Westar suggests that if other utilities decide that they want to implement a similar practice, they can file separate applications to change their tariffs and rely on the Commission's decision in this docket for support.<sup>6</sup> Westar also states Staff's concerns over the difference in rate base treatment between ILOCs and cash deposits is unwarranted because the purpose of obtaining deposits from

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<sup>3</sup> Report and Recommendation, p. 5 (May, 2, 2018) (R&R).

<sup>4</sup> R&R, p. 4.

<sup>5</sup> Response to Staff Report and Recommendation, ¶5 (May 14, 2018) (Westar's Response).

<sup>6</sup> Westar's Response, ¶5.

developers is not to offset rate base, but rather to ensure that there is a financial guarantee of reimbursement for infrastructure buildout in case full development does not occur.<sup>7</sup>

## **II. STAFF'S REPLY**

4. First, Staff reiterates its arguments in support of the Commission's adoption of the Recommendations contained in its May 2, 2018 R&R. In response to Westar's opposition to Staff's Recommendations, Staff addresses in the following paragraphs (1) why a general investigation is the appropriate forum for examining other jurisdictional utilities' practices regarding ILOCs and determining Commission policy; and (2) how cash deposits serve as both a financial guarantee and a rate base offset. Staff's exclusion of other issues raised by Westar in its Response should not be construed as agreement or acquiescence by Staff to Westar's position on any given issue.

### **A GENERAL INVESTIGATION IS THE APPROPRIATE FORUM FOR EXAMINING OTHER JURISDICTIONAL UTILITIES' PRACTICES REGARDING ILOCs AND DETERMINING COMMISSION POLICY.**

5. Westar's suggestion that other interested utilities file similar, separate applications to change their tariffs if they wish to accept an ILOC in lieu of a cash deposit from developers is not the appropriate solution for addressing this issue.

6. Staff has concerns that other jurisdictional utilities may have *already* implemented the practice of allowing ILOCs in lieu of cash deposits. As part of Staff's analysis of Westar's proposal, Staff contacted other jurisdictional utilities to discuss their extension policies for developers of residential subdivisions, as well as their acceptance of ILOCs for other purposes. Staff's understanding is that some jurisdictional utilities currently believe they are permitted to accept an ILOC in lieu of a cash deposit from developers, however, Staff is not certain that any

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<sup>7</sup> Westar's Response, ¶6.

such utilities have actually done so. Because discovery directed toward other jurisdictional utilities would be inappropriate in a Westar-specific docket, Staff believes a general investigation is the most appropriate forum for determining: (1) whether other jurisdictional utilities currently accept ILOCs in lieu of cash deposits from developers; and (2) Commission policy regarding the acceptance of ILOCs in lieu of cash deposits from developers.

**CASH DEPOSITS SERVE AS BOTH A FINANCIAL GUARANTEE AND A RATE BASE OFFSET.**

7. Westar argues that Staff's concern regarding the difference between the accounting treatment of ILOCs and cash deposits is unwarranted because the purpose of obtaining cash deposits from developers is not to offset rate base. Both cash deposits and ILOCs serve the purpose of providing financial guarantees of reimbursement for infrastructure buildout in the case where full development does not occur. However, a cash deposit from a developer is treated as a Customer Advance for Construction and used as a rate base offset, as it is recognized as cost-free capital. Thus, ratepayers are protected from the possibility of stranded costs, as well as from funding the cost of capital associated with building out the infrastructure for residential housing developments. Alternatively, if an ILOC is accepted in lieu of a cash deposit, there would not be any up-front cash from the developer available to fund the investment in infrastructure; therefore, the funds would come from utility operations.

8. Staff was unable to find prior Commission policy to determine whether cash deposits were intended to serve as a rate base offset when the Policy for Residential Subdivisions was originally approved. Thus, Staff recommends the Commission open a general investigation to determine whether the shift of costs caused by the acceptance of ILOCs is appropriate.

### **III. CONCLUSION**

WHEREFORE, Staff respectfully requests the Commission reject the arguments of Westar's Response advocating acceptance of ILOCs in lieu of cash deposits under its Policy for Residential Subdivisions, deny Westar's proposal in this Docket, and open a general investigation for the purpose of determining whether accepting an ILOC, in lieu of a cash deposit, is an appropriate form of security for residential subdivision developers and, if so, whether any specific conditions should be placed on the financial institution issuing the ILOC.

Respectfully submitted,



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Otto A. Newton #08760  
Litigation Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead road  
Topeka, Kansas 66604-4027  
Tel: (785) 271-3157  
For the Commission Staff

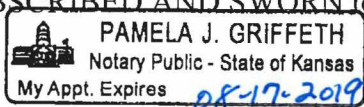
**VERIFICATION**

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF SHAWNEE    )

Otto A. Newton, being duly sworn upon his oath, deposes and states that he is Litigation Counsel for the Kansas Corporation Commission; that he prepared the foregoing *Staff Reply To Westar Energy, Inc. and Kansas Gas and Electric Company's Response to Staff's Report and Recommendation* and that the statements therein are true to the best of his knowledge and belief.

  
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Otto A. Newton

SUBSCRIBED AND SWORN to before me this 22<sup>nd</sup> day of May, 2018.



  
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Notary Public

My Appointment Expires: August 17, 2019

## CERTIFICATE OF SERVICE

18-WSEE-163-TAR

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff Reply to Westar Energy, Inc. and Kansas Gas and Electric Company's Response to Staff's Report and Recommendation was served by electronic service on this 22nd day of May, 2018, to the following:

OTTO NEWTON, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3167  
o.newton@kcc.ks.gov  
\*\*\*Hand Delivered\*\*\*

CATHRYN J DINGES, CORPORATE COUNSEL  
KANSAS GAS & ELECTRIC CO.  
D/B/A WESTAR ENERGY  
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  
KANSAS GAS & ELECTRIC CO.  
D/B/A WESTAR ENERGY  
818 S KANSAS AVE  
PO BOX 889  
TOPEKA, KS 66601-0889  
jeff.martin@westarenergy.com

  
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Pamela Griffeth  
Administrative Specialist