

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

In the Matter of the General Investigation)
To Examine Issues Surrounding Rate) Docket No. 16-GIME-403-GIE
Design for Distributed Generation Customers)

POSTHEARING BRIEF OF CLIMATE AND ENERGY PROJECT

Introduction

1. From the beginning of regulatory time the relationship between utilities and ratepayers has been one of service provider and customer. That basic relationship has formed the model around which regulatory concepts like rate design have evolved. But that relationship has changed with the advent of economical distributed generation (DG) photovoltaic (PV) systems deployed on platforms as small as modest sized residential rooftops. Now, electric utility customers are also competitors of electric utilities. (Hearing Tr. Vol. 2, p. 365, l. 23-p. 366, l. 6). The competition is for a share of the more or less static consumer market and space on the grid. As a regulatory matter, the challenge is to allocate the costs and benefits caused by the new customer-as-competitor relationship without causing an “unreasonably discriminatory or unduly preferential rule, regulation, classification, rate, charge or exaction”. K.S.A. 66-101b. In this docket no consensus has emerged concerning the efficacy of a separate rate class or imposition of three-part demand charges. This docket did not clarify what costs and benefits should be allocated or specify a methodology for making the allocation. These remain open questions. (Hearing Tr. Vol. 2, p. 365, ll 5-18). This circumstance is exacerbated because of the lack of Kansas-specific

studies to determine the value of DG resources and the cost to serve such. (CEP Reply Comments, p. 21, paras. 33-34). A Kansas-specific value of residential DG resource study and/or a residential DG cost and benefit analysis is crucial. Other states' studies, performed by state agencies, have shown consistently that benefits of DG outweigh costs. (CEP Reply Comments, pp. 18-22, paras. 25-32). Whether such would be replicated in a Kansas-specific study is, of course, unknown. However, a Kansas-specific study would, at the least, clarify issues surrounding allocation of costs and benefits in a way to avoid an outcome that causes "unreasonably discriminatory or unduly preferential" Commission actions. K.S.A. 66-101b. And because of the level of DG penetration in Kansas there is time to complete the necessary underlying studies. (CEP Reply Comments, p. 18, para. 24).

2. As an investigative docket, this was intended as a forum to flesh out how to navigate changes to the electric utility-customer/competitor relationship that are necessary if Kansas is to realize the benefits of residential DG that have been realized elsewhere in the United States. (CEP Reply Comments, pp. 18-22, paras. 25-32). The Commission explicitly recognized its authority to consider benefits of residential DG as an offset of costs to provide service to residential DG ratepayers. (Order Opening General Investigation, para.9). This docket was intended to allow a "thorough and thoughtful discussion" of the costs and benefits that are quantifiable related to DG capacity. (Id. para. 10).

3. Unfortunately, no consensus developed concerning whether it costs more, on a net basis, to serve a residential DG customer than a non-DG ratepayer. And that is at least, a partial explanation for the absence of substantial evidence to support alleged increased costs to serve DG residential ratepayers. Likewise, the investigatory phase yielded no consensus about net benefits expected from DG residential generation. Nor was there consensus about what costs and

benefits should be considered and weighted. CEP expressed concerns that the process did not allow for a “thoughtful and through discussion of rate design” Additionally, the workshops did not even yield consensus on whether this docket was intended to set DG policy in Kansas. (CEP Reply Comments, p. 5).¹

4. Accordingly, when the adversarial phase of the docket produced the proposed Non-unanimous Stipulation and Agreement (S&A), CEP could not support it. (Gilliam prefiled testimony in opposition to S&A, Hearing Tr. Vol. 2, p. 4, ll. 1-10) The S&A’s proposed rate design assumes, without record factual support, that a.) net costs to serve a residential DG ratepayer are more than their non-DG counterparts, b.) residential DG ratepayer costs are subsidized by non-DG ratepayers and c.) residential DG benefits are inadequate to offset costs. Ultimately, this may be borne out by a careful and objective analysis of the net costs and benefits of residential DG; but it has not been established with substantial and competent evidentiary support in this docket, as will be discussed further, below.

5. CEP supports a cost based rate design that requires residential DG ratepayers to bear additional costs only if it is supported by adequate proof that such costs are actually attributable to residential DG service and after offset by quantifiable benefits. But the S&A lacks the quantum of substantial and competent evidence to justify any change in the extant residential rate design. (Gilliam prefiled testimony opposing S&A, p. 16, l. 8-22; p. 18, l. 21-p. 19, l. 8).

6. CEP supports a further process to determine how to best determine the costs and benefits of residential DG. But the S&A provision in paragraph 14 is inadequate because its scope is too

¹ The proposed S&A includes paragraph 15 that requests a finding that rate design policy be set in this docket. (Gilliam prefiled direct opposing S&A, p. 18, l. 21-p. 19, l.8).

narrow and a one-year duration too short to provide a fair assessment. (Gilliam prefiled direct opposing S&A, p. 16, l. 23-p. 18, l. 20, Hearing Tr. Vol. 2, p. 428, l. 3-p. 430, l. 19.).

Procedural history related to CEP

7. CEP filed its intervention petition on August 22, 2016 and it was granted by the Order of September 1, 2016. On August 26, 2016, CEP, pursuant to the July 12, 2016, Order Opening General Investigation, presented its comments and suggestions regarding the best use of this docket. On March 17, 2017, CEP advanced the testimony of Dorothy Barnett as its initial comments concerning the substantive issues surrounding DG/DER rate design questions. CEP advanced its reply comments on May 5, 2017 and included the prefiled direct testimony of Rick Gilliam. On June 20, 2017, CEP advanced the testimony of Rick Gilliam in opposition to the proposed non-unanimous settlement.

The proposed residential tariff change not supported by substantial competent evidence.

8. A central tenant of the S&A is to take unsupported assumptions about residential DG costs and benefits and enshrine them in a rate design that has discriminatory impacts on residential DG ratepayers. But the primary problem is that it assumes, absent factual support, that residential customers create more costs than benefits. Consider the case of Midwest Energy. In Midwest Energy's prefiled testimony it opposed a rate design that divides residential DG from non-DG residential ratepayers. (Midwest Energy Initial Comments, p. 3, para. 8). Further, Midwest Energy's experience indicates that costs to serve DG and non-DG customers are "very similar". (Id. para. 9). Midwest Energy has a small number of residential DG customers. (Hearing Tr. Vol. 2, p. 309, li. 9-25). Residential DG customer specific costs have not been quantified. However, Mr. Parke testified that Midwest's early experience with installation might require

travelling up to two hours to get to an installation site. But with experience has come reduced costs. Mr. Parke testified “As we've gotten more experienced especially with inverter based solar units, we don't even go out to the site. If the equipment has the proper certificates, we don't visit.” Other costs expected, though either not incurred or unquantified, are grid enhancements and unpredictability. Mr. Parke acknowledged that there may be no costs related to unpredictability. (Hearing Tr. Vol. 2, p. 310, l. 10-p. 212, l. 10). In any event, Midwest Energy has not undertaken a study to support its suppositions because such is not justified due to the small number of residential DG systems in its territory.

9. Residential DG customers are now subject to the standard residential tariff. (Hearing Tr. Vol. 1, p. 124, ll. 15-20). Jeff Martin of Westar testified that Westar is presently unable to recover its full costs to serve residential DG customers. (Hearing Tr. Vol. 1, p. 79, l. 10-p. 80, l. 7). But Westar does not know, for the most part, what it costs to serve a residential DG customer. (Hearing Tr. Vol. 1, p. 113, l. 14-p. 116, l. 17).² But this lack of knowledge does not deter Westar from endorsing the proposed S&A's establishment separate class for residential solar ratepayers.

10. The assumption that DG customers cost more to serve is essential to the rate design advocated in the proposed S&A. But it also puts policy ahead of data that are available through a value of resource study and/or a cost of service study for residential DG ratepayers. (Hearing Tr. Vol. 1, p. 133, l. 22-p. 134, l. 16; p. 142, l. 20-p. 143, l. 4) Mr. Martin testified that the essential

² Mr. Martin testified that the additional administrative costs for DG customers are presently fully recovered. (Hearing Tr. Vol. 1, p. 116, l. 18-p. 117, l. 2). Westar, according to Mr. Martin, incurs additional costs to serve residential DG customers related to billing services but he does not know the amount. (Hearing Tr. Vol. 1, p. 118, ll. 4-10). As for equipment costs incurred by Westar to serve residential DG customers, such has not been determined by Westar, yet; it is to be determined in the next cost of service study. (Hearing Tr. Vol. 1, p. 118, ll. 11-23). As for labor costs, Westar fully recovers such, presently. (Hearing Tr. Vol. 1, p. 118, l. 24-p. 119, l. 8).

information necessary to establish a separate residential rate class is in the record of this docket. (Hearing Tr. Vol. 1, p. 134, l. 20-p. 135, l. 9). While Mr. Martin asserts the supportive data are in this record, he also acknowledges that it will be left to the next rate case for the utility “to provide all the data to show that that’s the case” and that Westar does not know costs of service for residential DG ratepayers. Additionally, Dr. Faruqui acknowledged that based on Kansas data he does not know the magnitude, if any, of subsidies realized by Kansas residential DG ratepayers at the expense of non-DG ratepayers. (Hearing Tr. Vol. 1, p. 209, l. 7-p. 211, l. 18). Mr. Gilliam also drew the distinction between a utility’s reduction in revenue and incurring additional incremental costs. An additional incremental cost includes the equipment to serve a DG customer such as a larger transformer. But a reduction in revenue is a reduction in existing cost recovery, which is not a new cost. In this docket there has been no evidence of additional incremental costs that utilities have incurred to serve residential DG ratepayers. (Hearing Tr. Vol. 2, p. 440, l. 10-p. 442, l. 11).

11. Nevertheless, before the next rate case Westar wants a “policy” decision from the Commission, in the form of an approved rate design that establishes net costs attributed to residential ratepayers are being imposed on non-DG ratepayers and that DG residential ratepayers cost more to serve. Mr. Martin testified that such a policy would avoid a “fight” concerning the issue in the next general rate case. (Hearing Tr. Vol. 1, p. 126, l. 18- p. 127, l. 16).

12. This raises questions about the endorsement of a rate design policy in this docket makes adoption in a future rate case a *fait accompli* by making it the presumptive rate design. But any subsequent application of such a far-reaching policy requires a careful quantification of costs and

benefits in the residential DG context. Without such, a rate design would lack supporting substantial and competent evidence contrary to KSA 77-526(d) and effect an unreasonable discrimination against residential DG ratepayers prohibited by K.S.A. 66-101b.

The evidence in this docket does not support a finding that residential DG usage patterns differ significantly from non-DG ratepayers are subsidized by non-DG residential ratepayers.

13. The assertion that usage patterns differ between ratepayers with DG and those without DG systems has been central to the assertion that a separate class for residential DG ratepayers is justified. (List of Contested Issues, p. 2). This issue prompted Rick Gilliam, CEP's expert witness, to undertake a comparative analysis of the usage patterns of Westar's DG and non-DG residential ratepayers. (Gilliam prefiled direct testimony, p. 6, l. 12- p. 9, l. 4).

14. Pursuant to a Data Request to Westar Mr. Gilliam received from Westar "hourly data for all residential DG customers for which the Company has data". Mr. Gilliam received a "voluminous amount of raw customer data." Indeed, the response included more than 30 files, many with more than one million lines of data. (Hearing Tr. Vol. 2, p. 400, ll. 12-25). The data included 15 minute load information for each of the two registers on the meter – Channel 1: "kWh received by the customer from Westar (billable usage)" and Channel 11: "kWh sent to Westar (net meter kWh)." In other words, Channel 1 recorded the load of the customer that Westar serves, and Channel 11 measured exported energy. (Gilliam prefiled direct testimony, p. 9, ll. 5-18; Hearing Tr. Vol. 2, p. 401, l. 1-p. 402, l. 25).

15. In order to compare the load characteristics of non-DG customers with DG customers, it is necessary to look only at the load placed on the system, i.e. the energy measured by Channel 1. Channel 11 is effectively a measure of the reduction in load for the circuit due to the customer's DG system. It is not a measure of customer load. Indeed it reduces the amount of generation the Company must provide to meet the needs of customers on that circuit, thus providing a savings to customers. (Gilliam prefiled testimony opposing S&A, p. 9, ll. 5-18; Hearing Tr. Vol. 2, p. 401, l. 10-p. 402, l. 12; p. 409, ll. 2-23; p. 418, l. 13-p. 419, l. 2).

16. Mr. Gilliam's analysis compared the load placed on Westar by DG customers with the equivalent characteristic for non-DG customers and found that the differences were not significant. (Gilliam prefiled testimony opposing S&A, p. 9, ll. 19-p. 12, l. 16; Hearing Tr. Vol. 2, p. 409, l. 24-p. 415, l. 8). Table 1 shows the mean consumption is comparable between non-grandfathered DG ratepayers and non-DG ratepayers. (Gilliam prefiled testimony opposing S&A, p. 9, l. 20- p. 10, l. 5). Table 2 shows that the load factors of the two groups are nearly the same with the mean being nearly identical. (Gilliam prefiled testimony opposing S&A, p. 10, ll. 6-15). Table 3 compares consumption of all DG residential ratepayers (grandfathered and non-grandfathered) to non-DG ratepayers. These data evidence comparable consumption levels for DG and non-DG ratepayers. Table 4 compares load factors of all DG residential ratepayers (grandfathered and non-grandfathered) to non-DG ratepayers. These data evidence comparable load factors for DG and non-DG ratepayers. (Id., p. 11, ll. 1-14). Mr. Gilliam's analysis and conclusions track with recent comparable load data from Utah. (Id., p. 12, l. 17-p. 13, l. 10). Mr. Gilliam concluded, based on a review of Westar usage data, that there is no significant difference in usage patterns of residential DG ratepayers compared to residential ratepayers, generally. (Hearing Tr. Vol. 2, p. 435, l. 16-p. 439, l. 5) The absence of substantial competent evidence to

support the new residential DG rate class renders the S&A, if adopted as a final order, “unreasonably discriminatory or unduly preferential”. K.S.A. 66-101b.

17. Dr. Faruqui used the sum of the two registers (1 and 11) in an erroneous attempt to show that the resulting DG “loads” which are negative in some periods, are different than the loads of non-DG customers. (Faruqui rebuttal testimony, p. 5, ll. 1-9). This is an apples to oranges comparison that is irrelevant. Negative load is an oxymoron. Only the loads measured by register 1 are comparable to loads measured by non-DG customers’ meters. The excess energy measured by Channel 11 serves neighboring loads who pay Westar for the energy, even though Westar did not generate it. As Mr. Gilliam pointed out during cross-examination, from the Company’s perspective those transactions are a wash. (Hearing Tr. Vol. 2, p. 409, ll. 11-23).

18. The fact remains that Mr. Gilliam’s data and analysis represent the only factually relevant comparison of load characteristics of DG and non-DG customers in this docket. Mr. Gilliam concludes they are similar. Thus, the basis for paragraph 9 in the non-unanimous settlement agreement is lacks supportive substantial and competent evidence, and it (along with paragraphs 10 and 11) must be rejected.

The S&A’s use of demand charges in its rate design is based on erroneous assumptions and lacks evidentiary support.

19. The S&A in paragraph 11 includes the provision for three-part demand charges. Dr. Faruqui’s endorsement of demand charges is based on several erroneous assumptions and not supported by Westar specific data. First, Dr. Faruqui assumes that when DG ratepayers reduce their consumption from the utility, their maximum demand changes very little. (Faruqui

Affidavit in Support of Initial Comments, p. 3). Despite the generic diagrams of DG customers in comments and testimony (eg. Faruqui Affidavit in Support of Initial Comments, p. 4, Figure 2) the fact is that the load factor of DG customers is similar to that of non-DG customers, and in no way supports the need to base a portion of the customer's bill on its maximum demand. (Gilliam prefiled testimony opposing S&A, p. 9, ll. 19-p. 12, l. 16; Hearing Tr. Vol. 2, p. 409, l. 24-p. 415, l. 8; p. 433, l. 21-p. 435, l. 2). The relationship between annual consumption of energy and maximum annual demand between DG and non-DG customers is consistent and applying a significantly different rate structure to one set would unreasonably discriminate against residential DG ratepayers. K.S.A. 66-101b.

20. Second, Dr. Faruqui suggests that the Company must “must have installed generating capacity, transmission capacity, and distribution capacity held ready for use” for the entire load of the customer at any given time. (Westar Initial Comments, Faruqui Affidavit, pp. 3-5). But this “ready for use” capacity does not cause Westar to discourage increased use of its generation output. For example, charging an electric vehicle increases demand for as long as several hours. Westar does not charge customers a different rate to support capacity “held ready for use” because they may begin charging their car at any point in time. This capacity is part of the utility obligation to serve and not a justification for increasing charges to certain customers with certain energy saving or energy consuming technologies behind the meter. Customers have a right to self-determination in their consumption of utility-supplied energy.

21. Third, demand charges are a poor price signal to customers. As noted by Mr. Gilliam, the demand charge for Westar would collect nearly three-fourths (73%) of the average monthly bill based upon a single very short period (15 to 60 minutes) out of the entire 720-hour typical month. (CEP Reply Comments, p. 14; Gilliam testimony in opposition to S&A, p. 15, l. 7-p. 16,

1.3). Because a customer's individual peak demand can occur at any time of day and not necessarily during the hour when system costs are greatest, the standard three-part demand charge rate design does not reflect cost causation. Thus, even if a customer had the necessary information and ability to reduce its peak demand, unless that peak demand actually occurred coincidentally with the system peak demand, the customer's effort would have no impact on the costs incurred by the utility. Indeed, if the customer shifted load away from its own peak onto the system peak, it would have the reverse effect of that desired. (CEP Reply Comments, p. 14-16) CEP in its reply comments showed a chart of hourly customer consumption from sample load research customers in Colorado (Chart 1) that demonstrated the relative randomness of individual customer consumption. (CEP Reply Comments, p. 10). The load patterns of residential customers in Kansas are similarly volatile. (CEP Reply Comments, pp. 9-10, paras. 6-7).

22. Fourth, no state regulatory agency has established mandatory demand charges due to the shortcomings described above. (Hearing Tr. Vol. 1, p. 211, l. 19-p. 212, l. 12; (Gilliam prefiled testimony opposing S&A, p.15, l. 22- p. 16, l. 3).

Public comments favor adoption of policies that favor greater development of residential DG capacity.

23. Public comments were filed in the record of this docket on June 2, 2017. A summary of some of the public comments follows:

24. There were **160** individuals opposed to rate increases and 65 of whom specifically said they did not want to see rates on DG increase.

25. The largest number of comments indicated support for renewable energy in general, whether good for the environment, the economy, and/or health. They indicate a strong interest in encouraging, as opposed to stifling, growth in solar and wind. **180** comments were counted in this category.

26. The next largest number of comments favored renewable energy and stated they are prepared to pay their fair share following a fact-finding study. Eighty comments were counted in this category.

27. There were only two comments found that indicated support for a rate increase on DG customers.

28. From those who mentioned a business in their comment: One comment suggested it would be detrimental to his business if a thorough study wasn't conducted. Two comments were simply opposed to rates going up. One comment was in support of renewable energy in general.

29. Scott White from Cromwell Solar initiated an online petition to help reach Kansas citizens and have their voice heard by the KCC. The petition states that the KCC should "reject the utilities' anti-solar proposals". Like several of the other public comments, it states that the KCC should "be cautious when dramatically changing rate structures which can cost jobs and limit Kansans freedom to produce some of their own energy". The petition also points out that with such a small amount of solar on the grid in Kansas, just 0.1%, there is time to carefully study the benefits and costs of DG and the consequences of any new rate proposals. That petition received **1,040** signatures with a multitude of zip codes.

30. Natalie R Sollo who owns a winery submitted comments based on her business's commitment to sustainability and clean energy, she states that she installed a solar array that

powers 80% of their business operation. She asks that the KCC not “disincentivize solar power as it is so important to the mission of our Kansas business.” She states that any fees imposed on their business would take away from their ability to fund jobs. She asks that the KCC “take time to study this issue so that any fees are fair, and not based on any arbitrary stances by the power companies.”

31. Mark Horst, owner of King Solar, a business that “relies heavily on net-metering” for the business to function, states that “making any changes to the current structure without looking deeply into what the actual effects DG has on the KS grid would be a mistake”. Mr. Horst emphasizes the importance of a thorough study to determine the facts before proceeding with a decision. He also points out that “there is time to study the issue and adjust rates before it becomes a problem.”

32. Several of the commenters are in favor of increasing more renewable energy in Kansas. William Ward, who lives on a farm, has a capital investment of about \$30K in solar and wind. He says that if the KCC raises rates it will make it difficult for him to see a return on his investment. Meanwhile he would like to continue to invest in renewable energy as a way to be more conscientious of the environment.

33. David G. Sollo states that current emissions have already pushed us to 400 PPM of CO₂ in the atmosphere causing detrimental effects to our environment and humans and therefore, “clean, RE [renewable energy] should be the only energy we use.”

34. Richard Randolph, a physician, mentions health concerns associated with energy generated from oil and gas. He wants to buy a house and add solar in order to be ecologically responsible.

35. Amanda Isenburg, who also doesn't want to see renewable energy disincentivized, says that anyone generating their own energy via renewable resources should be rewarded. She too would like to purchase solar panels.

36. Eric Zenk opposes penalties on DG customers and opposes restrictions that could discourage DG. He plans to put solar on his home in order to "take advantage of the abundant renewable energy the Kansas sun provides so that we can reduce our carbon footprint while saving money".

37. Charles Canoles favors an equitable method to incentivize both the utility and the customer. He suggests looking to other states to see how they've established fair rate designs.

38. Arthur Thompson states that it's appropriate to have customers pay for the privilege of obtaining electricity from the grid at any time of the day or night, the utility does have to have the ability to provide it and should be compensated for that.

Conclusion

39. CEP advocates a process going forward that emphasizes consideration of the specific circumstances that pertain to Kansas and each utility's particular circumstances in order to maximize the benefits and minimize costs of DG. (CEP Reply Comments, pp. 21-22, paras. 33-35.). There is no need to rush this process because the number of extant residential DG systems is relatively low. (CEP Reply Comments, p. 18, para. 24). There is no evidence that utilities are presently under-recovering costs or suffering other financial hardships from the current residential rate design. There is no evidence of a financial or operational crisis in residential DG service in Kansas that demands immediate regulatory actions. Accordingly, the Commission's adoption of CEP's proposed path forward would clarify the facts around residential DG and allow KCC policy to follow the facts.

40. The proposed S&A effectively asks the Commission to adopt rate design policy without developing crucial information concerning quantifiable costs and benefits of residential DG. Further, such a policy assumes a “one size fits all” approach to rate design is appropriate without consideration of the particular circumstances of each electric utility and its ratepayers related to residential DG. The process CEP advocates would provide data upon which rate design policy could be based and allow an orderly transition to increased use of residential DG that maximizes benefits and minimizes costs for utilities and their DG ratepayer competitors. (CEP Reply Comments, pp. 21-22, para 35.).

Respectfully submitted,


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VERIFICATION

STATE OF KANSAS)
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COUNTY OF DOUGLAS)

Robert V. Eye, of lawful age, being first duly sworn upon oath, deposes and states:
That he is an attorney for Climate + Energy Project, that he has read the above and foregoing and
that the statements therein contained are true and correct according to his knowledge,
information and belief.

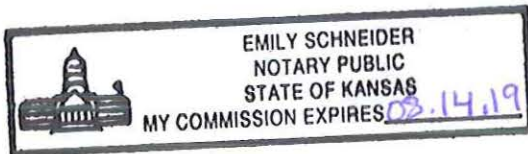


Robert V. Eye

Subscribed and sworn to before me this 21st day of July, 2017.

My appointment expires: 08.14.19


Notary Public



CERTIFICATE OF SERVICE

Undersigned certifies that on July 21, 2017, the above and foregoing post-hearing brief of CEP was emailed to the following:

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A handwritten signature in black ink, appearing to read "R. Eye", is positioned above a horizontal line.

Robert V. Eye