

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

In the Matter of Westar Energy, Inc. and)
Kansas Gas and Electric Company Seeking)
Commission Approval for Tariff Revisions to) Docket No. 15-WSEE-021-TAR
the Energy Efficiency Rider)

**WESTAR ENERGY, INC. AND KANSAS GAS AND ELECTRIC COMPANY'S
PETITION FOR RECONSIDERATION**

COME NOW Westar Energy, Inc. and Kansas Gas and Electric Company (collectively referred to as "Westar") and, pursuant to K.A.R. 82-1-235, K.S.A. 66-118b and K.S.A. 77-529, respectfully petition for reconsideration of a portion of the Commission's January 6, 2015 Order on Operating Budgets and EM&V Studies (Budget and EM&V Order) in the above-captioned matter. Specifically, Westar asks the Commission to reconsider its Budget and EM&V Order because the findings made in the Order are not adequately supported within the record in this docket and because the parties were not given an opportunity to address the issues decided by the Commission in the Order. Westar also asks the Commission to reconsider its decision to require Westar to conduct evaluation, measurement and verification (EM&V) for the SimpleSavings program.

I. Introduction

1. On July 15, 2014, Westar filed an application with the Commission asking for approval of its recovery of certain costs through the Energy Efficiency Cost Recovery Rider (EER).

2. On September 18, 2014, Staff filed its Report and Recommendation. Staff recommended that the Commission approve Westar's Application.

3. On September 29, 2014, the Citizens' Utility Ratepayer Board (CURB) filed its Reply to Staff's Report and Recommendation. While recognizing that these topics are outside the scope of this proceeding, CURB argued that Westar should be required to file updated budgets for certain energy efficiency programs with the Commission and conduct EM&V for its energy efficiency programs.

4. Westar responded to CURB's reply and explained that CURB's discussion of Commission-approved budgets and EM&V is outside of the scope of this docket. As Staff explained in its Report and Recommendation in the docket, utilities make separate, formal tariff applications when implementing new energy efficiency programs so that the programs can be reviewed "in light of Commission policy directives." Staff R&R, at pp. 2. Because all of the energy efficiency programs that Westar is requesting cost recovery for have already been approved by the Commission, the review in this EER docket is limited to "examinations of expenditures consistency – both in scope and amount – to that previously granted approval by the Commission." Staff R&R, at p. 3.

5. Westar also argued in its response that even if the Commission were inclined to consider CURB's comments on these issues in this docket, there is no basis for CURB's suggestions that Westar needs to refile its energy efficiency programs with new budgets for approval, that Westar should be responsible for evaluating the SimpleSavings program, or that the Commission needs to require additional EM&V.

6. Westar explained that its energy efficiency programs hadn't expired. In Appendix A of its Final Order in Docket No. 08-GIMX-441-GIV, the Commission simply lists a five-year budget as one of the items a utility company must submit when filing an application for approval of an energy efficiency program. *See* Final Order, *In the Matter of a General Investigation*

regarding Cost Recovery and Incentives for Energy Efficiency Programs, Docket No. 08-GIMX-441-GIV, Appendix A (Nov. 14, 2008) (441 Order). Nowhere in its Final Order does the Commission state that it will only approve energy efficiency programs for five year periods or that it will require utilities to resubmit programs for approval every five years. Westar explained that requiring utilities to come back with a full-blown application and docketed proceeding every five years would be a waste of all parties' and the Commission's resources and is certainly not what was required by the Commission in its 441 Order.

7. Westar also explained that EM&V for the SimpleSavings program may not be useful and there is no requirement for Westar to conduct such an evaluation. The EM&V for SimpleSavings may not be useful because the funding for the program was pulled in mid-2011 and only about 350 customers actually utilized the program while it was in effect. Westar is not required to conduct the EM&V because when Westar's participation in this state program was approved, the Commission indicated that Staff would conduct EM&V, as discussed in detail below.

8. Staff also responded to CURB's reply and argued that the Commission should address the issues regarding budgets and EM&V raised by CURB by opening a generic docket.

9. On October 28, 2014, the Commission issued an Order Approving Energy Efficiency Rider and approved Westar's request to include certain costs in its Energy Efficiency Rider. In that Order, the Commission stated that it would determine the appropriate scope of this docket by March 12, 2015.

10. No additional pleadings or testimony were filed in the docket after the Commission's October 28, 2014 Order was issued.

11. On January 6, 2015, the Commission issued its Order on Operating Budgets and EM&V (Budget and EM&V Order). In the Budget and EM&V Order, the Commission did not address any of the arguments made by Westar, listed in paragraphs 4-7 above, or Staff's argument that the EM&V and budget issues were outside the scope of this docket and should be addressed in a generic docket.

12. Without responding to or evaluating any of these arguments, the Commission ordered Westar to submit operating budgets for each of its ongoing energy efficiency programs by March 16, 2015, and to conduct EM&V on the SimpleSavings, WattSaver, and Energy Efficiency Demand Response (EEDR) programs. Budget and EM&V Order, at ¶¶ 8-9.

13. Although Westar continues to believe that the Commission's decision regarding program budgets is outside the scope of this docket, Westar does not object to providing information to the Commission, Staff, and CURB regarding the budgets for its ongoing energy efficiency programs. However, Westar does request reconsideration of the remainder of the Commission's Budget and EM&V Order, as discussed below.

II. The Commission's Budget and EM&V Order did not allow parties due process and a reasonable opportunity to address the issues decided and did not address facts and arguments in the record.

14. The Commission made its decision in its Order without giving the parties a reasonable opportunity to address the issues. In its October 28, 2014, the Commission stated that it would be addressing only the scope of the docket before March 2015. Then, without providing any additional opportunity for comment from the parties, the Commission issued its Budget and EM&V Order, which did not address the scope of the docket.

15. Parties appearing before the Commission have the right to due process. The Kansas Supreme Court has explained that "The constitutional guaranty of due process of law

applies to administrative as well as judicial proceedings where such proceedings are Quasi-judicial in nature.” *Suburban Med. Ctr. v. Olathe Cmty. Hosp.*, 226 Kan. 320, 331 (1979). The Court went on to explain:

An administrative hearing, particularly where the proceedings are judicial or quasi-judicial, must be fair, or as it is frequently stated, full and fair, fair and adequate, or fair and open. The right to a full hearing includes a reasonable opportunity to know the claims of the opposing party and to meet them. In order that an administrative hearing be fair, there must be adequate notice of the issues, and the issues must be clearly defined. All parties must be apprised of the evidence, so that they may test, explain, or rebut it. They must be given an opportunity to cross-examine witnesses and to present evidence, including rebuttal evidence, and the administrative body must decide on the basis of the evidence.

Id.

16. In this docket the issues being decided by the Commission were not clearly defined and the parties were provided no opportunity to present evidence, explain, or rebut any of those issues.

17. Additionally, in its Budget and EM&V Order, the Commission failed to address or even recognize any of the arguments made by Westar and Staff regarding the scope of the docket and whether requiring additional budgets and EM&V was appropriate. The Commission also did not address Staff’s suggestion that these issues be handled in a generic docket.

18. The Kansas Court of Appeals has explained that “To assure the KCC has engaged in lawful procedures and followed prescribed procedures, K.S.A. 77-621(c)(5), the KCC must render a written decision that is concise and contains a specific statement of relevant law and basic facts that support the decision. The KCC is not required to state factual findings in minute detail, but must be specific enough to allow judicial review of the reasonableness of the order. To guard against arbitrary action, conclusions of law must be supported by findings of fact

supported by evidence in the record.” *Farmland Industries, Inc. v. State Corp. Com'n of State of Kan.*, 25 Kan.App.2d 849 (1999).

19. The Commission’s Budget and EM&V Order does not comply with these requirements.

III. Westar should not be required to conduct EM&V for the SimpleSavings program.

20. Westar should not be required to conduct EM&V for the SimpleSavings program. The SimpleSavings program was dependent on funding from the State of Kansas and that funding was pulled from the program by the Commission in mid-2011. Since that time, there has been no new activity with the SimpleSavings program. Only approximately 350 Westar customers utilized the program while it was in effect. Westar is not convinced that, given the limited application of the program, EM&V would provide useful information or would be worth the expense, which is borne by our customers.

21. Any EM&V conducted for the SimpleSavings program would include all of the costs of the program but only a small portion of the potential benefits because funding was pulled before all of the benefits could be realized. Requiring Westar or any other party to conduct EM&V on such a program – where we were unable to realize the full potential of benefits for reasons outside of our control – would be unreasonable.

22. However, if the Commission thought it might be useful, there is clear Commission direction that Commission Staff, not Westar be responsible for conducting EM&V. In its Application filed for the SimpleSavings program, Westar clearly stated: “Westar will rely on the State Energy Office to perform EM&V as it deems necessary.” Application, Appendix A, *In the Matter of the Application of Westar Energy, Inc. and Kansas Gas and Electric Company for an Order Authorizing them to participate in Efficiency Kansas, Approve the SimpleSavings*

Program Rider, and Related Cost Recovery, Docket No. 10-WSEE-775-TAR (SimpleSavings Docket).

23. In the Order approving Westar's SimpleSavings program, the Commission made it clear that Commission Staff is responsible for any EM&V for the SimpleSavings program:

The Commission directs its Staff to open an investigation and file a report at the beginning of the fourth year of the pilot program to allow the Commission to examine data associated with Westar's SimpleSavings program. Staff's report should include, at a minimum, participation in the program, results of the EM&V, amount loaned through the program, repayment issues, energy and demand savings, lost revenues recovered by Westar, and any other items Staff finds of use to the Commission.

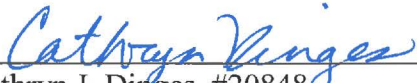
Order Approving Partnership between Efficiency Kansas and Westar's SimpleSavings Program, SimpleSavings Docket, at ¶ 37 (Jan. 31, 2011).

24. Had the Commission afforded the parties to this docket the opportunity to present evidence and address the issues being decided, the Commission would have realized that its decision to require Westar or any other party to conduct EM&V for the SimpleSavings program would be costly and would not provide tangible results.

25. Therefore, the Commission should reconsider the requirement in its Budget and EM&V Order that Westar conduct EM&V for the SimpleSavings program.

WHEREFORE, for the above reasons, Westar respectfully requests that the Commission grant reconsideration of its Budget and EM&V Order as requested herein.

Respectfully submitted,
WESTAR ENERGY, INC.
KANSAS GAS AND ELECTRIC COMPANY



Cathryn J. Dinges, #20848
Senior Corporate Counsel
818 South Kansas Avenue
Topeka, Kansas 66612
Telephone: (785) 575-8344
Fax: (785) 575-8136

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

Cathryn J. Dinges, being duly sworn upon her oath deposes and says that she is one of the attorneys for Westar Energy, Inc. and Kansas Gas and Electric Company; that she is familiar with the foregoing **Response**; and that the statements therein are true and correct to the best of her knowledge and belief.



Cathryn J. Dinges


SUBSCRIBED AND SWORN to before me this ___th day of January, 2015.

Notary Public

My Appointment Expires:

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January, 2015, the foregoing Petition for Reconsideration was electronically filed with the Kansas Corporation Commission and an electronic copy was delivered to each party on the service list.



Cathryn J. Dinges