

Received
on

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

APR 06 2012

IN THE MATTER OF THE APPLICATION OF)
KANSAS GAS AND ELECTRIC)
COMPANY FOR APPROVAL OF THE)
ENERGY SUPPLY AGREEMENT BETWEEN)
KANSAS GAS AND ELECTRIC)
COMPANY AND FRONTIER EL DORADO)
REFINING LLC)
COMMERCIAL OR INDUSTRIAL)
CUSTOMERS)
_____)

by
State Corporation Commission
of Kansas

DOCKET NO. 12-KG&E-718-CON

PETITION TO INTERVENE AND REQUEST FOR HEARING

COMES NOW, Occidental Chemical Corporation ("OXY") and respectfully requests full Intervention as a Party in this KCC Docket, and states to the State Corporation Commission of the State of Kansas ("KCC" or "Commission") as follows:

1. On March 28, 2012, Kansas Gas and Electric Company ("KGE"), d/b/a Westar Energy, Inc. ("Westar") (Westar and KGE, collectively "Westar") filed an Application ("Application") for an order approving the Energy Supply Agreement ("Agreement") between KGE and Frontier El Dorado Refining LLC ("Frontier"). On information and belief, OXY did not receive service of this Application.

2. OXY, as a large retail electric customer of Westar, has a direct financial interest in the outcome of this proceeding. Westar states in its Application that the rates to be paid by Frontier under the Agreement are discounted from the Commission-approved rates contained in Westar's High Load Factor ("HLF") and Interruptible Service Rider ("ISR") Tariffs, based on certain claimed benefits. Accordingly, the terms of the Agreement will have an impact on Westar's other retail customers, both from a

cost and a reliability standpoint. As a large retail customer of Westar, OXY is substantially affected by this Agreement and the outcome of this proceeding.

3. Westar did not file any testimony supporting its application. For example, there is no testimony that describes the material terms of the Agreement, or that quantifies its impact. The lack of factual support extends to all aspects of the Application, including quantification of the size of the discount, the impact on other customers, or any quantification of the claimed benefits. There is also no testimony comparing the rates in the Agreement to Westar's existing cost of service.

4. Westar's Application and the attached Agreement lack clarity on numerous points that are material to whether the Agreement would be in the public interest. For example, neither the Application nor the Agreement address the specific obligations and requirements regarding interruptions. Despite the Application's claimed benefits regarding Westar's ability to interrupt Frontier's load, there does not appear to be any obligation for Frontier to interrupt its load.¹ Additionally, while the agreement appears to contemplate that Frontier will operate its cogeneration facility when called on by Westar, the specific parameters and timing of the operation are either unspecified or unclear.² Absent specific obligations, the Agreement cannot support Westar's claimed benefits.

5. Additionally, certain terms of the Agreement raise serious questions regarding the claimed benefits of the Agreement. For example, the Agreement states that it provides the "[v]alue of shorter notification period when compared to ISR

¹ See generally, Agreement at Section 4.

² See, e.g., Agreement at Section 3.3, which appears to limit Frontier's performance obligations to starting its cogeneration plant "within a commercially reasonable period of time" instead of a specified period.

requirements.”³ However, the Agreement provides that Westar shall provide 48 hours’ notice of interruption during the winter months, which is much longer than the two-hour notice required under Westar’s ICR Tariff.⁴

6. Because Westar did not provide basic information or testimony related to its Application, material deficiencies exist. By not providing this information, OXY and other parties are not able to fully evaluate the Agreement and to test the veracity of the claims made by Westar.

7. Therefore, OXY requests that the Commission set this matter for hearing in order to allow full development of the facts surrounding the agreement. OXY and other parties must have the opportunity to obtain relevant information and supporting documentation and to conduct discovery in order to properly evaluate and verify the Agreement. Accordingly, the Commission should not act on the Application until the parties have had the opportunity to be fully heard on this matter.

8. Because of the potential rate implications to OXY that could result from the approval of the Agreement, OXY should be granted full intervention in this proceeding.

9. No party to this proceeding adequately represents OXY’s interests.

10. OXY respectfully requests the right to fully intervene in this matter and to participate in all aspects of this KCC Docket, including but not limited to discovery, the filing of motions and other pleadings as may be appropriate herein, the right to present Oral Argument and to fully participate in any KCC Hearings in this Docket.

11. OXY further requests that the Commission grant its request for hearing.

³ Agreement at Section 5.7.F.

⁴ Westar ISR Tariff at Sheet 5.

12. OXY requests service of all pleadings, orders, and other documents in the above-titled proceeding on the following listed individuals:

Teresa J. James #12194
MARTIN, PRINGLE, OLIVER,
WALLACE & BAUER, L.L.P.
6900 College Boulevard, Suite 700
Overland Park, KS 66211
Tel: (913) 491-5500
Fax: (913) 491-3341
tjjames@martinpringle.com

Stanford J. Smith, Jr. #11353
MARTIN, PRINGLE, OLIVER,
WALLACE & BAUER, LLP
100 N. Broadway, Ste. 500
Wichita, KS 67202
Tel: (316) 265-9311
Fax: (316) 265-2955
sjsmith@martinpringle.com
tjjames@martinpringle.com

WHEREFORE, OXY respectfully requests that the Commission grant its Petition for Intervention herein, and that OXY be granted full intervention and all rights of a Party in this entitled KCC Docket, including but not limited to, the right to Discovery, the right to file Pleadings, the right to present Oral Argument to the Commission, and the right to fully participate in any Hearing in the above-titled docket. OXY further requests that the Commission grant its request for hearing.

Respectfully submitted,



Teresa J. James #12194
MARTIN, PRINGLE, OLIVER,
WALLACE & BAUER, L.L.P.
6900 College Boulevard, Suite 700
Overland Park, KS 66211
Tel: (913) 491-5500
Fax: (913) 491-3341
tjjames@martinpringle.com

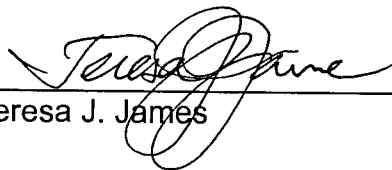
Stanford J. Smith, Jr. #11353
MARTIN, PRINGLE, OLIVER,
WALLACE & BAUER, L.L.P.
100 North Broadway, Suite 500
Wichita, KS 67202
Tel: (316) 265-9311
Fax: (316) 265-2955
sjsmith@martinpringle.com

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

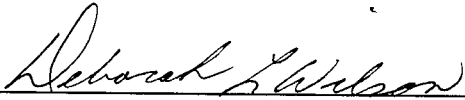
Teresa J. James, of lawful age, being first duly sworn, upon oath states:

That she is one of the attorneys for the intervener, Occidental Chemical Corporation ("OXY"), that she has read the above and foregoing Petition to Intervene, knows the contents thereof, and knows that all of the statements made therein are true.



Teresa J. James

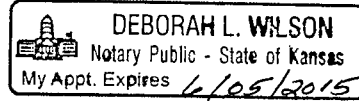
SUBSCRIBED AND SWORN to before me this 6th day of April, 2012.



Notary Public

My Appointment Expires:

6/05/2015



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition to Intervene and Request for Hearing was fax-filed and sent via U.S. First Class mail on this 6th day of April, 2012, to:


Ray Bergmeier, Litigation Counsel Kansas Corporation Commission 1500 SW Arrowhead Road Topeka, KS 66604-4027	Cathryn J. Dinges, Corporate Counsel Westar Energy, Inc. 818 S Kansas Avenue PO Box 889 Topeka, KS 66601-0889
---	---

In addition, on April 6, 2012, a copy of the foregoing Petition to Intervene and Request for Hearing was sent via email to:

Tammy Cooper, Attorney
Andrews Kurth L.L.P.
111 Congress Avenue
Suite 1700
Austin, TX 78701
tammycooper@andrewskurth.com

Phillip Oldham, Attorney
Andrews Kurth L.L.P.
111 Congress Avenue
Suite 1700
Austin, TX 78701
phillipoldham@andrewskurth.com

Stanford J. Smith, Attorney
Martin, Pringle, Oliver,
Wallace & Bauer, L.L.P.
100 N. Broadway, Suite 500
Wichita, KS 67202
sjsmith@martinpringle.com



Teresa J. James



MARTIN | PRINGLE
ATTORNEYS AT LAW

TERESA J. JAMES
Overland Park Office
tjjames@martinpringle.com

MARTIN, PRINGLE, OLIVER, WALLACE & BAUER, L.L.P.		
Overland Park	Kansas City, Missouri	Wichita
6900 College Boulevard	4700 Belleview	100 N. Broadway
Suite 700	Suite 210	Suite 500
Overland Park, KS 66211	Kansas City, MO 64112	Wichita, KS 67202
T 913.491.5500	T 816.931.1133	T 316.265.9311
F 913.491.3341		F 316.265.2955

www.martinpringle.com

April 6, 2012

Patti Petersen-Klein
Executive Director
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, KS 66604

Received
on

APR 06 2012

by
State Corporation Commission
of Kansas

RE: Docket No. 12-KG&E-718-CON
Our File No. 30938-0002
Petition to Intervene and Request for Hearing

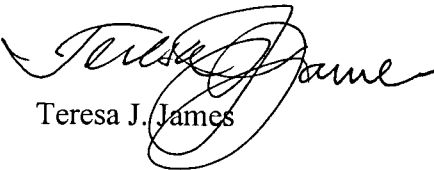
Dear Ms. Petersen-Klein:

Enclosed please find the original and seven copies of OXY Chemical's Petition to Intervene and Request for Hearing in the above referenced docket which was fax-filed on April 6, 2012.

Please do not hesitate to contact me if you have any questions. Thank you.

Sincerely,

MARTIN, PRINGLE, OLIVER,
WALLACE & BAUER, L.L.P.



Teresa J. James

TJJ/dwil

Enclosures

cc: Service List
Tammy Cooper
Phillip Oldham
Stanford J. Smith