

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Application of Kansas )  
Gas and Electric Company for Approval of )  
the Amendment to the Energy Supply ) Docket No. 18-KG&E-303-CON  
Agreement between Kansas Gas and Electric )  
Company and Occidental Chemical )  
Corporation. )

**POST-HEARING BRIEF OF OCCIDENTAL CHEMICAL CORPORATION**

Occidental Chemical Corporation respectfully files its *Post-Hearing Brief*. In support, Occidental states to the State Corporation Commission of the State of Kansas ("KCC" or "Commission") as follows:

**I. Background**

**A. Joint Application and Joint Applicants' Direct Testimonies**

1. On January 16, 2018, Kansas Gas and Electric Company, d/b/a Westar Energy ("Westar") and Occidental Chemical Corporation ("Occidental")<sup>1</sup> filed a Joint Application requesting approval of an Energy Supply Agreement ("ESA" or "Agreement") between Kansas Gas and Electric Company and Occidental Chemical Corporation.

2. Occidental currently takes service from Westar under the ESA initially approved by the Commission on May 22, 2013, in Docket No. 13-KG&E-451-CON. That contract was subsequently amended by Westar and Occidental, with such amendment approved by the Commission in Docket No. 17-KG&E-352-CON ("17-352 Docket"). In its Order approving the amendment, the Commission agreed with the recommendations of Staff and Westar, finding "the record supports a determination that the amended contract is necessary, will benefit remaining

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<sup>1</sup> Occidental is also referred to by various witnesses as "Oxy" or "OxyChem."

core Westar customers, and will result in just and reasonable rates."<sup>2</sup> The Commission also stated that "the increased monthly minimum bill under the amended contract will give some additional assurance of fixed cost recovery."<sup>3</sup>

3. Under its terms, the currently effective ESA would have expired May 31, 2018. However, the Commission has extended the term of the current ESA through the pendency of this docket.<sup>4</sup>

4. As noted above, Westar and Occidental have now entered into a new ESA and have submitted the Agreement to the Commission for approval in this docket.<sup>5</sup> Included with the Joint Application filed January 16, 2018, Westar filed the Direct Testimonies of Mr. Chad Luce and Mr. John Wolfram.

#### **i. Direct Testimony of Chad Luce**

5. In his Direct Testimony, Mr. Luce explains the Agreement is for an additional five-year term and is not substantively different from the currently effective ESA. The agreement simply updates dates and contact information.<sup>6</sup>

6. Mr. Luce further testifies the new ESA continues to satisfy the Commission's standards for approval of special contracts. Specifically, he explains how the ESA benefits Westar's core remaining customers.<sup>7</sup> And Mr. Luce also highlights the economic benefits of extending the ESA, including commitments by Occidental 1) to maintain certain employment

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<sup>2</sup> KCC Docket No. 17-KG&E-352-CON, Order Approving Amended Energy Supply Agreement, June 27, 2018, ¶ 8.

<sup>3</sup> KCC Docket No. 17-KG&E-352-CON, Order Approving Amended Energy Supply Agreement, ¶ 8.

<sup>4</sup> Order Approving Procedural Schedule; Extension of Agreement & Waiver of Statutory Deadline, May 17, 2018

<sup>5</sup> Joint Application, January 16, 2018, ¶ 3. (Joint Application, ¶ 3.)

<sup>6</sup> Direct Testimony of Chad Luce, January 16, 2018, p. 2. (Luce Direct, p. 2.)

<sup>7</sup> Luce Direct, pp. 3-5.

levels at its Wichita facilities and 2) to continue to invest in capital improvements at its Wichita facility to help maintain the long-term viability of those facilities.<sup>8</sup>

7. Finally, Mr. Luce testifies to the necessity of the contract, stating:

The contract is necessary because it provides the incentives needed to keep Oxy as a large, viable customer on our electric system and as a viable business in Kansas. The proposed contract will continue to help address the electric cost disadvantages that Oxy has indicated its Wichita facilities are experiencing as compared to other Oxy plant locations.<sup>9</sup>

### **ii. Direct Testimony of John Wolfram**

8. In his Direct Testimony, Mr. Wolfram discusses Westar's Energy Efficiency Demand Response ("EEDR") Program, which is a component part of the ESA. In particular, Mr. Wolfram sponsors an Evaluation, Measurement, and Verification ("EM&V") analysis demonstrating the cost-effectiveness of the EEDR program, relying on multiple cost-benefit tests.<sup>10</sup>

### **iii. Direct Testimony of Brenda Harris**

9. On January 26, 2018, Occidental filed the Direct Testimony of Ms. Brenda Harris. In her testimony, Ms. Harris sets out the basic terms of the existing ESA, which include:

- 1) Agreed base energy rates with seasonal differentials;
- 2) In addition to base energy rates, OxyChem is charged all applicable surcharges and riders, and OxyChem's base rates increase with any general rate increase approved by the Commission;
- 3) Two tiers of interruptible power;
- 4) Terms allowing Westar to request Occidental reduce its load; and

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<sup>8</sup> Luce Direct, p. 5.

<sup>9</sup> Luce Direct, p. 5.

<sup>10</sup> Direct Testimony of John Wolfram, January 16, 2018, pp. 3-4, Exhibit JW-1. (Wolfram Direct, pp. 3-4, Exhibit JW-1.)

5) Requirements for OxyChem to retain 90 percent of full-time jobs and continue investing substantial capital at its Wichita facilities.<sup>11</sup>

Ms. Harris further explains,

The Agreement does not change the terms and conditions of the currently effective ESA or the rates Occidental pays under the currently effective ESA. In effect, the Agreement simply extends the current ESA for an additional five-year term. Westar and OxyChem have entered into the Agreement to preserve and extend the economic benefits of the previous agreement.<sup>12</sup>

10. Ms. Harris further testifies, "In the 17-352 Docket, the Commission found the current ESA to be necessary, and the basic facts underlying that decision remain."<sup>13</sup> Ms. Harris also explains why extending the ESA is uniquely necessary for a customer like Occidental, stating:

The cost of electricity is the largest cost input in...OxyChem's production processes. Westar's electric rates have increased materially over the last 10-15 years. Absent approval of the Agreement, OxyChem's Wichita facilities will be at a distinct rate disadvantage, compared to its plants - and its competitors' plants - in other states. In such a scenario, OxyChem would be forced to reexamine its level of ongoing operations at the Wichita facilities.<sup>14</sup>

11. Finally, Ms. Harris testifies the ESA benefits Westar's other customers and results in just and reasonable rates.<sup>15</sup> She states,

The Agreement provides a cost benefit to other customers by retaining OxyChem as a customer on the Westar system. In addition, the Agreement provides other material system benefits to Westar. Finally, the Agreement substantially benefits the economy of the state of Kansas by allowing the continued operation of OxyChem's Wichita facilities.<sup>16</sup>

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<sup>11</sup> Direct Testimony of Brenda Harris, January 26, 2018, pp. 3-4. (Harris Direct, pp. 3-4.)

<sup>12</sup> Harris Direct, p. 4.

<sup>13</sup> Harris Direct, p. 4.

<sup>14</sup> Harris Direct, pp. 4-5.

<sup>15</sup> Harris Direct, p. 5.

<sup>16</sup> Harris Direct, p. 3.

## **B. Direct Testimony of Staff Witness Darren Prince**

12. On August 15, 2018, Staff of the Commission ("Staff") filed the Direct Testimony of Mr. Darren Prince. In his testimony, Mr. Prince evaluates the ESA, ultimately recommending it satisfies the Commission's standards for approval of special contracts and results in just and reasonable rates. He also presents a cost-benefit analysis demonstrating Westar's EEDR program is cost-effective and should be continued.

13. In addition to the statutory standard requiring "just and reasonable rates," Mr. Prince cites the Commission's standards for approving a special contract, which includes a demonstration that the contract is necessary and provides a cost benefit to remaining other customers.<sup>17</sup> To determine whether the contract is necessary, Mr. Prince performed a detailed analysis of electricity pricing at Occidental facilities in other states using line item invoices from those locations.<sup>18</sup> As a result of this analysis, he determined Occidental's Wichita facility "will be at a rate disadvantage if the 2018 Special Contract is not approved."<sup>19</sup> Therefore, absent approval of the ESA, Mr. Prince determined Occidental's concerns regarding the long-term viability of its Wichita operations were credible.<sup>20</sup>

14. Mr. Prince also addressed the various benefits of the ESA to other Westar customers. Most importantly, Mr. Prince performed a variable cost analysis showing revenues collected from Occidental under the ESA will cover Westar's variable cost of serving Occidental and also produce a sufficient contribution to Westar's fixed costs.<sup>21</sup> Because these fixed costs

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<sup>17</sup> Direct Testimony of Darren L. Prince, August 15, 2018, pp. 8-9. (Prince Direct, pp. 8-9.)

<sup>18</sup> Prince Direct, pp. 12-13.

<sup>19</sup> Prince Direct, p. 13, Exhibit DLP-1.

<sup>20</sup> Prince Direct, p. 13, "Staff's analysis shows that Oxy's Wichita facility will be at a rate disadvantage if the 2018 Special Contract is not approved...Oxy's threat to shut down operations at its Wichita plant is credible."

<sup>21</sup> Prince Direct, p. 11.

would otherwise be recovered from Westar's remaining customers, those customers benefit from retaining Occidental on the system under the terms of the ESA.<sup>22</sup>

15. In addition to the financial benefit to customers of retaining Occidental on the system, Mr. Prince lists several other customer benefits, including operational benefits, secured under the ESA.<sup>23</sup> Because the ESA is "necessary and the price and terms of the contract are just and reasonable," Mr. Prince recommends the Commission approve the ESA.<sup>24</sup>

16. Finally, Mr. Prince also assesses the cost-effectiveness of Westar's EEDR program, which provides a financial benefit to Occidental in exchange for its participation in the program. The EEDR credits are not separate payments to Occidental. Rather, they are simply embedded in the contract rates set forth in the ESA.<sup>25</sup>

17. The EEDR program is an energy efficiency program subject to Commission approval. Therefore, Mr. Prince performed a number of analyses to determine whether it is cost-justified, as required by Commission precedent.<sup>26</sup> After considering the results of these cost-benefit tests, Mr. Prince concludes the EEDR program is cost-effective and recommends it be continued.<sup>27</sup>

### **C. Direct Testimony of CURB Witness Stacey Harden**

18. On August 15, 2018, the Citizens' Utility Ratepayer Board ("CURB") filed the Direct Testimony of Ms. Stacey Harden. In her testimony, Ms. Harden did not evaluate the ESA or object to the approval of the contract rates. Instead, Ms. Harden focuses solely on the cost-

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<sup>22</sup> Prince Direct, p. 9, 13; See also, 17-352 Docket, Staff Report & Recommendation, June 13, 2017, pp. 5-6.

<sup>23</sup> Prince Direct, pp. 15-16.

<sup>24</sup> Prince Direct, p. 16.

<sup>25</sup> Prince Direct, p. 17, fn. 26.

<sup>26</sup> Prince Direct, pp. 19-20.

<sup>27</sup> Prince Direct, p. 21.

effectiveness of the EEDR program and whether it should be continued as a Commission-approved energy efficiency program.<sup>28</sup>

19. In her testimony, Ms. Harden cites the Commission's precedential requirement that energy efficiency programs will not be approved unless they are cost-beneficial, going on to describe the five cost-benefit tests approved by the Commission and the varying weight it may place on each test.<sup>29</sup>

20. Next, Ms. Harden notes Occidental has not been recently curtailed by Westar under the EEDR program.<sup>30</sup> And she further argues Westar is unlikely to need the EEDR in the future because it can access the Southwest Power Pool ("SPP") marketplace for its energy needs in the event of a system emergency.<sup>31</sup> Finally, Ms. Harden contends Westar does not need Occidental's interruptible capacity because it "has a significant amount of excess capacity<sup>32</sup> available to meet its customers' demand."<sup>33</sup>

21. Based on the above considerations, Ms. Harden places a value of zero (0) dollars per kW on the interruptible capacity provided to Westar by the EEDR, disagreeing with Westar's estimate of avoided capacity cost (\$58 per kW).<sup>34</sup> Relying on a \$0 value of avoided capacity, Ms. Harden testifies the EEDR cannot pass any cost-benefit test.<sup>35</sup>

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<sup>28</sup> Direct Testimony of Stacey Harden, August 15, 2018, p. 19. (Harden Direct, p. 19.)

<sup>29</sup> Harden Direct, pp. 7-10; See also, Docket No. 08-GIMX-442-GIV, Order Setting Energy Efficiency Policy Goals, Determining a Benefit-Cost Test Framework, and Engaging a Collaborative Process to Develop Benefit-Cost Test Technical Matters and an Evaluation, Measurement, and Verification Scheme, June 2, 2008, ¶ 26, "As a resource, energy efficiency needs to produce cost-effective, firm energy savings. Energy efficiency programs should be used to achieve both energy and demand reductions."

<sup>30</sup> Harden Direct, p. 11.

<sup>31</sup> Harden Direct, p. 12.

<sup>32</sup> Ms. Harden is referring to capacity available to Westar in excess of its SPP reserve margin requirement of 12%.

<sup>33</sup> Harden Direct, p. 16.

<sup>34</sup> Harden Direct, pp. 15-16.

<sup>35</sup> Harden Direct, p. 17.

#### **D. Rebuttal Testimony of Westar Witness John Wolfram**

22. On August 29, 2018, Westar filed the Rebuttal Testimony of Mr. John Wolfram. In his testimony, Mr. Wolfram objects to CURB's arguments regarding the value of the EEDR program. In particular, Mr. Wolfram states Ms. Harden oversimplifies the concept of avoided capacity costs because she considers only a very short-term view.<sup>36</sup>

23. Mr. Wolfram testifies CURB's "zero-dollar" value of avoided capacity is unreasonable in the long-term. This is particularly true when considering planned retirements of existing Westar generating capacity and the fact that Occidental's interruptible load is subtracted from Westar's capacity planning requirements.<sup>37</sup>

24. Finally, Mr. Wolfram explains Westar's access to the SPP Integrated Marketplace ("IM") does not eliminate its need for curtailable load, stating:

While SPP does perform a security-constrained economic dispatch of available resources, the SPP IM alone does not mean that Westar will no longer benefit from having curtailable load. Participating in the SPP IM does not immunize Westar and its customers against system emergencies. Under emergency conditions the market does not guarantee moderate energy pricing, nor does it ensure deliverability. Westar customers may still face high energy prices and even the need for load curtailment due to transmission outages, power plant outages, frequency disturbances, or unexpected volatile load swings on the transmission grid. Exposure to high-priced market energy due to Locational Marginal Pricing ("LMP") differences is a risk that Westar and its customers will continue to face in the SPP IM, and a curtailable resource still provides value as a mitigation tool against both LMP price risk and deliverability risk in the SPP IM. For this reason, CURB's correlation of SPP market participation with no longer needing a curtailable resource is not appropriate.<sup>38</sup>

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<sup>36</sup> Rebuttal Testimony of John Wolfram, August 29, 2018, pp. 2-3. (Wolfram Rebuttal, pp. 2-3.)

<sup>37</sup> Wolfram Rebuttal, pp. 3-4, 6, "CURB also did not consider that Westar's reserve margin calculation assumes 80% interruptible performance by Oxy – in other words, Westar counts on the interruption of Oxy's load when determining its total reserve margin, so terminating the EEDR will lower those reserve margins even further."

<sup>38</sup> Wolfram Rebuttal, pp. 7-8.



### **E. Rebuttal Testimony of Occidental Witness Jeffrey Pollock**

25. On August 29, 2018, Occidental filed the Rebuttal Testimony of Mr. Jeffrey Pollock. In his testimony, Mr. Pollocks notes Staff's position that the ESA meets the Commission's standards for approval of contract rates.<sup>39</sup> However, Mr. Pollock disagrees with CURB's view of the need for curtailable load. He further notes that both Staff and CURB undervalue avoided capacity costs.<sup>40</sup>

26. Specifically, Mr. Pollock explains that Ms. Harden overlooks the fact that Occidental's curtailable load helps Westar meet its SPP reserve margin of 12% now and in the future.<sup>41</sup> In his testimony, Mr. Pollock demonstrates Westar's planned generation retirements will bring it very near or below SPP's 12% reserve margin requirement.<sup>42</sup> And, if Westar does not maintain this reserve margin, there are financial consequences.<sup>43</sup>

27. More specifically, Westar would be required to pay a "deficiency payment" of \$107 per kW if it fails to meet SPP's Resource Adequacy Requirement.<sup>44</sup> Mr. Pollock testifies this figure, based on a very recent Order of the Federal Energy Regulatory Commission ("FERC"), is the most accurate measure of avoided capacity cost.<sup>45</sup> He notes it is much higher than the estimates of avoided capacity relied on by both Staff and Westar and clearly demonstrates the unreasonableness of CURB's "zero dollar" value of avoided capacity.<sup>46</sup>

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<sup>39</sup> Rebuttal Testimony of Jeffrey Pollock, August 29, 2018, pp. 4-5 (Pollock Rebuttal, pp. 4-5.)

<sup>40</sup> Pollock Rebuttal, pp. 2-3.

<sup>41</sup> Pollock Rebuttal, p. 5.

<sup>42</sup> Pollock Rebuttal, p. 11.

<sup>43</sup> Pollock Rebuttal, pp. 5-6.

<sup>44</sup> Pollock Rebuttal, pp. 8-10.

<sup>45</sup> Pollock Rebuttal, pp. 2-3; This figure is based on the cost of a new natural gas-fired peaking facility in the SPP region, estimated at \$85.61 per kW.

<sup>46</sup> Pollock Rebuttal, pp. 10-11.

## **F. Evidentiary Hearing**

28. On October 10, 2018, the Commission convened an Evidentiary Hearing to receive testimony in this matter. During the hearing, the Commission admitted the pre-filed testimonies detailed above. In addition, witnesses Wolfram, Prince, Harden, and Dr. Robert Glass<sup>47</sup> took the stand for cross-examination and Commissioner questions.

## **II. Legal Analysis**

### **A. The ESA between Westar and Occidental should be approved by the Commission because it is necessary, cost-beneficial, and results in just and reasonable rates.**

29. As detailed at length in this Docket, the Commission has established the following standard for approval of special contracts: "In order to be approved, the utility must show that the special contract provides a cost benefit to the remaining core customers."<sup>48</sup> In addition, the Commission requires the utility to provide certain information when filing a special contract, stating:

When filing the contract with the Commission, the utility must also file all documents and information that support the contract. The utility is to provide a narrative explanation of why the special contract is necessary and of why the price and other terms of the special contract are just and reasonable. The utility is to provide specific information on the customer's operations and needs, information on the effect of the contract on the utility's system over the term of the contract, a detailed cost analysis of the proposed contract, and a statement of the benefits from the contract to the utility and its other customers. Costs to provide the contracted service should be identified, and at a minimum separated into generation, transmission and distribution components.<sup>49</sup>

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<sup>47</sup> Dr. Robert Glass testified on behalf of Staff pursuant to the Commission's Order Granting Staff's Motion to Allow Dr. Glass as an Additional Witness dated October 2, 2018.

<sup>48</sup> Docket No. 01- GIME-813-GIE, Order, October 3, 2001, ¶¶ 6. (01-813 Order, ¶¶ 6.)

<sup>49</sup> 01-813 Order, ¶ 7.

30. In the Joint Application, including their Direct Testimonies, Westar and Occidental provided all the above information. The Direct Testimony of Staff witness Darren Prince further supports approval of the ESA, supplying the information sought above.<sup>50</sup>

31. As detailed above, Westar,<sup>51</sup> Occidental,<sup>52</sup> and Staff<sup>53</sup> each testify the ESA is necessary. Occidental witness Brenda Harris explained that the extension of the ESA is uniquely necessary for the long-term viability of the Occidental Wichita facilities. This is because the terms of the ESA help to address the electric rate disadvantage at the Occidental Wichita facilities, as compared to other Occidental plants and those of competitors in other states.<sup>54</sup>

32. To evaluate Ms. Harris's testimony, Staff performed a comprehensive analysis – including a review of Occidental's costs in other jurisdictions. As a result of this review, Staff confirmed Occidental's statements regarding its rate disadvantage in Kansas and determined Occidental's concerns regarding the long-term viability of its Wichita operations were credible.<sup>55</sup>

33. In fact, while the ESA makes Westar's rates *more* competitive with other locations, Staff's analysis demonstrates Occidental remains at a noticeable price disadvantage in Kansas – even under the contract rates.<sup>56</sup> This pricing disadvantage would become quite distinct if the current ESA is not extended. Under such a scenario, the long-term viability of Occidental's Wichita operations would be at risk.

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<sup>50</sup> Prince Direct, pp. 12-16.

<sup>51</sup> Luce Direct, p. 5.

<sup>52</sup> Harris Direct, pp. 4-5.

<sup>53</sup> Prince Direct, pp. 12-13.

<sup>54</sup> Harris Direct, pp. 4-5.

<sup>55</sup> Prince Direct, pp. 12-13; See Exhibit DLP-1.

<sup>56</sup> See Prince Direct, Exhibit DLP-1.

34. In addition, Westar,<sup>57</sup> Occidental,<sup>58</sup> and Staff<sup>59</sup> also testify the ESA provides a cost benefit to Westar's remaining core customers, among other operational and economic benefits. As described in paragraph 14 above, Staff witness Darren Prince performed a detailed variable cost analysis showing revenues collected from Occidental under the ESA will cover Westar's variable cost of serving Occidental and also produce a sufficient contribution to Westar's fixed costs.<sup>60</sup>

35. If Occidental were not retained on the system, the fixed costs currently recovered from Occidental would be recovered from Westar's other customers, requiring rates to increase. Therefore, Westar's other customers benefit economically from retaining Occidental as a customer.

36. It is also important to note the contract rates and the EEDR program are both cost-justified, independent of one another. The contract rates in the ESA meet Staff's variable cost analysis test, even when the benefits of the EEDR program are not included. In other words, when analyzing the level of revenue provided by Occidental under the contract, Staff did not impute additional revenue to Occidental to recognize the economic value of its participation in the EEDR program.

37. Of course, the ratepayer benefits noted above are also entirely independent of the significant economic benefits of retaining Occidental in Kansas. As noted in Ms. Harris's Direct Testimony, Occidental's Wichita operations employ several hundred positions with excellent compensation levels.<sup>61</sup> Westar witness John Wolfram further recognized these benefits during the evidentiary hearing, stating:

[Occidental is] significant to [Westar]...clearly from a standpoint of revenue but also from a standpoint of the community in which [Westar] operates and the direct,

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<sup>57</sup> Luce Direct, pp. 3-5.

<sup>58</sup> Harris Direct, pp. 3, 5.

<sup>59</sup> Prince Direct, pp. 9, 11, 13, 15-16.

<sup>60</sup> Prince Direct, p. 11.

<sup>61</sup> Harris Direct, p. 3.

indirect and induced economic benefits of maintaining this customer in the [Westar] service territory is extremely important, extremely valuable not only to [Westar] but to the community in which it operates.<sup>62</sup>

38. As detailed in the testimonies of Westar, Occidental, and Staff, the ESA is necessary and provides a cost benefit to Westar's other customers, satisfying the Commission's standards for approval of special contracts. Thus, those parties all agree the ESA results in just and reasonable rates and should be approved by the Commission.

**B. The EEDR program is cost-effective and should be continued.**

39. As cited above, the Commission requires all energy efficiency programs to be cost-effective. And it has approved a set of five cost-benefit tests to determine whether programs are meet this threshold. Westar and Staff both performed the Commission-approved cost-benefit tests and demonstrated the EEDR program is cost-justified.<sup>63</sup>

40. CURB took a different view. CURB witness Stacey Harden argued the interruptible capacity provided by the EEDR has a value of zero (0) dollars per kW because Westar currently has excess generating capacity and has not recently curtailed Occidental. The value of avoided capacity directly and significantly impacts the results of a cost-benefit test. Therefore, because she relies on a \$0 value of avoided capacity, Ms. Harden testifies the EEDR cannot pass any cost-benefit test.<sup>64</sup>

41. Westar relied on a \$58 per kW value of avoided capacity to perform its cost-benefit tests. In its Rebuttal Testimony, Westar strongly disagreed with CURB's avoided cost value, noting that Westar must use a longer-term generation planning approach than the short-term view advocated by CURB.

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<sup>62</sup> Transcript of Evidentiary Hearing, October 10, 2018, p. 57, lines 1-8 (Transcript, p. 57, lines 1-8); See also, Luce Direct, p. 5.

<sup>63</sup> Wolfram Direct, pp. 3-4, Exhibit JW-1.; Prince Direct, pp. 19-21.

<sup>64</sup> Harden Direct, p. 17.

42. According to Mr. Wolfram, Westar will not have significant excess capacity in the future – especially if the EEDR is discontinued. Therefore, the Commission must estimate a reasonable value of avoided capacity. Westar places this figure at \$58 per kW, the actual cost of its most recent investment in peaking capacity.

43. Occidental's Rebuttal Testimony further demonstrates the unreasonableness of using CURB's value of \$0. In fact, Occidental Witness Jeffrey Pollock showed Westar's actual cost of falling below SPP's required capacity reserve margin would be \$107 per kW. As noted above, Occidental's interruptible capacity is currently removed from Westar's capacity requirements. Therefore, a scenario where Westar falls near or below the SPP reserve margin is not unrealistic if Westar follows its current generation retirement plan and the EEDR program is discontinued.

44. In its Direct Testimony, Staff used a confidential value of avoided capacity lower than Westar's, but well above CURB's suggested value of \$0. Even using this lower figure, the EEDR was determined cost-effective.

45. Avoiding the cost of building new capacity<sup>65</sup> was the only value considered in the cost-benefit tests. However, the parties noted there are other very significant benefits of interruptible capacity that were not quantified in those tests.<sup>66</sup> In particular, the EEDR provides "insurance value,"<sup>67</sup> because it allows Westar to respond to system emergencies.

46. Staff noted this valuable "insurance" capability will not be easily replaced without Occidental. Dr. Glass specifically explained,

It's going to be very hard to find a large customer that can drop demand as fast as Occidental can. I mean, that is just a remarkable facility and they've done it in the past, so it's not, you know, it's not a mythical facility. It's a real ability. Today it

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<sup>65</sup> Avoided transmission costs were included in certain estimates of avoided capacity costs. During the hearing, Westar noted its avoided capacity value did not include avoided transmission costs, but the EEDR's benefits would be even greater if such costs were considered (Transcript, pp. 65-66, lines 16-6).

<sup>66</sup> Transcript, p. 134, lines 14-25; See also, Transcript, p. 162, lines 18-23.

<sup>67</sup> Prince Direct, p. 21.

serves two purposes. It serves, one, to keep the rate down for Occidental, but it also has the possibility of being used.<sup>68</sup>

47. In her Direct Testimony, CURB witness Stacey Harden discounted the operational benefit of responding to system emergencies because she contends Westar can access energy from the SPP IM during a system emergency. However, Westar strongly rebutted this notion in its Rebuttal Testimony and during the evidentiary hearing, explaining that Westar's participation in the SPP IM does not guarantee access to *affordable* energy. Similarly, the availability of energy in the market does not mean energy can be delivered where it is needed.<sup>69</sup> Thus, the ability to quickly shed substantial load provides Westar a valuable operational benefit.

48. When considering the record as a whole, it is apparent Westar's cost of avoided capacity is not zero. In fact, it is certainly no lower than the figure offered by Staff – and is likely much higher. The EEDR program is cost-beneficial for customers using any of the values proffered by Staff, Westar, or Occidental. However, the program is further justified by the difficult-to-quantify, but undeniable, insurance value it offers in the event of system emergencies.

**C. The Commission should reject CURB's recommendation to treat the EEDR program like the Interruptible Service Rider for ratemaking purposes.**

49. CURB agrees Occidental should receive the full economic value of the EEDR program to ensure the viability of its Kansas operations. However, CURB recommends those costs be treated the same as a Westar's other interruptibility program, the Interruptible Service Rider ("ISR") for ratemaking purposes.<sup>70</sup> In other words, CURB contends the EEDR costs should be

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<sup>68</sup> Transcript, p. 148, lines 12-19.

<sup>69</sup> Wolfram Rebuttal, pp. 7-8; Transcript, pp. 59-60, lines 18-20.

<sup>70</sup> Transcript, pp. 108-109, lines 21-8; "What CURB is simply requesting is that the program that provides Occidental that 4 million dollars is no longer classified as energy efficiency **and that Westar's ratemaking treatment associated with that program be handled consistently with its other interruptible programs**, so we are not suggesting that Oxy lose out on this 4 million dollars every year. It's baked into the contract rates which are presented in the ESA that were then amended after the conclusion of Westar's most recent general rate case. CURB is recommending those rates be approved so Occidental would maintain that 4 million dollars."

measured during each test year and incorporated into base rates instead of being recovered through Westar's Energy Efficiency Rider ("EE Rider"). This approach should be rejected for several reasons.

50. First, the EEDR is a unique program that provides different value than the ISR program. These distinctions were explored during the evidentiary hearing, where Westar witness John Wolfram explained the cost differential between the EEDR and ISR:

That's correct [that the EEDR has a higher cost than the ISR], but it implies a comparison that isn't reasonable because they are not the same product. In other words, the operational benefits of calling on a single interruptible load in 10 minutes is a greater result for operational purposes than the result of interrupting all these ISR customers. It has different operational impacts for dealing with Westar's system conditions for Westar operators.<sup>71</sup>

51. Mr. Wolfram further emphasized the substantial value of the EEDR to Westar, noting, "I think that a curtailable load of 80 megawatts which is a large number that can be called in 10 minutes which is a small number is -- has particular or special value to a utility of Westar's size."<sup>72</sup>

52. From a qualitative perspective, the EEDR and ISR do not provide the same level of value. Therefore, it makes sense that the two programs may be treated differently from a ratemaking perspective. However, at hearing, Staff witness Robert Glass provided an additional reason the EEDR costs should not be recovered in the same manner as ISR costs, stating, " I would argue that in the long run both sides, both ratepayers and Westar, are better off with an annual collection...in the Energy Efficiency Rider."<sup>73</sup> Specifically, Dr. Glass noted CURB's approach

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<sup>71</sup> Transcript, p. 52, lines 17-24.

<sup>72</sup> Transcript, p. 73, lines 1-5; See also, Transcript, p. 73, lines 6-25. According to Mr. Wolfram's direct testimony, the ISR requires two hours' notice. See Wolfram Direct, EM&V Analysis, p. 1.

<sup>73</sup> Transcript, p. 152, lines 4-10.



would not ultimately reduce costs and could have unfair consequences for both Westar and customers.<sup>74</sup>

53. The record evidence demonstrates the EEDR is a significantly different product than the ISR and should be treated as such for ratemaking purposes. The ratemaking approach suggested by CURB should be rejected by the Commission.

### **III. Conclusion**

54. The ESA between Occidental and Westar is necessary and provides a cost benefit to Westar's other customers. Further, the ESA allows Occidental to maintain its current level of operations at its Wichita facility, sustaining a significant economic benefit for the state of Kansas. All parties agree the contract is necessary, provides these benefits, and should be approved.

55. The EEDR program is cost-justified under a variety of cost-benefit tests. And it provides Westar a valuable tool to respond to system emergencies, which is an additional benefit not incorporated into Staff or Westar's cost-benefit analyses. CURB is the only party suggesting the EEDR is not cost-justified, and its recommendation is based on a number of unreasonable assumptions. The Commission should reject CURB's faulty analysis and approve the EEDR program.

56. Finally, the Commission should reject CURB's ratemaking approach. As noted by Staff, such an approach will not ultimately decrease costs and may unfairly burden customers and Westar. The EEDR is a valuable and cost-effective demand response program. Its costs should be recovered through Westar's EE Rider.

WHEREFORE, Occidental respectfully requests the Commission issue an order approving the Joint Application filed in this docket January 16, 2018.

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<sup>74</sup> Transcript, pp.150-152, lines 13-10.

Respectfully submitted,

/s/ **Andrew J. French**

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**VERIFICATION**

STATE OF KANSAS     )  
                                  )    ss:  
COUNTY OF JOHNSON    )

Andrew J. French, being duly sworn upon his oath, deposes and states that he is the Attorney for Occidental Chemical Corporation, that he has read and is familiar with the foregoing *Post-Hearing Brief of Occidental Chemical Corporation*, and the statements therein are true to the best of his knowledge, information, and belief.

  
\_\_\_\_\_  
Andrew J. French

SUBSCRIBED AND SWORN to before me this 23<sup>rd</sup> day of October, 2018.

  
\_\_\_\_\_  
Nancy L. Carlson  
Notary Public

My Appointment Expires:  
*August 31, 2022*



**CERTIFICATE OF SERVICE**

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or regular U.S. mail (unless otherwise noted), the 24<sup>th</sup> day of October, 2018, to the below representatives of parties to this proceeding:

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