

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

Before Commissioners: Thomas E. Wright, Chairman
Joseph F. Harkins
Ward Loyd

In the Matter of the Petition of Westar)
Energy, Inc. And Kansas Gas and Electric)
Company (collectively "Westar") for)
Determination of the Ratemaking Principles)
and Treatment that Will Apply to the)
Recovery in Rates of the Cost to be Incurred)
by Westar for Certain Power Purchase)
Agreements under K.S.A. 2003 Supp. 66-)
1239)

Docket No. 11-WSEE-377-PRE

**ORDER ADOPTING REPORT AND RECOMMENDATIONS OF PREHEARING
OFFICER AND SETTING PROCEDURAL MATTERS AND SCHEDULE**

The above captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined the files and records, and being duly advised in the premises, the Commission makes the following findings and conclusions:

I. Background

1. On November 10, 2010, Westar Energy, Inc. (Westar North) and Kansas Gas and Electric Company (Westar South) (collectively, Westar), filed a petition (Petition) with the Commission for a predetermination, pursuant to K.S.A. 2009 Supp. 66-1239, of the ratemaking principles and treatment that will apply to the recovery in rates of the costs to be incurred by Westar pursuant to certain power purchase agreements (PPAs) for the purchase of wind energy.

2. The Commission has jurisdiction in this matter pursuant to K.S.A. 2009 Supp. 66-1239, K.S.A. 66-101, and K.S.A. 66-104.

3. On November 16, 2010, the Citizens' Utility Ratepayer Board (CURB) filed a Petition for Intervention and Motion for Protective Order. On November 19, 2010, the Commission issued an Order Assessing Costs and an Order Designating Prehearing Officer and Setting Scheduling Conference. On December 3, 2010, the Commission issued a Suspension Order, a Protective Order, and a Discovery Order.

4. As provided in the Commission's order of November 19, 2010, a Prehearing Conference was held November 30, 2010, at 1:30 p.m. On December 6, 2010, the Prehearing Officer filed his report and recommendations. The Commission has reviewed and considered the Prehearing Officer's report and recommendations. The Commission notes with approval that the Prehearing Officer granted CURB's petition to intervene in this docket and also found that CURB's motion for a protective order should be granted. As noted above, a Protective Order was issued by the Commission on December 3, 2010.

II. Electronic Service

5. During the Prehearing Conference, the Prehearing Officer inquired of the parties about the use of electronic service for testimony, briefs, and orders in this proceeding and the waiver by the parties of receipt of a hard copy follow-up as required by K.A.R. 82-1-216(a)(6). Tr., 5. The Prehearing Officer reported that the parties agreed that all testimony, briefs, and orders be served electronically without hard copy follow-up, with confidential papers served either electronically if confidentiality can be retained or by some other method such as providing information on a compact disc. The parties also agreed that service of other motions and pleadings may also be made electronically. The parties agreed electronic service would be made

by 3:00 p.m. on the day indicated as a due date or deadline in the procedural schedule.

Electronic courtesy copies would be provided to the Prehearing Officer. Tr., 5-6, 9. Staff suggested that if another party intervened in this docket, the order granting intervention might indicate that the party needed to provide email addresses for electronic service and email the parties to advise them that the new intervenor is on the email service list. Tr., 8.

6. The Prehearing Officer recommended that the Commission approve electronic service in general for parties in this docket, to include briefs, testimony, orders, and motions, without requiring provision of a hard copy follow-up as required by K.A.R. 82-1-216(a)(6). The Prehearing Officer observed that this docket is on a compressed statutory time frame and electronic service will facilitate this proceeding. The Prehearing Officer observed that parties have successfully used electronic service in several dockets. The Prehearing Officer recommended that any service via electronic mail specifically state that this electronic service constitutes service and that a hard copy will not follow. Parties must continue to file an original and at least seven paper copies with the Commission, as required by Commission regulations. K.A.R. 82-1-215(a). The Prehearing Officer recommended that the parties be directed to include electronic service of briefs and testimony to the Prehearing Officer, at c.reimer@kcc.ks.gov. The Prehearing Officer recommended that the Commission provide that any entity filing a petition to intervene submit email addresses for electronic service with their petition to intervene. As a courtesy, the Prehearing Officer suggested that any intervenors also notify the other parties via email that they are on the email service list, as suggested by Staff.

7. The Commission approves the agreement of the parties to use electronic service for service of all testimony, briefs, orders, motions, and other pleadings, with waiver of receipt of a follow-up hard copy as required in K.A.R. 82-1-216(a)(6). Confidential material may be

served either electronically if confidentiality can be retained, or by some other method such as providing information on a compact disc. The parties shall specify that the electronic service constitutes service and that no hard copy will follow. Parties must file an original document and seven paper copies with the Commission. K.A.R. 82-1-215(a). Parties shall include the Prehearing Officer with electronic service at c.reimer@kcc.ks.gov.

8. As agreed by the parties, the service deadline shall be 3:00 p.m. on the respective due dates as set forth in the procedural schedule. Parties should indicate in their service that the service reflects the same document that has been or will be filed that day, however, the document served need not bear a file stamp. The Commission encourages the parties to also file the respective paper documents with the Commission by 3:00 p.m. on the due dates as specified in the procedural schedule, below, if at all possible.

9. Any future motions to intervene should include an agreement to participate in electronic service and should include email addresses. Parties granted future motions to intervene will be expected to participate in electronic service unless a reason is shown why electronic service is not feasible. The Commission recommends that, as a courtesy, new parties email the other parties advising of their email addresses for purposes of service.

III. Public Hearings and Notice to Westar Customers and to the Public

10. The Prehearing Officer observed that the Commission has historically conducted public hearings in rate cases to provide the public directly affected by a utility's proposed changes an opportunity to obtain information and ask questions of the utility, Staff, and intervenors regarding the utility's application, and an opportunity to make or provide statements to the Commission regarding the utility's proposed changes. As the Prehearing Officer noted, the Legislature has provided that the Commission hold public hearings when a utility seeks to

construct an electric transmission line. K.S.A. 66-1,178. However, the legislature has not directed the Commission to hold public hearings in rate or other cases and whether, when, and the manner in which to hold a public hearing in this proceeding is a matter solely for the Commission's discretion. In its discretion, the Commission has conducted public hearings in proceedings other than rate cases as well in order to facilitate public knowledge and understanding about a utility's proposal and to facilitate the public's ability to provide comments to the Commission.

11. When deciding to hold such hearings and the manner in which to hold them, the Commission balances its judgment of the degree of public interest and concern about a particular docket with time, expense, and demands upon Commission staff that public hearings require. See K.A.R. 82-1-231(g). These considerations include travel, facility rental, staff time, and costs for providing notice of the meeting to ratepayers and to the public in the utility's service territory. These costs for a public hearing are ultimately born by the ratepayers of the utility. As the Prehearing Officer observed, use of video-conferencing technology is an option that may be utilized by the Commission to permit the Commission to significantly expand the availability of and potential audience for a public hearing while enabling prudent management of expenses and Commissioner and Commission Staff time. As Vicki Buening, the Commission's Director of Public Affairs and Consumer Protection (PACP), observed at the Prehearing Conference, the Commission has found video conferencing to work well as a means of providing the public with an opportunity to express their opinions to the Commission and participate in the public hearings.

12. In this docket, based on the comments of the parties at the Prehearing Conference and the recommendation of CURB to add Salina as a location, the PACP Director and the

Commission's Director of Communications ultimately recommended that a public hearing be held in this docket with three locations. These locations were selected to better facilitate public access, as was suggested by CURB:

Tuesday, Feb. 1, 2011

6 to 8 p.m.

Kansas Corporation Commission

1500 S.W. Arrowhead Road

Topeka, KS 66604

Or by video conference at:

WSU Eugene M. Hughes Metropolitan Complex Sudermann Commons,

Room 132 5015 E. 29th North (Entrance C)

Wichita, KS 67220

and:

K-State at Salina

College Center Conference Room

2310 Centennial Rd. (park/enter south side)

Salina, KS 67401

13. The Commission understands this schedule and locations to be satisfactory to Westar and to Staff. Although CURB also recommended that more than one meeting be held, the Commission notes the parties, in their comments at the Prehearing Conference, have not indicated they anticipate this docket to be controversial or to raise a high level of public concern. The Commission believes this arrangement provides an appropriate balance for this particular docket and has adopted the recommendations of the PACP Director and the Director of Communications.

14. The Prehearing Officer consulted with the PACP Director and Director of Communications with regard to issuance of notice and publication of notice for the public hearings. They recommended that notice be provided to Westar customers via a bill insert with the monthly billing statement for each customer in Westar's service territory, and that notice be provided the general public via publication in newspapers. The Prehearing Officer noted that these are the standard methods of providing notice utilized by the Commission for most public hearings and that K.A.R. 82-1-231(g) specifically provides for publication notice.

15. At the public hearing, the parties discussed the provision of notice to Westar customers and the public and agreed on a procedure to develop the notice language so as to permit Westar to timely insert the notice for customers in its billing. The parties also discussed newspaper publication for notice to the public in Westar's service territory. The Prehearing Officer recommended that Westar provide information to the public about this proceeding by publishing notice in larger newspapers throughout its territory. See K.A.R. 82-1-231(g). The Prehearing Officer recommended that Westar propose a list of newspapers for publishing such notice, and work with the Director of Communications and Director Of Public Affairs and Consumer Protection to determine the timing of publication and the newspapers in which notice will be published.

16. The Commission adopts the recommendations of the Prehearing Officer. Notice via bill insert and by publication shall comply with applicable Commission regulations, including K.A.R. 82-1-231(g). Billing inserts should provide at least one week notice of the public hearing. Publication notice should be published once a week for two consecutive weeks, with the final notice at least one week before the public hearing is held. Westar is directed to work with the Director of Communication and Director of Public Affairs and Consumer

Protection to develop a list of newspapers for publishing, determine the timing of publication, and to take such other steps as may be necessary to accomplish publication. Notice shall be published in newspapers approved by the Director of Communications. The notice shall be approved by Prehearing Officer upon consultation with the Director of Communications and Director of Public Affairs and Consumer Protection. The Commission also recommends that the Director of Communications and the Director of Public Affairs and Consumer Protection explore and pursue other avenues to notify the public in addition to publication notice in newspapers. Upon completion of providing notice to customers and to the public, Westar shall file an affidavit(s) demonstrating that notice was made to its customers and to the public in compliance with this Order and with Commission regulations.

IV. Public Comment and the Public Comment Period

17. The Prehearing Officer recommended that the Commission encourage the public to submit public comments about this docket via electronic mail and in writing, and that the bill insert provide Westar customers with information indicating that the Commission is accepting comments regarding Westar's Petition. The Prehearing Officer also recommended that information regarding this proceeding and explanations as to how the public can submit comments be provided on websites.

18. The Commission encourages the public to submit email or written comments. Comments should reference Docket No. 11-WSEE-337-PRE and will be accepted through March 18, 2011. Comments may be emailed to public.affairs@kcc.ks.gov or mailed to the Kansas Corporation Commission, Office of Public Affairs and Consumer Protection, 1500 SW Arrowhead Road, Topeka, KS 66604 (telephone 1-800-662-0027). As recommended by the Prehearing Officer, the Commission finds that the public comment period should begin

immediately and end on March 18, 2011, at 5:00 p.m. The PACP Office should submit two reports summarizing public comments received. The initial report should be submitted on January 25, 2011, by 5:00 p.m. The final report should be submitted on March 21, 2011, by 5:00 p.m. The Commission also directs Westar, CURB, and the PACP Office to make information concerning this proceeding more accessible to the public through use of websites by, for example, including links and contact information to assist members of the public in easily identifying how to contact the PACP Office to submit public comments and to easily access filings made in this docket.

V. Procedural Schedule including Prehearing Conference and Evidentiary Hearing

19. The Prehearing Officer reported that at the prehearing conference, the parties discussed a procedural schedule off the record and subsequently proposed a schedule for the Commission’s consideration. The Commission approves the following schedule, as suggested by the parties, with certain details recommended by the Prehearing Officer. Please note the start time for the evidentiary hearing will be 9:00 a.m. Please note that service must be also made to the Prehearing Officer at c.reimer@kcc.ks.gov. Initial briefs due April 13, 2011 must include proposed findings of fact and conclusions of law.

ACTION	DATE	TIME & Place if applicable
Staff & Intervenor Direct Testimony due	February 17, 2011	3:00 p.m.
Staff & Intervenor Cross- Answering Testimony due	March 3, 2011	3:00 p.m.
Westar Rebuttal Testimony due	March 17, 2011	3:00 p.m.

Settlement Conference	March 21, 2011 (or as arranged by parties)	As arranged by parties
Prehearing Motion Cutoff	March 23, 2011	3:00 p.m.
List of Disputed Issues due	March 24, 2011	3:00 p.m.
Prehearing Conference	March 25, 2011	1:30 p.m., Third Flr Hrg Rm, Commission's Offices, Topeka
Discovery Cutoff	March 25, 2011	3:00 p.m.
Evidentiary Hearing (Commission presiding)	March 30-31, 2011	9:00 a.m., First Flr Hrg Rm, Commission's Offices, Topeka
Initial Briefs due from Westar, Staff, & Intervenors (to include proposed Findings of Fact and Conclusions of Law)	April 13, 2011	3:00 p.m.
Responsive Brief due from Westar, Staff, & Intervenors	April 20, 2011	3:00 p.m.
Order due	May 9, 2011	

20. As recommended by the Prehearing Officer and as agreed by the parties, the Commission schedules a second prehearing conference, with the Prehearing Officer presiding, to address any pending matters and to establish procedures to be used during the evidentiary hearing, for March 25, 2011, beginning at 1:30 p.m., in the Commission's Third Floor Hearing

Room, (or such other room as may be designated, if necessary) of the Commission's offices at 1500 SW Arrowhead Road, Topeka, KS 66604-4027. This prehearing conference will focus on issues pertaining to the evidentiary hearing and any other issues that may promote the orderly and prompt conduct of this proceeding. Any party who fails to attend or participate in the hearing or in any other stage of this proceeding may be held in default. At the prehearing conference, this proceeding without further notice may be converted into a conference hearing or a summary proceeding for disposition of the matter as provided by law.

21. An evidentiary hearing, with the Commission presiding, is scheduled for March 30 through March 31, 2011, beginning at 9:00 a.m., in the Commission's First Floor Hearing Room, 1500 SW Arrowhead Road, Topeka, KS 66604-4027.

22. The Commission notes that the attorneys designated to appear on behalf of the agency in this proceeding are Dana Bradbury, 785-271-3196, and Colleen Harrell, 785-271-3138, 1500 Arrowhead Road, Topeka, KS 66604-4027.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission approves the use of electronic service for serving all testimony, briefs, orders, and motions in this proceeding, as agreed by the parties, without requiring provision of hard copy follow-up, as further set forth in paragraphs 5 - 9, above. Electronic service shall also be made to the Prehearing Officer at c.reimer@kcc.ks.gov. Filing of the original document and seven paper copies with the Commission must continue to be done as required by Commission regulations.

B. The Commission adopts the revised recommendations of the PACP Director and Director of Communications regarding a public hearing in this docket, as further set forth in

paragraphs 10 – 13, above. A public hearing shall be held February 1, 2011, beginning at 6:00 p.m., with locations in Topeka, Wichita, and Salina, as set forth and discussed above.

C. The Commission directs that that notice of the public hearing be provided by Westar to Westar customers via a bill insert and to the public in Westar's service territory via notice in larger newspapers throughout its service territory as discussed in paragraphs 14 through 16, above. As discussed, Westar and the PACP Director and Director of Communications should work together to develop the notices and accomplish publication. Notice shall be subject to the approval of the Prehearing Officer. Upon completion of providing notice to its customers and to the public, Westar shall file an affidavit verifying that notice to its customers and to the public has been provided in compliance with the Commission's directives and regulations.

D. The Commission encourages the public to submit comments concerning this docket via electronic mail and in writing, and encourages the use of websites to provide information to the public, as further discussed above in paragraph 17 - 18. The public comment period shall begin and end, with reports to be submitted by the PACP Office, as discussed in paragraph 18, above.

E. The Commission adopts the procedural schedule proposed by the parties, including a prehearing conference and evidentiary hearing, as set forth in paragraphs 19 through 22, above. The Commission schedules a Prehearing Conference for March 25, 2011, beginning at 1:30 p.m. in the Commission's Third Floor Hearing Room, (or such other room as may be designated, if necessary) of the Commission's offices at 1500 SW Arrowhead Road, Topeka, KS 66604-4027, as further discussed in paragraph 20, above. The Commission schedules an evidentiary hearing, with the Commission presiding, to begin March 30, 2011, at 9:00 a.m., in the First Floor Hearing Room of the Commission's Offices, 1500 SW Arrowhead Road, Topeka,

Kansas 66604-4027, as further discussed above in paragraph 21. A final order in this docket shall be issued by the Commission on or before May 9, 2011.

F. The Commission orders service of this order be made by electronic mail, with a notation that no hard copy will follow. This is a procedural order and constitutes nonfinal agency action under the Kansas Judicial Review Act (KJRA). K.S.A. 77-607(b)(2). Parties have 15 days from service of this order to file a petition for reconsideration. K.S.A. 2009 Supp. 77-529(a)(1). Filing a petition for reconsideration is a predicate for judicial review of the Commission's orders, and interlocutory review of nonfinal agency action is limited by the KJRA. K.S.A. 2009 Supp. 77-529(a)(1); K.S.A. 77-607; K.S.A. 66-118b; K.S.A. 77-608.

G. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn; Harkins, Com.; Loyd, Com.

Dated: DEC 30 2010

ORDERED MAILED
ELECTRONIC

DEC 30 2010

Susan K. Duffy EXECUTIVE
DIRECTOR

Susan K. Duffy
Executive Director

crr

CERTIFICATE OF SERVICE

11-WSEE-377-PRE

DEC 30 2010

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order Adopting Report and Recommendations of Prehearing Officer and Setting Procedural Matters and Schedule was served by electronic mail this 30th day of December, 2010, to the following parties who have waived receipt of follow-up hard copy:

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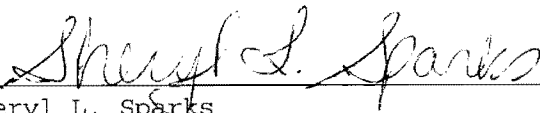
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ORDER MAILED DEC 30 2010
ELECTRONIC