

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

In the Matter of the Application of)
Midwest Power Company For)
A Certificate of Public Convenience) Docket No. 19-MPCE-064-COC
And Necessity to Transact the)
Business of a Public Utility In the)
State of Kansas.)

**MIDWEST POWER COMPANY’S SURREPLY TO WESTAR’S REPLY IN SUPPORT OF
MOTION FOR ORDER REQUIRING REILING OF APPLICATION AND SUPPORTING
TESTIMONY AND RESTARTING 180-DAY CLOCK**

COMES NOW, Midwest Power Company (“MWP”) and hereby files its surreply to the November 13, 2018 *Reply in Support of Motion for Order Requiring Reiling of Application and Supporting Testimony and Restarting 180-Day Clock* filed by Westar Energy, Inc. (“Westar”). In support of its Surreply, MWP hereby states as follows:

1. Westar continues to push a false narrative before this Commission. MWP has not changed its position from its initial application and supporting testimony, MWP filed its application in good faith and the application clearly stated that “[t]o the extent required, KeyCorp will modify the Guaranty to ensure that any operations, maintenance or capital expenses required to be paid by MWP pursuant to the Operation Agreement will be paid.”¹ As evidenced by numerous agreements previously reviewed by and approved by this Commission, MWP has no obligation to pay operations, maintenance or capital expenses that are not paid from revenues from the 8% interest in the Jeffrey Energy Center that comprise the Trust Estate. Westar does, however, have this contractual obligation.

¹ MWP Application at ¶ 28. (Emphasis supplied.)

2. As support for its claim that MWP has substantially changed its position, Westar relies on Staff witness Chad Unrein's testimony that misquotes MWP's application by stating that "in its application, MWP and KeyCorp were willing to modify the Guaranty to the extent *required by the Commission.*" In fact, MWP made no such statement. The exact quote from MWP's application related only to the obligations under the Operation Agreement, as set forth in paragraph 1 above. Similarly, in the testimony filed in support of MWP's application, MWP stated that if it does not have sufficient cash flows to fulfill its obligations under the Operation Agreement, the guaranty provided to MWP by KeyCorp ensures that any obligation undertaken by MWP shall be fully discharged, and noted that "to the extent required, KeyCorp will modify the Guaranty to ensure that any operations, maintenance or capital expenses required to be paid by MWP pursuant to the Operation Agreement will be paid."²

3. Westar is altering MWP's statements in its application and supporting testimony in an effort to shirk its own contractual obligations, obligations affirmed by contracts that were approved by the Commission and have been in place for twenty-seven years.

4. Westar next suggests that it is irrelevant whether it was aware of the terms of the various contracts, stating, rather, that what Westar believes is relevant is whether Westar, Staff, and the Commission were aware of MWP's interpretation of the contracts and its intent to rely on the same.

5. Westar's incredible argument regarding relevance or irrelevance further demonstrates that it is unwilling or unable to provide accurate statements to the Commission that recognize its obligations to cover any shortfalls between the revenue generated by the Trust Estate and operations, maintenance and capital expenses. Rather, Westar suggests that the

² MWP Testimony at p. 11, lines 9-15.

relevant contracts should not be the focus when making this “procedural decision” and instead trumpets its fictitious “new position” argument.

6. MWP has not set forth a new position. Requiring an amended application and supporting testimony only serves to create additional delay, compounds the myriad issues surrounding the expiration of the JEC Lease Agreement on January 3, 2019, and provides Westar with additional time to conceive even more arguments to avoid the contractual obligations they themselves bargained for. Westar should simply admit that it has the contractual obligations to cover any shortfalls and stop its disingenuous charade.

Respectfully submitted,

POLSINELLI PC

By: /s/ Anne E. Callenbach

FRANK A. CARO, JR. (#11678)
ANNE E. CALLENBACH (#18488)
900 West 48th Place, Suite 900
Kansas City, Missouri 64112
(816) 572-4760
Fax No. (816) 751-1536
fcaro@polsinelli.com
acallenbach@polsinelli.com

ANDREW B. YOUNG
MAYER BROWN LLP
1999 K Street, N.W.
Washington, D.C. 20006
(202) 263-3272
ayoung@mayerbrown.com

ATTORNEYS FOR PETITIONERS

VERIFICATION

STATE OF Missouri)
)
COUNTY OF Jackson)

I, Anne E. Callenbach, being duly sworn, on oath state that I am counsel to Petitioners, that I have read the foregoing pleading and know the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge and belief.

By: *A. Callenbach*
Anne E. Callenbach

The foregoing pleading was subscribed and sworn to before me this November 14, 2018.

Phyllis E. Edwards
Notary Public

My Commission Expires:

1/30/2021

PHYLLIS E. EDWARDS
NOTARY PUBLIC-NOTARY SEAL
STATE OF MISSOURI
CLAY COUNTY
MY COMMISSION EXPIRES 1/30/2021
COMMISSION # 13471396

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading has been x emailed, faxed, hand-delivered and/or mailed, First Class, postage prepaid, this November 14, 2018, to:

AMBER SMITH, CHIEF LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
a.smith@kcc.ks.gov

MATTHEW B. McKEON, SVP & ASSISTANT GENERAL COUNSEL
KEY EQUIPMENT FINANCE
66 SOUTH PEARL STREET- 5TH FLOOR
ALBANY, NY 12207
matthew.b.mckeon@key.com

AMY G. PAINE, SVP Asset Mgmt.
KEY EQUIPMENT FINANCE
1000 SOUTH McCASLIN BLVD.
SUPERIOR, CO 80027
amy.g.paine@key.com


COLE BAILEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
c.bailey@kcc.ks.gov

MICHAEL DUENES, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
m.duenes@kcc.ks.gov

CATHRYN J DINGES, CORPORATE COUNSEL
KANSAS GAS & ELECTRIC CO. D/B/A WESTAR ENERGY
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
cathy.dinges@westarenergy.com

LESLIE WINES
WESTAR ENERGY, INC.
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
leslie.wines@westarenergy.com

ANTHONY WESTENKIRCHNER, SENIOR PARALEGAL
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PL, 1200 MAIN ST 19TH FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
anthony.westenkirchner@kcpl.com



Anne E. Callenbach