

Received
on

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

MAY 16 2012

IN THE MATTER OF WESTAR ENERGY)
AND KANSAS GAS AND ELECTRIC)
COMPANY SEEKING COMMISSION)
APPROVAL TO IMPLEMENT CHANGES IN)
THEIR RENEWABLE ENERGY PROGRAM)
RIDER ADDING A SUSTAINABILITY)
PROGRAM OPTION FOR LARGE)
COMMERCIAL OR INDUSTRIAL)
CUSTOMERS)
_____)

by
State Corporation Commission
of Kansas

DOCKET NO. 12-WSEE-652-TAR

**OCCIDENTAL'S RESPONSE TO WESTAR, PROPOSED TARIFF REVISIONS AND,
IN THE ALTERNATIVE, REQUEST TO EXTEND THE SUSPENSION PERIOD**

COMES NOW, Occidental Chemical Corporation ("OXY") and respectfully submits this response to the Reply to Petition to Intervene filed by Westar Energy, Inc. ("Westar") and Kansas Gas and Electric Company ("KGE") (collectively, "Westar") on March 7, 2012. This response includes proposed changes to Westar's requested Renewable Energy Program Rider to resolve OXY's concerns and, in the alternative, a request to extend the suspension period for an additional 150 days, as allowed by law.¹ In support, OXY states to the State Corporation Commission of the State of Kansas ("KCC" or "Commission"), as follows:

1. On February 24, 2012, Westar filed its application proposing revisions to the Renewable Energy Program Rider. This proposed revision adds a Sustainability Program Option for large commercial and industrial customers. Westar's proposal alters the current program by allowing these customers to designate a certain percentage of their energy usage to be sourced from renewable resources in 5% increments, rather than purchasing 100 kWh blocks, and by proposing up to a 30%

¹ K.S.A. § 66-117.

discount to the Renewable Energy Charge for these customers based on achieving certain LEED certifications or based on the “customer’s commitment to sustainable energy initiatives, plus the average load and energy use of the customer.” Westar claims that this option will encourage large commercial and industrial customers to participate in the Renewable Energy Program.²

2. On March 16, 2012, the Commission issued an order suspending this proceeding for 90 days to May 29, 2012, to allow Staff additional time to review Westar’s application.

3. On April 24, 2012, OXY filed its Petition to Intervene in this proceeding.

4. On May 7, 2012, the Commission issued an order granting OXY’s Petition to Intervene, and an order designating a prehearing officer.

5. Also on May 7, 2012, Westar filed its Reply to OXY’s Petition to Intervene (“Reply”). Westar’s Reply contains new factual assertions and contentions that were not provided as part of its application in this proceeding. Despite Westar’s arguments, Westar’s proposed tariff could result in unlawful cost-shifting, subsidization, and discrimination in violation of K.S.A. § 66-101b.

6. For the reasons stated herein, OXY is providing proposed revisions to Westar’s requested tariff to address the concerns OXY has identified. If the Commission is not prepared to adopt OXY’s proposed revisions at this time, OXY alternatively requests extension of the suspension period for 150 days, as allowed by law, so that other appropriate protections may be developed to ensure that customers are not subjected to unlawful cost-shifting and discrimination.

² Reply at ¶ 10.

Cost-Shifting and Subsidization

7. As proposed, Westar's tariff revisions could result in unlawful cost-shifting and subsidization. Rates that cause one set of customers to pay costs caused by another set of customers are unreasonable, discriminatory, and unduly preferential in violation of K.S.A. § 66-101b. As the Kansas Supreme Court has stated, "the touchstone of public utility law is the rule that one class of consumers shall not be burdened with costs created by another class."³

8. Unlawful cost-shifting would occur under the proposed tariff revisions if Westar were to purchase additional renewable energy at a cost that is greater than Westar's avoided cost of energy plus the Renewable Energy Charge paid by a participating customer, net of any program costs. Cost-shifting would also occur if Westar purchased renewable energy credits (RECs) at a per-unit cost that is greater than the amount Westar is collecting from a participating customer through the Renewable Energy Charge, net of any program administration costs. Westar indicates in its Reply that it does not intend to purchase any additional renewable energy, and would meet any demand under the program that is not covered by Westar's existing renewable energy supply exclusively by purchasing RECs, which are currently available at a cost that is less than the Renewable Energy Charge being charged to customers.⁴ However, Westar's proposed tariff does not include this restriction. Since there is no guarantee that REC prices will remain low,⁵ or that Westar would not

³ *Jones v. Kan. Gas & Elec. Co.*, 222 Kan. 390, 401 (Kan. 1977).

⁴ Reply at ¶ 8.

⁵ For example, the Federal Production Tax Credit is scheduled to expire at the end of 2012 for wind generation. See http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=US13F.

purchase technology-specific RECs at a higher price,⁶ the tariff should contain explicit protection against unlawful cost-shifting.⁷ The Commission should therefore include a provision restricting Westar from purchasing renewable energy or RECs to meet demand under the Renewable Energy Program in a manner that would shift costs to non-participating customers. It is also important to ensure that any incremental purchases Westar makes to meet additional demand under the Renewable Energy Program do not involve a commitment that extends beyond the period of the customer commitment giving rise to the incremental purchase, which could also shift costs to other customers. OXY has attached a revised tariff sheet as Appendix "A" that contains proposed language to prevent cost-shifting.

Discriminatory Rate Discounts

9. Westar's proposed tariff revisions could result in Westar unlawfully discriminating among its customers as prohibited by K.S.A. § 66-101b.

10. Under Westar's proposed changes to the Renewable Energy Program Rider, Westar "may consider reducing the Renewable Energy Charge . . . for customers obtaining Silver, Gold, or Platinum LEED certification from the US Green Building Council. [Westar] may also consider the reduction to the Renewable Energy Charge based on the customer's "commitment to sustainable energy initiatives, plus the average load and energy use of the customer." Under this language, Westar "may consider" granting a discount anywhere from 0% to 30%, but is not required to, based

⁶ Information from the Department of Energy shows that solar REC prices ranged from \$200 to \$650/REC during 2008-2010. See <http://apps3.eere.energy.gov/greenpower/markets/certificates.shtml?page=5>.

⁷ Westar attempts to dismiss the cost-shifting issues with its tariff by noting that the current Renewable Energy Charge was previously approved by the Commission. Clearly, the Commission has not reviewed the new Sustainability Program Option, which Westar claims will increase participation from large commercial and industrial consumers. This increased participation could cause significant cost-shifting if Westar purchases additional renewable energy or RECs on behalf of these customers, as discussed in Paragraph 8 of this pleading.

on certain LEED certifications or other ambiguous "commitments" to "sustainable energy initiatives." There is no requirement that these discounts be consistently applied, nor is there any guidance as to the discount level that would result from certain activities.⁸ Westar's proposal gives it complete discretion over whether to grant a discount at all and what that discount should be. Westar's proposed tariff would therefore permit Westar to discriminate among similarly situated customers in violation of K.S.A. § 66-101b.

11. OXY has modified the proposed tariff to remove the inappropriate provisions that could result in Westar unlawfully discriminating among its customers, which is attached as Appendix "A."

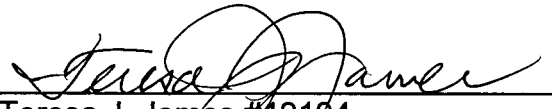
Request for Extension of the Suspension Period

12. For the reasons discussed herein, OXY requests that the Commission include the proposed tariff revisions contained in Appendix "A." However, if the Commission is not prepared to approve these changes at this time, or believes that other protections would be appropriate, OXY respectfully requests that the suspension period be extended by an additional 150 days, pursuant to K.S.A. § 66-117, to allow for the development of appropriate solutions to the cost-shifting and discrimination issues inherent in Westar's proposal. OXY has raised important legal issues that must be addressed prior to approval of Westar's tariff change. OXY therefore asks that the current suspension period, which expires on May 29, 2012, be extended by 150 days, as authorized by law.

⁸ Moreover, because Westar submitted no evidence whatsoever to support its request for additional discounts, it is impossible for the Commission or the parties to evaluate whether any additional discounts are warranted for these activities at all.

WHEREFORE, OXY respectfully requests that the Commission adopt the proposed tariff language in Appendix "A" or, in the alternative, extend the suspension period so that alternative language and protections may be developed to address the cost-shifting and discrimination issues addressed herein.

Respectfully submitted,



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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

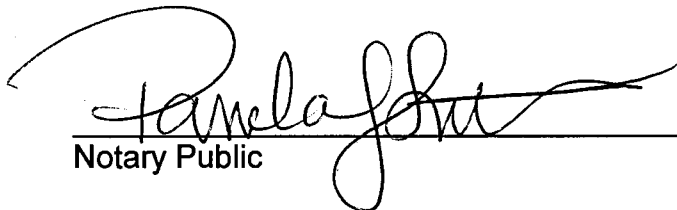
Teresa J. James, of lawful age, being first duly sworn, upon oath states:

That she is one of the attorneys for the intervenor, 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 16 day of May, 2012.



Notary Public

My Appointment Expires:
2/16/15



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition to Intervene was sent via U.S. First Class mail on this 16th day of May, 2012, to:

Holly Fisher, Attorney Kansas Corporation Commission 1500 SW Arrowhead Road Topeka, KS 66604-4027	Andrew French, Advisory Counsel Kansas Corporation Commission 1500 SW Arrowhead Road Topeka, KS 66604-4027
Cathryn J. Dinges, Corporate Counsel Westar Energy, Inc. 818 S. Kansas Avenue P.O. Box 889 Topeka, KS 66601-0889 Fax: 785-575-8136 Cathy.dinges@westarenergy.com	Michael B. Heim, Sr. Regulatory Analyst Westar Energy, Inc. 818 S. Kansas Avenue P.O. Box 889 Topeka, KS 66601-0889 Michael.heim@westarenergy.com
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Teresa J. James

APPENDIX "A"

OXY'S PROPOSED REVISIONS TO WESTAR'S PROPOSED
RENEWABLE ENERGY PROGRAM RIDER

1. Amend the proposed **SUSTAINABILITY PROGRAM OPTION** Section on Sheet 2 by deleting the third paragraph, as follows:

SUSTAINABILITY PROGRAM OPTION

Available to customers taking service under the Medium General Service or High Load Factor rate schedules.

Customers electing to take a portion of their renewable energy under this Sustainability Program Option may receive a percentage of their monthly renewable energy usage from available Company provided renewable resources in 5 percent increments of their total monthly energy use. The monthly energy use will be rounded up to the nearest 100 kWh block for billing.

~~Additionally, the Company may consider reducing the Renewable Energy Charge shown above for customers obtaining Silver, Gold, or Platinum LEED certification from the US Green Building Council. Company may also consider the reduction to the Renewable Energy Charge based on the customer's commitment to sustainable energy initiatives, plus the average load and energy use of the customer. The reduction to the standard Renewable Energy Charge shall not exceed 30% per block.~~

2. Amend the proposed **DEFINITIONS AND CONDITIONS** Section on Sheet 3 by adding the following language to Paragraph 3, to read as follows:
3. Renewable Energy shall be limited to the sum of (a) generation produced by Company-owned renewable sources, (b) outside renewable sources available to the Company and (c) renewable energy credits purchased by the Company. Service under this Renewable Energy Program Rider may be limited at the sole discretion of the Company to such available resources. Each renewable energy credit purchased by the Company for purposes of the Renewable Energy Program shall not exceed the Renewable Energy Charge applicable to any customer participating in the Renewable Energy Program, net of program administration costs. The cost of outside renewable sources for the purposes of the Renewable Energy Program may not exceed the avoided cost of energy for the interval of purchase plus the Renewable Energy Charge applicable to any customer, net of program administration costs. Company shall not enter into commitments to purchase renewable energy credits or outside renewable energy that exceed the commitment period of customers participating in the Renewable Energy Program.



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May 15, 2012

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Executive Director
Kansas Corporation Commission
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Received
on

MAY 16 2012

by
State Corporation Commission
of Kansas

RE: Docket No. 12-WSEE-652-TAR
Our File No. 30938-0002
Oxy's Response to Westar, Proposed Tariff Revisions and, in the Alternative,
Request to Extend the Suspension Period

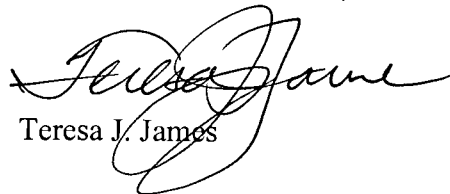
Dear Ms. Petersen-Klein:

Enclosed please find the original and seven copies of OXY Chemical Corporation's
Response to Westar, Proposed Tariff Revisions and, in the Alternative, Request to Extend the
Suspension Period in the above referenced docket.

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/pjs

Enclosures

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