

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

In the Matter of Westar Energy, Inc. and)
Kansas Gas and Electric Company Seeking)
Commission Approval to Implement Changes) Docket No. 19-WSEE-327-TAR
in their Transmission Delivery Charges Rate)
Schedules.)

**STAFF’S REPLY TO THE KANSAS INDUSTRIAL CONSUMERS GROUP,
INC.’S PETITION FOR INTERVENTION**

I. BACKGROUND

1. On February 15, 2019, Westar Energy, Inc. and Kansas Gas and Electric Company (Westar) filed an updated Transmission Delivery Charge (TDC) tariff.¹ Westar noted the updated TDC tariff “results in shifting the allocation of the revenue requirement among the customer classes, as a result of the application of the new 12 [Coincident Peak] allocation factors agreed to and approved in the Stipulation and Agreement in Docket 18-WSEE-328-RTS.”² Westar further detailed its desire for collaborative discussions regarding the shifted allocation factors.³

2. On February 26, 2019, the Kansas Industrial Consumers Group, Inc. (KIC) petitioned to intervene.⁴ KIC’s intervention primarily focused on how new 12 Coincident Peak (12 CP) allocators assign a larger portion of Westar’s transmission-related costs to non-residential customer classes.⁵ KIC argued Westar’s updated TDC tariff results in unjust and unreasonable rates, and produces “rate shock” for numerous Westar customers.⁶ As a result, KIC requested the Commission take immediate action to address Westar’s TDC allocation methodology and reduce the likelihood of future swings in TDC cost assignment.⁷

¹ Tariff for Westar Energy (Feb. 25, 2019).

² *See id.* at p. 1.

³ *See id.*

⁴ Petition to Intervene of Kansas Industrial Consumers Group, Inc. (Feb. 26, 2019) (KIC PTI).

⁵ *See id.* at p. 2.

⁶ *See id.*

⁷ *See id.*

II. STAFF'S REPLY

3. Staff does not oppose KIC's intervention request or exploring rate design solutions to mitigate the volatility of the TDC for individual classes. However, KIC argues "immediate action" must be taken to mitigate Westar's TDC allocation. Staff must respond as this request requires the Commission disregard and unwind an approved settlement agreement KIC agreed to.

A. The 18-WSEE-328-RTS Settlement Agreement

4. In Westar's last general rate proceeding, Docket No. 18-WSEE-328-RTS (18-328 Docket), KIC agreed to a Non-Unanimous Stipulation and Agreement (S&A)⁸ that explicitly detailed the TDC allocation methodology Westar would use in the instant docket:

The Parties agree that Westar's transmission delivery charge (TDC) between this rate case and the next base rate case will be allocated by the 12 CP factors listed in the table in Appendix B. Parties recognize that the first TDC filing after the Order in this case will use these factors. In subsequent years, until a new 12 CP is set in the next base rate case, the amounts will be calculated by applying the adjustment factor to the TDC unit charges, pursuant to the requirements specified in Westar's TDC tariff.⁹

5. Appendix B to the S&A explicitly identified these 12 CP allocation factors:¹⁰

Class	Load	Allocation %
RES	1,297.0	37.98%
DG	0.3	0.01%
SGS	682.3	19.98%
MGS	446.7	13.08%
LGS	530.9	15.55%
ILP	151.6	4.44%
LTM	17.0	0.50%
INT	9.4	0.28%
SPL	130.3	3.82%
RITOD	2.8	0.08%
SCH	144.0	4.22%
LIGHT	2.7	0.08%
TOTAL	3,415.1	100.00%

⁸ Joint Motion to Approve Non-Unanimous Stipulation and Agreement, Docket No. 18-WSEE-328-RTS, pp. 4 (Jul. 17, 2018). Note: Attached to the Joint Motion was a public version of the Stipulation and Agreement. KIC's signature is affixed to both the Joint Motion and Stipulation and Agreement. See e.g. Non-Unanimous Stipulation and Agreement, Docket No. 18-WSEE-328-RTS, p. 17 (Jul. 17, 2018).

⁹ Non-Unanimous Stipulation and Agreement, Docket No. 18-WSEE-328-RTS, p. 10, ¶ 36 (Jul. 17, 2018).

¹⁰ Non-Unanimous Stipulation and Agreement, Docket No. 18-WSEE-328-RTS, Appendix B (Jul. 17, 2018).

6. Per the agreement, Westar's 2019 TDC uses the 12 CP allocation factors from the 18-328 Docket's S&A. Now, KIC argues the 12 CP allocation factors it agreed to a mere seven months ago, which the law presumes reasonable,¹¹ are in fact unjust and unreasonable.¹² KIC is bound to the terms contained within the 18-328 Docket's S&A. Specifically:

If the Commission accepts this [S&A] in its entirety and incorporates the same into a final order without material modification, the Parties shall be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's order on these issues.¹³

7. In support of the S&A, KIC testified the "settlement represents a reasonable compromise of the disputed issues presented in this case and does result in a fair and balanced result for both Westar and customers."¹⁴ KIC's Post-Hearing Brief in support of the S&A argued, in part, the S&A: (1) was supported by substantial competent evidence, (2) conformed with applicable law, (3) established just and reasonable rates, and (4) was in the public interest.¹⁵ KIC unquestionably agreed to and supported approving the 18-328 Docket's 12 CP allocation factors.

B. "Rate Shock"

8. KIC argues accepting the 12 CP allocation factors it agreed to would result in an unjust and unreasonable outcome and "rate shock."¹⁶ At the time KIC agreed to these allocators, Westar's TDC annually recovered approximately \$256 million from Kansas ratepayers. KIC was aware its members would be responsible for, assuming no change in the TDC's revenue

¹¹ See K.S.A. 66-115.

¹² "Though it may be the product of an approved formula, this immediate and significant change in cost assignment is very clearly an unjust and unreasonable ratemaking outcome – producing 'rate shock' for numerous Westar customers." KIC PTI, p. 2.

¹³ Non-Uniform Stipulation and Agreement, Docket No. 18-WSEE-328-RTS, p. 15, ¶ 55 (Jul. 17, 2018). The Commission approved the 18-328 Docket's S&A on September 27, 2018. Order Approving Non-Uniform Stipulation and Agreement, Docket No. 18-WSEE-328-RTS, p. 42 (Sep. 27, 2018).

¹⁴ Testimony in Support of Stipulated Settlement Prepared by Michael P. Gorman, p. 4 ll. 19 – 20 (Jul. 18, 2018).

¹⁵ KIC's Post-Hearing Brief in Support of Non-Uniform Stipulation and Agreement, Docket No. 18-WSEE-328-RTS, pp. 6 – 11 (Aug. 24, 2018).

¹⁶ KIC PTI, p. 2.

requirement, a certain percentage of the \$256 million charge. In the instant proceeding, Westar reduced its TDC request to approximately \$248 million – a fact KIC recognizes.¹⁷ In short, KIC’s members agreed to be responsible for certain percentages of a \$256 million charge (identified in Appendix B to the S&A) and now claim they are “shocked” by being assessed the *same percentage of a lesser amount*.

9. If any party is “shocked” it certainly should not be KIC. After all, KIC envisioned this very process. While briefing issues in a separate ongoing TDC proceeding, KIC argued:

The appropriate forum for litigating [TDC] cost allocation is in a general rate case. Staff and all other parties will have a chance to argue this issue in Westar’s ongoing rate case [(i.e. the 18-328 Docket)]. And a new 12-CP allocator will then be adopted in that case for *prospective* use in future Westar TDC filings.¹⁸

10. KIC knew an “appropriate forum” to adjust Westar’s TDC allocation was a rate case because it was KIC’s idea. The settlement agreement KIC executed, which KIC is bound to, followed its own recommended process.

C. Conclusion

11. Asserting a rate is unjust or unreasonable is a significant allegation. In this instance, KIC unapologetically claims the very 12 CP allocation factors it agreed to produce an unjust and unreasonable result. Nevertheless, KIC testified and briefed the Commission that the 18-328 Docket’s S&A produced a just and reasonable result. KIC knew, or should have known, how the S&A’s allocation factors would impact its members. Parties that enter into settlement agreements, absent circumstances justifying abrogation, must remain bound by those agreements. Any other result undermines the legitimacy of settlement agreements.

¹⁷ See *id.* at p. 1.

¹⁸ Initial Brief of Kansas Industrial Consumers Group, Inc., Docket No, 18-WSEE-355-TAR, p. 18 (Jun. 1, 2018) (emphasis in original).

WHEREFORE, Staff respectfully submits its Reply to the Kansas Industrial Consumers Group, Inc.'s Petition to Intervene and hereby requests the Commission permit KIC to intervene in the docket, permit Westar's TDC to go into effect subject-to-refund while parties explore rate design considerations, and for any other relief the Commission deems just and reasonable.

Respectfully submitted,

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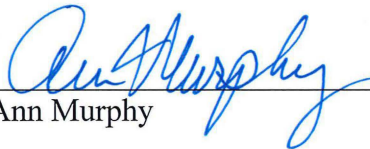
VERIFICATION

Robert E. Vincent, being duly sworn upon his oath deposes and states that he is a Senior Litigation Counsel for Litigation Counsel of the Kansas Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Staff's Reply To The Kansas Industrial Consumers Group, Inc.'s Petition For Intervention*, and attests that the statements contained therein are true and correct to the best of his knowledge, information and belief.



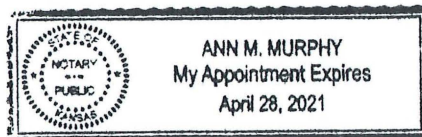
Robert E. Vincent
Senior Litigation Counsel
State Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 8th day of March, 2019.



Ann Murphy

My Appointment Expires: 4-28-21



CERTIFICATE OF SERVICE

19-WSEE-327-TAR

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Reply To The Kansas Industrial Consumers Group, Inc.'s Petition For Intervention was served via electronic service and first class U.S. Mail on this 8th day of March, 2019, to the following:

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