

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

In the Matter of Joint Application of Westar)
Energy, Inc. and Kansas Gas and Electric)
Company for Recovery of Certain Costs) Docket No. 19-WSEE-355-TAR
Through Their RECA.)

**STAFF'S RESPONSE TO THE PETITION FOR CLARIFICATION OF WESTAR
ENERGY, INC. AND KANSAS GAS AND ELECTRIC COMPANY**

The Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively), hereby files its Response to the Petition for Clarification of Westar Energy, Inc. and Kansas Gas and Electric Company, ("Westar"), concerning the Commission's September 12, 2019 Order on Westar's Application to Recover Certain Costs through its RECA related to the 8% portion of Jeffrey Energy Center ("Order") in the above captioned matter.

I. Background

1. On March 4, 2019, Westar filed a Joint Application for recovery through its Retail Energy Costs Adjustment (RECA) of the lease expense and non-fuel operations and maintenance expense (NFOM) associated with its seven-month lease extension and subsequent purchase of an 8% interest in Jeffrey Energy Center, (JEC). The lease extension and purchase were the result of a settlement agreement between Westar and Midwest Power Company (MWP) to settle disputes related to the 8% undivided interest.

2. Testimony was filed in the docket by Staff, Westar, the Citizens' Utility Ratepayer Board and Kansas Industrial Consumers Group, Inc. On July 16, 2019, the Commission held a one day evidentiary hearing and post-hearing briefs were filed by all parties.

3. On September 12, 2019, the Commission issued its Order denying Westar's Application to recover the lease payments for the seven-month lease extension and the NFOM

associated with the 8% interest as well as fuel costs and future capital costs related to the 8% interest in JEC.¹

4. On September 27, 2019, Westar filed a Petition for Reconsideration or Clarification. In its petition, Westar requested the Commission to 1) reconsider its finding that Westar was imprudent because it did not timely consider alternatives to the MWP settlement or 2) issue an order clarifying that if Westar commits to never requesting recovery of the \$3.7 million purchase price for the 8% interest in JEC or the \$4.83 million in lease payments for the seven-month lease extension, qualifying Westar's purchase as a "zero-cost transfer" and conforming to paragraph 29 of the NS&A, then Westar would be allowed to automatically recover the fuel and NFOM costs associated with the 8% interest in JEC.²

II. Staff's Response to Westar's Petition For Clarification

5. Commission Staff is choosing not to respond to Westar's Petition for Reconsideration. Accordingly, this response will only address Westar's Petition for Clarification regarding the treatment of the purchase price and lease payments associated with the 8% interest in JEC.

6. The Commission's Order concludes the Non-Unanimous Stipulation & Agreement (NS&A) approved by the Commission in Westar's General Rate Case controls the legal analysis with respect to the treatment of the costs related to the 8% interest in JEC.³ In the Order the Commission acknowledges that if Westar would have negotiated a zero cost transfer of ownership

¹ Order on Westar's Application to Recover Certain Costs through its RECA related to the 8% portion of Jeffrey Energy Center ("Order"), (Sept. 12, 2019).

² Petition for Reconsideration or Clarification of Westar Energy, Inc. and Kansas Gas and Electric Company, (Sept. 27, 2019).

³ Order, ¶ 17.

(defined as \$0 or \$1), Westar would automatically be entitled to begin recovery of actual NFOM expenses and fuel expenses associated with the 8% interest of JEC without Commission approval.⁴

7. Referring to the Commission's conclusion on the NS&A, Westar's Petition for Clarification offers a commitment by Westar to never seek recovery of the \$3.7 million acquisition price or the \$4.83 million in lease payments for the seven-month lease extension from Westar's ratepayers. Westar submits this commitment would be equivalent to a zero-cost transfer to obtain the 8% interest in JEC if Westar does not seek to recover the purchase price or lease cost from its customers. Thus conforming to the intent of paragraph 29 of the NS&A.⁵

8. Staff's interpretation of the NS&A, specifically paragraph 29 of the settlement is, if Westar could negotiate a transfer of the 8% interest in JEC on behalf of its customers at no additional cost (defined as \$0 or \$1), then all parties to the NS&A agreed Westar could automatically begin recovering NFOM and fuel costs associated with the 8% interest. Whether Westar actually paid more than \$1 or not is irrelevant to the true intent of the NS&A, which was to ensure that ratepayers could only be exposed to a purchase price or lease expense larger than \$1 if the decision to purchase the 8% interest was found to be prudent for ratepayers. In other words, if Westar could procure the 8% interest in a way that effectively has no incremental rate impact on customers (in the same fashion as a \$0 or \$1 purchase), Westar would not have to seek Commission approval and Westar would automatically be entitled to begin recovering NFOM and fuel costs related to the 8% interest in JEC.

9. Staff acknowledges this interpretation is not what is literally written in paragraph 29 of the NS&A. The plain reading of paragraph 29 states Westar is automatically entitled to recover NFOM and fuel expenses related to the 8% interest only if Westar "ends up negotiating a

⁴ Order, ¶ 22

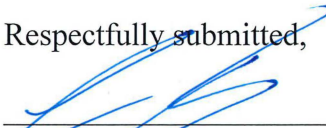
⁵ Westar's Petition for Clarification at 6.

zero-cost transfer of ownership.”⁶ While Westar did not actually negotiate a zero-cost transfer from Midwest Power, Westar’s commitment to not recover these costs has exactly the same impact to Westar’s ratepayers. If Westar had ended up with a \$0 or \$1 transfer, ratepayer exposure to NFOM and fuel costs associated with the 8% interest would be identical to Westar’s suggested commitment to never recover the purchase price or lease expense from its customers.

10. While Westar did not literally negotiate a zero-cost transfer of the 8% interest in JEC, Staff believes that Westar’s commitment to never seek recovery of the \$3.7 million purchase price and the \$4.83 million lease expense equates to a “zero-cost transfer” from the perspective of ratepayers. Because of Westar’s commitment, Staff contends that Westar should be allowed to recover NFOM and fuel costs linked to the 8% interest in JEC through the RECA.

WHEREFORE, Staff respectfully requests the Commission accept Westar’s petition for clarification and find that Westar’s commitment to never recover the \$3.7 million purchase price or the \$4.83 million in lease expense from customers essentially equates to a “zero cost transfer” to customers that allows Westar to recover the NFOM and fuel costs associated with the 8% interest in JEC through its RECA.

Respectfully submitted,



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⁶ NS&A ¶ 29.

VERIFICATION

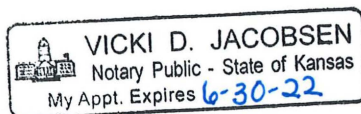
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

Cole Bailey, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Staff's Response to the Petition for Clarification of Westar Energy, Inc. and Kansas Gas and Electric Company*, and attests that the statements therein are true and correct to the best of his knowledge, information and belief.



Cole Bailey, S. Ct. #27586
Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 7th day of October, 2019.





Notary Public

My Appointment Expires: June 30, 2022

CERTIFICATE OF SERVICE

19-WSEE-355-TAR

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Response to the Petition for Clarification of Westar Energy, Inc. and Kansas Gas and Electric Company was served via electronic service this 7th day of October, 2019, to the following:

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