

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Joint Application of Westar           )  
Energy, Inc. and Kansas Gas and Electric           )     Docket No. 18-WSEE-328-RTS  
Company for Approval to Make Certain Changes       )  
in their Charges for Electric Services.               )

**RESPONSE OF WESTAR ENERGY, INC. AND  
KANSAS GAS AND ELECTRIC COMPANY TO SIERRA CLUB AND VOTE SOLAR'S  
PETITION FOR RECONSIDERATION**

COME NOW Westar Energy, Inc. and Kansas Gas and Electric Company (collectively, "Westar") and for their Response to Sierra Club and Vote Solar's Petition for Reconsideration ("PFR") state:

**I.     Introduction**

1.     On September 27, 2018, the State Corporation Commission of the State of Kansas ("Commission") issued its Order Approving Non-Unanimous Stipulation and Agreement (the Order will be referred to herein as the "Order Approving S&A" and the Stipulation and Agreement as "S&A"). Thereafter, on October 12, 2018, Sierra Club and Vote Solar (collectively referred to as "Sierra Club") filed their PFR. The PFR is not well founded and should be rejected.

2.     At the outset, it should be noted that the PFR does not address issues raised by Sierra Club concerning the cost of continued operation of Westar's coal-fired generating plants. Additionally, although the Commission traditionally applies a five-part test for evaluating settlement agreements, Sierra Club did not organize its brief to address the elements of the Commission's test. It appears, however, that Sierra Club did not contest that the S&A met the first element of the Commission's test – that opposing parties had an opportunity to be heard on their reasons for opposing the S&A – but argues that the S&A fails to meet each of the other elements of the Commission's test. The balance of this Response will address the four elements of the test

that Sierra Club contends were not met by the S&A. As the Commission found, the S&A: (1) is supported by substantial evidence in the record as a whole, (2) conforms with applicable law, (3) results in just and reasonable rates and (4) is in the public interest.

**II. The S&A is supported by substantial evidence in the record as a whole.**

3. Sierra Club alleges that the allocation of revenue and the RS-DG rate are not supported by substantial, competent evidence in the record.<sup>1</sup> Sierra Club suggests that there is no substantial evidentiary basis for the S&A's allocation of the rate reduction among the classes.<sup>2</sup> From that suggestion, Sierra Club concludes that there is insufficient support in the record for the proposed rates. Sierra Club's position overlooks several basic facts and principles.

4. First, as the courts have noted, ratemaking is not an exact science – there is no single cost-recovering rate, but a zone of reasonableness.<sup>3</sup> Additionally, “The matter of rate design involves a policy decision which is legislative in nature, and the Commission's orders in that regard demand utmost deference from the judicial branch.”<sup>4</sup>

5. Given the inexact nature of rate design and the disagreement between experts concerning the allocation of joint and common costs, in this case, as in numerous past cases, the Commission did not adopt the class cost of service of any party. Nor did the S&A enshrine the results of either Staff's or Westar's class cost of service. Rather, in the spirit of compromise, the

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<sup>1</sup> PFR, at Sections I.A. and I.B. In the PFR, Sierra Club did not contest the amount of the rate reduction reflected in the S&A.

<sup>2</sup> PFR, at ¶4.

<sup>3</sup> *Conway v. Federal Power Commission*, 426 U.S. 271, 278 (1976); *Farmland Industries, Inc. v. KCC*, 25 Kan. App. 2d 849, 855, 856-57 (1999).

<sup>4</sup> *Midwest Gas Users Ass'n v. KCC*, 5 Kan. App. 2d 653, syl. ¶ 3 (1981).

allocation of the revenue requirement reflected a compromise between the parties. As KCC Staff witness Dr. Glass described it:

The decrease in revenue requirement allocation started with an equal percentage decrease to all customer classes based on existing base rate revenue. Then the decrease for Large General Service, Industrial and Large Power, and Schools and Churches was increased by reducing the revenue requirement decrease to Residential, Small General Service and Lighting.<sup>5</sup>

6. Thus, contrary to Sierra Club's assertion, the allocation of the revenue decrease was based, among other things, on Staff's cost of service study. The S&A applied an equal percentage decrease with adjustments to those classes which Staff's class cost of service indicated were contributing more than their fair share to Westar's cost of service. As such, the resulting rates are supported by substantial evidence in the record as a whole.

7. Despite Sierra Club's contentions, the RS-DG rate is not an exception to this approach. In his original proposal, Dr. Glass treated RS-DG customers as though they were a part of the DG class.<sup>6</sup> As Dr. Glass explained during the hearing, the dynamic nature of the RS-DG class made the class cost of service unreliable as to that class.<sup>7</sup> Consequently, Dr. Glass proposed to reduce the standard residential rate and the residential distributed generation rate revenue by the same percentage.<sup>8</sup> And the S&A rate design retained the demand charges that Dr. Glass proposed in his direct testimony. In the S&A, as Dr. Glass stated, "When the differences in revenue requirement was [sic] taken into account, the three parties' proposed values for the three different

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<sup>5</sup> Glass, Testimony in Support of the Non-Unanimous Stipulation and Agreement, at 6.

<sup>6</sup> Glass, Tr. at 281.

<sup>7</sup> *Id.* at 288.

<sup>8</sup> *Id.* at 280-81. Dr. Glass proposed to reduce the revenue requirement for both RS and RS-DG customers by approximately 3.84%. Compare Exhibit RHG-1, page 1 with Exhibit RHG-1, page 3.

charges were close enough that a compromise rate design was achieved.”<sup>9</sup> Because the resulting rates more accurately reflect costs caused by RS-DG customers, the resulting rates are more just and reasonable than they were before.<sup>10</sup>

8. The reasonableness of the RS-DG rate is also supported by testimony of KCC Staff witnesses Myrick and Dr. Glass that Sierra Club chose to ignore concerning the use of the class cost of service study for rate setting purposes. As Ms. Myrick stated during her cross-examination by Sierra Club’s counsel, it is desirable to move classes closer to the system ROR “but that’s not the same thing as saying to 1 [that is, the system ROR].”<sup>11</sup> The class ROR is “just one of the many things” that rate design experts use as a guide in determining how to allocate a revenue requirement reduction among the classes.<sup>12</sup> And, as Dr. Glass noted, because the RS-DG class is very small and growing very rapidly, the rate of return calculated for the class “is probably not very reflective of the class.”<sup>13</sup> However, as Dr. Glass explained, the level of demand charges implemented in the S&A is far below the actual demand cost imposed by RS-DG customers.<sup>14</sup>

### **III. The S&A conforms with applicable law.**

9. Sierra Club contends that the S&A violates K.S.A. 66-117d,<sup>15</sup> 18 C.F.R. §292.305<sup>16</sup> and K.S.A. 66-101b.<sup>17</sup> Sierra Club’s arguments are unfounded.

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<sup>9</sup> Glass, Testimony in Support of the Non-Unanimous Stipulation and Agreement, at 3.

<sup>10</sup> Glass, Tr. at 286.

<sup>11</sup> Myrick, Tr. at 270.

<sup>12</sup> *Id.* at 271.

<sup>13</sup> Glass, Tr. at 288.

<sup>14</sup> *See* Glass, Tr. at 288-91.

<sup>15</sup> Sierra Club Brief, at ¶¶14-39.

<sup>16</sup> *Id.* at ¶¶40-54.

<sup>17</sup> *Id.* at 55-60.

**A. The S&A does not violate K.S.A. 66-117d.**

**1. The S&A does not set higher rates based on use of renewable energy.**

10. K.S.A. 66-117d prohibits utilities from charging higher rates or imposing any other prejudice or disadvantage on any customer in consideration of the customer's use of a renewable resource.<sup>18</sup> The S&A does not justify the RS-DG rate on the basis of customers' use of renewable resources. Rather, as the Commission noted, Westar witness Mr. Amen stated that the RS-DG rate is needed to address issues raised by customers which "are choosing to be 'partial requirements customers' rather than 'full requirements customers,' as most people used to be."<sup>19</sup> The Commission also noted that "Dr. Glass testified similarly, stating that the RS-DG demand charge is addressing the problem of the DG customer's 'basic behavior,' namely, 'that they still had similar demand on the system, but they used less energy.'"<sup>20</sup>

11. Thus, the RS-DG rate is designed to address revenue recovery issues associated with partial requirements customers who continue to demand service from the utility while they reduce their use of company-provided electricity through self-generation. That the affected customers may happen to use renewable resources does not affect the lawfulness of the S&A and the Order approving it. As Westar noted in its Reply Brief, the reference in the proposed tariff to renewable resources was taken directly from K.S.A. 66-1264(b), a section of the Net Metering and Easy Connection Act that specifically authorizes different rate schedules for "customer-generators."<sup>21</sup> The Commission properly found that Westar's willingness to change the RS-DG

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<sup>18</sup> K.S.A. 66-117d.

<sup>19</sup> Order Approving S&A, at ¶55.

<sup>20</sup> *Id.* at ¶56.

<sup>21</sup> Westar Reply Brief, at 9.

tariff to apply to all customers with self-generation, regardless of the type of generation alleviated this concern.<sup>22</sup>

12. Although the Commission did not rely upon it, K.S.A. 66-1265(e) provides further support for a finding that the RS-DG rate is lawful. As the Commission found: “the plain language of K.S.A. 66-1265(e) does not preclude the Commission from imposing higher rates on residential DG customers relative to residential non-DG customers. This is consistent with Kansas law providing that the Commission may implement ‘a rate structure imposing differing rates on different classes . . . if there is a reasonable basis to support it.’”<sup>23</sup>

13. It is also important to note, that not all customers on the RS-DG rate will pay more for electricity. Contrary to the record in this matter, Sierra Club – citing only to its own briefs and testimony – states “[i]t is undisputed in the record that the S&A will impose higher rates and charges overall for RS-DG customers than for RS customers *using the same amount of electricity and having the same demand.*”<sup>24</sup> However, that statement simply is not true. As Dr. Faruqui testified, some customers will pay more and some will pay less under the RS-DG rate than under the standard residential rate.<sup>25</sup> As he noted, there is a break even point between the standard residential rate and the RS-DG rate around 900 kWh per month and about 5 kW demand.<sup>26</sup> As a result, a customer on the RS-DG rate with an average monthly usage of 900 kWh and a demand less than 5kW would pay less under the RS-DG rate than under the standard residential rate.<sup>27</sup>

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<sup>22</sup> Order Approving S&A, at ¶61.

<sup>23</sup> *Id.* at ¶63, quoting *Midwest Gas Users Ass’n v. KCC*, 5 Kan. App. 2d 653, 663 (1981).

<sup>24</sup> PFR, at ¶20 (emphasis original).

<sup>25</sup> Faruqui, Tr. at 183.

<sup>26</sup> *Id.* at 224.

<sup>27</sup> *Id.*

Distributed generation customers who are able to use their own generation to reduce their peak consumption of Westar-supplied energy will actually save money under the RS-DG rate.

2. The S&A does not impose “other prejudices or disadvantages” on customers based on their use of renewable resources.

14. Sierra Club contends that applying a demand charge rate to RS-DG customers imposes a “prejudice or disadvantage” on customers because of their use of renewable resources.<sup>28</sup> Sierra Club’s argument is unavailing.

15. First, as the Commission noted in its Order Approving S&A, the RS-DG rate does not target customers based on their use of renewable energy. The purpose of the rate is to align the recovery of costs from partial requirements customers with the costs the utility incurs to provide service to such customers.

16. Second, there is substantial evidence in the record in support of the proposition that implementation of the RS-DG rate does not impose a burden or disadvantage on customers due to difficulties in understanding or responding to demand charges. As Westar witness Dr. Faruqui testified, customers are able to understand and respond to demand charges: “The message is very simple, don’t use all your big appliances all at the same time. Here are your five big appliances. So no technology needed, just education and awareness.”<sup>29</sup> Dr. Faruqui also testified that experiments and pilot programs involving time varying rates and demand changes have shown that customers are able to and do, in fact, react to new and different rate designs.<sup>30</sup>

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<sup>28</sup> PFR, at ¶¶27-39.

<sup>29</sup> Faruqui, Tr. at 188.

<sup>30</sup> See, e.g., Faruqui, Tr. at 186-87.

17. Sierra Club argues that reliance of Dr. Faruqui's testimony is misplaced. However, Sierra Club's argument goes to the weight to be accorded the testimony. The Commission is entitled to determine the weight to give to the testimony of witnesses before it and was free to accept Dr. Faruqui's testimony over the testimony and arguments proffered by Sierra Club.<sup>31</sup> The Commission's acceptance of Dr. Faruqui's testimony concerning the ability of customers to understand and react to demand charges was well within its discretion.

**B. The RS-DG rate does not violate 18 C.F.R. §292.305.**

18. As Sierra Club correctly noted, 18 C.F.R. §292.305 allows the application of different rates based on "accurate data and consistent system-wide costing principles."<sup>32</sup> The Order Approving S&A approved the RS-DG rate based on just such data and principles.

19. In order to approve the RS-DG rate, the Commission had to determine two things: the revenue requirement for the RS-DG class and the level of demand charges that would result in just and reasonable rates. And, in order to meet the requirements of 18 C.F.R. §292.305, those determinations need to be based on accurate data and consistent system-wide costing principles.

20. When it determined the proper revenue requirement for the RS-DG class, the Commission relied in large part of the recommendation of Staff witness Dr. Glass. He, in turn, relied in part on the class cost of service analysis performed by Staff witness Ms. Myrick. However, as he explained, the RS-DG class is "very dynamic" – in the test year alone, the number of members in the class went from 65 to 227.<sup>33</sup> As a result, the relative rate of return for the RS-

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<sup>31</sup> Under the Kansas Judicial Review Act (KJRA), in reviewing the evidence in light of the record as a whole, a reviewing court may not reweigh the evidence or engage in de novo review. K.S.A. 77-621(e).

<sup>32</sup> 45 Fed. Reg. 12214, at 12228 (February 25, 1980).

<sup>33</sup> Glass, Tr. at 287.



DG class is “probably something that can’t be accurately measured at this point.”<sup>34</sup> As Dr. Glass explained, in developing his proposal for allocation of the revenue requirement, he included Residential DG customers in the Residential class and proposed the same percentage decrease for both groups.<sup>35</sup> In its Order Approving S&A, the Commission properly accepted Dr. Glass’s approach, as memorialized in the S&A. Since that approach treated the RS-DG class as part of the residential class, it clearly applied identical data and principles to both DG and non-DG residential customers.

21. The level of the demand charge was based on, but set well below, the level shown to be appropriate using consistent data and costing principles. As the Commission noted, Ms. Myrick’s study showed the estimated value for demand for the system as a whole to be \$17.60 per kW.<sup>36</sup> Dr. Glass also noted that Ms. Myrick’s study showed demand costs for standard residential customers to be \$17 per kW and for distributed generation customers \$28 per kW.<sup>37</sup> The demand charges adopted in the S&A for RS-DG customers – \$3 per kW in eight months and \$9 per kW in four months for an average of \$5 per kW<sup>38</sup> – are well below the level that the application of consistent data and costing principles indicates would be appropriate. Thus, the Order Approving S&A did not violate 18 C.F.R. §292.305.

#### **IV. The S&A results in just and reasonable rates.**

22. Sierra Club claims that the rates approved are unjust, unreasonable and unduly discriminatory in violation of K.S.A. 66-101b. However, because the S&A establishes different

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<sup>34</sup> *Id.* at 288.

<sup>35</sup> Glass Direct, at 24; Glass, Tr. at 280-81.

<sup>36</sup> Order Approving S&A, at ¶46.

<sup>37</sup> Glass, Tr. at 288.

<sup>38</sup> *Id.* at 289.

rates for different types of service, the rates are, in fact, just and reasonable and not unduly discriminatory.

23. As the Commission noted in the Order Approving S&A, Kansas law provides “that the Commission may implement ‘a rate structure imposing different rates on different classes . . . if there is a reasonable basis to support it.’”<sup>39</sup> The record clearly shows that distributed generation customers use the utility system differently than customers that do not have distributed generation. Consequently, a different rate is justified and supported by the record.

24. Sierra Club claims that the Order Approving S&A is flawed because Dr. Glass’s analysis concerning whether customers “pay a proper share” of the demand costs is not applied to any other class.<sup>40</sup> That argument is clearly erroneous because it ignores the unique characteristic of RS-DG customers as “partial requirements” customers. Because standard residential customers are full requirements customers and their rates are designed to recover the cost of providing them service, there is no need for such an analysis for the class.

#### **V. The S&A is in the public interest.**

25. The Commission properly found that the S&A is in the public interest. The S&A implements reductions stemming from the recent changes in federal tax law and commitments made by Westar in the recent merger docket while addressing other enumerated issues,<sup>41</sup> thus advancing the general public interest.

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<sup>39</sup> Order Approving S&A, at ¶59, *citing Midwest Gas Users Ass’n*, 5 Kan. App. 2d 653, 663 (1981).

<sup>40</sup> PFR, at ¶56.

<sup>41</sup> *See* Order Approving S&A, at ¶70.

26. At the same time, the Order Approving S&A implements a conservatively set demand charge for RS-DG customers<sup>42</sup> that starts to reduce the subsidy from non-distributed generation customers to distributed generation customers.<sup>43</sup> However, the reduction to the subsidy is far less than was proposed by Westar and supported by evidence in its original filing.<sup>44</sup> Consequently, as noted by the Commission, “although the residential DG customers could be facing a rate increase based on the evidence, they are getting a rate decline.”<sup>45</sup> Consequently, approval of the S&A serves the interests of the RS-DG customers as well.

## **VI. Conclusion**

27. The Commission properly approved the S&A. Sierra Club’s Petition for Reconsideration should be rejected.

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<sup>42</sup> See discussion at ¶21 above.

<sup>43</sup> Westar witness Dr. Faruqui testified that the RS-DG rate adopted in the S&A would reduce the under-recovery from DG customers from 38% percent on average to around 30%. Faruqui, Testimony in Support of S&A, at 3.

<sup>44</sup> As noted by Dr. Faruqui, “The RS-DG rate that was originally proposed by Westar in this proceeding would have reduced this subsidy to an under-collection of costs of only around 12%.” The reduction in under-recovery “is an improvement from a cost causation perspective over the current rate offering, though it does not go as far toward mitigating the cross-subsidy as Westar’s original RS-DG proposal.” *Id.* at 3-4.

<sup>45</sup> Order Approving S&A, at ¶91.

### CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed, this 22<sup>nd</sup> day of October 2018, to all counsel of record.

  
Cathryn J. Dinges

Respectfully submitted,

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**Counsel for Westar Energy, Inc. and  
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**VERIFICATION**

STATE OF KANSAS                    )  
  )  
COUNTY OF SHAWNEE            )       ss:

Cathryn J. Dinges, being duly sworn upon her oath deposes and says that she is one of the attorneys for Kansas Gas and Electric Company; that she is familiar with the foregoing **Response**; and that the statements therein are true and correct to the best of her knowledge and belief.

Cathryn J. Dinges  
Cathryn J. Dinges

SUBSCRIBED AND SWORN to before me this 18<sup>th</sup> day of October, 2018.

Leslie R. Wines  
Notary Public

My Appointment Expires: May 30, 2022

