

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

Before Commissioners:                      Shari Feist Albrecht, Chair  
   Jay Scott Emler  
   Dwight D. Keen

In the Matter of the Application of Kansas                      )  
Gas and Electric Company for Approval of                      )  
the Amendment to the Energy Supply                      )                      Docket No. 18-KG&E-303-CON  
Agreement between Kansas Gas and Electric                      )  
Company and Occidental Chemical                      )  
Corporation.                      )

**ORDER APPROVING PROCEDURAL SCHEDULE;  
EXTENSION OF AGREEMENT & WAIVER OF STATUTORY DEADLINE**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1.        On January 16, 2018, Kansas Gas and Electric Company, d/b/a Westar Energy (Westar) and Occidental Chemical Corporation (Occidental) filed a Joint Application with the Commission for approval of an Energy Supply Agreement (ESA) between Westar and Occidental (collectively Joint Applicants).<sup>1</sup> The ESA is an extension and contact information update to the already approved ESA ending effectively May 31, 2018, and no other terms concerning the rates are altered therein.<sup>2</sup> The Joint Applicants requested expedited approval to avoid a lapse of the current ESA before implementation of the requested amended ESA.<sup>3</sup>

2.        On March 22, 2018, the Citizens' Utility Ratepayers Board (CURB) filed a Petition to Intervene and Motion for Protective Order and Discovery Order and Motion for Procedural Schedule. No party filed a response to CURB's petition.

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<sup>1</sup> Joint Application at 1 (Jan. 16, 2018).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

3. On April 12, 2018, Occidental filed a Motion for Protective Order (Additional Protective Order) beyond the scope of the Commission's standard Protective Order to limit the production of Occidental's confidential, commercially-sensitive information to just Commission Staff (Staff) and to prevent further disclosure to any other Party, specifically Westar.<sup>4</sup>

4. On April 13, 2018, Staff filed a Motion to Compel Response to Staff's Data Request No. 10. Staff had requested that Occidental provide 2017 invoices for electrical service at various other plant locations in support of Occidental's assertion that, absent an ESA, Occidental is disadvantaged by electrical rates at its Wichita, Kansas plant location as compared to the other locations.<sup>5</sup>

5. On April 18, 2018, Occidental filed a Response to Motion to Compel. Occidental stated that it would be willing to provide information Occidental believed would be supportive of the alleged price disadvantage once the Commission entered the Additional Protective Order requested by Occidental.<sup>6</sup>

6. On April 19, 2018, Staff filed a reply to Occidental's Response to Motion to Compel.

7. On April 19, 2018, CURB filed a Memorandum in Support of Staff's Motion to Compel and Memorandum in Opposition to Occidental's Motion for Protective Order. CURB voiced support for Staff's rationale for compelling response to Staff's Data Request No. 10 (DR 10) without additional argument.<sup>7</sup> CURB alleged that Occidental's request for an Additional Protective Order, if granted, would violate CURB's due process rights to participate in the docket

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<sup>4</sup> Motion for Protective Order at 3-4 (Apr. 12, 2018).

<sup>5</sup> Motion to Compel Response to Staff's Data Request No. 10 at 2 (Apr. 13, 2018); *see* Pre-Filed Direct Testimony of Brenda Harris at 4-5 (Jan. 26, 2018); *see also* Pre-Filed Direct Testimony of Chad Luce at 5 (Jan. 16, 2018).

<sup>6</sup> Response to Motion to Compel at 3 (April 18, 2018).

<sup>7</sup> Memorandum in Support of State Corporation Commission Staff's Motion to Compel Response to Staff's Data Request No. 10 at 2 (Apr. 19, 2018).

and that the Additional Protective Order was otherwise unnecessary as the Commission's standard Protective Order was adequate to alleviate Occidental's concerns.<sup>8</sup>

8. On April 20, 2018, Staff filed a Memorandum in Support of CURB stating that Staff agreed with CURB's position regarding the Additional Protective Order requested by Occidental.<sup>9</sup>

9. On April 25, 2018, Occidental filed a Response to CURB's Memorandum in Opposition to the Additional Protective Order. Therein, Occidental conceded that it did not object to providing confidential information to CURB, but that limitation on disclosure to Parties other than Staff and CURB was still necessary under the same rationale expressed in the Motion for Protective Order.<sup>10</sup> Occidental also stated that additional negotiations had taken place among the Parties in an effort to resolve the discovery dispute regarding Staff's DR 10.<sup>11</sup> Occidental stated that it would provide the information requested in Staff's DR 10 subject to redaction of the sensitive and irrelevant portions and after the issuance of the Additional Protective Order.<sup>12</sup>

10. On May 4, 2018, the Prehearing Officer issued an order granting Occidental's Motion for Protective Order and holding the discovery dispute in abeyance.<sup>13</sup>

11. On May 14, 2018, the Parties filed a Joint Motion for Procedural Schedule and Extension of Energy Supply Agreement. The Parties request that the Commission adopt the following schedule for the proceedings:

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<sup>8</sup> *Id.* at 3.

<sup>9</sup> Memorandum in Support of CURB at 2 (Apr. 20, 2018).

<sup>10</sup> Response to CURB's Memorandum in Opposition to Motion for Protective Order at 3-6 (Apr. 25, 2018).

<sup>11</sup> *Id.* at 6.

<sup>12</sup> *Id.* at 6-7.

<sup>13</sup> Prehearing Officer Order on Protective Order and Discovery at 4-5 (May 4, 2018).

<b><u>DATE</u></b>	<b><u>TIME</u></b>	<b><u>ACTION</u></b>
1/16/2018		Application Date
8/15/2018	5:00 p.m.	Staff and Intervenor Direct Testimony
8/29/2018	5:00 p.m.	Joint Applicant Rebuttal Testimony
9/10/2018	9:00 a.m.	Settlement Conference KCC Office – Third Floor Hearing Room 1500 SW Arrowhead Rd Topeka, KS 66604
9/17/2018	5:00 p.m.	Settlement Due Date
9/17/2018	5:00 p.m.	Discovery Cut-Off
9/24/2018	5:00 p.m.	Settlement Testimony Due
10/02/2018	10:00 a.m.	Prehearing Conference KCC Office – Third Floor Hearing Room 1500 SW Arrowhead Rd Topeka, KS 66604
10/10/2018	9:00 a.m.	Evidentiary Hearing KCC Office – First Floor Hearing Room 1500 SW Arrowhead Rd Topeka, KS 66604
10/24/2018	5:00 p.m.	Simultaneous Post-Hearing Briefs
11/23/2018	5:00 p.m.	Order on Application Due <sup>14</sup>

The Parties also requested that the current ESA be extended in effect through the end of the first billing cycle following a final Commission Order in the docket.<sup>15</sup> Finally, the Parties requested a

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<sup>14</sup> Joint Motion for Procedural Schedule and Extension of Energy Supply Agreement at 2 (May 14, 2018).

<sup>15</sup> *Id.* at 3.

waiver of 240-day deadline until November 23, 2018 for Commission action in accordance with K.S.A. 66-117(c).<sup>16</sup>

12. The Parties being in agreement and for good cause shown, the Commission finds and concludes that the Joint Motion should be granted.

**THEREFORE, THE COMMISSION ORDERS:**

A. The procedural schedule in paragraph eleven (11) above is adopted.

B. The terms of the current Energy Supply Agreement shall continue in effect during the pendency of this docket and through the end of the first billing cycle after a final Commission Order.

C. Pursuant to K.S.A. 66-117(c), the 240-day deadline for a Commission decision is waived and extended until November 23, 2018.

D. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>17</sup>

E. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 05/17/2018



Lynn M. Retz  
Secretary to the Commission

DLK/sc

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<sup>16</sup> *Id.*

<sup>17</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

## **CERTIFICATE OF SERVICE**

18-KG&E-303-CON

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 05/17/2018.

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/S/ DeeAnn Shupe

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DeeAnn Shupe