BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

COMMISSION STAFF'S CLOSING BRIEF

The technical Staff of the Kansas Corporation Commission (Staff and Commission, respectively), having participated in the evidentiary hearing held October 10, 2018, in this matter, hereby offers the following in closing:

Staff's Position

1. The Commission should approve the Joint Application in full. This would include approval of the Energy Supply Agreement (ESA) and the continuation of the Energy Efficiency Demand Response (EEDR) program.

2. With respect to the ESA, Oxy's[1] business model and operating characteristics would allow it to easily bypass Westar's[2] system at better rates than those available to it in Kansas under tariff. Therefore, providing Oxy a discount under special contract that incentivizes it to stay in Kansas and contribute toward Westar's fixed costs results in "just and reasonable" rates. As such, the ESA should be approved.

3. The EEDR allows Westar to interrupt Oxy's energy consumption during times of heavy load or emergencies. This allows Westar to avoid purchasing additional capacity which would be paid for by all ratepayers on Westar's system. Westar has to pay Oxy for this interruptibility, but the benefits outweigh the costs. This is based on an analysis of the

[1]Occidental Chemical Corporation.
[2]Kansas Gas and Electric Company, d/b/a Westar Energy.

Commission's four preferred cost-benefit tests. Because the EEDR is cost-effective, it should be approved.

Legal Standards

A. Special Contracts

4. K.S.A. 66-101b requires Westar as an electric public utility to establish "just and reasonable rates" for the jurisdictional services it renders.[3] This requirement applies equally to tariffed (i.e. generally applicable) and non-tariffed (i.e. special contract) rates. Rates are "just and reasonable" when they "balance the public need for adequate, efficient, and reasonable service with the public utility's need for sufficient revenue to meet the cost of furnishing service and earn[ing] a reasonable profit."[4]

5. With respect to special contracts, the Commission conducted a general investigation in Docket No. 01-GIME-813-GIE (Docket 01-813) wherein it concluded that "in order to be approved, the utility must show that [a] special contract provides a cost benefit to the remaining core customers."[5]

B. Demand Side Management Programs (EEDR)

6. DSM programs must be "cost-effective" to be approved.[6] As indicated by the Kansas Energy Efficiency Investment Act (KEEIA), the goal of the state of Kansas is to promote

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[3]K.S.A. 66-101b also has other requirements pertaining to the provision of service by electric public utilities, but they are not immediately relevant to this proceeding.
[4]Danisco Ingredients USA, Inc. v. Kansas City Power & Light Co., 267 Kan. 760, 773 (1999). *See also* Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944) (stating "The rate-making process under the [Natural Gas Act], i.e. the fixing of 'just and reasonable' rates, involves a balancing of the investor and consumer interests…From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business.").
[5]Order, ¶ 6, Docket No. 01-GIME-813-GIE (Oct. 3, 2001) (01-813 Order).
[6]*See* K.S.A. 66-1283(b).

the implementation of cost-effective demand-side programs.[7] This standard is consistent with prior Commission precedent,[8] and comports with an ordinary understanding of prudence.

7. On June 22, 2017, the Commission released a Final Order in Docket No. 16-KCPE-446-TAR (Docket 16-446) wherein it determined, among other things, that the appropriate benefit-cost tests to use for evaluating energy efficiency programs are the 1) Participant Cost Test (PCT); 2) Ratepayer Impact Measure Test (RIM); 3) Program Administrator Cost Test (PAC); and 4) Total Resource Cost Test (TRC).[9] The Commission stated that it would place primary emphasis on the TRC and RIM tests.[10] As explained in a prior Commission order - the TRC test answers the question: "[w]ill the total costs of energy in the utility service territory decrease."[11] The RIM test "measures what happens to customer bills or rates due to changes in utility revenues and operating costs caused by the program."[12]

Argument

A. Special Contract

8. The necessity for, and the justness and reasonableness of the rates contained in the ESA have not been disputed by the parties to this proceeding. Nor have the parties disputed that the ESA provides a benefit to the remaining core customers, as required by Commission Order in Docket 01-813.

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[7]*See* Id.
[8]*See generally* Order Initiating Investigation and Assessing Costs, p. 3 Docket No. 08-GIMX-442-GIV (Nov. 6, 2007) ("The goal in this docket is to assure that energy efficiency programs can be economically justified and that the Commission has or can develop the capacity to appropriately monitor and evaluate approved programs. Specifically, this docket will address benefit-cost standards to be applied to Demand Side Management (DSM) and Demand Response (DR) programs…").
[9]Final Order, ¶ 96, Docket No. 16-KCPE-446-TAR (June 22, 2017) (16-446 Order).
[10]Id.
[11]Order Following Collaborative on Benefit-Cost Testing and Evaluation, Measurement, and Verification, p. 9, Docket No. 08-GIMX-442-GIV (Apr. 13, 2009).
[12]Id. at 8.

9. The ESA is necessary because it contains discounted rates - compared to Westar's tariffed rates that Oxy would pay absent a special contract - that are low enough to incentivize Oxy to keep operating in Kansas. Mr. Prince explained that Oxy's threat to shut down operations at its Wichita plant is credible.[13] He was able to confirm this fact by comparing Oxy's Wichita facility rates to its rates at four different plant locations in three different states.[14] Based on the comparison, Mr. Prince concluded that "Oxy's Wichita facility will be at a rate disadvantage if the 2018 Special Contract is not approved."[15] Witnesses for both Westar and Oxy also supported this position, and Brenda Harris explained the unique situation Oxy was in given that electricity is the largest cost input in Oxy's production process.[16]

10. Mr. Prince explained that the rates contained in the ESA are just and reasonable and provide a benefit to the remaining core customers because Oxy is contributing to its fixed costs, and the remaining core customers are better off with Oxy on the system rather than off the system.[17] He verified this statement by determining that the revenues provided under the contract were more than 15% above the variable cost floor.[18]

11. Additionally, Mr. Prince testified that in addition to Oxy's revenue contribution, the 2018 ESA/Special Contract provides the following benefits to Westar and its core customers:

a) An incentive for Oxy to coordinate maintenance outage schedules for its cogeneration plant and the chemical plant to avoid Westar's summer peak;
b) A summer/winter pricing differential to reflect Westar's higher cost of incremental fuel and generation during summer months;
c) Contract clauses to ensure that Oxy will be subject to all Riders and Surcharges, if applicable;
d) A requirement for Oxy to pay its pro rata share of any general rate increase authorized by the Commission;

[13]Pre-Filed Direct Testimony of Darren L. Prince, p. 13 (Aug 15, 2018) (Prince Direct).
[14]Id. at 12.
[15]Id. at 13.
[16]*See* Pre-Filed Direct Testimony of Brenda Harris, pp. 4-5 (Jan. 26, 2018) (Harris Direct).
[17]Prince Direct, p. 13.
[18]Id. at 12.

e) Westar's ability to utilize Oxy's cogeneration facility during periods of "System Condition" or a load buy down; and
f) A set amount of interruptible load provided to Westar by Oxy.[19]

12. Mr. Prince further explained that the requirements under the ESA for Oxy to maintain a certain number of employees at its Wichita facilities, continue investing in capital improvements at the Wichita facility to help maintain the long-term viability of those facilities, and a minimum bill requirement all benefited Westar's customers.[20]

13. Because customers are better off giving Oxy a discount rather than having Oxy leave the state, and all applicable legal standards have been met, the Commission should approve the ESA.

B. Energy Efficiency Demand Response Rider (EEDR)

14. The EEDR program was specifically designed for Oxy.[21] It was designed to address Oxy's concerns for low cost electricity to keep its Wichita facility competitive, while providing Westar the additional ability to curtail Oxy's demand in responding to emergency system conditions.[22]

15. At a high level, Oxy is given a monthly capacity incentive credit per kW of interruptible Demand Response Load and an Event Payment credited to Oxy's monthly bill for all reduced load during a curtailment period.[23] The incentive credit is provided under the EEDR Tariff, and is $4.00 per kW per month.[24] The Event Payment is at least $75.00 per MWh for each MWh provided by the participant during a curtailment period.[25]

[19]Id. at 15-16.
[20]Id. at fn. 21.
[21]Prince Direct, p. 16.
[22]Id.
[23]Id. at 17.
[24]Pre-Filed Direct Testimony of Stacey Harden, p. 10 (Aug. 15, 2018) (Harden Direct).
[25]Id.

16. As explained above, the Commission should approve the EEDR if the benefits outweigh the costs.[26] In this case, they do.

17. For clarity, no party to the docket has disputed the costs of the EEDR.[27] Nor do the parties dispute the applicable cost-benefit tests to use in analyzing this matter.

18. The parties simply dispute the benefits of the EEDR, specifically, the value of the benefits associated with avoided capacity.[28]

19. The parties' views on the value of avoided capacity are wildly divergent. Westar derived a $58 per kW-year value based upon the cost of a new natural gas-fired combustion turbine.[29] Oxy derived a $107 per kW-year value based upon the value of deficiency payments Westar would have to make to Southwest Power Pool (SPP) if it does not meet its required reserve margin.[30] Staff derived a confidential figure based upon the value of purchasing capacity in the market.[31] Finally, CURB said that the avoided capacity cost is $0, because Westar's EEDR program does not avoid or delay the construction of new generation.[32]

20. Since all parties but CURB assert the EEDR is cost-effective,[33] it is best to explain why CURB's figure of $0 should not be adopted by the Commission.

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[26] *See* K.S.A. 66-1283(b). Note that this standard of benefits needing to outweigh costs has been used by the Commission since before KEEIA was enacted. *See generally* Order Initiating Investigation and Assessing, Docket No. 08-GIMX-442-GIV (Nov. 6, 2007).

[27] The four cost-benefit tests utilized by the Commission look at costs such as: administrative, equipment, installation, operation, maintenance, sales tax, and the value of customer's time. This is not an exhaustive list. *See generally* Prince Direct, fn. 31-35.

[28] Note that nobody has disputed John Wolfram's avoided energy figure of $.0217 per kWh. *See* Pre-Filed Direct Testimony of John Wolfram, EM&V Exhibit, p. 1 (Jan. 16, 2018) (Wolfram Direct). Additionally, Mr. Prince argues there is an "insurance" value to the EEDR. *See* Prince Direct, p. 21.

[29] Pre-Filed Rebuttal Testimony of John Wolfram, p. 3 (Aug. 29, 2018) (Wolfram Rebuttal); *see also* Wolfram Direct, EM&V Exhibit, p. 2.

[30] *See* Pre-Filed Rebuttal Testimony and Exhibits of Jeffry Pollock, p. 10, 12 (Aug. 29, 2018) (Pollock Rebuttal).

[31] Prince Direct, pp. 19-20.

[32] *See* Harden Direct, p. 16.

[33] *See* Prince Direct at 20; Wolfram Rebuttal at 9; Pollock Rebuttal at 2-3.

21. The most compelling reason why $0 is not an appropriate value for avoided capacity is because it does not reflect the possibility that Westar would ever need additional capacity or that a system emergency would ever occur. The failure to reflect any possibility for capacity decline or load growth was the reason why the Commission rejected CURB's avoided capacity figure in favor of Staff's in Docket 16-446. In Docket 16-446, the Commission stated: "CURB's avoided capacity cost, however, does not, in the Commission's view, provide sufficient flexibility to reflect the potential for a decline in the excess capacity currently available to KCP&L or the potential for KCP&L's load to grow even an incremental amount."[34] This logic remains correct. It should be noted that CURB's avoided capacity figure in Docket 16-446 was higher than $0, and therefore its $0 figure reflects even less of a potential for load growth or decline in excess capacity.[35]

22. Here, Westar's witness Mr. Wolfram testified that there is a possibility for a decline in excess capacity. When asked why a $0 avoided capacity cost was unreasonable, he stated:

> While it may appear at first to be reasonable in the short term, upon further review it is not – and it is certainly not correct for the long term. The short-term view is based at least in part on Westar's current reserve margins – but those reserve margins will not continue into even the near future, primarily due to announced planned unit retirements detailed later in my testimony.[36]
>
> He further elaborated that:
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> CURB's analysis did not consider the upcoming unit closures at the Murray Gill, Gordon Evans, and Tecumseh Energy Centers, which together represent 792 MW of lost capacity. CURB also did not consider that Westar's reserve margin calculation assumes 80% interruptible performance by Oxy – in other words, Westar counts on the interruption of Oxy's load when determining its total reserve

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[34]16-446 Order, ¶ 99.
[35]Note that Staff's and CURB's avoided capacity figures in Docket 16-446 were confidential. To avoid making this closing brief confidential, Staff has omitted the exact figures.
[36]Wolfram Rebuttal, p. 4.

> margin, so terminating the EEDR will lower those reserve margins even further.[37]

23. Mr. Pollock echoed these concerns in his testimony. He noted that "[b]ased on Westar's announcement, 778 MW of capacity would no longer be in service after 2018. This is more than the 688 MW of capacity in excess of SPP's target PRM as reported in SPP's June 2018 Resource Adequacy Report."[38]

24. During the evidentiary hearing, CURB introduced its Exhibit 6 (CURB DR-30), which purportedly showed Westar being above its 12% SPP reserve margin until 2029.[39] CURB will likely argue in its closing brief that Exhibit 6 proves that Westar has no capacity to avoid in the next 10 years. Notwithstanding that this line of reasoning still ignores any possibility of changes in the market, the argument ignores the explanation provided by Westar as to why the estimate in Exhibit 6 and the SPP June 2018 Resource Adequacy Report are different. The explanation provided by Westar states that Exhibit 6 includes roughly 300 MW of additional wind capacity due to a different method of rating certain wind units.[40] If the additional 300 MW of wind capacity is recalculated, and the 80 MW of capacity from the EEDR program is removed from Westar's accredited capacity, Exhibit 6 indicates Westar will be below its 12% reserve margin in 2020.[41]

25. Aside from the capacity issue, several witnesses testified that the EEDR could be used during emergency conditions. Mr. Wolfram testified that participating in the SPP IM does not immunize Westar and its customers against system emergencies, so CURB's correlation of

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[37]Id. at 6.
[38]Pollack Rebuttal at 11.
[39]Tr. p. 46-49 (Wolfram).
[40]CURB Exhibit 6.
[41]The reserve margin projected for 2020 is 322 MW. Subtracting out 380 MW results in a (58 MW) capacity shortfall. *See* CURB Exhibit 6.

SPP market participation with no longer needing a curtailable resource is not appropriate.[42] He elaborated during the evidentiary hearing that:

> It is not correct to assume just because you are in the market you are not going to have any high prices, you are not going to have any risk of power being able to be delivered to you. Being in SPP doesn't protect you or immunize you against those things and that's why the value of the interruptible option remains.[43]

26. Dr. Glass provided an example of the EEDR possibly being used during a system emergency if Wolf Creek were to go down unexpectedly.[44] He posited that the EEDR could keep some of Wichita running in such a situation.[45]

27. Even CURB's witness Stacey Harden admitted during the evidentiary hearing that the "interruptibility that Occidental offers can be a tool for Westar to try to mitigate the negative impacts" of a terrorist event or some other very extraordinary system emergency.[46]

28. In conclusion, CURB's $0 avoided capacity figure simply does not take into account plant closures, reserve margins, emergency conditions, or any other capacity shortfall that could ever occur in the future. This is inconsistent with the concerns raised by the Commission in Docket 16-446 and inconsistent with the testimony from the witnesses in this docket. Therefore, CURB's $0 avoided capacity figure should be rejected.

29. Staff's avoided capacity figure is the correct one for the Commission to use. It is based on the market price for generation capacity, and as Dr. Glass explained during the evidentiary hearing: "[i]f Westar were to substitute capacity or to do it on a short term-basis…they are not going to build a plant, they are going to sign a contract."[47]

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[42]Wolfram Rebuttal at 7-8.
[43]Tr. p. 60 (Wolfram).
[44]Tr. p. 155-156 (Glass).
[45]Id.
[46]Tr. p. 87-88 (Harden).
[47]Tr. p. 141-142.

30. However, even if the Commission were to adopt any of the values presented by the parties other than CURB, the EEDR passes the four cost-benefit tests utilized by the Commission. Therefore, the EEDR is cost-effective and should be approved.

WHEREFORE, Staff respectfully requests that the Commission approve the Joint Application in full.

Respectfully submitted,

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VERIFICATION

Michael Neeley, 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 *Commission Staff's Closing Brief* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.

Michael Neeley # 25027
Kansas Corporation Commission of the
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Subscribed and sworn to before me this 24th day of October, 2018.

PAMELA J. GRIFFETH
Notary Public - State of Kansas
My Appt. Expires 08-17-2019

Notary Public

My Appointment Expires: August 17, 2019

CERTIFICATE OF SERVICE

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I, the undersigned, certify that a true and correct copy of the above and foregoing Commission Staff's Closing Brief was served by electronic service on this 24th day of October, 2018, to the following:

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