

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

Before Commissioners:                    Thomas E. Wright, Chairman  
    Joseph F. Harkins  
    Ward Loyd

In the Matter of Westar Energy, Inc. and    )  
Kansas Gas and Electric Company (both doing    )  
business as Westar Energy) Filing Tariff    )  
Revisions Seeking Approval for an Energy    )            Docket No: 11-WSEE-032-TAR  
Efficiency Rider Pursuant to the Commission's    )  
Order Dated November 14, 2008 in Docket    )  
No. 08-GIMX-441-GIE.                            )

**ORDER DESIGNATING PREHEARING OFFICER AND  
TAKING ADMINISTRATIVE NOTICE OF STAFF MEMORANDUM**

**I. Introduction** ..... 1  
**II. Prehearing Officer** ..... 2  
**III. Administrative Notice of Staff Memorandum** ..... 3  
**IV. Agency Attorney of Record** ..... 4

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and being fully advised of all matters of record, the Commission summarizes the arguments of the parties and finds and concludes as follows:

**I. Introduction**

1. On July 16, 2010, Westar Energy, Inc. and Kansas Gas and Electric Company (collectively Westar) filed an Application asking the Commission to approve its Energy-Efficiency Rider (EER), to permit recovery of costs associated with Westar's various energy-efficiency programs. Westar noted that it has received Commission approval for the deferral of costs associated with its energy-efficiency programs as a regulatory asset for future recovery through the November 12, 2008, Commission Order in Docket No. 08-WSEE-862-ACT.

2. Westar stated that its specific programs and associated dockets are: Energy-Efficiency Educational Program, Docket No. 09-WSEE-986-ACT; Building Operator Certification Program, Docket No. 09-WSEE-738-MIS; WattSaver Air Conditioner Cycling Program, Docket No. 09-WSEE-636-TAR; and Energy-Efficiency Demand-Response Program, Docket No. 10-WSEE-141-TAR.

3. As a result of the addition of the EER, Westar's application incorporated a reference in all applicable tariffs impacted by this change. Westar requested that these tariffs become effective with bill cycle 1 for October, which is September 29, 2010.

4. A Suspension Order was issued by the Commission on August 10, 2010, which suspended the Application and its effective date for a period of 240 days, until Monday, March 14, 2011. Suspension Order, August 10, 2010, ¶ 3.

5. The Citizens' Utility Ratepayer Board (CURB) filed a Petition to Intervene on July 21, 2010. CURB was granted intervention on August 20, 2010.

6. Commission Staff (Staff) filed a Memorandum on September 8, 2010, discussing Westar's Application. CURB filed a Response to Westar's Application and Staff's Memorandum on September 20, 2010.

7. The Commission has jurisdiction over this docket under K.S.A. 66-117 and K.A.R. 82-1-231. Applicant filed information required by K.A.R. 82-1-231. In this Order, the Commission designates a prehearing officer for the docket and advises the parties that it is taking administrative notice of Staff's Memorandum.

## **II. Prehearing Officer**

8. Having reviewed the Application, the Commission finds that a prehearing officer should be designated. The Commission designates a prehearing officer to conduct any

prehearing conferences that might be needed in this proceeding and to address any matters that are appropriately considered in a prehearing conference, including all items listed in the Kansas Administrative Procedure Act (KAPA) at K.S.A. 77-517(b). These items include, for example, conversion of the proceeding to another type; exploration of settlement possibilities; preparation of stipulations; clarification of issues; rulings on identity and limitation of the number of witnesses; objections to proffers of evidence; determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form, and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person; order of presentation of evidence and cross-examination; rulings regarding issuance of subpoenas; discovery orders and protective orders; and such other matters as will promote the orderly and prompt conduct of the docket. The Commission designates Melissa Doeblin, Advisory Counsel, telephone number 785-271-3186, email address [m.doeblin@kcc.ks.gov](mailto:m.doeblin@kcc.ks.gov), 1500 SW Arrowhead Road, Topeka, Kansas 66604-4027, to act as Prehearing Officer in this docket. K.S.A. 2009 Supp. 77-514; K.S.A. 77-516; K.S.A. 2009 Supp. 77-551. The Commission, as it deems necessary, may designate other staff members to serve in this capacity.

### **III. Administrative Notice of Staff Memorandum**

9. The Kansas Administrative Procedures Act (KAPA) requires an agency to maintain an official record. K.S.A. 2009 Supp. 77-532(a). This record must include any “motions, pleadings, briefs, petitions, requests, and intermediate rulings” as well as evidence received or considered by the agency. K.S.A. 2009 Supp. 77-532(b)(3), (4). Generally, a staff memorandum or data does not constitute part of the agency record that provides a basis for judicial review, except to the extent another statute provides otherwise. K.S.A. 2009 Supp. 77-532(b)(10), (c). However, an agency may take official notice of any matter that could be

judicially noticed in the courts of this state or that discusses technical or scientific matters within the state agency's specialized knowledge. K.S.A. 77-524(f)(1), (3).

10. If an agency takes official notice of a matter, parties must be notified before issuance of any initial or final order that is based in whole or in part on matters or material that is being noticed. Parties must be advised "of the specific matters or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the matters or material so noticed." K.S.A. 77-524(f).

11. The Commission takes administrative notice of the contents of Staff's Memorandum filed September 8, 2010. The Commission notes that it must issue an order in this proceeding by Monday, March 14, 2011, which is the first business day following the 240-day deadline for filing a Commission order. K.S.A. 66-117. Therefore, if a party desires to contest or rebut Staff's Memorandum, the party must do so by filing its information in the Commission's Docket Room by Friday, October 1, 2010, at 5:00 p.m.

#### **IV. Agency Attorney of Record**

12. The attorney designated to appear on behalf of the agency in this proceeding is Terri Pemberton, telephone number 785-271-3119, email address [t.pemberton@kcc.ks.gov](mailto:t.pemberton@kcc.ks.gov), 1500 SW Arrowhead Road, Topeka, Kansas 66604-4027. K.S.A. 2009 Supp. 77-518(c)(2); K.S.A. 77-516(c)(2).

#### **IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. The Commission appoints Melissa Doeblin to act as Prehearing Officer, as discussed above in paragraph 8.

B. The Commission takes administrative notice of Staff's Memorandum filed September 8, 2010, and directs parties, if so inclined, to contest or rebut the matters or material so noticed by October 1, 2010, at 5:00 p.m., as discussed above in paragraph 11.

C. This is a procedural order and constitutes nonfinal agency action. K.S.A. 77-607(b)(2). Parties have 15 days, plus three days if service of this Order is by mail, from the date of service of this Order in which to petition the Commission for reconsideration. K.S.A. 66-118b; K.S.A. 2009 Supp. 77-529(a)(1).

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

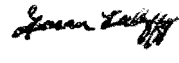
**BY THE COMMISSION IT IS SO ORDERED.**

Wright, Chairman; Harkins, Commissioner; Loyd, Commissioner

Dated: SEP 24 2010

**ORDERED MAILED**

SEP 24 2010

 EXECUTIVE  
DIRECTOR

Susan K. Duffy  
Executive Director

mrd