

**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 Westar                      )  
Energy, Inc. and Kansas Gas and Electric                      )                      Docket No. 18-WSEE-163-TAR  
Company for Approval of Revisions to their                      )  
Policy for Residential Subdivisions.                                      )

**ORDER GRANTING RECONSIDERATION**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the file and records, and being properly advised, the Commission finds:

1.        On October 16, 2017, Westar Energy, Inc. and Kansas Gas and Energy Company (Westar) filed an Application to amend its tariff to revise its Policy for Residential Subdivisions to allow developers the option of providing an irrevocable letter of credit in place of a cash deposit.<sup>1</sup> Currently, Westar provides a \$40,000 allowance to developers of residential housing towards a conventional overhead distribution system and the developer is required to provide a cash deposit with Westar of an amount equal to the difference between the \$40,000 allowance and the cost of a conventional overhead distribution system.<sup>2</sup>

2.        On October 31, 2017, the Commission issued a Suspension Order, giving itself until June 13, 2018 to issue an Order on the Application.

3.        On May 2, 2018, Commission Staff (Staff) filed its Report and Recommendation, opposing the Application. Staff explained the cash deposit is supposed to allow Westar to recover

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<sup>1</sup> Application, Oct. 16, 2017, ¶5.

<sup>2</sup> *Id.*, ¶ 2.

its costs in the event that construction on the subdivision is never completed.<sup>3</sup> The cash deposit is treated as cost free capital and used as a rate base offset.<sup>4</sup> Therefore, ratepayers are not responsible for stranded costs or financing the carrying costs associated with building out the infrastructure for residential housing developments.<sup>5</sup> If irrevocable letters of credit are accepted, Westar shareholders finance the infrastructure extension until there is a rate case and then ratepayers finance the carrying costs going forward.<sup>6</sup>

4. Staff's investigation also revealed there is no universal policy regarding whether utilities accept irrevocable letters of credits in lieu of cash deposits.<sup>7</sup> Therefore, Staff recommends opening a general investigation to determine the appropriateness of accepting irrevocable letters of credit in place of cash deposits.<sup>8</sup>

5. On May 14, 2018, Westar filed its Response to Staff Report and Recommendation, arguing deferring this issue to a general investigation would result in an unnecessary delay.<sup>9</sup>

6. On May 22, 2018, Staff filed its Reply to Westar's Response, reiterating a general investigation is the proper forum to address whether utilities should be able to accept irrevocable letter of credits and that cash deposits are advantageous as they provide both a financial guarantee and a rate base offset.<sup>10</sup>

7. On June 12, 2018, the Commission granted Wichita Area Builders Association, Inc. (WABA) intervention.<sup>11</sup>

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<sup>3</sup> Staff Report and Recommendation, May 2, 2018, p. 3.

<sup>4</sup> *Id.*, p. 4.

<sup>5</sup> *Id.*

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

<sup>7</sup> *Id.*, p. 2.

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

<sup>9</sup> Response to Staff Report and Recommendation, May 14, 2018, ¶ 4.

<sup>10</sup> Staff Reply to Westar Energy, Inc. and Kansas Gas and Electric Company's Response to Staff's Report and Recommendation, May 22, 2018, ¶ 4.

<sup>11</sup> Petition for Intervention of Wichita Area Builders Association, Inc. (WABA Petition), May 29, 2018, ¶ 2.

8. On June 12, 2018, the Commission issued its Order Denying Application, due to concerns that if Westar's Application is granted, and irrevocable letters of credit are accepted, the carrying costs of the funds from utility operations would be included in rate base, with shareholders and ratepayers subsidizing developers.<sup>12</sup> In denying Westar's Application, the Commission left open the possibility of opening a general investigation if Westar could propose a plan that does not negatively impact ratepayers.<sup>13</sup> The Commission noted its agreement with Staff that a general investigation is the proper forum to address allowing letters of credit in place of cash deposits for developers of residential subdivisions and would ensure uniformity among the utilities as it relates to accepting irrevocable letters of credit in lieu of cash deposits.<sup>14</sup>

9. On June 27, 2018, WABA filed a Petition for Reconsideration and Clarification asking the Commission to open a general investigation to address the issue of accepting irrevocable letters of credit in lieu of cash deposits from developers of residential subdivisions.<sup>15</sup>

10. On July 5, 2018, Staff filed its Response to WABA's Petition for Reconsideration and Clarification, supporting the opening of a general investigation.<sup>16</sup> Staff believes the Commission would benefit from a Staff Report and Recommendation to clarify the issues and define the scope of a general investigation.<sup>17</sup> As part of a general investigation, Staff suggests receiving feedback from the major gas and electric utilities in the State on their current practices<sup>18</sup> and addressing the general risks of non-cash security, accounting treatment that could prevent subsidization, and the desirability of uniformity throughout the industry.<sup>19</sup>

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<sup>12</sup> Order Denying Application, June 12, 2018, ¶ 11.

<sup>13</sup> *Id.*, ¶ 13.

<sup>14</sup> *Id.*

<sup>15</sup> Petition for Reconsideration and Clarification of Wichita Area Builders Association, Inc., June 27, 2018, ¶ 8.

<sup>16</sup> Staff's Response to WABA's Petition for Reconsideration and Clarification, July 5, 2018, ¶ 1.

<sup>17</sup> *Id.*, ¶ 4.

<sup>18</sup> *Id.*, ¶ 3.

<sup>19</sup> *Id.*, ¶ 2.

11. The Commission agrees that having Staff file a Report and Recommendation to clarify the issues and define the scope of the general investigation would be beneficial. Accordingly, the Commission directs Staff to file a Report and Recommendation by October 24, 2018, outlining the issues and the scope of the investigation.

**THEREFORE, THE COMMISSION ORDERS:**

A. WABA's Petition for Reconsideration is granted. The Commission directs Staff to file a Report and Recommendation to clarify the issues and define the scope of a general investigation by October 24, 2018.

B. This Order constitutes non-final agency action.<sup>20</sup> Any request for review of this action shall be in accordance with K.S.A. 77-608 and K.S.A. 77-613. Lynn M. Retz, Secretary to the Commission, is designated by the Commission to receive service of a petition for judicial review.<sup>21</sup>

C. The Commission retains jurisdiction over the subject matter and parties to enter further orders as it deems necessary.

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

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner.

Dated: 07/17/2018  
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Lynn M. Retz  
Secretary to the Commission

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<sup>20</sup> K.S.A. 77-607(b)(2).

<sup>21</sup> K.S.A. 77-613(e).

## CERTIFICATE OF SERVICE

18-WSEE-163-TAR

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 07/17/2018.

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