

**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. )

**PREHEARING OFFICER ORDER  
ON PROTECTIVE ORDER AND DISCOVERY**

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 Prehearing Officer 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> Staff mentioned that Occidental had objected to producing the information as the highly-confidential, commercially-sensitive information that was not relevant to the proceeding and that all attempts to remedy the dispute had failed.<sup>6</sup>

5. On April 17, 2018, the Commission designated a Prehearing Officer in this proceeding to address any matters appropriately considered in a prehearing conference, including all items listed in K.S.A. 77-517(b) of the Kansas Administrative Procedure Act (KAPA).<sup>7</sup> The Commission set the matter for prehearing conference on May 1, 2018.<sup>8</sup>

6. 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>9</sup> Occidental further explained that although some information could be

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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> Motion to Compel Response to Staff's Data Request No. 10 at 2-3.

<sup>7</sup> Order Designating Prehearing Officer; Granting Intervention to the Citizens' Utility Ratepayer Board; and Protective and Discovery Order at 1-2 (April 17, 2018).

<sup>8</sup> *Id.* at 12.

<sup>9</sup> Response to Motion to Compel at 3 (April 18, 2018).

provided, not all of the information would be relevant to support the testimony in favor of the Joint Application and the disclosure of all of the information in the invoices may substantially harm Occidental's business interests.<sup>10</sup>

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

8. 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>11</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 and that the Additional Protective Order was otherwise unnecessary as the Commission's standard Protective Order was adequate to alleviate Occidental's concerns.<sup>12</sup>

9. 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>13</sup>

10. 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 rational expressed in the Motion for Protective Order.<sup>14</sup> Occidental also stated that additional negotiations had taken place amongst

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<sup>10</sup> *Id.* at 8-10.

<sup>11</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).

<sup>12</sup> *Id.* at 3.

<sup>13</sup> Memorandum in Support of CURB at 2 (Apr. 20, 2018).

<sup>14</sup> Response to CURB's Memorandum in Opposition to Motion for Protective Order at 3-6 (Apr. 25, 2018).

the Parties in an effort to resolve the discovery dispute regarding Staff's DR 10.<sup>15</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>16</sup>

11. On May 1, 2018, the Prehearing Officer convened the Prehearing Conference at which all Parties were present through Counsel. After discussing the pending Motion for Protective Order and Motion to Compel, no Party objected to the entry of an Additional Protective Order, with the exception of Westar, for the purpose of allowing the disclosure to Staff and CURB of redacted information responsive to Staff's DR 10. Westar voiced no position at that time, but reserved the right to file a response indicating their position at a later date. The Parties agreed to waive or abandon the legal arguments raised without a determination and under the reservation that those legal issues could be raised at a later date if necessary. The Parties also agreed to submit a joint motion for procedural schedule and such interim relief as necessary to avoid a lapse in the current agreement during the pendency of the docket.

12. On May 2, 2018, Westar communicated its non-objection to entry of the Additional Protective Order via e-mail to all Parties.

13. By the authority vested in the Prehearing Officer and in accordance with K.S.A. 77-517(b), Occidental's Motion for Protective Order is granted as modified by Occidental's Response to CURB's Memorandum in Opposition to Motion for Protective Order and in conjunction with the Parties' concessions made at the Prehearing Conference. Occidental shall provide the "partially-redacted versions of its monthly 2017 invoices, in addition to the information it already compiled" to Staff and CURB only. Resolution of the Motion to Compel

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<sup>15</sup> *Id.* at 6.

<sup>16</sup> *Id.* at 6-7.

will be held in abeyance pending review of the information by Staff and CURB. Staff and CURB shall not disclose any of the information submitted by Occidental to any other Party in the docket.

**THEREFORE, THE PREHEARING OFFICER ORDERS:**

A. Occidental's Motion for Protective Order is granted in accordance with paragraph 13 above.

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

Dated: May 4, 2018

DLK/sc

//s *Dustin L. Kirk*  
Dustin L. Kirk, Deputy General Counsel  
Prehearing Officer

## 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 05/04/2018.

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/S/ DeeAnn Shupe

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