

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

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

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 CLOSING DOCKET**

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 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 credit in lieu of cash deposits.<sup>7</sup> Therefore, Staff recommended opening a general investigation to determine the appropriateness of accepting irrevocable letters of credit in place of cash deposits.<sup>8</sup>

5. 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>9</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>10</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>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> Order Denying Application, June 12, 2018, ¶ 11.

<sup>10</sup> *Id.*, ¶ 13.

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

6. On June 27, 2018, the Wichita Area Builders Association, Inc. (WABA)<sup>12</sup> 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>13</sup>

7. On July 5, 2018, Staff filed its Response to WABA's Petition for Reconsideration and Clarification, supporting the opening of a general investigation.<sup>14</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>15</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>16</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>17</sup>

8. On January 8, 2019, the Commission issued an Order Opening General Investigation, giving rise to Docket No. 19-GIMX-256-GIV (19-256 Docket). The 19-256 Docket is designed to evaluate allowing electric and gas utilities the authority to accept ILOCs in lieu of cash deposits for system expansion related to residential development.<sup>18</sup> All Kansas gas and electric public utilities were made party to the 19-256 Docket.<sup>19</sup>

9. Among the 21 questions presented in the Order Opening General Investigation is "Should a natural gas or electric utility be allowed to accept an irrevocable letter of credit (ILOC) (in lieu of a cash deposit) when extending its distribution infrastructure at the request of a developer

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<sup>12</sup> On June 12, 2018, the Commission granted WABA intervention.<sup>12</sup>

<sup>13</sup> Petition for Reconsideration and Clarification of Wichita Area Builders Association, Inc., June 27, 2018, ¶ 8.

<sup>14</sup> Staff's Response to WABA's Petition for Reconsideration and Clarification, July 5, 2018, ¶ 1.

<sup>15</sup> *Id.*, ¶ 4.

<sup>16</sup> *Id.*, ¶ 3.

<sup>17</sup> *Id.*, ¶ 2.

<sup>18</sup> Ordering Opening General Investigation, Docket No. 19-GIMX-256-GIV, Jan. 8, 2019, Ordering Clause A.

<sup>19</sup> *Id.*, ¶ 10.

of a new residential or commercial development?”<sup>20</sup> Until that question is resolved, there is no reason to reverse the Commission’s denial of Westar’s Application. If the Commission determines electric and gas utilities should be allowed to accept letters of credit instead of cash deposits, Westar will need to file a new Application to conform to the Commission’s findings in the 19-256 Docket. Therefore, this docket is closed.

**THEREFORE, THE COMMISSION ORDERS:**

- A. This Docket is closed.
- B. 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>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.**

Keen, Chair; Emler, Commissioner; Albrecht, Commissioner

Dated: 02/12/2019



Lynn M. Retz  
Secretary to the Commission

BGF/sb

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<sup>20</sup> *Id.*, ¶ 8(1).

<sup>21</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

## **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 \_\_\_\_\_.

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