

Received
on

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

APR 06 2012

IN THE MATTER OF WESTAR ENERGY)
AND KANSAS GAS AND ELECTRIC)
COMPANY SEEKING COMMISSION)
APPROVAL TO IMPLEMENT CHANGES IN)
THEIR TRANSMISSION DELIVERY)
CHARGES RATE SCHEDULES.)
_____)

by
State Corporation Commission
of Kansas

DOCKET NO. 12-WSEE-651-TAR

PETITION FOR RECONSIDERATION

COMES NOW, Occidental Chemical Corporation ("OXY") and respectfully files this Petition for Reconsideration pursuant to K.S.A. 66-118b and K.S.A. 77-529 of the Suspension Order and Order Granting Temporary Waiver issued by the Commission of the State of Kansas ("KCC" or "Commission") on March 21, 2012, in the above-referenced proceeding. OXY requests that the Commission grant reconsideration for the reasons set forth below:

1. On February 24, 2012, Westar Energy, Inc. ("Westar") and Kansas Gas and Electric Company ("KGE") (Westar and KGE, collectively "Westar") filed what it claimed to be updated Transmission Delivery Charge (TDC) tariffs in the above-titled docket.

2. On March 15, 2012, Staff filed a Motion for a Suspension Order and an Order Granting Temporary Waiver.

3. On March 21, 2012, the Commission issued a Suspension Order and Order Granting Temporary Waiver ("Order").

4. In its Order, the Commission authorized a TDC rate to go into effect, subject to refund, by granting Westar a temporary waiver of the tariff requirement to use

updated 12-CP data. The Commission ordered Westar to allocate the costs of both the current TDC amount and the requested increase using the “current allocation methodology,” which the Commission determined was the current 12-CP, and not the updated 12-CP as required by the tariff. Additionally, the Commission suspended Westar’s request for tariff revisions for 240 days pursuant to K.S.A. 66-117(c).

5. The legislature prescribed specific procedures for changes to a tariff and updates to TDC rates. K.S.A. 66-117 governs fundamental tariff changes, and K.S.A. 66-1237(a)-(b) governs updates to the TDC, but does not allow for changes to the underlying tariff. Westar’s application failed to follow the correct procedures under either of these statutes.

6. The Commission properly concluded that changes to the underlying TDC tariff provisions requires a full investigation pursuant to the terms of K.S.A. 66-117.¹

7. However, the Commission erred by granting a waiver of the current tariff language, allowing use of the existing 12-CP data in a manner contrary to the plain language of the TDC tariff. This fundamental tariff change is in violation of K.S.A. 66-1237 and 66-117. The waiver granted by the Commission is inconsistent with the approved TDC tariff, which requires that updated 12-CP data be used. Specifically, Westar’s TDC tariff provides that Westar shall use the 12-CP method based on current test-year load research each time it files a retail rate proceeding.² Westar acknowledged in its supplemental filing that “[t]his tariff language would require Westar to utilize the 12-CP ratio from its most recently filed rate case, Docket No. 12-WSEE-112-RTS, when allocating the proposed increase to the TDC revenue requirement in

¹ Suspension Order and Order Granting Temporary Waiver at ¶ 14 (Mar. 21, 2012).

² See *generally*, Westar’s Transmission Delivery Charge Tariff at Sheet 2.

this docket.”³ Updated 12-CP data must be used pursuant to the terms of the statute and the tariff.

8. The Commission further erred by failing to consider evidence demonstrating the impact to customers of Staff’s recommendation to not use updated 12-CP data, as required by the tariff. Westar provided no supporting documentation with its application that calculated the result of using the current 12-CP data as applied to both the current TDC amount and the proposed increase. Accordingly, there is no evidentiary basis for the Commission’s decision to authorize Westar to collect additional costs under its TDC.

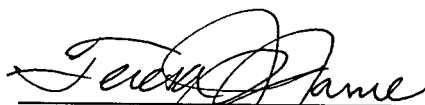
9. The Commission erroneously relied on the Staff’s position that directing Westar to allocate the costs of the both the current TDC amount and the increase based on the current allocation methodology, subject to refund, preserves the status quo. This position is incorrect. Preserving the status quo would be to deny Westar’s application for updated TDC rates until such time as Westar files a valid TDC application. Alternatively, if the Commission allows Westar to implement a rate under its application, Westar should be directed to use updated 12-CP data pursuant to the tariff.

10. Because Westar’s filing did not constitute a proper TDC update request pursuant to K.S.A. 66-1237 or a proper request for a tariff change pursuant to K.S.A. 66-117, the Commission should reconsider its decision and deny Westar’s application. Alternatively, the Commission should require Westar to use updated 12-CP data with no adjustments, as required by Westar’s TDC tariff, until such time as the Commission completes its full investigation pursuant to K.S.A. 66-117 and determines whether the underlying tariff language should be changed.

³ Westar Supplemental Filing at 1 (Mar. 6, 2012).

WHEREFORE, OXY respectfully requests that the Commission grant its Petition for Reconsideration and grant such other relief as is just and proper.

Respectfully submitted,



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Attorneys for Occidental Chemical
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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

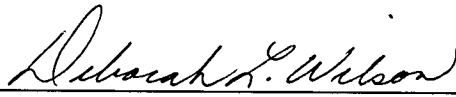
Teresa J. James, of lawful age, being first duly sworn, upon oath states:

That she is one of the attorneys for the intervener, Occidental Chemical Corporation ("OXY"), that she has read the above and foregoing Petition for Reconsideration, knows the contents thereof, and knows that all of the statements made therein are true.



Teresa J. James

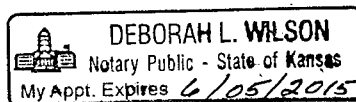
SUBSCRIBED AND SWORN to before me this 6th day of April, 2012.



Notary Public

My Appointment Expires:

6/05/2015



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Reconsideration was fax-filed and sent via U.S. First Class mail on this 6th day of April, 2012, to:

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In addition, on April 6, 2012, a copy of the foregoing Petition for Reconsideration was sent via email to:

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April 6, 2012

Patti Petersen-Klein
Executive Director
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, KS 66604

Received
on

APR 06 2012

RE: Docket No. 12-WSEE-651-TAR
Our File No. 30938-0002
Petition for Reconsideration

by
State Corporation Commission
of Kansas


Dear Ms. Petersen-Klein:

Enclosed please find the original and seven copies of OXY Chemical's Petition for Reconsideration in the above referenced docket which was fax-filed on April 6, 2012.

Please do not hesitate to contact me if you have any questions. Thank you.

Sincerely,

MARTIN, PRINGLE, OLIVER,
WALLACE & BAUER, L.L.P.


Teresa J. James *dwil*

TJJ/dwil

Enclosures

cc: Service List
Tammy Cooper
Phillip Oldham
Stanford J. Smith