

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Joint Application of)
Westar Energy, Inc. and Kansas Gas and)
Electric Company for Approval to Make) Docket No. 18-WSEE-328-RTS
Certain Changes in their Charges for Electric)
Services.)

RESPONSE TO THE RESPONSE OF WESTAR TO
KIC'S PETITION TO INTERVENE

The Kansas Industrial Consumers Group, Inc. ("KIC"), respectfully files this Response to the *Response of Westar Energy, Inc., and Kansas Gas and Electric Company to the Petition to Intervene of the Kansas Industrial Consumers Group, Inc.*, dated February 28, 2018. In support of its Response, KIC states to the State Corporation Commission of the state of Kansas ("Commission" or "KCC") as follows:

I. Background

1. On February 1, 2018, Westar Energy, Inc., and Kansas Gas and Electric Company (collectively referred to as "Westar") filed a Joint Application requesting authorization to make certain changes to its charges for electric service in Kansas.

2. On February 19, 2018, KIC filed its Petition to Intervene in this proceeding. In its Petition, KIC explained it is a corporation organized for the purpose of representing the interests of commercial, business, industrial, and not-for-profit and educational entities that purchase large volumes of electric energy and natural gas for their operations and activities.

3. On February 28, 2018, Westar filed a Response opposing KIC's intervention, asserting that KIC must identify its "members." Focusing on the mandatory intervention requirements, Westar argues that KIC should not be granted intervention, because it is not a Westar customer and has identified no members who are customers of Westar. Westar states it

will not object to KIC's intervention if KIC will "identify its members that take service from Westar."¹

II. Response

A. KIC's Petition to Intervene should be Granted

4. As noted in its Petition, KIC is a corporation organized to represent and advance the interests of large-volume energy customers. This corporate purpose is a legally-cognizable interest and also a limitation on KIC's business activities.

5. More importantly, this corporate purpose identifies the unique interests KIC will represent in Commission proceedings. KIC will advocate for large-volume users of electricity, who have very specific concerns. For instance, in the context of Westar, these customers tend to be more exposed to surcharges and riders than the average customer. Because they purchase vast quantities of power, their overall bills are also very dependent on the utility's transmission and fuel costs.

6. Also, as a result of their unique usage characteristics, large-volume customers provide benefits to the entire Westar system. Not only do these users contribute significant amounts of revenue, they tend to have high load factors, meaning their use of electricity is very stable and predictable, as compared to the average customer.

7. As noted in KIC's Petition to Intervene, in 2008, the Commission recognized a corporate entity's ability to intervene in Commission proceedings without identification of "members." In that proceeding, the Southwest Kansas Irrigation Association asserted that it represented "a unique segment of consumers for natural gas who are dependent upon gas service

¹ Response of Westar Energy, Inc., and Kansas Gas and Electric Company to the Petition to Intervene of the Kansas Industrial Consumers Group, Inc., February 28, 2018, ¶ 7.

for a significant component of the economy."² Similarly, KIC represents and advances the interests of a unique segment of large-volume consumers whose businesses and economic activities are highly dependent on reliable and competitively-priced electricity service. And, as more fully described above, large-volume users have unique characteristics distinguishing their interests from other customers. The unique concerns of this specific segment of consumers are clearly implicated and may be substantially affected by this proceeding.

8. Because KIC's interests may be substantially affected, KIC's Petition meets the criteria for both mandatory and discretionary intervention under K.S.A. 77-521. Certainly, KIC's collective representation of a unique segment of consumer interests is in the interests of justice and will *facilitate* the orderly and prompt conduct of the proceedings. For these reasons, KIC requests the Commission grant its Petition to Intervene without limitation or qualification.

B. Identification of Westar Customers participating through KIC

9. As noted above, Westar will not object to KIC's intervention if KIC identifies members taking service from Westar. KIC has no objection to identifying such customers and commits to doing so in all Commission proceedings. However, this is not an appropriate condition to place on KIC's intervention.

10. KIC has demonstrated sufficient grounds for the Commission to grant intervention and requests the Commission grant its intervention on such grounds. However, KIC will also identify entities participating through it. KIC anticipates additional entities, in addition to those listed below, will join this group in the following weeks.

11. The following entities have all filed Petitions to Intervene in this proceeding and have indicated an intent to participate through KIC, as appropriate:

² KCC Consolidated Docket Nos. 08-ANGG-295-CCN and 08-TKOG-314-COC, Order Granting SWKIA's Petition to Intervene and Motion to Consolidate Dockets, ¶¶ 8-12.

- Cargill, Incorporated
- Coffeyville Resources Refining & Marketing, LLC
- Occidental Chemical Corporation
- Spirit Aerosystems, Inc.

12. Because KIC has identified participants who are Westar customers, it is KIC's understanding Westar will not further object to KIC's intervention in this proceeding. However, as noted above, KIC requests the Commission specifically grant its Petition to Intervene as a standalone entity, consistent with the Commission's decision in 2008.

13. In future proceedings, KIC requests the Commission grant its intervention as a standalone corporate entity representing a unique segment of consumer interests. Such action is in the interests of justice and will promotes the orderly and prompt conduct of the proceedings.

WHEREFORE, KIC respectfully requests the Commission grant its Petition to Intervene in this matter. KIC also requests all other relief to which the Commission determines it may be entitled.

Respectfully submitted,

/s/ **Andrew J. French**

James P. Zakoura, KS Bar #07644
Andrew J. French, KS Bar # 24680
Smithyman & Zakoura, Chartered
750 Commerce Plaza II
7400 West 110th Street
Overland Park, KS 66210
Phone: (913) 661-9800
Fax: (913) 661-9863
Email: jim@smizak-law.com
andrew@smizak-law.com

**Attorneys for Kansas Industrial
Consumers Group, Inc.**

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

Andrew J. French, being duly sworn upon his oath, deposes and states that he is the Attorney for the Kansas Industrial Consumers Group, Inc., that he has read and is familiar with the foregoing *Response to the Response of Westar to KIC's Petition to Intervene*, and the statements therein are true to the best of his knowledge, information, and belief.



Andrew J. French

SUBSCRIBED AND SWORN to before me this 6th day of March, 2018.



Notary Public

My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or regular U.S. mail (unless otherwise noted), the 6th day of March, 2018 to the parties below:

MARTIN J. BREGMAN BREGMAN LAW OFFICE, L.L.C. 311 PARKER CIRCLE LAWRENCE, KS 66049 mjb@mjbregmanlaw.com	CATHRYN J. DINGES, SENIOR CORPORATE COUNSEL WESTAR ENERGY, INC. 818 S KANSAS AVE PO BOX 889 TOPEKA, KS 66601-0889 cathy.dinges@westarenergy.com
DAVID W. NICKEL, CONSUMER COUNSEL CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 d.nickel@curb.kansas.gov	THOMAS J. CONNORS, ATTORNEY CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 tj.connors@curb.kansas.gov
TODD E. LOVE, ATTORNEY CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 t.love@curb.kansas.gov	SHONDA RABB CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 s.rabb@curb.kansas.gov
DELLA SMITH CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 d.smith@curb.kansas.gov	MICHAEL DUENES, ASSISTANT GENERAL COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 m.duenes@kcc.ks.gov
STEPHAN SKEPNEK, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 s.skepnek@kcc.ks.gov	AMBER SMITH, CHIEF LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 a.smith@kcc.ks.gov
KURT J. BOEHM, ATTORNEY BOEHM, KURTZ & LOWRY 36 E SEVENTH ST STE 1510 CINCINNATI, OH 45202 kboehm@bkllawfirm.com	JODY KYLER COHN, ATTORNEY BOEHM, KURTZ & LOWRY 36 E SEVENTH ST STE 1510 CINCINNATI, OH 45202 jkylerecohn@bkllawfirm.com

ELIZABETH A. BAKER 6610 SW 29th St. Topeka, KS 66614 betsy@bakerlawks.com	KEVIN HIGGINS KEVIN C. HIGGINS PARKSIDE TOWERS 215 S STATE ST STE 200 SALT LAKE CITY, UT 84111 khiggins@energystrat.com
--	--

/s/ **Andrew J. French**
James P. Zakoura
Andrew J. French
SMITHYMAN & ZAKOURA, CHARTERED