

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Complaint of Kansas Gas     )  
Service, a Division of ONE Gas, Inc., Against     )  
Westar Energy, Inc., Regarding Westar's Practice of     )     Docket No. 19-WSEE-061-COM  
Offering Payments to Developers in Exchange for     )  
the Developers Designing All Electric Subdivisions.     )

**JOINT MOTION FOR APPROVAL OF UNANIMOUS SETTLEMENT AGREEMENT**

Kansas Gas Service, a Division of ONE Gas, Inc. (Kansas Gas Service or Company), the Staff of the Kansas Corporation Commission (Staff), Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy (Black Hills) and Westar Energy, Inc. (Westar) (collectively, the Parties) hereby submit this Joint Motion seeking approval from the Kansas Corporation Commission (Commission) of the Unanimous Settlement Agreement (Agreement) reached by the Parties which is attached hereto as Exhibit A and incorporated herein by reference. The Parties submit that the Agreement reasonably resolves all issues raised in this Complaint case and should be approved by the Commission. In support of this Joint Motion, the Parties state as follows:

**I.     BACKGROUND**

1.     On August 7, 2018, KGS filed a Formal Complaint against Westar Energy, Inc. (Westar), alleging Westar has violated its own Commission-approved "Policy for Residential Subdivisions" tariff through the implementation and operation of a program that offers payments to developers who agree to design residential subdivisions that only contain "Total Electric" housing.<sup>1</sup>

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<sup>1</sup>See, Formal Complaint at p. 1 and Exhibit A (August 7, 2018).

2. On September 11, 2018, the Commission adopted Staff's Legal Memorandum and ordered the Formal Complaint to be served upon Westar for an Answer.<sup>2</sup>

3. On September 27, 2018, Westar filed its Answer opposing KGS' allegations<sup>3</sup>, followed by the filing of KGS's Reply to Westar's Answer on October 8, 2018.<sup>4</sup>

4. On October 30, 2018, the Commission granted Black Hills' Petition to Intervene.<sup>5</sup>

5. On November 6, 2018, the Commission issued its *Protective Order and Discovery Order*.

6. On April 17, 2019, the Parties filed a Joint Motion for Procedural Schedule, proposing a procedural schedule in this matter.<sup>6</sup>

7. On April 23, 2019, the Commission issued a procedural schedule.<sup>7</sup>

8. On April 24, 2019, KGS filed its direct testimony in support of its Complaint against Westar.<sup>8</sup> In its testimony, KGS claimed (1) Westar failed to obtain Commission approval for its Total Electric Subdivision Program, and (2) the Total Electric Subdivision Program creates economic waste by effectively prohibiting the installation of natural gas facilities in the new all-electric subdivisions, which in turn actively damages the public interest by eliminating customer choice for those homeowners who may want gas facilities installed at a later date. Also, KGS

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<sup>2</sup>See, Order Adopting Legal Memorandum at p. 3 (Sept. 11, 2018).

<sup>3</sup>Answer of Westar Energy, Inc. (Sept. 27, 2018).

<sup>4</sup>Kansas Gas Service's Reply to Westar Energy's Answer (Oct. 8, 2018).

<sup>5</sup>*Order Granting Petition to Intervene*, Ordering Clause A (Oct. 30, 2018).

<sup>6</sup>Joint Motion for Procedural Schedule, pp. 2-3 (April 17, 2019).

<sup>7</sup>*Order Setting Procedural Schedule* (April 23, 2019).

<sup>8</sup>Direct Testimony of Janet L. Buchanan and Lyn S. Leet (April 24, 2019).

stated that Westar's practice of using ratepayer funds to provide developers cash rebates in exchange for building all-electric housing in their subdivisions ran afoul of the Commission's Order in docket number 09-GIMX-160-GIV.

9. On April 24, 2019, Black Hills filed its direct testimony in support of the Complaint against Westar.<sup>9</sup> In that testimony, Black Hills alleged that Westar's practice of incentivizing developers to install all-electric subdivisions results in natural gas providers losing out on the opportunity to add load to its system that could serve to benefit its natural gas customers. Moreover, according to Black Hills, Westar's Total Electric Subdivision Program removes the opportunity for residents in all-electric subdivisions to use natural gas in the future, which is contrary to the public interest.

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<sup>9</sup>Direct Testimony of Thomas D. Stevens (April 24, 2019).

10. On May 30, 2019, Westar filed its direct testimony.<sup>10</sup> In that testimony, Westar generally denied KGS' allegations, while contending: (1) the Total Electric Subdivision Program is in the public interest, (2) tariffing of the Total Electric Subdivision Program by the Commission is not required, and (3) it is appropriate to use ratepayer funds to provide rebates to developers because the Total Electric Subdivision Program is a program that benefits Westar retail customers.

11. On June 25, 2019, Staff filed a Motion for Extension of Time and Request for Approval of Amended Procedural Schedule, asking the Commission to give Staff an additional three (3) weeks to pre-file its direct testimony and to amend the remainder of the procedural schedule.<sup>11</sup> On July 9, 2019, the Commission issued an order<sup>12</sup> granting the extension and amending the remainder of the procedural schedule as follows:

DATE	TIME	ACTION
July 22, 2019	5:00 p.m.	Staff Direct Testimony
August 12, 2019	5:00 p.m.	Complainant and Intervenor Rebuttal to Westar Complainant, Intervenor and Westar's Responsive Testimony to Staff
September 9, 2019	9:00 a.m.	Settlement Conference
September 16, 2019	5:00 p.m.	Motions and Discovery Cut-Off
September 16, 2019	5:00 p.m.	Deadline to Submit Settlement Agreement
September 19, 2019	5:00 p.m.	Testimony in Support of Settlement Agreement Due
September 27, 2019	9:00 a.m.	Prehearing Conference, 3 <sup>rd</sup> Floor Hearing Room
October 22, 2019	10:30 a.m.	Evidentiary Hearing, 1 <sup>st</sup> Floor Hearing Room

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<sup>10</sup>Direct Testimony of Larry Wilkus and Rebecca Fowler (May 30, 2019).

<sup>11</sup>Motion for Extension of Time and Request for Approval of Amended Procedural Schedule, pp. 8-9 (June 25, 2019).

<sup>12</sup>*Order Granting Extension of Time and Amending Procedural Schedule* (July 9, 2019).

October 23, 2019	9:00 a.m.	
November 15, 2019	5:00 p.m.	Initial Briefs/Proposed Findings of Fact and Conclusions of Law Due
December 3, 2019	5:00 p.m.	Responsive Briefs Due
December 31, 2019	N/A	Commission Order Due

12. On July 22, 2019 and July 23, 2019, Staff filed its direct testimony.<sup>13</sup> According to Staff, Westar's Total Electric Subdivision Program, along with two other programs not the focus of this docket, the HVAC Contractor Program and Builder Programs (with the three programs collectively referred to as the "Programs"), should be included in Westar's tariff, and that the Total Electric Subdivision Program was not in the public interest and should be terminated.

13. On August 12, 2019, KGS and Westar filed their rebuttal testimony.<sup>14</sup>

## **II. AGREEMENT**

14. On September 9, 2019, the Parties to this docket met in Topeka, Kansas for the settlement conference that had been scheduled pursuant to the Commission's amended procedural order. As a result of the settlement conference, the Parties have established a Settlement Agreement that resolves all issues raised in this Complaint case. A copy of the Agreement is attached hereto as **Exhibit A** and incorporated herein by reference.

15. As part of this Joint Motion, the Parties request the Commission accept into the record the prefiled testimony of all parties filed in this docket. This Agreement is consistent with and supported by the prefiled testimony. Once entered into the record, this testimony constitutes

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<sup>13</sup>Direct Testimony of Leo M. Haynos and Justin W. Prentiss (July 22, 2019) and Dr. Robert H. Glass (July 23, 2019).

<sup>14</sup>Rebuttal Testimony of Janet L. Buchanan and Lyn S. Leet (August 12, 2019) and Rebuttal Testimony of Larry Wilkus and Mark Cosby (August 12, 2019).

sufficient, competent evidence upon which the Commission may base its decision to approve the proposed Agreement.

16. The Parties submit the Agreement they have reached reasonably addresses all issues raised in this Complaint docket and should be approved by the Commission.

WHEREFORE, the Parties request that the Commission issue an Order approving the Unanimous Settlement Agreement which is attached hereto as **Exhibit A**.

*/s/ James G. Flaherty*

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*/s/ Dari R. Dornan*

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*/s/ Cathryn J. Dinges*

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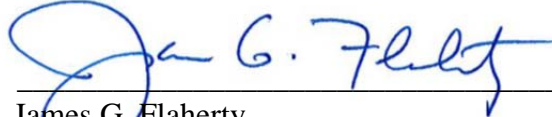
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**VERIFICATION**

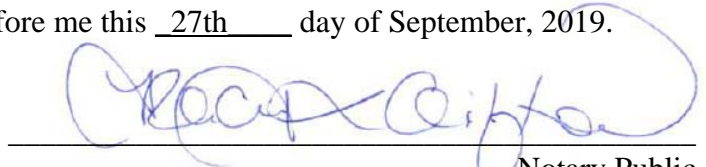
STATE OF KANSAS, COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being first duly sworn on oath, states that he is the attorney for Kansas Gas Service, a Division of ONE Gas, Inc. ; that he has read the forgoing Joint Motion for Approval of Unanimous Settlement Agreement, and the statements contained therein are true.

  
\_\_\_\_\_  
James G. Flaherty

SUBSCRIBED AND SWORN to before me this 27th day of September, 2019.



  
\_\_\_\_\_  
Notary Public

Appointment/Commission Expires:

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing was sent via U. S. Mail, postage prepaid, hand-delivery, or electronically, this 27<sup>th</sup> day of September, 2019, addressed to:

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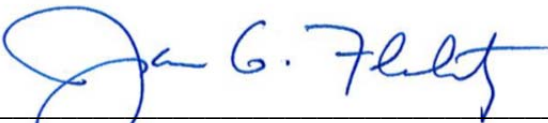
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