

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

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)

**PETITION FOR INTERVENTION OF
WICHITA AREA BUILDERS ASSOCIATION, INC.**

The Wichita Area Builders Association, Inc. (WABA), pursuant to K.A.R. 82-1-225, hereby petitions the State Corporation Commission of the State of Kansas (Commission) for intervention in the above-captioned matter. In support thereof, WABA states the following:

I. REQUEST FOR INTERVENTION

1. On October 16, 2017, Westar Energy, Inc. (Westar Energy) and Kansas Gas and Electric Company (KGE) (collectively, Westar), filed an application requesting Commission approval of revisions to Westar's "Policy for Residential Subdivisions" to allow developers the option of providing irrevocable letters of credit (ILOC) to Westar in lieu of cash deposits on the subdivision developments. Westar stated its pursuit of the revisions was, in part, a result of requests from developers seeking flexibility with regard to the subdivision deposit requirements.¹ Westar also noted that the revisions would modernize Westar's business practices, assist with economic development, while at the same time ensure Westar and its customers remain protected by allowing Westar the ability to recover its investment by drawing on the letters of credit in situations where cash deposits are not utilized.²

¹ Application, ¶ 3.

² Application, ¶ 4.

2. WABA is a chartered local affiliate of the National Association of Home Builders. WABA was established in 1951, is a 501(c)6 not-for-profit entity, and has a membership base of approximately 960 individual members located throughout the geographic area of Sedgwick, Harvey, Butler, Sumner, Cowley, Harper, and Kingman Counties, Kansas. Many of the WABA members are developers in the Westar certificated service territory and are subject to Westar's Tariff, and are some of the same developers seeking the flexibility to use the ILOC in lieu of cash, as referenced by Westar.

3. Because the terms and conditions of Westar's tariffs apply to WABA and its members, any Commission determination in this matter will substantially affect WABA's legal rights, duties, privileges, immunities, and other legal interests.

4. WABA notes that the Commission has not adopted a procedural schedule for this proceeding. WABA states that its intervention will not impair the orderly and prompt conduct of the proceedings. Rather, WABA's participation in this matter is in the interest of justice as it will provide additional information to assist the Commission in making its determination, as set forth below in greater detail.

5. All pleadings, orders, notices or other documents should be served on the undersigned counsel, and on the individual(s) named below:

Wess Galyon
President/CEO
Wichita Area Builders Association
730 N Main
Wichita, KS 67203
Phone: (316) 265-4226
wess@wabahome.com

II. DISCUSSION

6. On May 2, 2018, Commission Staff (Staff) filed its report and recommendation (Report) recommending the Commission deny Westar's Application at this time and instead initiate a general investigation to discuss "whether accepting an ILOC, in lieu of a cash deposit, is an appropriate form of security for residential subdivision developers and, if so, whether any specific conditions should be placed on the financial institution issuing the ILOC."³ The basis for Staff's recommendation is that there does not appear to be an established Commission policy on the use of ILOCs, and that other utilities currently accept irrevocable letters of credit in lieu of cash deposits despite not having explicit tariff language providing for the use of ILOC.⁴

7. On May 14, 2018, Westar responded to Staff's Report (Westar Response) urging the Commission to reject Staff's recommendation to open a general investigation, noting that a general investigation is not necessary because the requested modification is specific to Westar only, that a general investigation would cause unnecessary delay in providing relief to the developers and to economic development opportunities, and that Staff's concerns with the use of ILOC are unwarranted.⁵

8. WABA supports Westar's position. WABA understands that the deposits it makes are provided to ensure that there is a financial guarantee of reimbursement for infrastructure buildout in the event that full development of a subdivision does not occur. The ILOC proposed by Westar serves this purpose while allowing developers greater access to cash flow to expand on additional economic development opportunities, which will benefit developers, Westar, and Westar other customers. For example, the greater access to cash flow allows a developer to construct enhancements to the residential developments that the buying

³ Staff Report, p. 6.

⁴ Staff Report, p. 5.

⁵ Westar Response, pp. 2-3.

public desires, such as landscaping, fencing, walking paths, etc. These enhancements influence a prospective buyer's decision to purchase in a given area, which in turn improves the capability of a developer to successfully and fully develop the area, which also translates into a greater number of service connections being completed by Westar.

9. And while WABA appreciates Staff's concerns, Staff's Report leaves the impression that the use of ILOC is a risky proposition. That is simply not the case. The use of ILOC is a standard business practice, and in the experience of WABA members, the use of ILOC is not an atypical financial tool. As a general matter, in order to obtain an ILOC, developers must meet the same or similar stringent credit criteria banks apply to other loan applications. Meaning in this instance, that the bank protects its interests by ensuring the credit worthiness of the developer, with the developer incurring a liability on its financial statements, and Westar receives the financial protection necessary for its operations and other customers. The difference being that the developer's cash flow is not negatively impacted.

10. Further, the specific ILOC form and financial requirements provided for under Westar's proposed tariff are extensive. Specifically, the tariff provides the following:

Letter of Credit Form Requirements:

- a. Must be issued by a financial institution that has authority to issue letters of credit.
- b. Must identify Westar Energy, Inc. as the "Beneficiary", the financial institution as the "Issuer", and the party contracting with Westar Energy, Inc. as the "Developer" or "Principal".
- c. Must be signed and notarized by the appropriate officer of the issuing financial institution.
- d. Must identify the Westar Energy, Inc. project name and/or number.
- e. Must state the maximum amount to be drawn.
- f. Expiration date must be at least twelve months after the effective date of the letter of credit with automatic six (6) month extensions. unless notice is given by the issuing financial institution at least ninety (90) days prior to the expiration of a

term of non-renewal. Any extensions to the subdivision installation shall require extensions of the letter of credit letter of credit must not be revocable.

g. Westar Energy shall have the unconditional right to draw on the ILOC at the end of the 5-year period in an amount equal to its unrecovered investment.

h. The letter of credit cannot be modified, amended or terminated prior to the expiration date without the written consent of Westar Energy, Inc.

i. Any choice of law provision must elect Kansas laws as governing.

Additionally, with regard the financial institution issuing the ILOC, the proposed tariff provides:

Financial Institution Requirements:

j. Must have authority to issue letters of credit and be regulated by a Federal or State agency.

k. Must be insured by the Federal Deposit Insurance Corporation (FDIC).

l. The address of presentation must be an office of the financial institution located within the State of Kansas, unless otherwise mutually agreed by Westar Energy, Inc. and Developer in writing.

m. The principal's name on the letter of credit must be the same Developer who applies for the subdivision installation with Westar Energy, Inc.

n. The total letter of credit exposure to Westar Energy, Inc. at the lending institution is limited to no more than 10% of the institution's equity capital. If the financial institution that has issued an outstanding letter of credit to Westar Energy, Inc. has indicated its intent not to renew such letter of credit, Developer shall provide a substitute letter of credit at least twenty (20) days prior to the expiration of that outstanding letter of credit.

If the financial institution issuing a letter of credit shall fail to honor the Westar Energy Inc.'s properly documented request to draw on an outstanding letter of credit or such financial institution enters bankruptcy proceedings, Developer shall provide for the benefit of Westar Energy, Inc. (a) a substitute letter of credit that is issued by a financial institution acceptable to Westar Energy, Inc, or (b) provide Westar Energy, Inc. with cash in an amount specified by Westar Energy, Inc. to cover Developer's continuing contractual obligations, in either case within five (5) business days after Developer receives notice of such refusal or bankruptcy. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing and reducing the amount of (as the case may be) one or more letters of credit shall be borne solely by Developer.

As can be seen by the extensive provisions proposed by Westar, there will be significant safeguards in place to protect Westar and its customers.

11. Finally, by way of background for the Commission, Westar's decision to seek explicit approval to accept ILOC in lieu of cash for residential subdivision developments came, in WABA's view, after significant discussion and thought. In May of 2015, Westar formed what they referred to as Touch Point Teams, the members of which were Westar employees who were charged with reaching out to and meeting with customers to discuss concerns and identify improvements that could be made to processes that would be mutually beneficial to Westar and its customers. One such Team was tasked with working with developers with specific regard to Developer Service Requests. As a result of these interactions, the issue of Westar accepting ILOC from developers instead of cash deposits arose. After much discussion, it was agreed that Westar's exposure in relation to having stranded assets could be mitigated with the use of ILOC, which would also free up cash for developers to use to promote developments in the ways mentioned herein. In turn, Westar crafted the proposed tariff for Commission approval.

12. In WABA's view, the use of ILOC accomplishes the goal of providing a utility with a financial guarantee of reimbursement for infrastructure buildout in the event that full development of a subdivision does not occur. This process will protect Westar and its other customers, while at the same time be responsive to the needs of Westar's developer customers.

WHEREFORE, the Wichita Area Builders Association, Inc. respectfully requests the Commission grant this Petition for Intervention in this matter, consider the comments incorporated herein, and for such further and other relief as may be just and proper.

Respectfully Submitted,

/s/ Terri Pemberton

Glenda Cafer (#13342)

Telephone: (785) 271-9991

Terri Pemberton (#23297)

Telephone: (785) 232-2123

CAFER PEMBERTON LLC

3321 SW 6th Avenue

Topeka, Kansas 66606

E-mail: glenda@caferlaw.com

E-mail: terri@caferlaw.com

**ATTORNEYS FOR WICHITA AREA
BUILDERS ASSOCIATION, INC.**

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above pleading was electronically served this 29th day of May, 2018 to:

Otto Newton, Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027
o.newton@kcc.ks.gov

Cathryn J Dinges, Corporate Counsel
Kansas Gas & Electric Co. d/b/a Westar Energy
818 S. Kansas Avenue
P.O. Box 889
Topeka, Kansas 66601-0889
cathy.dinges@westarenergy.com

Jeffrey L. Martin, VP, Regulatory Affairs
Kansas Gas & Electric Co. d/b/a Westar Energy
818 S. Kansas Avenue
P.O. Box 889
Topeka, Kansas 66601-0889
jeff.martin@westarenergy.com

/s/ Terri Pemberton

Terri Pemberton

VERIFICATION OF WESS GALYON

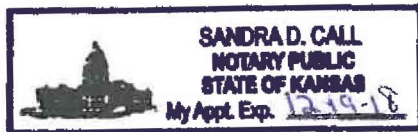
STATE OF KANSAS)
) ss
COUNTY OF SEDGWICK)

The undersigned, Wess Galyon, upon oath first duly sworn, states that he is the President and Chief Executive Officer of the Wichita Area Builders Association, Inc., and that he has reviewed the foregoing pleading, that he is familiar with the contents thereof, and that the statements contained therein are true and correct to the best of his knowledge and belief.

Wess Galyon
Wess Galyon

Subscribed and sworn to before me this 29th day of May, 2018.

Sandra D. Call
Notary Public



My appointment expires: 12-19-18