

**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) Docket No. 18-WSEE-328-RTS
Company for Approval to Make Certain)
Changes in their Charges for Electric Services.)

**SIERRA CLUB AND VOTE SOLAR'S RESPONSE IN OPPOSITION TO WESTAR'S
MOTION TO STRIKE**

Sierra Club and Vote Solar hereby respectfully submit this Response in Opposition to Westar Energy, Inc. and Kansas Gas and Electric Company's ("Westar" or "Company") Motion to Strike portions of the direct testimony of Madeline Yozwiak. In support of this Response, Sierra Club and Vote Solar state as follows:

1. On February 1, 2018, Westar filed a Joint Application requesting approval to make certain changes to their charges and rates for electric services.
2. Sierra Club filed a petition to intervene on April 2, 2018, and the State Corporation Commission of the State of Kansas ("Commission") granted the petition on May 3, 2018.
3. Vote Solar filed a petition to intervene on April 19, 2018, which Westar opposed on April 26, 2018. On June 7, 2018, the Commission granted Vote Solar's intervention, conditioned on Vote Solar combining its activities in the docket with Sierra Club pursuant to K.S.A. 77-521(c)(3).¹
4. On June 11, 2018, Sierra Club and Vote Solar jointly filed the Direct Testimony and Exhibits of Madeline Yozwiak.

¹ Order Consolidating Vote Solar and Sierra Club Interventions, p. 7 (June 7, 2018).

5. On June 18, 2018, Westar filed a Motion to Strike (“Motion”) roughly five pages of witness Yozwiak’s direct testimony. Specifically, Westar seeks to strike the testimony presented on page 33, line 1 through page 38, line 5 and on page 38, lines 18 through 20.² Westar argues that this portion of testimony is a collateral attack on the Commission’s Final Order in Docket No. 16-GIME-403-GIE (“16-403 Docket”) and should be stricken as an attempt to re-litigate issues addressed in that docket in contravention of the Commission’s Order Consolidating Vote Solar and Sierra Club Interventions.³

6. Westar’s Motion is without merit. In her direct testimony, witness Yozwiak evaluates the rate design changes that Westar proposes for the Residential Distributed Generation (“RS-DG”) class in this case. In the portion of the testimony that Westar seeks to strike, Yozwiak (i) describes the additional burden that RS-DG customers would have to bear due to the mandatory demand charge that Westar proposes as part of the new RS-DG tariff—a charge that would be assessed on the basis of a DG customer’s single hour of maximum usage during the period of 2:00 pm to 7:00 pm on non-holiday weekdays; (ii) responds to testimony that Westar has offered in this case in support of its proposal; and (iii) summarizes her conclusions about the proposed three-part RS-DG tariff.⁴ This portion of testimony, like the rest of the testimony, is relevant to the application Westar presents to the Commission for approval—it directly responds to the RS-DG proposal and the supporting testimony that Westar presents *in this case*—and, as such, is appropriate intervenor testimony.⁵

² Motion ¶ 8.

³ *Id.* ¶¶ 7, 8.

⁴ Direct Testimony and Exhibits of Madeline Yozwiak, pp. 33-38 (June 11, 2018) (“Yozwiak Direct”).

⁵ See K.A.R. 82-1-229(d) (prefiled testimony is subject to the same rules of evidence as if given orally); K.A.R. 82-1-230(a) (rules of evidence in 60 K.S.A. Art. 4 apply to Commission hearings and may be relaxed if in the public interest and aids factual development); K.S.A. § 60-401(b) (relevant evidence is evidence having any tendency in reason to prove any material fact).

7. Westar’s Motion is premised on a misreading of the Commission’s decision in the 16-403 Docket. In that proceeding, the Commission approved “a roadmap the electric utilities may pursue in future rate filings.”⁶ But “[t]he mere fact that a public utility is permitted to include a particular rate design in a future application is in no way a formal predetermination the rate design will be approved,”⁷ nor is it a shield against evidence presented in opposition. Instead, as the Commission explained, if a utility seeks to establish a new rate design or establish different rates for DG and non-DG customers in a rate case, then that utility has the burden of establishing that those changes result in just and reasonable rates that are neither unduly discriminatory nor preferential.⁸ Moreover, DG customers have a right not to be charged higher rates or charges for electric service, or otherwise be prejudiced or disadvantaged, based on their use of renewable energy sources.⁹ Witness Yozwiak’s testimony, including the portion that Westar seeks to strike, relates to these core inquiries. As such, the Commission should deny Westar’s motion.¹⁰

**WITNESS YOZWIAK APPROPRIATELY ADDRESSES THE DG RATE PROPOSAL
AND SUPPORTING TESTIMONY THAT WESTAR PRESENTS IN THIS CASE.**

8. In 39 pages of direct testimony, witness Yozwiak provides her evaluation of Westar’s proposed rate design changes for the RS-DG class in this rate case. She presents three main findings: first, the Company’s proposal would significantly increase the rates and charges

⁶ Final Order ¶ 34, *General Investigation to Examine Issues Surrounding Rate Design for Distributed Generation Customers*, Docket No. 16-GIME-403-GIE (Sept. 21, 2017) (“Final Order”) (“The Commission interprets the S&A as a roadmap the electric utilities may pursue in future rate filings.”).

⁷ Order on Petition for Reconsideration ¶ 26, *General Investigation to Examine Issues Surrounding Rate Design for Distributed Generation Customers*, Docket No. 16-GIME-403-GIE (Nov. 2, 2017) (“Reconsideration Order”).

⁸ Final Order ¶ 24; Reconsideration Order ¶¶ 24-26. *See also* K.S.A. 66-101b.

⁹ K.S.A. 66-117d.

¹⁰ Westar also claims that the arguments presented in witness Yozwiak’s testimony are strikingly similar to those raised by Sierra Club in Docket 16-403. Motion ¶ 8. Sierra Club was not a party to that proceeding. Rick Gilliam, a Vote Solar employee, served as a witness for The Climate and Energy Project in Docket 16-403, and discussed demand charges, among other things. However, unlike witness Yozwiak’s testimony in this case, Mr. Gilliam did not address the three-part rate design at issue in this case (*i.e.*, including a demand charge based on RS-DG customers’ single hour of maximum usage during the period of 2:00 pm to 7:00 pm on non-holiday weekdays) nor did he respond to testimony regarding other utilities’ experience with three-part rates.

that customers with distributed renewable energy generation pay for electricity, at a level that is disproportionate to Westar’s proposed rate changes for other residential customers, and this proposal is unjustified because RS-DG customers currently pay more than their share of costs; second, Westar’s Class Cost of Service Study overstates the costs allocated to the RS-DG class; and third, the proposal is not cost-based, and prejudices RS-DG customers by making their electricity bills more complex to understand and difficult to manage.¹¹

9. Westar’s Motion focuses on the third finding. Westar seeks to strike Section V of witness Yozwiak’s testimony, which is entitled “Westar’s Proposal Prejudices Customers with Renewable Energy Generation.”¹² But this section, like the rest of witness Yozwiak’s testimony, responds to the proposal Westar has put forward for Commission approval in this case.

10. In the first question and answer (“Q&A”) in Section V, Yozwiak contrasts Westar’s proposed RS-DG tariff with the current two-part Residential Standard Service tariff, and concludes that RS-DG customers would have an additional burden as compared to non-DG residential customers under Westar’s proposal—to understand, monitor, and attempt to control the coincident total hourly amount used in each hour from 2:00 pm to 7:00 pm every weekday.¹³

11. In the next two Q&As, Yozwiak responds directly to the testimony of Westar witness Dr. Ahmad Faruqui, who supports the Company’s proposed RS-DG rate design in this case. Specifically, Yozwiak responds to Dr. Faruqui’s discussion of three-part rate offerings to residential customers in other jurisdictions, including Arizona Public Service Company’s voluntary residential three-part rate, Salt River Project’s DG rate, and the demand charges of

¹¹ Yozwiak Direct, pp. 2:16-3:11.

¹² *Id.* at pp. 33:1-38:5. The remaining portion of testimony that Westar seeks to strike—page 38, lines 18-20—summarizes Section V.

¹³ Yozwiak Direct, pp. 33:1-34:3. The Citizens’ Utility Ratepayer Board discussed responding to price signals under Westar’s proposal three-part demand rate. *See* Direct Testimony of Stacey Harden, pp. 24:16-19, 26:2-5 (June 11, 2018). This testimony is not subject to a motion to strike.

Glasgow Electric Plant Board, Swanton, Vermont, and the City of Templeton, Massachusetts.¹⁴

Finally, Section V ends with a Q&A summarizing Yozwiak's overall conclusions regarding the proposed RS-DG tariff structure.¹⁵

**THE COMMISSION'S RATE DESIGN FINDING IN DOCKET 16-403 DOES NOT
SERVE AS A PREDETERMINATION OF WESTAR'S RS-DG TARIFF PROPOSAL IN
THIS RATE CASE.**

12. In its motion, Westar argues that the above-described portion of witness Yozwiak's testimony is an improper attempt to re-litigate issues decided in the 16-403 Docket. The Final Order and Reconsideration Order in the 16-403 Docket belie Westar's assertion.

13. In the 16-403 Docket, the Commission found that the current two-part residential rate design is problematic and a cost-based three-part rate to improve cost recovery is an appropriate rate design option, among others, for residential DG customers.¹⁶ However, "[t]he mere fact that a public utility is permitted to include a particular rate design in a future application is in no way a formal predetermination the rate design will be approved."¹⁷

14. The Commission neither compelled nor authorized Westar to charge RS-DG customers new rates absent a future finding, made in a rate case, that the particular rate is just, reasonable, non-discriminatory, and non-preferential. The Commission's Final Order and Reconsideration Order in the 16-403 Docket make this clear:

- "The Commission's finding that the above rate designs are appropriate does not serve as a predetermination that the above rate designs will result in just and reasonable rates."¹⁸

¹⁴ See Direct Testimony of Ahmad Faruqui, pp. 20:12-22:2, 29:21-30:2, and Appendix D (Feb. 1, 2018); Yozwiak Direct, pp. 34:4-37:10.

¹⁵ Yozwiak Direct, pp 37:11-38:5.

¹⁶ Final Order ¶¶ 22-23.

¹⁷ Reconsideration Order ¶ 26.

¹⁸ Final Order ¶ 24; see also Reconsideration Order, ¶ 26.

- The Commission interpreted the approved Non-Unanimous Stipulation and Agreement (“S&A”) as “requiring the sponsoring utility of a new DG rate design as having the burden to show that any proposed rate design will result in non-discriminatory, just and reasonable rates.”¹⁹
- The Commission’s Final Order “did not impose upon DG customers any specific rate design nor did the Order establish new rates for DG or Non-DG customers.”²⁰
- “In the event one of the electric utilities seeks to establish a new rate design or establish different rates for DG and Non-DG customers, then the electric utilities will carry the burden of establishing those changes result in just and reasonable rates that are neither unduly discriminatory nor preferential.”²¹
- “[N]o party is negatively impacted by the S&A because it merely shifts the discussion and production of evidence into utility specific dockets, where the burden of proof remains on the utilities to show that their proposed rate design results in non-discriminatory and just and reasonable rates.”²²
- The clear language of the Final Order “squarely places the evidentiary burden upon the electric utilities.”²³

15. DG customers have a right to purchase electricity service from Westar at just, reasonable, non-discriminatory, and non-preferential rates, notwithstanding their self-supplied DG electricity that reduces their purchases from Westar.²⁴ They also have a right not to be charged higher rates or charges for that service, or otherwise be prejudiced or disadvantaged, based on their use of renewable energy sources.²⁵ The testimony that Westar seeks to strike is relevant to these key inquiries.

¹⁹ Final Order ¶ 24.

²⁰ Reconsideration Order ¶ 24.

²¹ *Id.*; *see also id.* ¶ 25.

²² Reconsideration Order ¶ 26.

²³ *Id.*

²⁴ K.S.A. 66-101b.

²⁵ K.S.A. 66-117d.

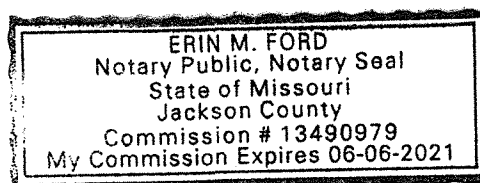
16. Westar's improper attempt to use the 16-403 Docket as grounds to strike testimony that challenges its proposal—including testimony that responds to what Westar put forward in its own direct testimony in support of its proposal—should be rejected.²⁶

WHEREFORE, Sierra Club and Vote Solar respectfully request that the Commission deny Westar's Motion to Strike portions of the Direct Testimony and Exhibits of Sierra Club and Vote Solar witness Madeline Yozwiak.



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²⁶ Moreover, in a portion of her testimony not subject to Westar's Motion, witness Yozwiak found that Westar's proposal is *not cost based*. Yozwiak Direct, pp. 30-32. Thus, the analysis presented demonstrates that Westar's proposal is not "[a] cost of service based three-part rate consisting of a customer charge, demand charge, and energy charge." Final Order ¶ 23.



CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June, 2018, a true and correct copy of **SIERRA CLUB AND VOTE SOLAR'S RESPONSE IN OPPOSITION TO WESTAR'S MOTION TO STRIKE** was electronically delivered to the following individuals:

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