

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

In the Matter of Westar Energy, Inc. and)
Kansas Gas and Electric Company Seeking)
Commission Approval to Implement Changes) Docket No. 16-WSEE-375-TAR
in their Transmission Delivery Charges Rate)
Schedules.)

In the Matter of Westar Energy, Inc. and)
Kansas Gas and Electric Company Seeking)
Commission Approval to Implement Changes) Docket No. 17-WSEE-377-TAR
in their Transmission Delivery Charges Rate)
Schedules.)

**STAFF'S RESPONSE TO KANSAS INDUSTRIAL CONSUMERS GROUP, INC.'S
PETITIONS AND MOTIONS;
STAFF'S RESPONSE TO HOLLY FRONTIER EL DORADO REFINING LLC's
REQUEST FOR MORE TIME**

COMES NOW, the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and files its Response to Kansas Industrial Consumers Group, Inc.'s Petitions and Motions and Holly Frontier El Dorado Refining LLC's Request for More Time. In support of its Response, Staff states the following:

I. CONDENSED BACKGROUND

1. Pursuant to K.S.A. 66-1237, Westar Energy, Inc. and Kansas Gas and Electric Company (Westar) requested to update its Transmission Delivery Charge (TDC) tariff to recover costs associated with the transmission of electric power.¹ Later, Westar submitted a revised TDC tariff incorporating the terms of a FERC-approved Settlement Agreement.² Westar began billing customers the updated TDC rates in July 2016 on a subject-to-refund basis.³

¹ Tariff for Westar Energy and Kansas Gas and Electric for 2016 Transmission Delivery Charge, p. 1 (Feb. 15, 2016). The Commission approved this request, subject-to-refund, with an effective date of April 1, 2016. Order Granting Application to Implement Changes in Transmission Delivery Charge Subject-To-Refund (Mar. 31, 2016).

² Westar Energy Revised Transmission Delivery Charge Tariff (Jun. 21, 2016).

³ See Order Granting Joint Motion to Amend Transmission Deliver Charge Tariff Subject-to-Refund (Jun. 28, 2016).

2. On August 2, 2016, Staff filed its Report and Recommendation regarding Westar's revised TDC (Staff's First R&R).⁴ Staff's First R&R detailed two statistical biases identified in Westar's load research sample used to calculate the TDC.⁵ Staff requested the Commission continue to allow Westar to bill the TDC on a subject-to-refund basis while Staff hired a consultant to conduct further analysis.⁶

3. On November 8, 2016, the Commission issued its Order Adopting Staff's August 2, 2016 R&R.⁷ In this Order, the Commission also recognized due process considerations raised by Westar and concluded all parties to Westar's previous general rate case, Docket No. 15-WSEE-115-RTS, should receive service of the Order Adopting Staff's August 2, 2016 Recommendation, and be added to the service list in the instant proceeding.⁸

4. On February 15, 2017, Westar filed its 2017 TDC update in Docket No. 17-WSEE-377-TAR.⁹

5. On September 26, 2017, Staff submitted its Second Report and Recommendation (Staff's Second R&R),¹⁰ and Motion to Join and Consolidate Westar's 2016 and 2017 TDC dockets.¹¹

6. On October 2, 2017, Kansas Industrial Consumers Group, Inc. (KIC), in addition to five other retail electric customers which KIC represents (jointly referred together in this

⁴ Notice of Filing of Staff's Report and Recommendation (Aug. 2, 2016) (Staff's First R&R).

⁵ See Staff's First R&R, p. 6. See also Staff's First R&R, Appx. 2.

⁶ See Staff's Response to Westar Energy, Inc. and Kansas Gas and Electric Company's Response to Staff's Report and Recommendation, p. 7 (Aug. 22, 2016).

⁷ Order Adopting Staff's August 2, 2016 Recommendation, pp. 7-8 (Nov. 8, 2016).

⁸ See *id.* at p. 8.

⁹ Tariff for Westar Energy and Kansas Gas Electric for 2017 Transmission Delivery Charge, Docket No. 17-WSEE-377-TAR (Feb. 15, 2017). Additionally, Staff has corrected a technical error that prevented this filing from being accessed on the Commission's website.

¹⁰ Notice of Filing of Staff's Report and Recommendation (Sep. 26, 2017) (Staff's Second R&R).

¹¹ Staff's Motion to Join and Consolidate Proceedings (Sep. 26, 2017).

Response as “KIC”), requested intervention in the instant proceeding.¹² Additionally, KIC requested the Commission close or dismiss Westar’s TDC dockets or set a procedural schedule and hold a hearing regarding Staff’s proposal.¹³

7. On October 9, 2017, Holly Frontier El Dorado Refining LLC (Holly Frontier) filed a Motion for Additional Time to Respond to Staff’s Report and Recommendation.¹⁴

II. STAFF’S RESPONSE TO KIC

A. Notes to the Reader and Introduction

8. In this Response, Staff repeatedly refers to statistical biases contained in Westar’s load research sample used in calculating allocators for Westar’s TDC. Staff does not intend to create an inference of malfeasance on the part of Westar with these references. For example, the phrase “Westar’s statistically biased methodology” indicates a statistical bias exists – not Westar intended to create such a bias.

9. Staff appreciates KIC acknowledging Westar’s TDC is a pass-through of lawfully approved transmission costs and *is not part* of Westar’s general rate proceedings.¹⁵ Likewise, Staff appreciates KIC recognizing TDC proceedings are considered *separate and apart* from the base rates of Westar.¹⁶ Because TDC proceedings occur separate from general rate proceedings, the most logical and proper docket to examine Westar’s 12 - Coincident Peak (CP) allocator used

¹² Application for Intervention of Cargill, Incorporated, CCPS Transportation, LLC, Coffeyville Resources Refining & Marketing, LLC, Occidental Chemical Company, Spirit AeroSystems, Inc., and The KIC Group, Inc. and Request for the Closing/Dismissal of These KCC Dockets, or in the Alternative, Request for a Procedural Schedule and Hearing (Oct. 2, 2017) (KIC’s Petition and Motion). Note: the Occidental Chemical Company previously sought and was granted intervention in Docket No. 16-WSEE-375-TAR. *See* Occidental Chemical Corporation Petition to Intervene (Feb. 24, 2016) *and* Order Granting Intervention of Occidental Chemical Corporation (Mar. 10, 2016).

¹³ *See* KIC’s Petition and Motion, pp. 4-5.

¹⁴ *See* Motion for Additional Time to Respond to Staff’s Report and Recommendation (Oct. 9, 2017) (Holly Frontier’s Motion).

¹⁵ *See* KIC’s Petition and Motion, p. 2 (emphasis added).

¹⁶ *See* KIC’s Petition and Motion, p. 2 (emphasis added).

in calculating its TDC is this instant proceeding.¹⁷ With this in mind, Staff identified and raised its concerns related thereto as quickly and prudently as possible. Contrary to assertions by KIC, all issues raised by Staff are timely before the Commission. Likewise, Staff reserves the right to challenge any position taken by KIC in the event the Commission sets this matter for further proceedings.

B. KIC's Incorrect History, Misinterpreted Scope and Timeliness Arguments

10. Staff's concerns over Westar's TDC 12-CP allocator, first identified in August 2016,¹⁸ did more than "question the methodology" as KIC suggests.¹⁹ Staff identified two statistical biases present in Westar's load research sample used to generate 12-CP allocators necessary to accurately allocate transmission costs among Westar's retail customers.²⁰ Staff was not simply challenging the methodology of Westar's sampling – Staff was asserting Westar's sampling was statistically biased and further investigation was needed.²¹

11. In Staff's Second R&R, Staff detailed the methodology used to render Westar's 12-CP allocator (the "new" allocator) more statistically representative.²² KIC states Staff's "new" 12-CP allocator "purportedly corrects several alleged sampling biases."²³ The sampling biases identified by Staff were not just alleged but confirmed. Westar's responses to Staff Data Requests KCC-11²⁴ and KCC-12²⁵ confirm the existence of such biases. Staff's First R&R

¹⁷ For reference, Docket No. 16-WSEE-375-TAR is Westar's first TDC filing following the conclusion of Westar's 2015 general rate proceeding (Docket No. 15-WSEE-115-RTS, herein after the 15-115 Rate Case).

¹⁸ See Staff's First R&R, p. 6. See also Staff's First R&R, Appx. 2.

¹⁹ KIC's Petition and Motion, p. 3.

²⁰ Staff's First R&R, p. 6.

²¹ Staff's First R&R, p. 6.

²² Staff's Second R&R, pp. 5-8, See also Review of Westar's 12-CP Allocator Report to Kansas Corporation Commission Prepared By Dr. George McCollister, attached to Staff's Second R&R.

²³ See KIC's Petition and Motion, p. 3.

²⁴ "However, Westar did not refresh its Load Research Sample by using a random sample. When Westar was asked if only customers with AMI meters were considered as potential sample replacements, Westar responded, "Yes, we needed the data to be available timely and did not have time to install new points.'" Staff's First R&R, p. 13, quoting Westar's response to KCC-11 (internal quotations retained). "At that time AMI meters were only in

noted, “Bias in sampling methodology does not necessarily result in a biased sample.”²⁶ However, the results provided by Staff in its Second R&R indicate the biases present in Westar’s sampling methodology *did* bias Westar’s load research sample.²⁷

12. The recommendations resulting from Staff’s further investigation into Westar’s TDC 12-CP allocators are provided in Staff’s Second R&R.²⁸ KIC asserts these recommendations are beyond the scope of this investigation.²⁹ KIC is incorrect. Staff’s recommendations may be summarized as follows:³⁰

- a. Westar’s 12-CP allocator must be adjusted due to sampling biases created by Westar’s method of supplementing its load research sample.³¹ These adjustments are accomplished by calibrating load research data to accrued billing data and weather normalizing the calibrated peak demands.³² This produces a “corrected 12-CP allocator” which Staff recommends using to recalculate the TDC for years 2016 and 2017.³³
- b. Staff recommends the Commission accept this corrected TDC allocator and approve Staff’s revised amount of TDC revenues.³⁴ Westar’s retail customers have been paying their respective TDCs for approximately 18 months. Staff recommended any refunds or additional charges necessary to correct for Westar’s biased sampling methodology be implemented over a 17-month period.³⁵ This would allow for any refunds or additional charges to be absorbed by Westar’s retail customers over approximately the same period of time they received the benefit (or harm) of artificially lower or higher TDCs.

Lawrence and a small part of Wichita. Even if a random sample of AMI metered customers was used, the sample was not a random sample of all Westar customers.” Staff’s First R&R, p.11.

²⁵ “When asked about the potential bias created by the use of only AMI metered customers, Westar responded: AMI was just used to fill in holes. The study has most of the points from the 2006 study (644 to 187). We prevented AMI bias by giving priority to 2006 sample points over AMI customers. This minimized the AMI influence on the overall study. Arbitrarily filling in holes in the data using non-probabilistic sampling is biased sampling.” Staff’s First R&R, pp. 12-13 *citing* Westar’s response to KCC-12.

²⁶ Staff’s First R&R, p. 6.

²⁷ Staff’s Second R&R, pp. 7-8.

²⁸ Staff’s Second R&R, p. 12.

²⁹ See KIC’s Petition and Motion, p. 5.

³⁰ For the complete unabridged recommendations, please see Staff’s Second R&R, p. 12.

³¹ Staff’s Second R&R, p. 12.

³² See Staff’s Second R&R, p. 6. See also Review of Westar’s 12-CP Allocator Report to Kansas Corporation Commission Prepared By Dr. George McCollister, attached to Staff’s Second R&R.

³³ Staff’s Second R&R, p. 12.

³⁴ Staff’s Second R&R, p. 12.

³⁵ Staff’s Second R&R, p. 12.

- c. Finally, Staff further recommended future load research samples be drawn at least once every five years with Westar providing a detailed explanation regarding the sampling methodology to the Commission and Staff before implementing such.³⁶

13. Staff's recommendations naturally flow from the Commission's approved scope.

The Commission stated, in relevant part:

Therefore, the Commission concludes that Staff's recommendation to hire a third party consultant to further investigate the load research sample used to generate the 12-CP allocator and *evaluate whether further action is needed* is in the public interest because it provides needed evidence that the proposed rates included in Westar's TDC Application are just and reasonable and not unduly discriminatory.³⁷

14. KIC states none of the two proposed changes to Westar's TDC 12-CP allocation factors provided by Staff (*i.e.* calibration and weather normalization) address the flaws in Westar's load research sample.³⁸ Staff disagrees. "While Dr. McCollister *was able to partially correct* for the biases on the usage levels, he was unable to correct for the effect of the biases on the customer load shape."³⁹ Moreover, "Staff supports all of Dr. McCollister's analysis and conclusions and concurs with his recommendations. *Dr. McCollister has reduced the effect of the biases on the load research sample through his adjustments.*"⁴⁰ Staff is unable to reconcile KIC indicating Staff's approach did not address the flaws in Westar's load research when Staff literally said its consultant was able to "partially correct for the effect of the biases" present in Westar's load research.

15. KIC asserts weather normalization is not related to the integrity of Westar's load research sample, and Staff's raising the issue is untimely.⁴¹ As shown above, KIC misses the point. Calibrating Westar's load research sample to accrued billing amounts and weather

³⁶ Staff's Second R&R, p. 12.

³⁷ Order Adopting Staff's August 2, 2016 Recommendation, pp. 7-8 (Nov. 8, 2016) (emphasis added).

³⁸ See KIC's Petition and Motion, p. 6.

³⁹ Staff's Second R&R, p. 7.

⁴⁰ Staff's Second R&R, p. 7.

⁴¹ See KIC's Petition and Motion, p. 6.

normalizing the peaks are necessary *to correct for the biases present in Westar's load research sample*. This is precisely the “further action” the Commission permitted Staff to investigate and report on.

16. By so doing, Westar's retail customers will be billed their respective TDC amounts using a more statistically sound (and more representative) 12-CP allocator.⁴² Staff is attempting to ensure Westar's customers are billed the most accurate transmission charges as possible. This recommendation only bolsters the Commission's pursuit of just and reasonable, not unduly discriminatory rates. To claim Staff's recommendations are beyond the scope of the docket ignores the docket's stated scope.

17. With this backstop, KIC's timeliness arguments fall apart. As detailed above, all of Staff's findings, recommendations, calculations, and third-party consultant work flows naturally from the Commission's order to “further investigate [Westar's] load research sample used to generate the 12-CP allocator and *evaluate whether further action is needed*.”⁴³ The results of this investigation are detailed in Staff's Second R&R. Given the course of action the Commission endorsed which Staff followed, Staff's recommendations and arguments in support thereof could not have been more timely.

C. The TDC

18. KIC's presentation of Westar's TDC allocation factors indicates a general misunderstanding of TDC proceedings. KIC claims Staff is seeking to change Westar's 12-CP allocators “*approved* in Westar's last general rate case.”⁴⁴ The Commission did not approve any TDC allocation factors in Westar's last general rate proceeding. In fact, the only mention of TDC in the Commission's Final Order from Westar's last general rate proceeding states Westar's

⁴² Staff's Second R&R, pp. 7-8.

⁴³ Order Adopting Staff's August 2, 2016 Recommendation, pp. 7-8 (Nov. 8, 2016).

⁴⁴ KIC's Petition and Motion, p. 5 (emphasis added).

TDC allocators will use a revised 12-CP allocator “due to customer migration stemming from customer class changes.”⁴⁵ At most, the Commission approved Westar revising its TDC’s 12-CP allocator in a yet-to-be filed TDC docket to account for customer migration. Westar has previously raised arguments similar to those offered by KIC, which Staff refuted and the Commission agreed.⁴⁶ Accordingly, in addition to the arguments raised herein, Staff hereby adopts these arguments against KIC.⁴⁷

19. KIC recognizes TDCs are set in separate and distinct proceedings. Granted there is some overlap between general rate proceedings and TDC proceedings. For example, Westar’s current Commission-approved TDC tariff and Westar’s last general rate case *use the same test year*. Because of this similarity in test year data, Staff has referred to Westar’s 12-CP allocators in this proceeding as the “15-115 Allocators.”⁴⁸ Regardless of what label is assigned to Westar’s TDC 12-CP allocators (*e.g.* new, old, corrected, 15-115, etc.), the fact remains that determining Westar’s 12-CP allocators for TDC purposes occurs in a TDC proceeding (*i.e.* the instant proceeding) and not a general rate proceeding. Further, as explicitly found by the Commission, the Settlement Agreement approved in the 15-115 Rate Case does not prevent Staff’s subsequent investigation into Westar’s TDC load research sample or methodology.⁴⁹

D. Rate Classes, Cost Causation and the Southwest Power Pool

20. KIC claims Staff made no mention of changing the 12-CP allocation factors for retail customer classes other than residential and small general service.⁵⁰ Staff provided a comparison of Westar’s four previous general rate proceedings (*i.e.* four test years used in the

⁴⁵ Order Approving Stipulation and Agreement, Docket No. 15-WSEE-115-RTS, p. 23 (Sep. 9, 2015).

⁴⁶ See Order Adopting Staff’s August 2, 2016 Recommendation, pp. 6-8 (Nov. 8, 2016).

⁴⁷ See Staff’s Response to Westar Energy, Inc. and Kansas Gas and Electric Company’s Response to Staff’s Report and Recommendation (Aug. 22, 2016).

⁴⁸ See Staff’s Second R&R, p. 5.

⁴⁹ See Order Adopting Staff’s August 2, 2016 Recommendation, p. 7 (Nov. 8, 2016).

⁵⁰ See KIC’s Petition and Motion, p. 6.

calculation of the TDC).⁵¹ Staff did recognize a large shift from small general service to residential customers.⁵² Westar and Staff investigated the shift, but were unable to identify the underlying cause of the change:

Unfortunately, Staff has only been able to raise doubts about the 2014 12-CP allocator and not pinpoint why the significant change took place and whether the change is justified or not.⁵³

21. While the shift between residential and small general service customers caught the brunt of Staff's concern, this does not render other customer classes immune from the effects of Westar's statistically biased load research sample. KIC uses the limitations of residential and small general service customer meters as support for why Westar's biases do not apply to Large General Service and Special Contract customers (*i.e.* members of KIC).⁵⁴ Once again, KIC misses the point — the allocators are tied together. For example, as Staff noted in its First R&R, even though only the large commercial and industrial customers were affected by the customer migration the 12-CP allocators for all classes were affected.⁵⁵ Westar uses its load research sample to *estimate demand allocators* for the residential and small general service customers. If these estimates are incorrect, not only will the allocators for these two classes be incorrect, but this error will also affect the allocation of TDC costs to other customer classes. It is irrelevant whether KIC's members have observable peaks due to their metering technology. If Westar's estimated peaks for residential and small general service customers are inaccurate (as Staff has confidently confirmed), all other customer class demand allocators will become skewed.

⁵¹ See Staff's First R&R, Appx 2, p. 3. (For ease of the reader, this may also be referred to as Staff's First R&R, p. 12).

⁵² See Staff's First R&R, p. 6.

⁵³ See Staff's First R&R, Appx 2, p. 4. (For ease of the reader, this may also be referred to as Staff's First R&R, p. 13).

⁵⁴ See KIC's Petition and Motion, p. 7.

⁵⁵ Specifically, Note 2. See Staff's First R&R, p. 6.

22. Properly refreshing Westar’s load research sample requires obtaining a new random sample for the 15-115 test year. Thus, no party can go back in time and properly refresh Westar’s load research sample. Accordingly, Staff’s corrected 12-CP allocators are designed to emulate, as much as statistically possible, a properly refreshed load research sample. The fact Staff recommended further studying Westar’s TDC 12-CP allocators put parties on notice the 12-CP, generally, and class-specific allocators may require refinements. Staff’s example, above, illustrates why such refinements would be necessary – the flaws in estimating one class of customer demand impacts the represented demand of other customer classes.

23. KIC alleges Staff’s recommendations violate cost causation principles.⁵⁶ Staff is puzzled by this argument. Westar’s TDC is presently utilizing statistically biased data Staff has shown produces an incorrect allocation of transmission costs among Westar’s customer classes. To correct for this flaw, Staff employs numerous research tools to approximate a 12-CP more representative of Westar’s customers’ true transmission-related costs.⁵⁷ By so doing, Staff is attempting to allocate transmission costs in the most just and reasonable manner possible.

24. “As a general rule, one class of consumers cannot be burdened with costs created by another class. On the other hand, [the Court] [has] rejected the notion this principle requires that rate design allocation be limited to cost of service factors.”⁵⁸ KIC’s Motion to Close the docket knowing full well Westar’s current TDC rates are based upon statistically flawed data itself violates the principles of cost causation.

25. To attack Staff and its consultant’s weather normalization methodology, KIC points to how the Southwest Power Pool (SPP) assigns transmission costs to transmission

⁵⁶ See KIC’s Petition and Motion, p. 6.

⁵⁷ See Staff’s Second R&R, p. 7.

⁵⁸ *Farmland Indus., Inc. v. Kansas Corp. Comm’n*, 29 Kan. App. 2d 1031, 1046–47, 37 P.3d 640, 650 (2001) (internal citations and quotations omitted).

owners.⁵⁹ SPP does not weather normalize utility-allocated transmission costs.⁶⁰ How SPP assigns transmission costs among its members is irrelevant to how Westar collects transmission costs incurred on behalf of its retail customers. The TDC tariff allows Westar to recover charges the SPP assesses to Westar for service to Westar's retail load.⁶¹ In other words, Westar's approved TDC tariff is designed to recover *Westar's* retail transmission service cost.⁶² This is in effect Westar's retail customers paying Westar back for Westar purchasing transmission service on behalf of its retail customers.⁶³ How SPP allocates costs among SPP members has no bearing on the methodology used to allocate Westar's transmission costs among its own retail customers.

E. Retroactivity

26. On multiple occasions, KIC repeatedly laments how “retroactive” Staff’s recommendations are.⁶⁴ KIC’s choice of words is curious. In Kansas, “retroactive ratemaking” is constitutionally and statutorily prohibited.⁶⁵ Though not explicitly claiming Staff’s request rises to this level, KIC’s repeated use of the word “retroactive” appears to be designed to elicit or conjure up doubt regarding the legality of Staff’s recommendations. Staff’s recommendations in this proceeding do not constitute retroactive ratemaking.

27. “The KCC's power to set just and reasonable rates, however, is subject to the general rule that a statute will operate prospectively rather than retrospectively unless its language clearly indicates that the legislature intended the latter, and that retrospective

⁵⁹ See KIC’s Petition and Motion, p. 8.

⁶⁰ See KIC’s Petition and Motion, p. 8.

⁶¹ Staff’s First R&R, p. 3.

⁶² Staff’s First R&R, p. 3.

⁶³ Staff’s First R&R, pp. 2-3.

⁶⁴ See, e.g. KIC’s Petition and Motion, pp. 3, 4, 5, 9.

⁶⁵ *Kansas Gas & Elec. Co. v. State Corp. Comm'n of State of Kan.*, 14 Kan. App. 2d 527, 533, 794 P.2d 1165, 1170 (1990).

application will not be given where vested rights will be impaired.”⁶⁶ “Legally established tariffs are construed in the same manner as statutes.”⁶⁷ Retroactive ratemaking is not limited to the “rates” a utility charges its customers. Tariffs are encompassed within the prohibition against retroactive ratemaking.⁶⁸ Implementing methodologies different from those detailed in established tariffs is retroactive rate making.⁶⁹

28. Staff has not requested the Commission take any action remotely resembling retroactive ratemaking. In reaching Staff’s recommendations, Staff evaluated and utilized the same test year data relied on by the other parties in the proceeding. By so doing, Staff has unquestionably followed to the letter Westar’s current TDC tariff which specifically states, in relevant part:

The allocation of the [Annual Transmission Revenue Requirement] is based on the 12 coincident-peak (12 CP) allocation method. Specifically, the basis for allocating the ATRR to each rate schedule is the ratio of the rate schedules average monthly system peak demand during the company’s monthly peak-hour demand to the average total monthly system peak-hour demand. ***The rate schedule class allocator is based on the twelve (12) months of the test year ended September 30, 2014.***⁷⁰

A reminder, Westar’s TDC calls for using the same test year data as Westar’s last general rate proceeding and not any specific allocator “approved” in said proceeding.

29. Staff is not requesting the Commission utilize some different test year than that explicitly called for in Westar’s TDC – to do so would be a violation of the filed-rate doctrine and retroactive ratemaking. Staff instead is asserting Westar’s method of calculating its TDC’s

⁶⁶ Kansas Gas & Elec. Co. v. State Corp. Comm’n of State of Kan., 14 Kan. App. 2d 527, 532, 794 P.2d 1165, 1170 (1990) (internal quotations and citations omitted).

⁶⁷ Farmland Indus., Inc. v. Kansas Corp. Comm’n, 29 Kan. App. 2d 1031, 1043, 37 P.3d 640, 648 (2001).

⁶⁸ Kansas Gas & Elec. Co. v. State Corp. Comm’n of State of Kan., 14 Kan. App. 2d 527, 534, 794 P.2d 1165, 1171 (1990) (“Tariffs are encompassed within the prohibition against retroactive ratemaking, particularly when, as in the present case, they share similarities with rate schedules.”).

⁶⁹ Farmland Indus., Inc. v. Kansas Corp. Comm’n, 29 Kan. App. 2d 1031, 1044, 37 P.3d 640, 649 (2001) (“In a different context, we have held that passing refunds through mechanisms other than current cost adjustment clauses in tariffs is retroactive rate making.”).

⁷⁰ Westar TDC Tariff, Sheet 2.

12-CP allocator is statistically biased. To remedy this, Staff utilizes the same test year data and (1) calibrates accrued billing data and (2) weather normalized peak demand to correct Westar's statistically biased 12-CP allocators. Staff is using data mandated by Westar's TDC tariff. However, Staff's analysis of such data yield a different result than that of Westar. Determining which 12-CP allocators are correct is a factual conclusion for the Commission to reach. As detailed above, it is not a legal conclusion as to whether approving one set would be classified retroactive ratemaking. Staff uses the same basic data as Westar and as called for by Westar's TDC tariff. However, Staff's methodology reaches a different result regarding allocation ratios. KIC may not like the result of this analysis, but it does not render the analysis or recommendations unlawful.

30. Moreover, retroactive ratemaking cannot occur until there is some deviation from Westar's lawfully established rate. Rates, however, are not final until approved on appeal or the time for appeal has expired.⁷¹ Appellate review is part of the ratemaking process.⁷² Accordingly, rates are not final until this judicial process has run its course.⁷³ During this time, public utilities are subject to refund orders until judicial review is completed.⁷⁴ This is because

⁷¹ Unified Sch. Dist. No. 259 v. State Corp. Comm'n, 176 P.3d 250 (Kan. Ct. App. 2008) ("A rate order is not "final" until after the rates are approved on appeal or the time for appeal from the Commission's order has expired.") (internal quotations retained).

⁷² Kansas Pipeline P'ship v. State Corp. Comm'n of the State of Kansas, 24 Kan. App. 2d 42, 57, 941 P.2d 390, 400 (1997) ("We adopt the latter premise and hold that appellate review is part and parcel of the rate-making process. A rate authorized does not become final until the appellate process has run its course. Until that time, a utility charges the rate with an inherent risk of refund if it is reversed. A decision of the lower court is not a final decision until the period for appeal has run and the case has not been appealed or the case has been appealed and finally adjudicated." We adopt the same rule for orders of the KCC. We hold that a decision of the KCC establishing a rate or otherwise is not a final decision until the period for appeal has run and the case has not been appealed or, if the case has been appealed, until the case is finally adjudicated. Our decision means that appellate review is part of the rate-making procedure. Until that procedure has run its course, no rate can be final. It cannot be retroactive rate making to order the refund of a rate which, although not final, has nonetheless been collected.").

⁷³ Farmland Indus., Inc. v. State Corp. Comm'n of State of Kan., 25 Kan. App. 2d 849, 860, 971 P.2d 1213, 1221 (1999)("Nevertheless, a rate does not become final until the appellate process is over.).

⁷⁴ Farmland Indus., Inc. v. Kansas Corp. Comm'n, 29 Kan. App. 2d 1031, 1040, 37 P.3d 640, 647 (2001) ("KIC correctly notes that until judicial review is completed, utilities are subject to refund orders if the rates are ultimately determined to be unlawful.").

rate changes (*i.e.* refunds) stemming from an appellate decision do not constitute retroactive ratemaking as the ratemaking process has not yet concluded.⁷⁵ Refunds and/or changes on remand do not equal retroactive ratemaking as no retroactive action has yet occurred.⁷⁶

31. Accordingly, Staff's recommendations do not constitute retroactive ratemaking for two primary reasons. First, Staff's request is not a violation of the filed-rate doctrine as Staff is explicitly complying with Westar's lawfully approved TDC tariff. Second, Staff's request to implement refunds and charges (to properly account for previously billed transmission charges to Westar's retail customers) over the next 17 months is not retroactive ratemaking as the dockets which initially approved these charges (on a subject-to-refund basis) remain open with the Commission.

F. KIC's Summary of Conclusions is Confusing

32. KIC disputes the accuracy and appropriateness of Staff's consultant's study into Westar's statistically biased load research sample.⁷⁷ However, in reading KIC's response it is difficult to surmise what portions, if any, of Staff's consultant's report KIC actually disputes the accuracy of. Likewise, KIC argues Dr. McCollister's report is "factually incorrect."⁷⁸ In reading KIC's Response, Staff finds it difficult to locate which particular fact(s) KIC is referring to.

33. KIC states Staff's "correction (and potential "refresh of Westar's 2015 load research) is not permitted under the language of the KCC approved TDC tariff of Westar."⁷⁹ This is not what Staff has recommended. Staff has not recommended refreshing any load research for purposes of determining Westar's 12-CP allocators for these proceedings. Staff *has*

⁷⁵ See note 72.

⁷⁶ Unified Sch. Dist. No. 259 v. State Corp. Comm'n, 176 P.3d 250 (Kan. Ct. App. 2008) ("Thus, refunds ordered or other changes made upon remand do not constitute retroactive ratemaking because no retroactive action has occurred.").

⁷⁷ See KIC's Petition and Motion, p. 8.

⁷⁸ KIC's Petition and Motion, p. 9.

⁷⁹ KIC's Petition and Motion, p. 9.

recommended Westar properly refresh its load research sample in the future to eliminate these biases entirely from its TDC calculation.⁸⁰ Moreover, Staff has certainly not advocated for refreshing Westar's 2015 load research as such research does not exist. Staff recommends adjustments to Westar's 2014 test year data (the data called to be used in Westar's TDC tariff) to correct statistical biases. Such a recommendation is not prohibited by Westar's Commission-approved TDC.

34. KIC states "Staff's proposed methodology is not appropriate and will not result in just and reasonable rates for ratepayers of Westar."⁸¹ Quite the contrary. Staff's proposed methodology will result in allocating Westar's transmission costs in a manner more representative of how Westar's customers cause those costs to be incurred.⁸² Accordingly, Staff's proposed methodology will result in rates that are just and reasonable for all of Westar's rate payers.

35. KIC claims Staff's proposal would "result in rate shock" for KIC's members and other Kansas ratepayers.⁸³ Staff's proposal has safeguards built into it to prevent such a calamity. Staff's recommendations would effectuate a "fix" to Westar's 12-CP allocators over a similar period of time the incorrect allocators were used.⁸⁴

If the 2017 TDC rates can be revised by [November 1, 2017], then the 17-month time period for refund/charge will approximate the 19 months the subject-to refund rates were originally billed (April 2016 through October 2017) without having to continue the refunds/charges into the 2019 TDC year.⁸⁵

36. If a customer has been paying too little transmission related costs over the past year and a half, the same customer will have an approximately a year and a half to make up this

⁸⁰ See Staff's Second R&R, p. 12.

⁸¹ KIC's Petition and Motion, p. 9.

⁸² Staff's Second R&R, p. 7.

⁸³ KIC's Petition and Motion, p. 9.

⁸⁴ Staff's Second R&R, pp. 11-12.

⁸⁵ Staff's Second R&R, p. 12.

difference. Any refunds due to customers will be dispensed over this same period of time. Attempting to correct Westar's statistically biased allocators with refunds and charges in a single month might constitute rate shock. Staff fails to see how effectuating a refund or charge over the same period of time this harm or benefit was incurred constitutes rate shock.

37. Finally, KIC states Westar's retail electric rates are among the highest in the region for commercial and industrial customers and should therefore not be increased further.⁸⁶ This argument is a red herring. It is irrelevant what Westar's total retail electric costs are for the purposes of this proceeding. The primary contested issue of which all other issues revolve around is whether Westar's TDC 12-CP allocators are representative of Westar's retail electric customer's demand. If they are not, then Westar's customers are either paying too little or too much in relation to the transmission costs they cause. KIC cannot claim "rates are high enough as it is" to avoid paying their fair and representative transmission costs.

G. KIC's Requests

38. KIC requests the Commission grant it and its members full intervention in (as Staff has requested) Westar's consolidated TDC proceedings.⁸⁷ Staff welcomes a full and thoughtful discussion regarding Westar's TDC and calculation thereof. Accordingly, Staff does not oppose the intervention of these parties. For the record, the Occidental Chemical Corporation has previously been granted intervention by the Commission.⁸⁸

39. KIC requests the Commission dismiss or close Westar's TDC dockets.⁸⁹ Staff opposes this request insofar as it would retain Westar's statistically biased TDC 12-CP allocators. Staff can envision no circumstance where the dockets should be dismissed. Staff is

⁸⁶ See KIC's Petition and Motion, p. 9.

⁸⁷ See KIC's Petition and Motion, p. 9.

⁸⁸ See Occidental Chemical Corporation Petition to Intervene (Feb. 24, 2016) and Order Granting Intervention of Occidental Chemical Corporation (Mar. 10, 2016).

⁸⁹ See KIC's Petition and Motion, p. 9.

unsure as to the ratemaking implications dismissing the docket without a Final Order would result in. Westar is lawfully allowed to collect its transmission-related costs.⁹⁰ The issue remaining in these proceedings is not necessarily how much should Westar collect, but how much should each customer class contribute.

40. In the alternative to closing or dismissing the consolidated proceedings, KIC request the Commission schedule a hearing to include the receipt of testimony after full discovery.⁹¹ Staff's Report and Recommendations contain the positions taken by Staff and Staff is prepared to defend such at an evidentiary hearing. Staff's two Report and Recommendations may be adopted by numerous Staff witnesses at a hearing, and likewise are evidence the Commission may consider in rendering a decision. Staff welcomes full and thoughtful critiques of any of its work, regardless of the proceeding. However, evaluating the statistical underpinnings of Westar's load research sample biases requires specialized training. Staff, despite its expertise in class cost of service and rate design had to retain an outside consultant in order to evaluate the biases Staff uncovered. Respectfully, KIC has not demonstrated how it intends to challenge, with any degree of particularity or competence, Staff's and its consultant's conclusions. Prior to the Commission setting this matter for hearing, Staff respectfully requests the Commission inquire into how KIC intends to retain the required expertise necessary to evaluate and challenge Staff and its consultant's conclusions.

III. Staff's Response to Holly Frontier Refining

41. Holly Frontier has requested additional time to respond to Staff's Second R&R.⁹² While Staff disagrees with how Holly Frontier has restated certain facts (*e.g.* alleged biases when

⁹⁰ See K.S.A. 66-1237.

⁹¹ KIC's Petition and Motion, pp. 9-10.

⁹² Holly Frontier's Motion, p. 3.

in fact they are confirmed),⁹³ Staff does not oppose Holly Frontier's request for additional time. While KIC's requests appear to focus more on a future evidentiary hearing, Holly Frontier's request is for additional time to file a response and participate in a hearing *if necessary*.⁹⁴ Keeping with Staff's want for thoughtful and meaningful dialog with the Commission and other parties, Staff will not oppose Holly Frontier's request for additional time to file a response. However, like KIC, Staff respectfully requests the Commission inquire into how Holly Frontier will retain the necessary expertise needed to evaluate and challenge Staff and its consultant's conclusions.

IV. Concluding Remarks

42. Generally speaking, and as detailed extensively above, Staff disagrees with KIC's positions taken in this proceeding and has refuted the basis for these positions. Nevertheless, Staff would welcome any and all critiques of its work in pursuit of setting just and reasonable rates for all Kansas ratepayers. At this time, Staff will not oppose any petitions to intervene in this proceeding and will not oppose Holly Frontier's request for additional time to prepare a response. Given the conflict present between Staff and KIC, it is likely Commission assistance will be necessary to resolve this proceeding between the parties. However, prior to setting any scheduling conference for this matter Staff respectfully requests the Commission inquire into KIC and Holly Frontier's ability to retain the expertise needed to evaluate Staff and its consultant's recommendations.

⁹³ Holly Frontier's Motion, p. 3.

⁹⁴ Holly Frontier's Motion, p. 3 (emphasis added).

WHEREFORE, Staff respectfully requests the Commission grant KIC's petitions for intervention, deny KIC's request to dismiss Westar's TDC dockets, deny KIC's request to close Westar's TDC dockets, deny KIC's request to set a procedural schedule, grant Holly Frontier's motion for an extension of time to file a response, grant Staff's request for an inquiry as to how KIC and Holly Frontier intend to retain the necessary expertise to evaluate Staff and its consultant's conclusions, and for any other relief the Commission may deem just and reasonable.

Respectfully submitted,

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VERIFICATION

Robert E. Vincent, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Staff's Response to Kansas Industrial Consumers Group, Inc. 's Petition and Motions; Staff's Response to Holly Frontier El Dorado Refining LLC's Request For More Time* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Robert E. Vincent, Litigation Counsel # 26028
Kansas Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 12th day of October, 2017.


Notary Public

My Appointment Expires: August 17, 2019

CERTIFICATE OF SERVICE

17-WSEE-377-TAR

16-WSEE-375-TAR

I, the undersigned, certify that a true and correct copy of the above and foregoing Response was served by electronic service on this 12th day of October, 2017, to the following:

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