

Received
on

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

APR 19 2012

In the Matter of the Application of Kansas)
Gas and Electric Company for Approval)
of the Energy Supply Agreement between)
Kansas Gas and Electric Company and)
Frontier El Dorado Refining LLC)

by
State Corporation Commission
Docket No. 12-KG&E-718-CON-Kansas

REPLY TO PETITION TO INTERVENE AND FOR HEARING

COMES NOW Kansas Gas and Electric Company, d/b/a Westar Energy (Westar) and replies to the Petition to Intervene and Request for Hearing (Petition) of Occidental Chemical Corporation (OXY). In support of its Reply, Westar states:

1. On March 28, 2012, Westar filed an application seeking approval of an Energy Supply Agreement (Agreement) with Frontier El Dorado Refining LCC (Frontier). Westar sought approval of the Agreement because it provides rates for service to Frontier that, while based on generally available tariff rates, namely the High Load Factor (HLF) Rate Schedule and the Interruptible Service Rider (ISR), provide a discount to Frontier in recognition of the unique benefits Frontier provides to Westar and its customers.

2. On April 6, 2012, OXY filed its Petition in this matter. Generally, OXY alleges that Westar has not adequately supported its request for approval of the Agreement.

3. The Commission should deny OXY's request for hearing. As demonstrated in Westar's Application and further supported by the affidavits attached hereto, the proposed Agreement provides real benefits to Westar's customers and to the state of Kansas.

4. As Westar indicated in its Application, the Agreement under consideration in this docket is the successor to an agreement approved by the Commission in Docket No. 05-KG&E-906-CON under which Frontier has committed to make its cogeneration facility available during periods of operational need. The operational terms of the Agreement are identical to those in the

previous agreement between Frontier and Westar that was approved by the Commission. Rohlf's Affidavit, at ¶ 4. The sole substantive change from the previous agreement is an additional block as an incentive for further growth in the plant's operations.¹ Adding the additional block would not materially affect Frontier's energy costs assuming power consumption at the plant remains at its historical levels. Rohlf's Affidavit, at ¶ 3. However, because the contract supports Frontier's plan to continue its growth and places the El Dorado facility in a better position to compete for Frontier expansions in Kansas rather than at other Frontier plants, Westar believes that revenue from the plant and employment at the plant will continue to grow in the future. Thus, approval of the contract will benefit customers by increasing Frontier's contribution to Westar's costs of service and will benefit the state by supporting Frontier's efforts to maintain and increase production and employment levels at the plant.

5. In support of its intervention, OXY also suggests that the Agreement will impact other customers from a "reliability standpoint." Petition, at ¶ 2. There is no question that is true and the impact is clearly positive. The Agreement supports reliable service to Westar's customers by providing a flexible source of power and energy that will be available when Westar's system is under stress. Thus, the Agreement states: "If Company declares a System Condition, **Customer shall start its Cogeneration Plant pursuant to Company's instructions**, subject to Good Utility Practice and events of Force Majeure." Agreement, at § 4.5 (emphasis added).

6. OXY erroneously suggests that the Agreement does not clearly establish the parameters under which Frontier will run its cogeneration facilities. Petition, at ¶ 4. OXY bases

¹ The rates set by the Agreement have been updated to reflect changes in Westar's costs since the prior agreement and will be further adjusted to reflect the outcome of Westar's pending rate proceeding, Docket No. 12-WSEE-112-RTS. The Agreement incorporates all the riders and surcharges applicable to service under the HLF and ISR rate schedules.

that argument on section 3.3 of the Agreement which deals not with Frontier's obligation to run its facilities but rather on Frontier's obligation to maintain the facilities. As was pointed out above, when Westar declares a System Condition, Frontier is required to start its Cogeneration Plant pursuant to Company's instructions. And there are clear consequences to Frontier if it fails to make its facilities available as required by the Agreement. Thus, section 11.5 of the Agreement requires Frontier to repair the Cogeneration Plant if it becomes inoperable. Failure to effect repairs gives Westar the right to terminate the Agreement – resulting in Frontier taking service under “an applicable published tariff” and subjecting Frontier to liquidated damages of \$100,000. Agreement, at § 11.5.

7. Admittedly, the pricing of the Agreement is more favorable than is available under the HLF Rate Schedule and ISR Rider or the Energy Efficiency Demand Response Program Rider (EEDR). However, that price advantage is more than justified by the additional flexibility provided by the Agreement. Thus, during the Summer months – June through September – when having the ability to interrupt load is important to Westar, Frontier must run its Cogeneration Plant on 90 minutes notice.² And, under the Agreement, Westar may call on Frontier to run its Cogeneration Plant an unlimited number of times each year for a maximum of 1000 hours. Rohlfs Affidavit, at ¶ 4.h. The Agreement provides nearly three times the number of hours of available interruptible hours allowed under the ISR and an unlimited number of interruptions rather than only 24 “events” provided for under the EEDR. *Id.*

8. The history of Westar's relationship with Frontier demonstrates the value of providing incentives to Frontier to grow its production. As Westar stated in its Application, between 2007 and 2012 – during the term of the previous agreement – “Frontier completed over

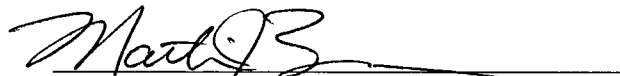
² OXY makes much of the fact that in the winter months, Frontier is entitled to 48 hours' notice. OXY Petition at ¶ 5. However, that fact is irrelevant given that in the history of Westar's interruptible programs, it has rarely implemented an interruption outside the Summer period. Rohlfs' Affidavit at ¶ 6.

\$450 million dollars of capital expenditures at the El Dorado facility that expanded the daily production and added new processes and products. These additions include the addition of facilities and processes to produce ultra-low sulfur diesel fuel and low sulfur gasoline in addition to additional production capacity at the facility.” Application at ¶ 8; *see* Wilson Affidavit at ¶ 3. Increased production at the plant resulted in the creation of 46 new jobs at the facility. *Id.* And Frontier has indicated that because the Agreement will help the El Dorado facility compete for expansion dollars with other Frontier plants that are located outside of Kansas, the Agreement increases the likelihood of increased production and employment in Kansas at the facility. Wilson Affidavit, at ¶ 3.

9. Approval of the Agreement is in the public interest. It will result in just and reasonable rates to Frontier and support additional expansion and job creation at the plant. The Commission should approve the Agreement without delay.

WHEREFORE, Westar requests that the Commission deny OXY’s request for a hearing and approve the Agreement between Westar and Frontier and for such other and further relief as may be appropriate.

Respectfully submitted,



Martin J. Bregman, #12618

Executive Director, Law

Cathryn J. Dinges, #20848

Corporate Counsel

818 S. Kansas Avenue

Topeka, KS 66612

(785) 575-8344; Telephone


(785) 575-8136; Fax

ATTORNEYS FOR
WESTAR ENERGY, INC. AND
KANSAS GAS AND ELECTRIC COMPANY

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

Martin J. Bregman, being duly sworn upon his oath deposes and says that he is one of the attorneys for Westar Energy, Inc. and Kansas Gas and Electric Company; that he is familiar with the foregoing **Reply to Petition to Intervene and for Hearing**; and that the statements therein are true and correct to the best of his knowledge and belief.



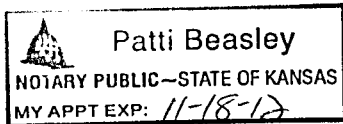
Martin J. Bregman

SUBSCRIBED AND SWORN to before me this 19th day of April, 2012.



Notary Public

My Appointment Expires: 11-18-12



BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

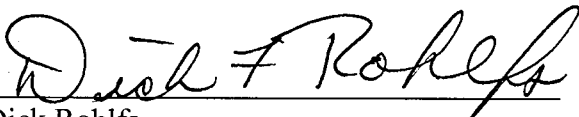
In the Matter of the Applications of Kansas)
Gas and Electric Company for Approval of)
the Energy Supply Agreement between) Docket No. 12-KG&E-718-CON
Kansas Gas and Electric Company and)
Frontier El Dorado Refinery L.L.C.)

AFFIDAVIT OF DICK ROHLFS

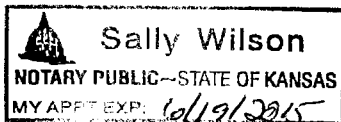
Dick Rohlfs, being first duly sworn, deposes and says:

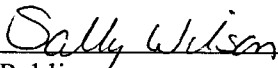
1. I am Director, Retail Rates for Westar Energy, Inc. (Westar).
2. The design of rates for the proposed Frontier Contract is identical to the existing contract rate except for the addition of an additional usage block in the Summer (June through September) and Winter (non-Summer) periods. The size of the energy blocks and rate applied to energy consumed in the blocks are identical between except for the pricing for usage in the new last block energy.
3. A comparison of actual revenue received from Frontier under the existing contract to the proposed contract shows that Frontier's total cost is identical or nearly so. The minor difference is attributable to less than 1 percent of Frontier's total energy being priced in the third energy block in the Winter period.
4. The existing contract and the proposed contract contain identical terms. These terms have been found to be reasonable and appropriate for inclusion in contracts. These terms include:
 - a. Summer / Winter differentiated pricing to encourage maintenance of Frontier facilities to occur during the winter months.
 - b. Declining block rate schedule to encourage expansion at Frontier's facility and job growth in Kansas.

- c. The application of the existing rate adjustment tariffs and schedules (Retail Energy Cost Adjustment, Property Tax Surcharge, Transmission Delivery Charge, Environmental Cost Recovery Rider and the Energy Efficiency Rider.
 - d. The modification of existing contract rates by a pro rata portion of any rate change approved by the KCC. (Article 5.7 E).
 - e. Application of all applicable taxes, fees applied to retail customers.
 - f. Westar's right to require Frontier to start its cogeneration facility if Westar has a "System Condition".
 - g. The right to request Frontier to start its cogeneration facility for economic reasons.
 - h. The proposed contract has nearly three times the number of hours of available interruptible hours compared to Westar's Interruptible Service Rider making this contract more valuable to Westar. The proposed contract is also more flexible compared to the Energy Efficiency Demand Response Rider (EEDR) in that the contract provides for an unlimited number of calls on Frontier's cogeneration facility whereas the EEDR permits only 24 events.
5. The notice provision to start Frontier's cogeneration facility is shorter than the notice to interrupt contained in Westar's Interruptible Service Rider during the Summer period when Westar is most likely to call on Frontier to start its Cogeneration Plant.
6. In the history of Westar's interruptible service rate schedules, Westar has rarely implemented an interruption outside the Summer period.


 Dick Rohlfs

SUBSCRIBED AND SWORN to before me this 18th day of April, 2012.




 Notary Public

My Appointment Expires: 6/19/2015

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Applications of Kansas)
Gas and Electric Company for Approval of)
the Energy Supply Agreement between) Docket No. 12-KG&E-718-CON
Kansas Gas and Electric Company and)
Frontier El Dorado Refinery L.L.C.)

AFFIDAVIT OF TERRANCE D. WILSON

Terrance D. Wilson, being first duly sworn, deposes and says:

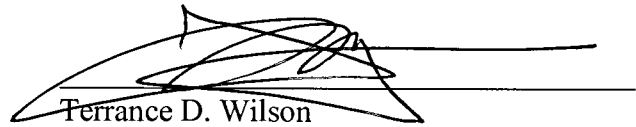
1. I am Director, Customer & Community Relations for Westar Energy, Inc. (Westar).

2. In my position, I was responsible for negotiating both the current electric service agreement between Kansas Gas and Electric Company and Frontier El Dorado Refining LLC (Frontier) and the proposed agreement (the "Agreement") that is the subject matter of this proceeding.

3. One of the main purposes of the current agreement was to promote growth at the Frontier refinery. The agreement has been highly successful in that regard. Between 2007 and 2012 – during the term of the previous agreement – Frontier completed over \$450 million dollars of capital expenditures at the El Dorado facility that expanded the daily production and added new processes and products. These investments have resulted in the addition of facilities and processes to produce ultra-low sulfur diesel fuel and low sulfur gasoline and additional production capacity at the facility. Increased production at the plant resulted in the creation of 46 new jobs at the facility.

4. The El Dorado facility is one of several refineries owned by Frontier but its only refinery in Kansas. The El Dorado facility has to compete with other Frontier facilities for capital dollars for expansion and Frontier's corporate management judges its financial

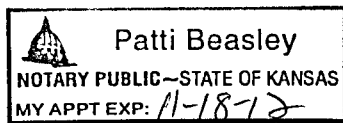
performance against the performance of other Frontier facilities located outside the state of Kansas. Frontier has indicated to us that because the Agreement will help the El Dorado facility compete for expansion dollars with other Frontier plants, the Agreement increases the likelihood of increased production and employment at the facility.


Terrance D. Wilson

SUBSCRIBED AND SWORN to before me this 19th day of April, 2012.


Notary Public

My Appointment Expires: 11-18-12



CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 2012, the original and eight copies foregoing **Reply to Petition to Intervene and for Hearing** were delivered to:

Patti Peterson-Klein
Executive Director
KANSAS CORPORATION COMMISSION
1500 SW Arrowhead
Topeka, Kansas 66604

that one copy was delivered to:

RAY BERGMEIER, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027

and that one copy was sent by electronic mail to:


TERESA J. JAMES
MARTIN, PRINGLE, OLIVER, WALLACE &
BAUER, LLP
tjjames@martinpringle.com

STANFORD J. SMITH, JR.
MARTIN, PRINGLE, OLIVER, WALLACE &
BAUER, LLP
sjsmith@martinpringle.com

TAMMY COOPER
ANDREWS KURTH L.L.P.
tammycooper@andrewskurth.com

PHILLIP OLDHAM
ANDREWS KURTH L.L.P.
phillipoldham@andrewskurth.com

JAMES G. FLAHERTY
ANDERSON & BYRD, LLP
jflaherty@andersonbyrd.com



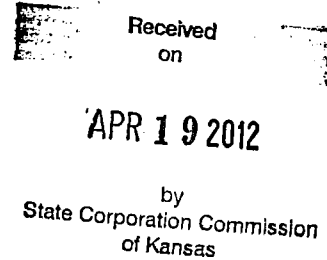
Martin J. Bregman



MARTIN J. BREGMAN
Executive Director, Law

April 19, 2012

Patti Petersen-Klein
Executive Director
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604



Re: In the Matter of the Application of Kansas Gas and Electric Company for Approval of the Energy Supply Agreement between Kansas Gas and Electric Company and Frontier El Dorado Refining LLC; Docket No. 12-KG&E-718-CON

Dear Ms. Petersen-Klein:

Enclosed for filing please find the original and eight (8) copies of the **Reply to Petition to Intervene and for Hearing** filed on behalf of Kansas Gas and Electric Company d/b/a Westar Energy, Inc.

Please file stamp one copy for my files.

Thank you for your assistance.

Sincerely,

Martin J. Bregman

Enclosures

cc: Service List