

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

Before Commissioners: Thomas E. Wright, Chairman
 Michael C. Moffet
 Joseph F. Harkins

In the Matter of the Investigation of Westar)
Energy, Inc., and Kansas Gas and Electric) Docket No. 09-WSEE-641-GIE
Company to Consider the Issue of Rate)
Consolidation and Resulting Rate Design.)

**ORDER OPENING DOCKET, SETTING SCHEDULING CONFERENCE,
DESIGNATING PREHEARING OFFICER AND ASSESSING COSTS**

The above captioned matter comes before the State Corporation Commission of the State of Kansas ("Commission") for consideration and decision. Having examined its files and records, and being duly advised in the premises, the Commission makes the following findings and conclusions:

1. On May 27, 2008, Westar Energy, Inc. (Westar North), and Kansas Gas and Electric Company (Westar South) (collectively Westar) initiated a proceeding to make changes to its charges for electric service by filing a Joint Application. *In the Matter of the Application of Westar Energy, Inc., and Kansas Gas Electric Company for Approval to Make Certain Changes in Their Charges for Electric Service*, KCC Docket No. 08-WSEE-1041-RTS. In that docket, the parties reached an Agreement that resolved all contested issues among the parties except whether rates for Westar North and Westar South should be consolidated. The parties identified the issue of rate consolidation as a policy question appropriate for Commission decision. The parties recommended that this issue be bifurcated from KCC Docket No. 08-WSEE-1041-RTS and addressed in a separate proceeding.

2. The Commission agreed to open a new docket to address whether rates for Westar North and Westar South should be consolidated. In granting the parties' request to defer this decision, rather than address it in the 08-1041 docket, the Commission stated the issue was too important to decide on anything less than a complete record. Opening a new proceeding will allow interested parties to present testimony addressing rate consolidation and the resulting rate design. Also, initiating a new proceeding will allow public input that focuses on the question of rate consolidation and resulting rate design.

3. The Commission notes that, simultaneous with the opening of this docket, the Commission will issue an Order Granting Motion to Bifurcate Rate Consolidation Issue and Closing Docket. That Order will end proceedings in Docket No. 08-WSEE-1041-RTS, except to the extent sub-dockets were created for compliance filings in the Commission's Order issued January 21, 2009. Rather than attempting to extract from that record relevant testimony regarding rate consolidation and related rate design, the Commission prefers testimony be filed anew in this proceeding. This will provide a record focused on the important issue of whether rates for Westar North and Westar South should be consolidated.

4. In its Motion to Bifurcate, Staff asked the Commission to address several issues in opening this docket. Those items are addressed in the following discussion.

I. SCHEDULING CONFERENCE

5. The Commission concludes that a prehearing conference to address scheduling will be beneficial in determining the issues to be decided in this proceeding and to develop a schedule for filing of testimony, hearings and other matters to recommend to the Commission. At this scheduling conference, parties should be prepared to discuss issues they believe the Commission will need to address regarding rate consolidation and resulting rate design. In

reviewing these issues, parties should consider incorporating energy efficiency goals articulated in KCC Docket No. 08-GIMX-442-GIV in evaluating the issue of rate consolidation and rate design resulting from rate consolidation. In considering energy efficiency goals, parties may want to review the discussion that took place during the evidentiary hearing before the Commission in 08-WSEE-1041-RTS. Transcript of November 5, 2008, Proceedings, pp. 32-34 (Moore), 44-52 (Rohlf), 67-70 (Springe), 88-92 (Ludwig), and 106-22 (Myrick). Parties should also be prepared to develop a procedural schedule for this docket, including discovery procedures; dates for public hearings and comments and for an evidentiary hearing; deadlines for testimony; and any other prehearing issues that will promote the orderly and prompt conduct of this proceeding. K.S.A. 77-517; K.A.R. 82-1-222. Parties should be prepared to discuss how the schedule in this docket will correspond to the abbreviated rate procedure Westar will file, approved by the Commission in the 08-1041 docket. January 21, 2009 Order, ¶¶ 39 and E.

6. The Commission sets a **Scheduling Conference before the Prehearing Officer for February 25, 2009, beginning at 10:00 a.m. in the Third Floor Hearing Room** of the Commission's Offices, 1500 SW Arrowhead Road, Topeka, KS 66604-4027. Any party who fails to attend or participate in the hearing or in any other stage of this proceeding may be held in default under the Kansas Administrative Procedure Act (KAPA). K.S.A. 77-516(c)(8); K.S.A. 77-520. At the prehearing conference, this proceeding without further notice may be converted into a conference hearing or a summary proceeding for disposition of the matter as provided by KAPA. K.S.A. 77-516(c)(7).

II. Designating Prehearing Officer

7. Although the Commission will conduct the evidentiary hearing in this docket, the Commission designates a prehearing officer to conduct any prehearing conferences that might be

needed in this proceeding and to address any matters that are appropriately considered in a prehearing conference, including all items listed in the Kansas Administrative Procedure Act (KAPA) at K.S.A. 77-517(b). These items include, for example, conversion of the proceeding to another type; exploration of settlement possibilities; clarification of issues; rulings on identity and limitation of the number of witnesses; objections to proffers of evidence; determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form, and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person; order of presentation of evidence and cross-examination; discovery orders and protective orders; and such other matters as will promote the orderly and prompt conduct of the hearing. The Commission designates Martha J. Coffman, Advisory Counsel, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, telephone 785-271-3105, email address m.coffman@kcc.ks.gov, to act as Prehearing Officer in this proceeding. K.S.A. 2008 Supp. 77-514; K.S.A. 77-516; K.S.A. 2008 Supp. 77-551. The Commission, as it deems necessary, may designate other staff members to serve in this capacity. After the Scheduling Conference on February 25, 2009, the Prehearing Officer will submit a report that outlines the issues proposed for decision in this proceeding and recommends a schedule. The Commission will then file an order defining the issues for this proceeding and the procedural schedule.

III. Assessing Costs

8. The Commission may assess the expenses of an investigation, opened on its own motion or upon an application to it, against the public utilities if the expenses reasonably attributable to such investigation exceed the sum of \$100. The Commission finds the expenses reasonably attributable to this investigation will exceed \$100. If the threshold \$100 is met, the Commission assesses these expenses against WESTAR ENERGY, INC. under K.S.A. 66-1502.

Expenses attributable to this docket shall be assessed beginning three days after notice of this assessment is given by service of this Order by United States mail. WESTAR ENERGY, INC. is notified that it has an opportunity to request a hearing on this assessment in accordance with the provisions of the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*

IV. Agency Attorneys of Record

9. The attorneys designated to appear on behalf of the agency in this proceeding are Dana Bradbury, telephone number 785-271-3396, and Matthew Spurgin, telephone number 785-271-3279, 1500 Arrowhead Road, Topeka, KS 66604-4027. K.S.A. 2008 Supp. 77-518(c)(2); K.S.A. 77-516(c)(2).

IT IS THEREFORE BY THE COMMISSION ORDERED:

(A) The Commission opens this docket to address issues discussed in paragraphs 2-4.

(B) The Commission appoints Martha J. Coffman to act as Prehearing Officer and directs parties to attend a scheduling conference on February 25, 2009, beginning at 10:00 a.m., in the Third Floor Hearing Room at the Commission's offices, 1500 SW Arrowhead Road, Topeka, KS 66604, as described above in paragraphs 5-7. Following the schedule conference, the Prehearing Officer will submit a report summarizing the issues discussed and recommending a procedural schedule.

(C) WESTAR ENERGY is assessed costs of this proceeding, as discussed in ¶ 8.

(D) This is a procedural order and constitutes non-final agency action. K.S.A. 77-607(b)(2). Parties have fifteen days, plus three days if service of this Order is by mail, from the date of service of this Order in which to petition the Commission for reconsideration. K.S.A. 66-118b; K.S.A. 2008 Supp. 77-529(a)(1).

(E) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn; Moffet, Com.; Harkins, Com.

Dated: FEB 13 2009

ORDERED MAILED

FEB 16 2009

 **EXECUTIVE
DIRECTOR**

Susan K. Duffy
Executive Director

mjc