

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Mark Sievers, Chairman
 Ward Loyd
 Thomas E. Wright

In the Matter of Westar Energy, Inc. and)
Kansas Gas and Electric Company Seeking)
Commission Approval to Implement Changes) Docket No. 12-WSEE-651-TAR
in Their Transmission Delivery Charge Rate)
Schedules.)

**ORDER DENYING OCCIDENTAL CHEMICAL CORPORATION'S
SECOND PETITION FOR RECONSIDERATION**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) on the application of Westar Energy, Inc., and Kansas Gas and Electric Company (collectively Westar) seeking approval of updated Transmission Delivery Charge (TDC) rates within its TDC tariff, pursuant to K.S.A. 66-1237. After reviewing the pleadings, files, and records, the Commission makes the following findings and conclusions:

1. On February 24, 2012, Westar filed its Application to Implement Changes in Their Transmission Delivery Charges Rate Schedules (Application) seeking Commission approval of its updated TDC rates within its TDC tariff, pursuant to K.S.A. 66-1237.

2. On March 21, 2012, the Commission issued a Suspension Order and Order Granting Temporary Waiver (March Order). In its March Order, the Commission ordered Westar to allocate the costs of both the current TDC amount and increase based on the current allocation methodology on an interim basis until Commission Staff (Staff) has the opportunity to fully investigate Westar's proposed allocation methodology. (March Order, p. 4, ¶ C) The March Order further provides that the allocation is subject to refund upon completion of Staff's investigation and subsequent Commission Order. (March Order, p. 4, ¶ C)

3. On April 6, 2012, intervenor Occidental Chemical Corporation (Occidental) filed a Petition for Reconsideration (Petition) of the March Order. Occidental's Petition raised four issues. First, Occidental asserted that Westar failed to follow the proper procedures under the relevant statutes. Second, Occidental stated that the Commission erred in granting Westar a waiver of the current tariff language, allowing them to use existing 12-CP data in violation of the plain language of the TDC tariff. Third, Occidental claimed that the Commission lacked an evidentiary basis for its decision authorizing Westar to collect additional costs under its TDC. Fourth, Occidental believed that the Commission erroneously relied on Commission Staff's position that directing Westar to allocate the costs of both the current TDC amount and the requested increase using the current allocation methodology, subject to refund, preserves the status quo.

4. On April 11, 2012, the Commission issued an Order Denying Occidental Chemical Corporation's Protest and Motion to Dismiss.

5. On April 25, 2012, the Commission issued an Order Denying Occidental Chemical Corporation's Petition for Reconsideration.

6. On April 30, 2012, Occidental filed a second Petition for Reconsideration. In its latest Petition for Reconsideration, Occidental essentially restates a claim from its earlier Petition that the Commission erred in granting Westar a waiver of the current tariff language, which allows Westar to use existing 12-CP data in violation of the plain language of the TDC tariff. Occidental also contends that it will be irrevocably harmed because it is being charged increased rates in violation of Westar's approved TDC tariff, which may not be cured by the possibility of a refund.

7. On May 9, 2012, Westar filed its Response, which urged the Commission to reject Occidental's Petition for Reconsideration.

8. There is no dispute that the waiver granted by the Commission is inconsistent with the approved TDC tariff, but that inconsistency does not violate K.S.A. 66-117 or 66-1237. There can be no violation of K.S.A. 66-117 because no tariff change was actually granted; only a temporary waiver was granted. Since K.S.A. 66-1237(c) requires the Commission to allow Westar to include any updated FERC-approved costs in the TDC, there is no violation of K.S.A. 66-1237.

9. Occidental offers no support for its contention that making the allocation subject to refund will lead to irrevocable harm.

10. Since the allocation is subject to refund, and Occidental has been permitted to fully participate in this docket and will thus have the opportunity to protect its interests, proceeding under Commission Staff's recommendation will result in neither irrevocable harm nor prejudice to Occidental. Therefore, Occidental's Petition for Reconsideration is denied.

IT IS, THEREFORE, BY THE COMMISSION ORDERED:

A. Occidental's Petition for Reconsideration is denied for the reasons set forth above.


B. The parties have fifteen days from the date of electronic service of this Order to file a petition for reconsideration with the Commission. K.S.A. 66-118b; K.S.A. 2011 Supp. 77-529.

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn.; Loyd, Com.; Wright, Com.

Dated: MAY 16 2012


ORDER MAILED MAY 16 2012
Patrice Petersen-Klein
Executive Director

BGF

CERTIFICATE OF SERVICE

MAY 16 2012

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I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order Denying Occidental Chemical Corporation's Second Petition for Reconsideration was served by electronic mail this 16th day of May, 2012, to the following parties who have waived receipt of follow-up hard copies:

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