

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.)

In the Matter of Westar Energy, Inc. and)
Kansas Gas and Electric Company Seeking)
Commission Approval to Implement Changes) Docket No. 18-WSEE-355-TAR
in their Transmission Delivery Charges Rate)
Schedules.)

**RESPONSE OF KANSAS INDUSTRIAL CONSUMERS GROUP, INC., TO STAFF'S
REPORT & RECOMMENDATION**

The Kansas Industrial Consumers Group, Inc. ("KIC"), respectfully files its *Response to Staff's Report & Recommendation*. In support of this Response, KIC states to the State Corporation Commission of the state of Kansas ("Commission" or "KCC") as follows:

I. Background

1. Approximately three and a half years ago, on February 15, 2016, Westar Energy, Inc., and Kansas Gas and Electric Company ("Westar"), filed a Report with the Commission setting its 2016 TDC rates ¹

2. A year later, on February 15, 2017, Westar filed a new Report setting its 2017 TDC rates.²

¹ Docket No. 16-WSEE-375-TAR, Tariff for Westar Energy and Kansas Gas and Electric for 2016 Transmission Delivery Charge, Feb. 15, 2016, p. 1.

² Docket No. 17-WSEE-377-TAR, Tariff for Westar Energy and Kansas Gas and Electric for 2017 Transmission

3. Approximately two years ago, on September 26, 2017, Commission Staff ("Staff") filed a Report & Recommendation ("R&R") addressing Westar's 2016 and 2017 TDC rates. In this R&R, Staff recommended the Commission retroactively change Westar's 2016 and 2017 TDC rates and back-bill customers for differences between the charged rates and the new rates proposed by Staff.³ These back-billed amounts would be large retroactive charges for some customers and refunds for other customers.⁴ To date, the Commission has neither adopted nor rejected Staff's recommendation.

4. On February 15, 2018, Westar filed a new Report setting its 2018 TDC rates.⁵

5. Westar's 2016 TDC, 2017 TDC, and 2018 TDC, docketed as 16-WSEE-375-TAR, 17-WSEE-377-TAR and 18-WSEE-355-TAR, respectively, each became effective and were charged to customers during their effective periods.⁶ None of the 2016-2018 TDCs remain in effect. Westar is currently charging rates associated with its 2019 TDC, which replaced the 2018 TDC rates.⁷

6. More than a year ago, in June of 2018, the parties filed legal briefs addressing the legality of Staff's proposal to retroactively set new TDC rates for past years and back-bill customers for usage occurring in 2016 and 2017. The Commission has not yet ruled on this legal issue.

Delivery Charge, Feb. 15, 2017, p. 1.

³ 16-375 Docket, Staff Report & Recommendation, September 26, 2017, pp. 9-12. (2017 R&R, pp. 9-12.)

⁴ 2017 R&R, p. 11.

⁵ Docket No. 18-WSEE-355-TAR, Tariff for Westar Energy and Kansas Gas and Electric for 2018 Transmission Delivery Charge, Feb. 15, 2018, p. 1.

⁶ The 2016 TDC became effective April 1, 2016, and was later amended by Westar, effective July 1, 2016. The 2017 TDC became effective April 3, 2017, replacing the 2016 TDC. The 2018 TDC became effective April 3, 2018, replacing the 2017 TDC.

⁷ Docket No. 19-WSEE-327-TAR, Tariff for Westar Energy and Kansas Gas and Electric for 2019 Transmission Delivery Charge, Feb. 15, 2019, p. 1.

7. On August 1, 2019, the Commission issued an Order Scheduling Oral Arguments on the legality of Staff's proposal. These arguments are scheduled to occur November 5, 2019.

II. Staff's 2019 Report & Recommendation

8. On August 8, 2019, Staff filed a new Report & Recommendation. In its new Report, it appears Staff is updating its proposed retroactive charges and refunds to reflect the full billing periods of the 2016, 2017, and 2018 TDCs.⁸ However, Staff notes it is also altering its earlier methodology somewhat by using different billing determinants in certain calculations.⁹ Finally, Staff sets forth specific charges it recommends Westar add to its customer bills for the next three years if Staff's proposal is approved.¹⁰

9. Under Staff's new recommendation, the retroactive charges to schools and businesses have grown substantially. Staff is now recommending Westar retroactively bill large volume and industrial users more than \$5 million for past electric service.¹¹ Staff recommends the Medium General Service class be billed approximately \$11.6 million for past electric service. And Staff recommends the small customer class of Schools be billed an additional \$6.5 million for past electric service.¹²

III. KIC's Response to Staff's 2019 Report & Recommendation

10. There have been no evidentiary proceedings on Westar's 2016, 2017, and 2018 TDCs. If the Commission finds it has authority to retroactively change Westar's historical TDC rates and back-bill customers, it will still need to consider the merits of such a proposal. Such an examination would include, but not be limited to, whether Staff's estimated 12-CP is superior to

⁸ Staff Report & Recommendation, filed August 8, 2019, pp. 6-8. (2019 R&R, pp. 6-8.)

⁹ 2019 R&R, p. 6.

¹⁰ 2019 R&R, Exhibit ANJ-5.

¹¹ This includes the LGS, ILP, LTM, and Special Contract customer classes.

¹² 2019 R&R, p. 8.

Westar's estimated 12-CP,¹³ whether Westar's estimated 12-CP "violated" its TDC tariff in a manner necessitating a retroactive "correction,"¹⁴ and whether retroactively billing customers for usage occurring years ago results in "just and reasonable rates" (i.e., whether it is just and reasonable for the Commission to take this action, even if such action is within the bounds of the Commission's legal authority).

11. It remains KIC's understanding this matter will move forward first on the legal questions implicated by Staff's proposal, although such a procedure is not discussed in Staff's most recent Report and Recommendation to the Commission. In the event the Commission finds it has lawful authority to take such an action, KIC understands the proceeding would transition to an evidentiary phase.¹⁵ Because Staff has supplemented the official record with a new recommendation, to avoid any doubt or uncertainty, KIC re-asserts its objections to Staff's updated proposal on legal, policy, and evidentiary grounds, consistent with KIC's prior filings in the above-listed dockets.

¹³ See Initial Brief on Retroactive Ratemaking by the Staff of the State Corporation Commission of the State of Kansas, June 1, 2018, ¶ 30. (Staff Initial Brief, ¶ 30.) It is KIC's understanding that neither 12-CP represents an "actual" observation of class demand during Westar's peaks. Rather, both figures are "estimates" based on sample load research data. Thus, neither represents Westar's "actual" 12-CP.

¹⁴ This question may also be relevant to Staff's legal arguments regarding retroactive ratemaking, since Staff appears to contend Westar violated its tariff by including an "incorrect" input in its "formula rate." Staff contends no retroactive ratemaking is occurring because it is simply inserting the "correct" input. It is KIC's understanding both Staff and Westar's 12-CP allocations are estimates based on limited load research data and neither represents Westar's "actual" 12-CP. Therefore, while Staff may believe its 12-CP is a statistically better estimate, it is unclear how Staff reaches the conclusion that Westar's 12-CP is "incorrect" and Staff's 12-CP is "correct," such that Westar violated its tariff – necessitating retroactive correction and rebilling. See, Staff Initial Brief, ¶ 2, "Westar's TDC is a formula rate that uses the 12-CP allocation method to determine TDC Unit Charges (i.e. customer surcharges). Implementing corrected 12-CP allocators and recalculating TDC Unit Charges does not retroactively modify this formula – it corrects an input to the formula thereby ensuring the tariff is enforced as written."

¹⁵ See Order Granting Staff's Motion to Join and Consolidate Proceedings, April 5, 2018, ¶ 15, "The Commission believes the question of whether Staff's request...would constitute unlawful, retroactive ratemaking is a *threshold* legal issue." (Emphasis added.)

WHEREFORE, KIC respectfully requests the Commission accept Staff's Report and Recommendation but issue an Order declining Staff's proposal to retroactively redesign Westar's TDC rates and closing the consolidated Westar TDC dockets.

Respectfully submitted,

/s/ **Andrew J. French**

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**Attorneys for Kansas Industrial Consumers
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VERIFICATION

STATE OF KANSAS)
)
COUNTY OF JOHNSON) ss:

Andrew J. French, being duly sworn upon his oath, deposes and states that he is the Attorney for the Kansas Industrial Consumers Group, Inc., that he has read and is familiar with the foregoing *Response of Kansas Industrial Consumers Group, Inc., to Staff's Report & Recommendation*, and the statements therein are true to the best of his knowledge, information, and belief.



Andrew J. French

SUBSCRIBED AND SWORN to before me this 16th day of August, 2019.



Notary Public

My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or regular U.S. mail (unless otherwise noted), the 16th day of August, 2019, to the parties below:

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