

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

SEP 20 2013

by  
State Corporation Commission  
of Kansas

In the Matter of the Applications of Westar ) Docket No. 13-WSEE-629-RTS  
Energy, Inc. and Kansas Gas and Electric )  
Company for Approval to Make Certain )  
Changes in Their Charges for Electric Service. )

**CURB'S PREHEARING RESPONSIVE BRIEF ON LEGAL ISSUES**

The Citizens' Utility Ratepayer Board (CURB) herein submits its prehearing responsive brief on legal issues raised in the above-captioned docket that were briefed by the Staff of the Kansas Corporation Commission and filed with the Commission on September 12, 2013 (hereafter, Brief).

1. CURB concurs with the background facts as set forth by Staff in paragraphs 1 through 5 in its Brief.

2. CURB also generally agrees with Staff's recitation of the facts related to the Commission's most recent order determining that so-called "lifeline" rates are prohibited under Kansas law as unduly discriminatory. CURB is not able to determine from the few facts presented by Westar Energy in its rate case application whether Westar's proposed low-income assistance program falls within the prohibition. It's not even clear whether the proposal falls under the definition of a discount rate or is more fairly characterized as a charitable contribution subsidized by customers, which raises questions beyond the discrete question of whether Westar's proposal is unduly discriminatory under the prohibition against lifeline rates. Additionally, CURB notes that discounted rates for low-income customers could, under certain circumstances, be considered not

unduly discriminatory<sup>1</sup>, but again, no facts have been presented in this docket that would support a determination one way or the other.

3. Therefore, CURB agrees with Staff that Westar has not met its burden to present evidence that the proposed low-income assistance program will result in just and reasonable rates for all customers, but does not necessarily agree that discounted rates for low-income customers in all circumstances are *per se* unduly discriminatory.

4. Similarly, the information provided in Westar's application does not provide enough evidence on its proposed economic development program to determine whether it would result in just and reasonable rates for all customers. It might—but we can't tell. For the same reasons stated above, CURB agrees with Staff that the evidence simply would not support a determination that the program is consistent with Kansas statutes, case law, and the Commission's prior rulings on unduly discriminatory rates and tariffs.

5. The most compelling argument that Staff makes in its Brief is the simplest: the Commission's prescribed limitations on the issues that may be considered in this abbreviated rate case proceeding do not include consideration of issues beyond 1) the actual capital costs incurred by Westar related to environmental upgrades at its LaCygne generation plant, 2) updating rates to reflect expiration of the amortization of costs related to the 2007 ice storm, and 3) issues related to class cost of service allocations and rate design. Consideration of new assistance programs, whether they

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<sup>1</sup> See *Comments of CURB*, Docket No. 04-GIMX-531-GIV, Feb. 6, 2004. In part, CURB concluded, "...the Commission cannot simply reverse its 1982 decision [on lifeline rates] without a rational basis for doing so. It must first distinguish below-cost-of-service 'lifeline' rates, as defined in its 1982 order, from rate tariffs or contracts that address home energy affordability and which will generate cost savings and other benefits to customers that will offset all or some of the costs that will be borne by other ratepayers. There is a growing body of evidence that supports the view that such programs provide such savings and benefits, much of which was not available in 1982", [referring to *Order of Nov. 9, 1982*, Docket No. 134.584-U in which the Commission had previously determined that lifeline rates were prohibited in Kansas].

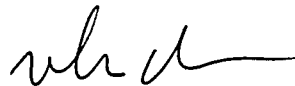
are intended to help low-income customers or promote economic development, is simply outside the scope of this abbreviated proceeding. These proposals are in no way related to the issues to be addressed by the Commission in this docket. Therefore, CURB agrees with Staff that the Commission should decline to consider or approve these proposed projects within the confines of this docket.

6. That said, CURB is not opposed to consideration of these programs in another docket. The burden of utility costs on lower-income customers continues to be a persistent problem in Kansas, and our state could certainly use some new jobs for its citizens. Whether Westar's programs will provide solutions to these problems, whether Westar's customers should bear the burden of the costs of the solutions to these statewide problems, and whether doing so violates the prohibition against making one set of customers pay for a service or program that is only available to other sets of customers are issues that should be discussed—but not in a narrowly-designed docket in which the discussion is a distraction from and an expansion of the docket's limited purposes. But CURB would welcome the opportunity to address these issues in the appropriate docket.

7. Finally, if, during the course of this proceeding, Westar decides to withdraw either or both of these proposals for consideration by the Commission either through a settlement agreement or by its own decision, the Commission should allow the company to do so without prejudice. In such circumstances, making a determination in this proceeding as to the legality or desirability of adopting such programs in general, on the basis of the prehearing briefs of Staff and CURB or other intervenors, would be inappropriate because the questions posed by the Commission to be addressed in these briefs did not ask the parties to address the legality of low-income programs and economic

development tariffs in general. Such questions should be addressed in a docket in which the determination of their legality is the focus of the docket, and not a distraction from the tasks at hand.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

13-WSEE-629-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 20<sup>th</sup> day of September, 2013, to the following parties who have waived receipt of follow-up hard copies:

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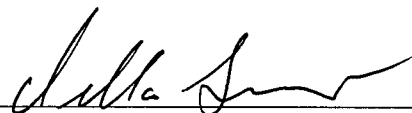
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A handwritten signature in cursive script, appearing to read "Della Smith", written over a horizontal line.

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