

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Joint Application of Westar)
Energy, Inc. and Kansas Gas and Electric)
Company for Approval to Make Certain)
Changes in their Charges for Electric Services.) Docket No. 18-WSEE-328-RTS

**STAFF’S RESPONSE TO SIERRA CLUB AND VOTE SOLAR’S
PETITION FOR RECONSIDERATION**

COMES NOW, Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and respectfully submits Staff’s response to Sierra Club and Vote Solar’s Petition for Reconsideration, filed October 12, 2018. For and in support of its response, Staff states as follows:

I. BACKGROUND

1. On February 1, 2018, Westar Energy Inc. and Kansas Gas and Electric Company (together, “Westar”) filed a Joint Application requesting authorization to make certain changes to their charges for electric service in Kansas pursuant to K.S.A. 66-117 and K.A.R. 82-1-231.¹

2. Pursuant to K.S.A. 77-521 and K.A.R. 82-1-225, the Commission authorized the intervention of a number of entities, including Sierra Club and Vote Solar, on the condition that the parties consolidated their participation in this docket.²

3. On June 11, 2018, Staff and intervenors submitted direct testimony. On June 22, 2018, Sierra Club and Vote Solar submitted cross-answering testimony. On July 3, 2018, Westar submitted rebuttal testimony.

¹ Joint Application (Feb. 1, 2018).

² Order Consolidating Vote Solar and Sierra Club Interventions (Jun. 7, 2018).

4. On July 17, 2018, settling parties filed a Joint Motion to approve Non-Unanimous Stipulation and Agreement. Sierra Club and Vote Solar did not join the Non-Unanimous Stipulation and Agreement.

5. On July 18, 2018, testimony either in support of, or in opposition to, the Non-Unanimous Stipulation and Agreement was filed.

6. On July 24, 2018, and July 25, 2018, the Commission held an evidentiary hearing on Westar's Joint Application and on the Non-Unanimous Stipulation and Agreement.

7. On September 27, 2018, the Commission issued an order approving the Non-Unanimous Stipulation and Agreement.

II. THE ALLOCATION OF THE REDUCTION IN REVENUE REQUIREMENT IS SUPPORTED BY SUBSTANTIAL, COMPETENT EVIDENCE.

8. The record in this matter contains substantial, competent evidence supporting the \$66 million reduction in revenue requirement. Four parties submitted testimony including a revenue requirement recommendation in their initial positions in this docket in response to Westar's original filed position. These parties were Staff, CURB, Kansas Industrial Consumers (KIC) and the U.S. Department of Defense. In its initial position, Staff recommended a net reduction in revenue requirement of \$69 million.³ CURB's position recommended a net reduction in revenue requirement of \$138.4 million.⁴ KIC recommended a net reduction in revenue requirement of \$54 million.⁵ The U.S. Department of Defense recommended a net increase in revenue requirement of \$32.54 million.⁶ Each of these parties provided extensive support of its recommended revenue requirement figure.

³ Direct Testimony of Kristina Luke Fry, p. 9 (Jun. 11, 2018).

⁴ Direct Testimony of Andrea Crane on behalf of CURB, p. 9 (Jun. 11, 2018).

⁵ Direct Testimony of Michael P. Gorman, p. 6 (Jun. 11, 2018).

⁶ Direct Testimony of Lafayette K. Morgan, Jr., p. 5 (Jun. 11, 2018).

9. The agreed-upon revenue reduction in the Non-Unanimous Stipulation and Agreement (Agreement) falls within the range of these recommended and supported positions. Moreover, the agreed-upon revenue decrease is closest to Staff's recommended position, and while there is not an exact determination of the revenue requirement specified in the Agreement, Staff witness Grady outlines several possible scenarios whereby the Commission could determine the revenue requirement reduction of \$66 million.⁷

10. The record further supports the allocation of this revenue reduction. Staff witness Dr. Glass provides an explanation as to how the allocation was determined, and support for the agreed-upon allocation in his testimony in support of the Agreement.⁸ Likewise, the negotiated revenue allocation was a departure of the parties' filed positions, reflecting compromise in the parties' positions, still within the bounds established by parties' direct positions. As such, the volume of support provided by the parties' initial positions and testimonies in support of the settlement agreement provide substantial, competent evidence when viewed in light of the record as a whole.

III. THE RESIDENTIAL STANDARD DISTRIBUTED GENERATION RATE IS SUPPORTED BY SUBSTANTIAL, COMPETENT EVIDENCE.

11. The Residential Standard Distributed Generation (RS-DG) rate is supported by substantial, competent evidence. The rate was proposed by Westar in its initial Joint Application, evaluated by Staff and intervening parties during discovery, with parties able to provide their adjustments to the rate in each party's direct filed position. Both Staff and CURB made recommendations for a residential distributed generation rate design.⁹ Through settlement

⁷ See Testimony in Support of Non-Unanimous Stipulation and Agreement Prepared by Justin T. Grady, pp. 17-19 (Jul. 18, 2018).

⁸ Testimony in Support of the Non-Unanimous Stipulation and Agreement Prepared by Robert H. Glass, PhD, p. 6 (Jul. 18, 2018).

⁹ See Direct Testimony of Robert H. Glass, PhD, pp. 32-35 (Jun. 13, 2018); Direct Testimony of Brian Kalcic, pp. 17-19 (Jun. 11, 2018); Direct Testimony of Stacey Harden, p. 25 (Jun. 22, 2018).

negotiations, a compromise was reached between settling parties, and the agreed-upon RS-DG rate design is directly supported by the settlement testimonies of Staff witness Dr. Glass and Westar witness Greg Greenwood.

12. As Staff witness Dr. Glass testified at hearing and in his direct prefiled testimony, the RS-DG class is a very dynamic class, going from 65 members to 227 members during the test year.¹⁰ Staff accounts for this in its support for, and recommendation of, its proposals relevant to the RS-DG rate.¹¹ Dr. Glass clarified that the rate of return, though accurately calculated, is “probably not very reflective of the [RS-DG] class,” and that other factors are considered when evaluating rate design.”¹²

13. The record in this matter includes substantial, competent evidence for the approval of the agreed-upon RS-DG rate design, and Sierra Club and Vote Solar’s Petition for Reconsideration offers no reason to reconsider the Commission’s well-reasoned findings on this issue articulated in the September 27, 2018 Order Approving Non-Unanimous Stipulation and Agreement.

IV. THE RESIDENTIAL STANDARD DISTRIBUTED GENERATION RATE IS LAWFUL.

14. In Commission Docket No. 16-GIME-403-GIE, parties extensively investigated and examined the appropriate rate design for distributed generation customers, and the Commission issued an order making policy determinations in that docket. As such, parties need not reengage in the litigation of such issues in this docket. Further, the Commission has notified parties that it “will give no weight to testimony it finds to be an attempt to re-litigate the policy

¹⁰ Glass Direct, pp. 34-35 (Jun. 13, 2018); Transcript (Tr.) Vol. 2, p. 287 (Jul. 25, 2018)

¹¹ Glass Direct, pp. 34-35 (Jun. 13, 2018).

¹² Tr. Vol. 2, p. 288.

issues addressed in the [16-403] Docket.”¹³ Nevertheless, Sierra Club and Vote Solar’s Petition for Reconsideration attempts to again raise the issues determined in the 16-403 Docket.

15. The Commission found in the 16-403 Docket that distributed generation customers are being subsidized by non-distributed generation customers.¹⁴ Accordingly, the Commission’s order in the 16-403 Docket found that a cost of service based three-part rate consisting of a customer charge, demand charge, and energy charge is one of several appropriate options to better recover the costs of providing service to distributed generation customers.¹⁵ Westar’s proposal for the RS-DG rate in its Joint Application was evaluated based on this guidance, and an analysis was performed to determine the appropriate cost-based rate design for this class.

16. As the record in this proceeding supports, and is more specifically outlined in Section III, above, the RS-DG rates approved by the Commission’s September 27, 2018 Order Approving Non-Unanimous Stipulation and Agreement are cost-based and supported by substantial, competent evidence. The cost-based RS-DG rate is not unlawful; the rate follows the Commission’s policy guidance articulated in the 16-403 Docket; and Sierra Club and Vote Solar’s attempts to re-litigate the issue should be rejected.

V. CONCLUSION

17. For the reasons set forth above, Sierra Club and Vote Solar’s Petition for Reconsideration fails to set forth any grounds upon which the Commission should reconsider its September 27, 2018 Order. The allocation of the revenue reduction is supported by substantial, competent evidence; the residential standard distributed generation rate is supported by

¹³ Order on Westar’s Motion to Strike Portions of Sierra Club’s and Vote Solar’s Testimony, ¶10 (Jul. 10, 2018).

¹⁴ Docket No. 16-GIME-403-GIE, Final Order, ¶22 (Sept. 21, 2017).

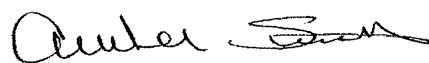
¹⁵ *Id.* at ¶23.

substantial, competent evidence; and the residential standard distributed generation rate is lawful.

Therefore, Sierra Club and Vote Solar's Petition for Reconsideration should be denied.

WHEREFORE, Staff respectfully requests the Commission deny Sierra Club and Vote Solar's Petition for Reconsideration.

Respectfully submitted,



Amber Smith, #23911
Phoenix Anshutz, #27617
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604
(785) 271-3110
a.smith@kcc.ks.gov
p.anshutz@kcc.ks.gov

For Commission Staff

VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

Amber Smith, of lawful age, being duly sworn upon her oath deposes and states that she is Chief Litigation Counsel for the State Corporation Commission of the State of Kansas; that she has read and is familiar with the foregoing *Staff's Response to Sierra Club and Vote Solar's Petition for Reconsideration*, and attests that the statements therein are true to the best of her knowledge, information and belief.



Amber Smith, S. Ct. #23911
Chief Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 22nd day of October, 2018.




Notary Public

My Appointment Expires: 6-30-22

CERTIFICATE OF SERVICE

18-WSEE-328-RTS

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Response to Sierra Club and Vote Solar's Petition for Reconsideration was served via electronic service this 22nd day of October, 2018, to the following:

JAMES G. FLAHERTY, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
Fax: 785-242-1279
jflaherty@andersonbyrd.com

KURT J. BOEHM, ATTORNEY
BOEHM, KURTZ & LOWRY
36 E SEVENTH ST STE 1510
CINCINNATI, OH 45202
Fax: 513-421-2764
kboehm@bkllawfirm.com

JODY KYLER COHN, ATTORNEY
BOEHM, KURTZ & LOWRY
36 E SEVENTH ST STE 1510
CINCINNATI, OH 45202
Fax: 513-421-2764
jkylercohn@bkllawfirm.com

MARTIN J. BREGMAN
BREGMAN LAW OFFICE, L.L.C.
311 PARKER CIRCLE
LAWRENCE, KS 66049
mjb@mjbregmanlaw.com

C. EDWARD PETERSON
C. EDWARD PETERSON, ATTORNEY AT LAW
5522 ABERDEEN
FAIRWAY, KS 66205
Fax: 913-722-0181
ed.peterson2010@gmail.com

THOMAS J. CONNORS, ATTORNEY AT LAW
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
tj.connors@curb.kansas.gov

TODD E. LOVE, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
t.love@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.nickel@curb.kansas.gov

SHONDA RABB
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
s.rabb@curb.kansas.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3116
d.smith@curb.kansas.gov

CERTIFICATE OF SERVICE

18-WSEE-328-RTS

DANIEL R. ZMIJEWSKI
DRZ LAW FIRM
9229 WARD PARKWAY STE 370
KANSAS CITY, MO 64114
Fax: 816-523-5667
dan@drzlawfirm.com

DAVID BENDER
EARTHJUSTICE
3916 Nakoma Road
Madison, WI 63711
dbender@earthjustice.org

FLORA CHAMPENOIS
EARTHJUSTICE
1625 Massachusetts Ave., NW
Suite 702
Washington, DC 20036
fchampenois@earthjustice.org

SHANNON FISK, ATTORNEY
EARTHJUSTICE
1617 JOHN F KENNEDY BLVD
SUITE 1675
PHILADELPHIA, PA 19103
sfisk@earthjustice.org

MARIO A. LUNA
EARTHJUSTICE
1625 Massachusetts Ave., NW
Suite 702
Washington, DC 20036
aluna@earthjustice.org

JILL TAUBER
EARTHJUSTICE
1625 Massachusetts Ave., NW
Suite 702
Washington, DC 20036
jtauber@earthjustice.org

NICOLAS THORPE
EARTHJUSTICE
1625 Massachusetts Ave., NW
Suite 702
Washington, DC 20036
nthorpe@earthjustice.org

GABRIELLE WINICK
EARTHJUSTICE
1625 Massachusetts Ave., NW
Suite 702
Washington, DC 20036
gwinick@earthjustice.org

ELIZABETH A. BAKER
6610 SW 29th St.
Topeka, KS 66614
betsy@bakerlawks.com

GREG WRIGHT
EMG, INC.
420 NE LYMAN RD.
TOPEKA, KS 66608
greg@emgnow.com

KEVIN HIGGINS
ENERGY STRATEGIES, LLC
PARKSIDE TOWERS
215 S STATE ST STE 200
SALT LAKE CITY, UT 84111
Fax: 801-521-9142
khiggins@energystrat.com

DAVID BANKS, CEM, CEP
FLINT HILLS ENERGY CONSULTANT
117 S PARKRIDGE
WICHITA, KS 67209
david@fheconsultants.net

CERTIFICATE OF SERVICE

18-WSEE-328-RTS

MATTHEW H. MARCHANT
HOLLYFRONTIER CORPORATION
2828 N HARWOOD STE 1300
DALLAS, TX 75201
matthew.marchant@hollyfrontier.com

DARIN L. RAINS
HOLLYFRONTIER CORPORATION
2828 N Harwood, Ste. 1300
Dallas, TX 75201
darin.rains@hollyfrontier.com

JUSTIN WATERS, ENERGY MANAGER
JUSTIN WATERS
USD 259 School Serv. Cntr.
3850 N. Hydraulic
Wichita, KS 67219
jwaters@usd259.net

NELDA HENNING, DIRECTOR OF FACILITIES
KANSAS BOARD OF REGENTS
1000 SW Jackson, Ste. 520
Topeka, KS 66612
nhenning@ksbor.org

PHOENIX ANSHUTZ, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
p.anshutz@kcc.ks.gov

MICHAEL DUENES, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
m.duenes@kcc.ks.gov

AMBER SMITH, CHIEF LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3167
a.smith@kcc.ks.gov

ROBERT V. EYE, ATTORNEY AT LAW
KAUFFMAN & EYE
4840 Bob Billings Pkwy, Ste. 1010
Lawrence, KS 66049-3862
Fax: 785-749-1202
bob@kauffmaneye.com

TIMOTHY MAXWELL, VICE PRESIDENT, SPECIALTY
FINANCE
KEF UNDERWRITING & PORTFOLIO MGMT.
1000 South McCaslin Blvd.
Superior, CO 80027
timothy_maxwell@keybank.com

KEVIN HIGGINS
KEVIN C. HIGGINS
PARKSIDE TOWERS
215 S STATE ST STE 200
SALT LAKE CITY, UT 84111
khiggins@energystrat.com

MATTHEW B. McKEON, SVP & SENIOR COUNSEL II
KEY EQUIPMENT FINANCE
17 Corporate Woods Blvd.
Albany, NY 12211
matthew.b.mckeon@key.com

AMY G. PAINE, SVP ASSET MGMT.
KEY EQUIPMENT FINANCE
1000 South McCaslin Blvd.
Superior, CO 80027
amy.g.paine@key.com

CERTIFICATE OF SERVICE

18-WSEE-328-RTS

ANDREW B. YOUNG, ATTORNEY
MAYER BROWN LLP
1999 K STREET NW
WASHINGTON, DC 20006
Fax: 312-701-7711
ayoung@mayerbrown.com

GENE CARR, CO-CEO
NETFORTRIS ACQUISITION CO., INC.
6900 DALLAS PKWY STE 250
PLANO, TX 75024-9859
gcarr@telekenex.com

ANNE E. CALLENBACH, ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
Fax: 913-451-6205
acallenbach@polsinelli.com

FRANK A. CARO, JR., ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
Fax: 816-753-1536
fcaro@polsinelli.com

ANDREW O. SCHULTE, ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
Fax: 816-753-1536
aschulte@polsinelli.com

SUNIL BECTOR, ATTORNEY
SIERRA CLUB
2101 WEBSTER, SUITE 1300
OAKLAND, CA 94312-3011
Fax: 510-208-3140
sunil.bector@sierraclub.org

ANDREW J. FRENCH, ATTORNEY AT LAW
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH ST STE 750
OVERLAND PARK, KS 66210-2362
Fax: 913-661-9863
andrew@smizak-law.com

DIANE WALSH, PARALEGAL
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH ST STE 750
OVERLAND PARK, KS 66210-2362
Fax: 913-661-9863
diane@smizak-law.com

JAMES P. ZAKOURA, ATTORNEY
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH ST STE 750
OVERLAND PARK, KS 66210-2362
Fax: 913-661-9863
jim@smizak-law.com

TOM POWELL, GENERAL COUNSEL-USD 259
TOM POWELL
903 S. Edgemoor
Wichita, KS 67218
tpowell@usd259.net

JOHN M. CASSIDY, GENERAL COUNSEL
TOPEKA METROPOLITAN TRANSIT AUTHORITY
201 N. Kansas Avenue
Topeka, KS 66603
jcassidy@topekametro.org

AMY FELLOWS CLINE, ATTORNEY
TRIPLETT, WOOLF & GARRETSON, LLC
2959 N ROCK RD STE 300
WICHITA, KS 67226
Fax: 316-630-8101
amycline@twgfirm.com

CERTIFICATE OF SERVICE

18-WSEE-328-RTS

TIMOTHY E. MCKEE, ATTORNEY
TRIPLETT, WOOLF & GARRETSON, LLC
2959 N ROCK RD STE 300
WICHITA, KS 67226
Fax: 316-630-8101
temckee@twgfirm.com

EMILY MEDLYN, GENERAL ATTORNEY
U.S. ARMY LEGAL SERVICES AGENCY
REGULATORY LAW OFFICE
9275 GUNSTON RD., STE. 1300
FORT BELVOIR, VA 22060-5546
Fax: 703-696-2960
emily.w.medlyn.civ@mail.mil

KEVIN K. LACHANCE, CONTRACT LAW ATTORNEY
UNITED STATES DEPARTMENT OF DEFENSE
ADMIN & CIVIL LAW DIVISION
OFFICE OF STAFF JUDGE ADVOCATE
FORT RILEY, KS 66442
Fax: 785-239-0577
kevin.k.lachance.civ@mail.mil

CATHRYN J. DINGES, CORPORATE COUNSEL
WESTAR ENERGY, INC.
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
Fax: 785-575-8136
cathy.dinges@westarenergy.com

DAVID L. WOODSMALL
WOODSMALL LAW OFFICE
308 E HIGH ST STE 204
JEFFERSON CITY, MO 65101
Fax: 573-635-7523
david.woodsmall@woodsmalllaw.com


Vicki Jacobsen
