

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Received  
on

MAY 07 2012

In the Matter of the Application of Westar )  
Energy, Inc. and Kansas Gas and Electric )  
Company seeking Commission Approval )  
To Implement Changes in Their Renewable )  
Energy Program Rider Adding a )  
Sustainability Program Option for Large )  
Commercial or Industrial Customers )

by  
State Corporation Commission  
of Kansas

Docket No. 12-WSEE-652-TAR

**REPLY TO PETITION TO INTERVENE**

COME NOW Westar Energy, Inc. and Kansas Gas and Electric Company (referred to collectively as "Westar") and reply to the Petition to Intervene (Petition) of Occidental Chemical Corporation (OXY). In support of its Reply, Westar states:

1. On February 24, 2012, Westar filed an application seeking approval of an amendment to its Renewable Energy Program Rider (the Renew Program). The proposed amendment would add a Sustainability Program Option to the existing Program.

2. On April 24, 2012, OXY filed its Petition in this matter. In support of its Petition, OXY makes several inaccurate statements about the existing Renew Program and the amendment proposed in this docket that demonstrate OXY's misunderstanding of both Program. Although Westar is not opposing OXY's Petition to Intervene, Westar is filing this Reply to correct the various misstatements made by OXY.

3. At the outset, it is important to recognize that the Renew Program has been in place for several years and that Westar is simply proposing an amendment to the Program at this time. By its Final Order in Docket No. 08-WSEE-309-PRE, ¶¶ 116-118 (Dec. 27, 2007), the Commission **required** Westar to develop the Renew Program. The Program was subsequently approved by the Commission in its Order Approving Application for Green Tariff on September 15, 2008, in Docket No. 09-WSEE-198-TAR (198 Docket). In paragraph 5 of that Order, the

Commission found that “Westar’s Application for approval of its Green Tariff is reasonable, in the public interest, and should be approved.”

4. The Renew Program approved in the 198 Docket allows customers voluntarily to purchase renewable energy to fulfill a portion of their energy use. Customers can purchase blocks of renewable energy up to the customer’s minimum usage level during the previous 12 months. Renew Tariff, attached hereto as Exhibit A. Westar sells each 100 kWh block for \$1.00. This is an incremental charge over the customer’s standard tariff rate. *Id.* All of the income received from this Program is flowed back to customers through the Retail Energy Cost Adjustment (RECA) clause. RECA Tariff, Sheet 3. Westar can fulfill the renewable energy requirements under the Renew Program with energy produced from its renewable resources or by purchasing renewable energy credits (RECs). Renew Tariff (Ex. A). Westar also has discretion to determine the number of Renewable Energy Charge Blocks available to customers based on the amount of renewable energy sources and RECs available during any program year. *Id.* Westar does not propose any change to these provisions of the Renew Program in this docket. OXY’s complaints about the existing, approved program are nothing more than an inappropriate collateral attack. *See, e.g., Pacific Gas and Elec. Co. v. F.E.R.C.*, 464 F.3d 861, 868 (9th Cir. 2006).

5. In this docket, Westar proposed to add a new option to the existing Renew Program – the Sustainability Program Option. Under this option, commercial and industrial customers would be able to purchase Renewable Energy Charge Blocks at a discount if they can establish that they have received a Leadership in Energy and Environmental Design (LEED) certification or that they are involved in some other sustainable energy initiative that has been recognized by the utility industry or government. The discount available to the customer would

be up to 30%, depending on the level of LEED certification and other recognition involved. In other words, a customer eligible for the Sustainability Program Option would still pay an additional amount above the normal tariff rate to purchase renewable energy but that amount would be less than other customers purchasing service under the Renew Program would pay. The lowest discounted price available under the Sustainability Program Option would be \$0.70 for a 100 kWh block.

6. OXY argues that Westar “fails to state that all of the costs from the procurement of renewable energy are flowed through to customers through the Retail Energy Cost Adjustment.” OXY Petition, at ¶ 4. OXY’s implication that Westar is somehow hiding this fact from the Commission is laughable. All of the renewable generation owned or purchased by Westar has been previously approved by the Commission in Docket Nos. 08-WSEE-309-PRE (309 Docket) and 11-WSEE-377-PRE (377 Docket) or otherwise found to be prudent.<sup>1</sup> In the 309 and 377 Dockets, the Commission explicitly approved cost recovery for Westar’s investment in renewable generation – either through the RECA for purchased power or through base rates for generation owned by Westar – and found those investments to be prudent and to result in just and reasonable rates.

7. OXY’s next suggestion – that all of Westar’s customers will subsidize the purchase of renewable energy to meet the requirements under the Renew Program – is simply wrong. When customers participate in the Renew Program, they actually provide a benefit to Westar’s other customers by reducing the amount they pay through the RECA. Westar has and will have sufficient renewable capacity and energy to meet the Kansas Renewable Portfolio

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<sup>1</sup> In addition to the wind generation it owns and purchases, Westar also has a purchase power agreement (PPA) to buy landfill gas generation. Although this PPA was not submitted to the Commission through the predetermination process, the Commission has reviewed the costs incurred under the PPA and permitted Westar to recover them through its RECA.

Standard and the obligation for energy under the Renew Program with its existing and planned renewable resources. Continuation of the Renew Program will not increase Westar's cost to acquire renewable generation resources.

8. In the unlikely event that Westar did not have enough renewable energy to satisfy its obligations under the Renew Program, Westar would not have to build or buy more renewable generation. The tariff allows Westar to meet its obligations under the Renew Program by purchasing RECs. Renew Tariff (Ex. A). As Westar indicated in response to Staff Data Request No. 8, attached hereto as Exhibit B, one REC can currently be purchased for 85¢ and represents the production of 1000 kWh of renewable energy. Under the Renew Program, Westar would receive \$10.00 for the same 1000 kWh purchased by its customers under this voluntary program. Thus, even if Westar were required to purchase RECs to satisfy its obligations under the Program, customers would be receiving a benefit through the RECA of \$9.15 for each 1000 kWh purchased under the Program. Even purchases receiving the highest discount proposed in the above-captioned docket would generate a benefit to customers of \$6.15 for each 1000 kWh purchased under the Program.

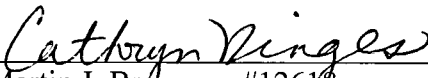
9. Since the Renew Program became effective in 2008, \$70,757.00 has been flowed through the RECA to the benefit of all of Westar's customers.

10. OXY's suggestion that customers are subsidizing the purchase of renewable generation to serve customers under the Renew Program or would be under the Sustainability Program is incorrect. In reality, customers that participate in the Renew Program are helping to reduce the cost of energy for all of Westar's other customers. By approving the Sustainability Program Option proposed in this docket, the Commission will be encouraging additional

customers to participate in the Renew Program, which will increase the benefit provided to all of Westar's customers from the Program.

WHEREFORE, Westar requests that the Commission approve the Sustainability Program Option amendment to its Renew Program and for such other and further relief as may be appropriate.

Respectfully submitted,



Martin J. Brogman, #12618

Executive Director, Law

Cathryn J. Dinges, #20848

Corporate Counsel

818 S. Kansas Avenue

Topeka, KS 66612

(785) 575-8344; Telephone

(785) 575-8136; Fax

ATTORNEYS FOR  
WESTAR ENERGY, INC. AND  
KANSAS GAS AND ELECTRIC COMPANY

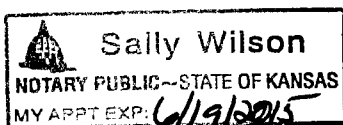
VERIFICATION

STATE OF KANSAS )  
 )  
COUNTY OF SHAWNEE ) ss:

Cathryn J. Dinges, being duly sworn upon her oath deposes and says that she is one of the attorneys for Westar Energy, Inc. and Kansas Gas and Electric Company; that she is familiar with the foregoing **Reply to Petition to Intervene**; and that the statements therein are true and correct to the best of her knowledge and belief.

Cathryn Dinges  
Cathryn J. Dinges

SUBSCRIBED AND SWORN to before me this 7<sup>th</sup> day of May, 2012.



Sally Wilson  
Notary Public

My Appointment Expires: 6/19/2015

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of May, 2012, the original and eight copies foregoing **Reply to Petition to Intervene** were delivered to:

Patti Peterson-Klein  
Executive Director  
KANSAS CORPORATION COMMISSION  
1500 SW Arrowhead  
Topeka, Kansas 66604

that one copy was delivered to:

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Cathryn J. Dinges

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THE STATE CORPORATION COMMISSION OF KANSAS

WESTAR ENERGY, INC & KANSAS GAS & ELECTRIC COMPANY, d.b.a. WESTAR ENERGY  
(Name of Issuing Utility)

SCHEDULE RENEW

Replacing Schedule RENEW Sheet 1

WESTAR RATE AREA

(Territory to which schedule is applicable)

which was filed September 15, 2008

No supplement or separate understanding shall modify the tariff as shown hereon

Sheet 1 of 3 Sheets

RENEWABLE ENERGY PROGRAM RIDER

AVAILABILITY

Renewable energy is available to customers participating in a voluntary renewable energy program offer by the Company. Service under this Rider is available to customers making a one-year commitment to participate in the Company's Renewable Energy Program after the term of each customer's initial term of enrollment in the Program, each such customer's commitment will extend for an additional year thereafter unless terminated by such customer or by the Company upon 30 days' notice prior to the end of the commitment period.

APPLICABLE

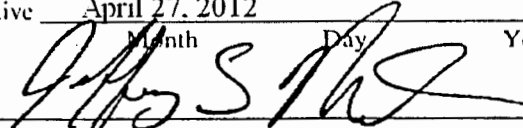
Applicable to any customer using electric service supplied at one point of delivery. Backup, breakdown, standby, supplemental, short term, resale, or shared electric services are not available under this rate schedule.

CHARACTER OF SERVICE

The Company agrees to generate or purchase energy from renewable sources and/or purchase renewable energy credits in an amount at least equal to the level of service purchased by participants in the Renewable Energy Program over the term of their commitment. Energy output from renewable sources will vary from month to month due to weather and other factors.

Issued \_\_\_\_\_  
Month Day Year

Effective April 27, 2012  
Month Day Year

By   
Jeffrey L. Martin, Executive Director

12-WSEE-112-RTS -   
Approved  
Kansas Corporation Commission  
April 18, 2012  
S. Patrice Petersen-Klein

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**THE STATE CORPORATION COMMISSION OF KANSAS**

WESTAR ENERGY, INC & KANSAS GAS & ELECTRIC COMPANY, d.b.a. WESTAR ENERGY  
(Name of Issuing Utility)

SCHEDULE RENEW

WESTAR RATE AREA

Replacing Schedule RENEW Sheet 2

(Territory to which schedule is applicable)

which was filed September 15, 2008

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 2 of 3 Sheets

RENEWABLE ENERGY PROGRAM RIDER

NET MONTHLY BILL

Renewable Energy Charge                      \$1.00 per Block, which shall consist of 100 kWh

Renewable Energy Charges are in addition to the charges in the Net Monthly Bill section of the applicable Rate Schedule under which customer takes electric service.

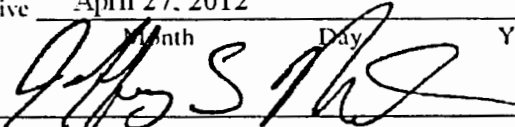
The number of Renewable Energy Charge Blocks available to participating customers shall be determined by Company based on the amount of renewable energy sources and renewable energy credits anticipated to be available to the Company for any program year.

DEFINITIONS AND CONDITIONS

1. Renewable Energy, as used in this rate schedule, shall mean electricity that is generated using technologies that have minimal impact on the environment. Sources of Renewable Energy include, but are not limited to, solar, wind, hydro, geothermal and biomass.
2. A customer receiving service under this Renewable Energy Program Rider must agree to participate for a minimum of one year. Customer may subscribe for an amount of Renewable Energy up to its minimum usage level during the previous 12 months, rounded down to the nearest 100 kWh.
3. Renewable Energy shall be limited to the sum of (a) generation produced by Company-owned renewable sources, (b) outside renewable sources available to the Company and (c) renewable energy credits purchased by the Company. Service under this Renewable Energy Program Rider may be limited at the sole discretion of the Company to such available resources.

Issued \_\_\_\_\_  
Month                      Day                      Year

Effective April 27, 2012  
Month                      Day                      Year

By   
Jeffrey L. Martin, Executive Director

12-WSEE-112-RTS   
Approved  
Kansas Corporation Commission  
April 18, 2012  
S. Patrice Petersen-Klein

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THE STATE CORPORATION COMMISSION OF KANSAS

WESTAR ENERGY, INC & KANSAS GAS & ELECTRIC COMPANY, d.b.a. WESTAR ENERGY

(Name of Issuing Utility)

WESTAR RATE AREA

(Territory to which schedule is applicable)

SCHEDULE RENEW

Replacing Schedule RENEW Sheet 3

which was filed September 15, 2008

No supplement or separate understanding shall modify the tariff as shown hereon.

Sheet 3 of 3 Sheets

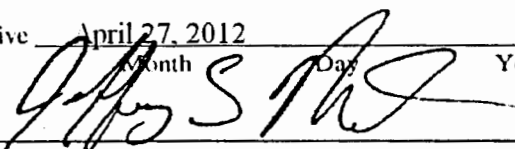
RENEWABLE ENERGY PROGRAM RIDER


DEFINITIONS AND CONDITIONS (CONT)

- 4. Changes in the weather and other factors may result in less Renewable Energy being available to the Company than anticipated. If the Renewable Energy resources obtained by the Company for a program year are not sufficient to meet commitment levels, the Company will refund to each participating customer at the end of each program year an amount equal to \$0.01 per kWh multiplied by the difference between the customer's pro rata share of Renewable Energy resources obtained by the Company for such program year and the Renewable Energy the customer committed to purchase.
- 5. Each customer's total annual usage shall be compared to their subscription level of renewable energy under this Rider on an annual basis. If a customer's actual annual usage is less than their subscribed amount, customer will receive a credit for the amount of renewable energy subscribed for but not consumed. The credit will be equal to \$0.01 per kWh multiplied by the difference between the actual energy usage and the customer's subscribed renewable energy.

Issued \_\_\_\_\_  
Month Day Year

Effective April 27, 2012  
Month Day Year

By   
Jeffrey L. Martin, Executive Director

12-WSEE-112-RTS   
Approved  
Kansas Corporation Commission  
April 18, 2012  
S: Patrice Petersen-Klein

**Kansas Corporation Commission  
Information Request**

Request No: 8

Company Name  
Docket Number 12-WSEE-652-TAR  
Request Date March 30, 2012  
Date Information Needed April 9, 2012  
RE: Cost Basis for Renewable Energy Charge

**Please Provide the Following:**

- (a) Please, identify the name/source of the RECs Westar based its value of the Renewable Energy Charge on.  
(b) What was the cost (quantitative value in dollar amounts) of those RECs [in 8.a above] and where did Westar obtain those quotes/figures (include source and date)?

Submitted By Andy Fry

Submitted To Dick Rohlf

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

**Verification of Response**

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: Dick F Rohlf

Date: 4-5-2012

Responses to Data Request

Response to No. 6

The change in the Commercial revenue class between 2010 and 2011 data is primarily related to a Federal facility acquiring renewable energy.

Response to No. 7

- a. The aspect of the Renew tariff that makes it attractive to customers is that it is a voluntary program so that a participant can claim and state that a portion of their energy usage is derived from renewable resources greater than the portion associated with the inclusion of renewable energy in Westar's overall generation mix. Attached is an excerpt from docket No 08-WSEE-309-PRE directing Westar to file this voluntary tariff and the expression that the Commission believes such a tariff would be of benefit. Also attached are excerpts of the testimony of KIC witness Dittmer and CURB witness Crane both supporting the creation and filing of a voluntary program such as the RENEW tariff offers.
- b. This Renew tariff supports the further development of renewable energy as the renewable attribute created can not be used twice under the state's RPS standard.
- c. A participating customer can claim or state that portion of their energy usage is derived from renewable energy resources. The level of such claim is dependent on the level of participation in this voluntary program.

Response to No. 8

- a. and b. The REC price obtained prior to the filing of the RENEW tariff in 2009 was from a broker dealing in RECs. No record exists of the price received for the RECs just prior to filing the original application. Today a REC can be obtained through many brokers. We obtained a recent REC price quote for a Kansas REC at \$0.85 from Evolution Marketing broker an Over the Counter brokerage.

Response to No. 9

- a. Yes.
- b. Westar did not incorporate a scale because it believes that there will be new verifiable and recognized future programs that evolve over time similar to the LEED program. However, Westar internally was considering the following discount scale for LEED certification. Each step (Silver, Gold and Platinum) would receive a discount of 8% and that other sustainable initiatives would be eligible to receive a discount of 6%. Thereby a recognition by the state of Kansas or a community for a customer's sustainable energy efficiency initiatives without LEED is still able to receive a discount if the participate also is taking some service under the RENEW tariff or a customer with a LEED Silver certified program would receive a discount of 8 percent and if the customer has other sustainable initiatives it may warrant an additional discount of 6 percent for a total of 14 percent (8 from LEED and 0 to 6 for other initiatives).



CATHRYN J. DINGES  
Corporate Counsel

May 7, 2012

Patti Petersen-Klein  
Executive Director  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, Kansas 66604

Received  
on  
**MAY 07 2012**  
by  
State Corporation Commission  
of Kansas

Re: In the Matter of the Application of Westar Energy, Inc. and Kansas Gas and Electric Company seeking Commission Approval To Implement Changes in Their Renewable Energy Program Rider Adding a Sustainability Program Option for Large Commercial or Industrial Customers; Docket No. 12-WSEE-652-TAR

Dear Ms. Petersen-Klein:

Enclosed for filing please find the original and eight photocopies of the **Reply to Petition to Intervene**.

Please file stamp one copy for my files.

Thank you for your assistance.

Sincerely,

  
Cathryn J. Dinges

cc: Service List