

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of a General Investigation to)
Evaluate Allowing Electric and Gas Utilities)
the Authority to Accept Irrevocable Letters) Docket No. 19-GIMX-256-GIV
of Credit in Lieu of Cash Deposits for)
System Expansion Related to Residential)
Development.)

REPLY COMMENTS OF THE WICHITA AREA BUILDERS ASSOCIATION, INC.

The Wichita Area Builders Association, Inc. (WABA) hereby submits its Reply Comments pursuant to the *Order Setting Procedural Schedule* issued in this matter by the State Corporation Commission of the State of Kansas (Commission) on February 28, 2019 (Procedural Order).

I. BACKGROUND

1. On April 12, 2019, the parties to this proceeding filed Initial Comments in response to Commission questions regarding the use of letters of credit in lieu of cash deposits for residential subdivision developments.

2. In brief summary, Kansas Gas Service (KGS), and Kansas City Power & Light Company and Westar Energy, Inc. (together as Westar) are generally supportive of the use of irrevocable letters of credit (ILOC). Black Hills/Kansas Gas Utility Company, LLC (Black Hills) stated it is not opposed to utilities being allowed to use ILOC, albeit it does not currently utilize ILOC for residential subdivision development. Atmos Energy Corporation (Atmos) does not currently offer the use of ILOC to developers on its system and does not want to be required to do so. In these Reply Comments WABA offers additional comments only as necessary for clarification, and otherwise stands by its Initial Comments.

II. REPLY

Question 1: *Should a natural gas or electric utility be allowed to accept an irrevocable letter of credit (ILOC) (in lieu of a cash deposit) when extending its distribution infrastructure at the request of a developer of a new residential or commercial development?*

3. In response to this question, KGS stated that letters of credit are acceptable if certain requirements pertaining to the letters of credit are met. The conditions espoused by KGS are generally consistent with the items identified in Westar's red-lined *Policy for Residential Subdivisions* tariff, which is attached to Westar's Initial Comments as Attachment 3. WABA offers the following comments with regard to KGS' and Westar's recommended conditions.

4. KGS recommends that the financial institution issuing a letter of credit be "a financial institution that is a U.S. commercial bank or is the U.S. branch of a foreign bank which has assets of at least ten billion U.S. dollars (\$10,000,000) [sic] and said bank should have a credit rating of at least "A-" by Standard & Poor's or "A3" by Moody's."¹ While WABA understands the importance of utilizing qualified financial institutions, these threshold requirements appear to be overly stringent, and WABA has concerns that the imposition of such thresholds would limit availability as to the number of financial institutions in Kansas that can meet the requirements. Further, given the fact that the Commission does not currently require this level of standards for non-subdivision related letters of credit, the imposition of such thresholds for residential subdivision developments would be inequitable to Developers. WABA respectfully requests the Commission decline KGS' proposal as overly stringent and inconsistent with the Commission's existing letter of credit requirements.

5. KGS also recommends that letters of credit be issued for a minimum amount of \$500,000. This recommendation is inappropriate because it does not appear to take into account

¹ *Initial Comments of Kansas Gas Service*, p. 3, filed Apr. 12, 2019 (KGS' Initial Comments). There is an ambiguity in KGS' comments with regard to the dollar amount as written as compared to the numeric value stated in parentheses.

the amount of infrastructure being invested for each given subdivision. For example, under Westar's tariff, the utility determines the costs of a conventional overhead distribution system to serve the anticipated load in the proposed subdivision, provides a \$40,000 allowance to the Developer toward that system, and requires the Developer to cover the remainder. Westar's calculation necessary takes into account, among other things, the number of lots being developed, and the level of investment being made by the utility. Because each subdivision consists of varying numbers of lots, KGS' across-the-board recommendation of \$500,000 does not properly account for the varying levels of utility investment. As such, WABA respectfully requests the Commission decline KGS' recommendation of a minimum letter of credit amount of \$500,000, and instead recommends the letter of credit be reasonably related to the amount of infrastructure being placed by the utility in each respective phase of each residential sub-division development.

Question 3: Are there times when it would be inappropriate for a utility to accept an ILOC in lieu of a cash deposit?

6. In response to this question KGS notes that the only time the use of a SLOC² would be inappropriate is where "the terms of the ILOC place excessive burden on the utility to meet requirements to draw on the ILOC; The ILOC is issued by a financial institution at risk of failure; and, the amount of the ILOC is not sufficient to offset the additional administrative burdens of tracking an ILOC and if necessary the of [sic] collecting of the ILOC..."³

7. As noted previously, WABA understands the need to utilize financially secure financial institutions to issue letters of credit. However, as noted above and in WABA's Initial Comments, the Commission currently accepts SLOCs for conservation related activities, and

² As stated in WABA's Initial Comments, ILOC are referred to in the financial community as Standby Letters of Credit (SLOC). See, WABA Initial Comments, ¶ 4, p. 2.

³ KGS' Initial Comments, p. 4.

some utilities use ILOCs for other purposes not related to residential subdivision development.⁴ Therefore, any restrictions on the use of SLOCs for residential subdivision developments should be no greater than what is already accepted Commission and utility practice. Any other treatment would be inequitable to Developers.

Question 7: What are the procedures if the financial institution has indicated its intent not to renew an ILOC, prior to the expiration of the currently outstanding letter of credit?

8. KGS' response to this question is that "[i]f the ILOC is not renewed for any reason, then the utility would seek to enforce the protections available under the main extension agreement. Depending upon where the developer is in the build-out process, the utility may impose the normal cash deposit requirements. However, if the bank would not extend the ILOC for the developer, the developer is probably not in a position to provide the cash deposit. This results in an additional risk associated with accepting an ILOC."⁵

9. WABA is unclear as to KGS' intent with regard to its response to this question. Because a SLOC would be established at a level sufficient to cover the level of infrastructure investment made by the utility, minus any allowances, there is no risk to the utility in the event a financial institution indicates its intent to not renew a SLOC. Rather, the utility at that time has the right to draw on the SLOC for any outstanding amounts owed to the utility to cover the level of investment made. Therefore, it is unclear what KGS means with regard to the statement that it may seek to "impose the normal cash deposits" upon notice that the financial institution will not renew a SLOC. There is no *additional* risk to the utility in the event a financial institution does not renew a SLOC. As such, the imposition of an additional cash deposit on infrastructure already covered by the SLOC would be inappropriate.

⁴ WABA's Initial Comments, pp. 3, 6-7, 9. See also, *Initial Comments of Kansas City Power & Light Company and Westar Energy, Inc. Entry of Appearance*, ¶ 13, p. 5, filed Apr. 12, 2019 (Westar's Initial Comments).

⁵ KGS' Initial Comments, Attachment A, p. 5.

Question 8(a): What are the procedures if the financial institution that issued the letter of credit fails to honor the utility's request to draw on an outstanding letter of credit?

10. In response to this question Westar referenced the Attachment 3 to its Initial Comments, wherein it states, in part, that under such conditions a Developer shall provide Westar with either cash or a replacement letter of credit within five (5) business days.⁶ WABA posits that the five (5) business day requirement may not be sufficient to allow a Developer to obtain the necessary cash, or to complete the necessary paperwork to secure financing with a new financial institution. WABA suggests that thirty (30) to sixty (60) days is a more appropriate timeframe.

Question 14: Are there any accounting practices that utilities should be required to use that would prevent ratepayers from being exposed to the risk of funding system expansions in the short and long-term?

11. KGS' response to this question is that "[t]he utility must establish a good tracking mechanism to monitor the ILOCs that have been received and to trigger contact with the developers if the terms expire prior to completion of construction activity. The utility should also require the ILOC be automatically extended for successive additional one-year periods until the beneficiary provides written notice to the issuer certifying that the letter of credit will not be utilized, requesting termination of the ILOC."⁷ WABA does not believe the term associated with an evergreen clause needs to be standardized or determined as part of this proceeding. Rather, WABA understands the inclusion of such evergreen clauses is standard, and may be dependent on a given project. Additionally, for purposes of clarity, the amount of the SLOC should be adjusted at the time of renewal so that it covers only the remaining amount of exposure that the utility has outstanding for the given project. For example, if a SLOC was originally \$300,000, but the amount of exposure to the utility at the time of renewal has been reduced due to the

⁶ Westar's Initial Comments, Attachment 3, Sheet 6 of 6.

⁷ KGS' Initial Comments, p. 6.

placement of permanent meters, e.g., then the amount of the SLOC should be reduced accordingly.

12. With regard to KGS' recommendation that the SLOC remains effective until such time that the beneficiary (utility) provides written notice that it will not draw on the SLOC, WABA requests that such written notice be provided expediently by the utility, and in no event more than 10 business days from the date upon such written notice is requested by either the Developer or the bank.

13. Westar's response to this question noted that "the 'risk of funding system expansions in the short and long-term' is minimal."⁸ Earlier in its comments, Westar explained that the current potential impact on its revenue requirement should every developer with existing cash deposits choose to replace the deposits with SLOC would be approximately \$560,000, or less than \$0.79 per customer per year. Westar further noted that the likelihood that all developers will replace existing cash deposits is unlikely. WABA agrees that such an event is unlikely due in part to the varying initiation dates associated with residential subdivisions as well as the various stages of development.

14. As a final note with regard to Westar's response to this question, WABA notes that comparatively to KGS, Westar indicated its preference for successive additional six-month evergreen periods.⁹ Again, WABA understands the inclusion of such evergreen clauses is standard, and the timeframe associates with each may be dependent on the given project.

Question 15: If ILOCs are an acceptable form of deposit (in lieu of cash), what are the restrictions, if any, the Commission should place on the types or specific provisions of the ILOC?

⁸ Westar Initial Comments, p. 9.

⁹ Westar Initial Comments, Attachment 3, Sheet 4 of 6, section 10(f).

15. As noted previously, WABA believes that residential subdivision development SLOCs should be treated the same as other SLOC currently utilized by the Commission and utilities, and that the SLOC should operate consistently with Westar's current cash deposits in its *Policy for Residential Subdivisions* tariff.

16. In response to this question KGS reiterated the bulleted items it listed in response to Question 1, to which WABA has already responded.

17. Westar responded to this question by referencing its red-lined *Policy for Residential Subdivisions*, as attached to its Initial Comments as Attachment 3. WABA has previously responded above to portions of Westar's proposed tariff and will not restate those comments here.

Question 17: If ILOCs are an acceptable form of deposit (in lieu of cash), what specific requirements should be established for a financial institution to be eligible to issue an ILOC to a developer? Should only banks be allowed to issue ILOCs or should other financial institutions be allowed to issue ILOCs?

18. See response to Question 1.

WHEREFORE, the Wichita Area Builders Association, Inc. respectfully requests the Commission consider these additional comments on the issue of irrevocable letters of credit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above pleading was electronically served this 7th day of May, 2019 to:

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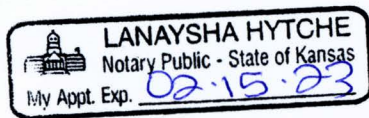
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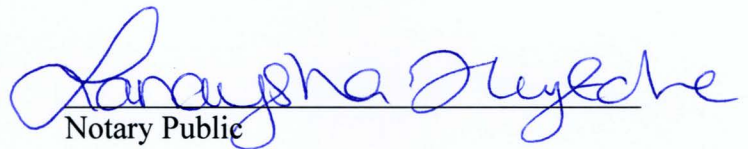
STATE OF KANSAS)
) ss
COUNTY OF SEDGWICK)

The undersigned, Wess Galyon, upon oath first duly sworn, states that he is the President and Chief Executive Officer of the Wichita Area Builders Association, Inc., and that he has reviewed the foregoing pleading, that he is familiar with the contents thereof, and that the statements contained therein are true and correct to the best of his knowledge and belief.


Wess Galyon

Subscribed and sworn to before me this 7th day of May, 2019.




Notary Public

My appointment expires: Feb 15 2023