

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Application of Kansas )  
Gas and Electric Company for Approval of )  
the Amendment to the Energy Supply ) Docket No. 18-KG&E-303-CON  
Agreement between Kansas Gas and Electric )  
Company and Occidental Chemical )  
Corporation. )

**MOTION FOR PROTECTIVE ORDER**

Occidental Chemical Corporation (“Occidental”), respectfully files its *Motion for Protective Order*, pursuant to K.S.A. 77-522(a). Occidental states to the State Corporation Commission of the state of Kansas ("Commission" or "KCC") as follows:

**I. Background**

1. On January 16, 2018, Kansas Gas and Electric Company, d/b/a Westar Energy ("Westar") and Occidental Chemical Corporation ("Occidental") filed a Joint Application requesting approval of an Energy Supply Agreement ("ESA" or "Agreement") between Kansas Gas and Electric Company and Occidental Chemical Corporation.

2. On January 26, 2018, Occidental filed the Direct Testimony of Ms. Brenda Harris. In her testimony, Ms. Harris explains, "The Agreement does not change the terms and conditions of the currently effective ESA or the rates Occidental pays under the currently effective ESA. In effect, the Agreement simply extends the current ESA for an additional five-year term."<sup>1</sup> Ms. Harris further testifies:

The cost of electricity is the largest cost input in...OxyChem's production processes. Westar's electric rates have increased materially over the last 10-15 years. Absent approval of the Agreement, OxyChem's Wichita facilities will be at a distinct rate disadvantage, compared to its plants - and its competitors' plants - in other states. In such a scenario, OxyChem would be forced to reexamine its level of ongoing operations at the Wichita facilities.<sup>2</sup>

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<sup>1</sup> Direct Testimony of Brenda Harris, January 26, 2018, p. 4.

<sup>2</sup> Direct Testimony of Brenda Harris, pp. 4-5.

3. On March 20, 2018, Occidental received an information request from Staff of the Commission (Staff). Therein, Staff requested Occidental "provide all 2017 invoices for electric service provided to [Oxy facilities in other states] and the Tariffs for each facility (excluding the Wichita plant)."<sup>3</sup>

4. On March 27, 2018, Occidental provided an objection to Staff's information request.<sup>4</sup> Occidental objected to Staff's request on the basis that it requests highly-confidential commercially-sensitive information which is not clearly relevant to this proceeding. Occidental also stated that potential disclosure of its invoice data, particularly to a competitive supplier of electricity such as Westar, could severely damage the company's position as a consumer of electric service. Occidental also notes that its invoices would include trade secrets and extremely commercially-sensitive information beyond the electricity prices paid at Occidental's various facilities. If disclosed, this information could severely harm Occidental's competitive business operations.

5. Despite its objections, Occidental committed "to assist the KCC Staff in verifying that KG&E's tariff rates are above the rates paid at other [Occidental] facilities in other states." To that end, Occidental noted that its counsel would contact Staff to discuss alternative methods of responding to Staff's request without disclosure of Occidental's highly confidential invoice data.

6. Since this response, Occidental has been in contact with Staff's counsel regarding potential supplementary responses to Staff's request. To date, Occidental and Staff have not yet reached an agreement regarding an appropriate response. However, as described above, any rate or pricing data specific to Occidental's operations in other jurisdictions will be highly-sensitive

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<sup>3</sup> Staff Information Request No. 10 is attached hereto as Exhibit 1.

<sup>4</sup> Occidental Response to Staff Information Request No. 10 is attached hereto as Exhibit 2.

and confidential. As such, any information provided to Staff would be classified as confidential commercial information and, depending on the information provided, a trade secret.

## **II. Motion for Protective Order**

7. Occidental requests a Protective Order in this case for several reasons. First, Occidental notes that no protective order has been issued in this proceeding.

8. More importantly, the Commission's standard protective order, which relies upon K.S.A. 66-1220a for its statutory authority,<sup>5</sup> will not sufficiently ensure nondisclosure of Occidental's confidential information.

9. Pursuant to K.S.A. 66-129, the Commission has authority "to inspect and examine any and all books, accounts, papers, records, property and memoranda kept by [Kansas] public utilities." However, this grant of authority is balanced by K.S.A. 66-1220a, which generally prohibits the Commission from disclosing trade secrets and confidential information of entities regulated by the Commission. Neither statute is applicable to a private business such as Occidental, which is not a Kansas public utility.

10. Because Occidental is not a public utility, the broad general grants of authority cited above are not applicable to its property and records. However, demonstrating its pricing disadvantage in Kansas is in Occidental's interests in this proceeding and will facilitate approval of the Application filed herein. Therefore, even though Occidental has already provided sworn testimony to this fact, it commits to provide additional relevant information to assist Staff's investigation, subject to reasonable protections ensuring confidential information will not be disclosed.

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<sup>5</sup> See, e.g., Docket No. 18-WSEE-328-RTS, Order Designating Prehearing Officer, Suspension Order, Protective Order, Discovery Order, and Order Granting Intervention to the Citizens' Utility Ratepayer Board, February 8, 2018, ¶¶ 7-9.

11. In addition, because it is a private Kansas business, Occidental also requests the Commission reasonably balance the interests of discovery with Occidental's legitimate business interest in maintaining the confidentiality of its commercially-sensitive information and trade secrets.<sup>6</sup> Unintentional disclosures do occur, and Occidental therefore requests discovery in this proceeding be appropriately-tailored to elicit only the information necessary to review the Application. Such balancing will allow necessary information to be exchanged, while moderating risks to Occidental's legitimate business interests and the public's interest in maintaining the confidentiality of the material.

12. To facilitate the exchange of confidential information between Occidental and the Staff, Occidental requests the Commission issue a protective order, pursuant to K.S.A. 77-522(a), 1) Allowing Occidental to disclose its confidential information solely to the Commission and its Staff, 2) Prohibiting any party from publicly disclosing any confidential information provided by Occidental in this proceeding, and 3) Prohibiting disclosure of Occidental's confidential information to other parties in this proceeding, specifically including Westar Energy.

13. The current ESA expires May 31, 2018. Therefore, Occidental requests the Commission issue a protective order on an expedited basis so that Occidental may begin providing information to Staff in a timely manner. To facilitate this request, Occidental has included, as Exhibit 3, a proposed protective order consistent with this motion for the Commission's consideration.

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<sup>6</sup> See *In re City of Wichita*, 277 Kan. 487, 514, 86 P.3d 513, 531 (2004), "Where the parties have conflicting interests in material sought to be discovered, the protective power of the court may be sought by a party and the court must balance the litigant's interest in obtaining the requested information with the resisting party's interest, as well as the public interest in maintaining the confidentiality of the material. When a trial court orders production of confidential records, it has a duty to limit the availability and use of documents by carefully drawn protective provisions."

WHEREFORE, Occidental respectfully requests the Commission a protective order consistent with the requests in paragraph 12 above.

Respectfully submitted,

/s/ **Andrew J. French**

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**Attorneys for Occidental Chemical Corporation**

VERIFICATION

STATE OF KANSAS        )  
                                  )    ss:  
COUNTY OF JOHNSON    )

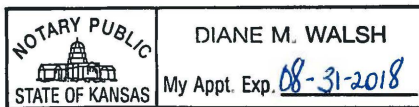
Andrew J. French, being duly sworn upon his oath, deposes and states that he is the Attorney for Occidental Chemical Corporation, that he has read and is familiar with the foregoing *Motion for Protective Order*, and the statements therein are true to the best of his knowledge, information, and belief.

  
\_\_\_\_\_  
Andrew J. French

SUBSCRIBED AND SWORN to before me this 11<sup>th</sup> day of April, 2018.

  
\_\_\_\_\_  
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 11<sup>th</sup> day of April, 2018 to the parties below:

DAVID W. NICKEL CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 <a href="mailto:d.nickel@curb.kansas.gov">d.nickel@curb.kansas.gov</a>	THOMAS J. CONNORS CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 <a href="mailto:tj.connors@curb.kansas.gov">tj.connors@curb.kansas.gov</a>
TODD E. LOVE CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 <a href="mailto:t.love@curb.kansas.gov">t.love@curb.kansas.gov</a>	SHONDA RABB CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 <a href="mailto:s.rabb@curb.kansas.gov">s.rabb@curb.kansas.gov</a>
DELLA SMITH CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 <a href="mailto:d.smith@curb.kansas.gov">d.smith@curb.kansas.gov</a>	DUSTIN KIRK, DEPUTY GENERAL COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 <a href="mailto:d.kirk@kcc.ks.gov">d.kirk@kcc.ks.gov</a>
MICHAEL NEELEY KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 <a href="mailto:m.neeley@kcc.ks.gov">m.neeley@kcc.ks.gov</a>	CATHRYN J. DINGES WESTAR ENERGY, INC. 818 S KANSAS AVE PO BOX 889 TOPEKA, KS 66601-0889 <a href="mailto:cathy.dinges@westarenergy.com">cathy.dinges@westarenergy.com</a>

/s/ ***Andrew J. French***  
\_\_\_\_\_  
James P. Zakoura  
Andrew J. French  
SMITHYMAN & ZAKOURA, CHARTERED





**Kansas Corporation Commission  
Information Request**

Request No: 10

Company Name	KANSAS GAS & ELECTRIC CO.	KG&E
Docket Number	18-KG&E-303-CON	
Request Date	March 20, 2018	
Date Information Needed	March 29, 2018	

RE: Occidental Chemical Corporation Rates

**Please Provide the Following:**

Occidental's witness, Brenda Harris, states on page 4-5 of her Direct Testimony, " Absent approval of the Agreement, OxyChem's Wichita facilities will be at a distinct rate disadvantage, compared to its plants - and its competitors' plants - in other states." Please provide all 2017 invoices for electric service provided to these Oxy facilities and the Tariffs for each facility (excluding the Wichita plant).

Submitted By Darren Prince

Submitted To James Zakoura

Occidental objects to this data request on the basis that it requests highly-confidential commercially-sensitive information and data which is not clearly relevant to this proceeding. Potential disclosure of this data, particularly to a competitive supplier of electric service such as Westar could severely damage Occidental's competitive position as a consumer of electric service.

Ms. Harris' statement can be readily verified by comparing publicly-filed rate tariffs of utilities serving other Occidental facilities in other states. It can also be quickly and simply verified by referencing other publicly-available data sources such as state-specific and utility-specific EIA data.

Occidental commits to assist the KCC Staff in verifying the statement that KG&E's tariff rates are above the rates paid at facilities in other states. Occidental's counsel will contact Staff to discuss possible alternative methods of verifying this statement - without disclosure of Occidental's highly confidential invoice data.

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: James P. ZakouraDate: 3/27/18

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners:                    Shari Feist Albrecht, Chair  
   Jay Scott Emler  
   Dwight D. Keen

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**PROTECTIVE ORDER**

**I. Background**

1.        On January 16, 2018, Kansas Gas and Electric Company, d/b/a Westar Energy ("Westar") and Occidental Chemical Corporation ("Occidental") filed a Joint Application requesting approval of an Energy Supply Agreement between Kansas Gas and Electric Company and Occidental Chemical Corporation.

2.        On April 12, 2018, Occidental filed its Motion for Protective Order. In its Motion, Occidental notes that it has objected to certain discovery issued by Staff but is attempting to informally resolve the dispute. Occidental further states that any response to Staff's request will require Occidental to provide highly-sensitive confidential commercial information and trade secrets.<sup>1</sup>

3.        Because it is not a regulated entity, Occidental explains that the Commission's standard protective order and associated statutory authority will not sufficiently ensure nondisclosure of Occidental's confidential information.<sup>2</sup> Therefore, Occidental has requested the Commission issue a protective order allowing it to provide confidential information to the

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<sup>1</sup> Occidental Motion for Protective Order, April 12, 2018, ¶ 5.

<sup>2</sup> Occidental Motion for Protective Order, ¶ 5.

Commission and its Staff, subject to reasonable protections ensuring Occidental's confidential information will not be disclosed publicly or to parties other than Staff, specifically including Westar.

## **II. Findings and Conclusions**

4. The Commission agrees that its standard legal authority and protective order are not specifically applicable to protection of a nonregulated business's confidential information. Therefore, the Commission issues this Protective Order, pursuant to K.S.A. 77-522(a), and specifically finds 1) Occidental is allowed to disclose its confidential information solely to the Commission and its Staff, 2) Public disclosure of confidential information provided by Occidental in this proceeding is strictly prohibited, and 3) disclosure of Occidental's confidential information to parties other than Staff is prohibited.

### **THEREFORE, THE COMMISSION ORDERS:**

- A. Occidental shall be granted the protections set forth in paragraph 4 above.
- B. The parties have 15 days from the date of the electronic service of this order to petition for reconsideration.<sup>3</sup>
- C. The Commission retains jurisdiction over the subject matter and the parties for the purpose for entering such further orders as it deems necessary.

### **BY THE COMMISSION IT IS SO ORDERED.**

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner.

Dated: \_\_\_\_\_

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Lynn M. Retz  
Secretary to the Commission

<sup>3</sup> K.S.A. 66-118b; K.S.A. 77-529(a)(1).