

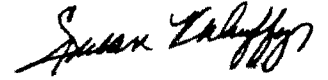
**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

STATE CORPORATION COMMISSION

SEP 22 2010

In the Matter of Westar Energy, Inc. and Kansas)
Gas and Electric Company (both doing business)
as Westar Energy) Filing Tariff Revisions)
Seeking Approval for an Energy Efficiency)
Rider Pursuant to the Commission's Order)
Dated November 18, 2008 in Docket No. 08-)
GIMX-411-GIE.)

Docket No. 11-WSEE-032-TAR



STAFF's RESPONSE TO COMMENTS OF CURB

The Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission" respectively), hereby submits its response to the comments of the Citizens' Utility Ratepayer Board ("CURB") filed in the above-captioned docket on September 20, 2010.

1. On July 16, 2010, Westar Energy, Inc. and Kansas Gas and Electric Company (collectively referred to as "Westar" or "Company") filed an application with the Commission seeking approval of an Energy Efficiency Cost Recovery Rider ("EER"). This rider would permit Westar to recover \$5,832,635.06 of costs associated with the implementation of various energy efficiency programs. Additionally within the filing, Westar requested Commission approval to cancel the Fuel Proration Rider (currently inactive) previously approved in Docket No. 09-WSEE-925-RTS for the months of February and March 2010.

2. On September 8, 2010, Staff filed its Memorandum (dated August 30, 2010), recommending the Commission approve Westar Energy's EER, as revised by Staff, in the amount of \$5,830,491.17. Staff's audit determined that \$2,142.89 in rebates used by Westar to encourage the purchase of Compact Fluorescent Light bulbs through the Save a Watt, Save a Lot program should be removed from the EER.¹ Staff viewed these expenses as inconsistent with

¹ Docket No. 11-WSEE-032-TAR, September 8, 2010, *Staff Memorandum* pg. 3 ("Staff Memorandum")

Commission directions given in the April 13, 2009, *Order Following Collaborative on Benefit-Cost Testing and Evaluation, Measurement, and Verification* in Docket No. 08-GIMX-442-GIV (“Order Following Collaborative”).

3. On September 20, 2010, CURB filed a response to Westar’s application and Staff’s Memorandum. Within its response, CURB did not dispute the accuracy of Staff’s finding that \$5,830,491.17 in expenses had been incurred by Westar to implement Commission-approved energy efficiency programs. However, CURB found Staff’s interpretation of Commission guidance limiting its review to “...whether program costs intended to be recovered are consistent with utility program applications”² troubling. CURB further requested the Commission conduct in-depth reviews of the Company’s WattSaver and Energy Efficiency Demand Response Program (“EEDR”).

4. Staff believes CURB’s primary objection to Staff’s Memorandum arises from a misunderstanding of Staff’s statement of precedent governing its ability to review expenses associated with energy efficiency programs for prudence. In its August 30, 2010 Memorandum, Staff was not indicating that it viewed its role within the review of Westar’s EER as “a simple check of whether Westar is capable of adding numbers correctly.”³ Rather, Staff was acknowledging that the Commission clearly stated within Docket No. 08-GIMX-441-GIV (“441 Docket”) that “[t]he Commission believes a rider should be implemented in a manner that maintains the Commission’s **responsibility to review costs for prudence**.”⁴ Staff was merely indicating a view that in the context of Commission guidance it is improper for Staff to reassess, and potentially relitigate, energy efficiency programs as prudent undertakings.

² *Id.* pg. 3

³ Docket 11-WSEE-032-TAR, September 20, 2010, *CURB’s Response to Westar’s Application and Staff’s Memorandum* pg. 2 (“Comments of CURB”)

⁴ Docket 08-GIMX-441-GIV, November 14, 2008, *Final Order* ¶ 32 (“441 Docket”), emphasis added

5. This is not to say that Staff believes energy efficiency programs should never be reassessed for performance. In the 441 Docket the Commission stated that "...Staff has recommended that energy efficiency program costs be reviewed in periodic program evaluations or in the context of a rate case. The Commission finds Staff's recommendation sound. Of course, as discussed in the 442 Order, evaluation, measurement, and verification ("EM&V") should be part of initial program design."⁵ This view of the Commission was reiterated at paragraph 41 of the same order. The Commission, in the Order Following Collaborative, later directed Staff to undertake a collaborative process to develop a third-party EM&V provider system, but additionally found reasonable "...the general procedure suggested by participants and Staff for EM&V report review – comments and reply comments by interested parties after the report is filed, followed by a Commission order issued without a hearing and the option for parties to request a hearing following issuance of the order."⁶ The EM&V report review procedure developed within the 442 Docket will allow an opportunity for the Commission to review the performance of energy efficiency programs and the prudence of expenditures with input from all intervening parties.

6. Staff takes its role to review costs for prudence seriously. However, the annual review of program prudence proposed by CURB is unprecedented. Staff has followed the same procedure in its review of costs included in Kansas City Power & Light Company's (KCPL) energy efficiency rider with no similar concern being raised by CURB. As with KCPL, Staff's review of Westar's proposed EER confirmed all expenses were supported by work papers and general ledger entries, included a review of general ledger entries for abnormalities (obvious errors and costs believed to be inconsistent with previously established Commission policy), and

⁵ *Id.* ¶ 33, internal citation removed

⁶ Docket 08-GIMX-442-GIV, April 13, 2009, *Order Following Collaborative on Benefit-Cost Testing and Evaluation, Measurement, and Verification* ¶ 151 ("Order Following Collaborative")

confirmed individual program expenditures were not exceeding established budgetary limits. This review is also consistent with reviews performed in other annual cost adjustment riders such as annual energy cost adjustment (“ECA”), and property tax surcharge riders. A determination of whether the expenditures are prudent will be made within an EM&V proceeding or within a rate case where there is sufficient data available to fairly evaluate the program.

7. CURB’s argument against the Company’s EEDR demonstrates the wisdom of limiting annual rider filings to reviews of appropriateness of cost. Within its comments CURB criticizes the EEDR program because it provided a single Westar customer a total of \$2,176,652.73 in a six-month period to reduce load by 1,254.303 MWhs, citing that this is the equivalent of \$1,735.35 per MWh. Such criticism is not directed at the performance of the program, but at the very concept of the EEDR itself, and should have been raised in Docket 10-WSEE-141-TAR (“141 Docket”) when Westar initially applied for Commission approval to implement the demand response program. CURB intervened in the 141 Docket but offered no comment on the program proposal.

8. Following the explanation of the EEDR program in Staff’s Memorandum in the 141 Docket, only \$94,072.73 of the \$2,176,652.73 in expenses that have been incurred and for which Westar is requesting recovery in the instant docket are associated with event payments to participating customers during curtailment events to shed load. This is equivalent to \$75 per MWh of curtailed load, or 7.5¢ per kWh. The remaining \$2,082,580 in expenses incurred thus far (approximately \$4 million annually) are associated with capacity payments provided to a customer in return for the customer providing the system benefit of being able to shed a large amount of load quickly at the direction of the Company. Using benefit-cost methodology commonly used in other jurisdictions to calculate program benefits, Staff found in the 141

Docket that Company ratepayers were receiving approximately \$6 million annually in system benefits in exchange for this annual \$4 million investment.⁷ Regardless, CURB's attack on the worthiness of the program is misplaced at this juncture.

WHEREFORE, Staff requests the Commission approve Westar's EER in the amount of \$5,830,491.17, subject to the conditions set forth in Staff's August 30, 2010 Memorandum, and approve cancellation of Westar's Fuel Proration Rider (currently inactive) approved in Docket No 09-WSEE-925-RTS for the months of February and March 2010.

Respectfully submitted,




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⁷ Staff currently values cost of avoided capacity as if the utility would need to build additional combustion turbines to meet avoided load. Staff is aware that CURB may take issue with this approach and because most utility systems in the state have excess capacity. There may be some value in reassessing Staff's calculations going forward. However, Staff does not believe its assessment of the program in question would change simply due to the degree of net benefits.

VERIFICATION

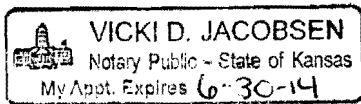
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

Otto A. Newton, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the Kansas Corporation Commission; that he has read and is familiar with the foregoing *Staff's Response to Comments of CURB* and that the statements therein are true to the best of his knowledge and belief.



Otto A. Newton

SUBSCRIBED AND SWORN to before me this 22nd day of September, 2010.





Notary Public

My Appointment Expires: 6-30-14

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Staff's Response to Comments of CURB* was deposited in the United States Mail, postage prepaid, this 22nd day of September, 2010, addressed to:

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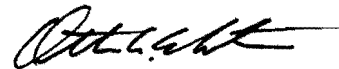
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