

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

In the Matter of the Application of Midwest                     )  
Power Company for a Certificate of Public                     )       Docket No. 19-MPCE-064-COC  
Convenience and Necessity to Transact the                     )  
Business of a Public Utility in the State of Kansas.        )

**REPLY IN SUPPORT OF MOTION FOR ORDER REQUIRING REILING OF  
APPLICATION AND SUPPORTING TESTIMONY AND RESTARTING 180-DAY  
CLOCK**

COME NOW Westar Energy, Inc. and Kansas Gas and Electric Company (collectively “Westar”) and file this Reply in support of its motion for an order requiring Midwest Power Company (“MWP”) to refile its application and supporting testimony in this docket, restarting the 180-day time period for the Commission order, and requiring MWP to explain why it should not be subject to sanctions for misleading the Commission in testimony filed under oath.

1.       On November 5, 2018, Westar filed its Motion requesting the Commission issue an order requiring reiling of MWP’s Application and supporting testimony and restarting the 180-day clock. Westar explained that MWP had substantially changed its position in the docket from the position taken in its initial application and testimony and that MWP should be required to file a new application and testimony explaining how it meets the Commission’s standards for approval of a certificate application under its new position.

2.       On November 8, 2018, MWP filed a response to Westar’s motion. Essentially, MWP argued that it did not change its position and that even though it stated in its application and testimony that it was willing to amend the KeyCorp guaranty “as required” in order to meet the financial component of the Commission’s standard, it is no longer willing to amend the guaranty

because it believes it is no longer necessary to amend the guaranty.<sup>1</sup> MWP argued that after it received data requests and proposed conditions from Westar, it went back and reviewed the relevant contracts and “realized” that Westar was responsible for any shortfalls that occurred in the trust’s payments for expenses at Jeffrey Energy Center.<sup>2</sup>

3. In its Response, MWP essentially admits that it changed its position from its initial application when it states that Westar’s data requests and proposed conditions caused it to reevaluate the Consent and Assumption Agreement and its position regarding responsibility for payment of expenses at JEC:

[T]hough MWP was aware of the Consent and Assumption agreement in August when it filed its application, it was Westar's own proposed conditions to MWP's certificate and in particular Condition No. 5, circulated by Westar counsel on October 18, 2018, that highlighted the provisions in the various agreements that specifically limit the obligation of MWP and WTC to make payments solely out of the assets of the Trust . . . Upon receipt of the data requests and proposed conditions, MWP scrutinized the Consent and Assumption Agreement and other relevant agreements to confirm that it is indeed Westar-not MWP-that has the obligation to cover any revenue deficiencies created by a lack of revenue in the Trust.<sup>3</sup>

4. MWP goes on in its Response to argue that its interpretation of the relevant contracts is correct. However, that question is something that should be addressed by the Commission on a substantive basis after the parties have the chance to review MWP’s new position and file testimony and that should not be the focus when making this procedural decision. Still, MWP never explains how its realization that it intends to rely on Westar to meet the financial component of the Commission’s standard is not inconsistent with its statement in testimony that it would rely on KeyCorp to meet that component of the standard.

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<sup>1</sup> MWP Response, ¶ 15.

<sup>2</sup> MWP Response, ¶ 13.

<sup>3</sup> MWP Response, ¶¶ 12-13.

5. Staff witness Chad Unrein confirmed that MWP substantially changed its position in his direct testimony filed November 9, 2018. He explained:

In its Application, MWP and KeyCorp were willing to modify the Guaranty to the extent required by the Commission; however, MWP has **significantly changed its position** on both the modification of the Guaranty and KeyCorp's willingness to fund the operating costs of MWP . . . Based on these responses, it appears that **MWP's new position** is that it does not have to meet the financial resource requirement because Westar is required to cover any shortfalls between the revenue generated by the 8% interest and its share of expenses at the JEC . . . MWP's reliance on Westar as a financial resource to cover any shortfalls between its operating revenue and its financial obligation to cover the full operating, maintenance, and capital expenditures is not in the public interest.<sup>4</sup>

6. MWP also argues that Westar was aware of its alleged obligations under the contracts before receiving the data request responses. Whether Westar was aware of the terms of the various contracts or not is completely irrelevant to the question currently before the Commission. What is relevant is whether – based on the application and testimony filed by MWP that is currently in the record – Westar, Staff, and the Commission were aware of MWP's interpretation of those contracts and its intent to rely on that interpretation to meet the standard for approval in the docket.

7. There was not one mention in MWP's application and supporting testimony about Westar's alleged obligation to cover the trust's shortfalls or about reliance on Westar to meet the financial component of the Commission's standard. It is clear that, given this new position articulated in response to data requests, the application and testimony initially filed by MWP are insufficient and inaccurate.

WHEREFORE, Westar respectfully requests that the Commission issue an order requiring MWP to refile its application and supporting testimony in this docket, restarting the 180-day time

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<sup>4</sup> Unrein Direct Testimony, at 24-25 (emphasis added).

period for the Commission order, and requiring MWP to explain why it should not be subject to sanctions for misleading the Commission in testimony filed under oath, and for such further and other relief as may be appropriate.

Respectfully submitted,

/s/Cathryn J. Dinges

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**ATTORNEY FOR WESTAR ENERGY, INC. AND  
KANSAS GAS AND ELECTRIC COMPANY**

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been emailed, this 13<sup>th</sup> day of November, 2018, to all counsel of record.

/s/ Cathryn J. Dinges