

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Joint Application of)
Westar Energy, Inc. and Kansas Gas and) Docket No. 19-WSEE-355-TAR
Electric Company for Recovery of Certain)
Costs Through Their RECA.)

**PETITION TO INTERVENE OF KANSAS INDUSTRIAL
CONSUMERS GROUP, INC., AND OBJECTION TO REQUEST
FOR EXPEDITED REVIEW OF APPLICATION**

COMES NOW the Kansas Industrial Consumers Group, Inc. ("KIC"), respectfully files this Petition to Intervene in the above-referenced case, pursuant to K.A.R. 82-1-225. In support of its Petition, KIC states to the State Corporation Commission of the state of Kansas ("Commission" or "KCC") as follows:

I. Background

1. On March 4, 2019, Westar Energy, Inc., and Kansas Gas and Electric Company (collectively referred to as "Westar") filed an Application to recover costs related to an acquisition of 174 MW of generating capacity – an 8% interest in the Jeffrey Energy Center ("JEC") previously owned by Midwest Power Company ("MWP"). The 8% interest in JEC, including associated operating costs, is not currently used to serve Westar customers and, thus, is not included in Westar rates.

II. Petition to Intervene

2. KIC is a corporation organized and existing under the laws of the state of Kansas. KIC was incorporated in Kansas on April 13, 2005.¹ KIC is organized for the purpose of representing of the interests of commercial, business, industrial, and not-for-profit and educational entities that purchase large volumes of electric energy and natural gas for their operations and

¹ The Secretary of State of Kansas has assigned to KIC the business identity I.D. No. 3771185.

activities. In furtherance of this representation, KIC has been granted intervention and actively participated in numerous proceedings at the Commission over many years.

3. Furthermore, KIC was granted intervention and was an active participant in Docket No. 18-WSEE-328-RTS where the Commission approved a Settlement Agreement that addressed the costs of the above-described 8% interest in JEC and whether such costs should be included in Westar's retail rates.

4. The Commission must grant a petition for intervention if it is in the interests of justice, if the intervention will not impair the orderly and prompt conduct of the proceedings, and if the party has stated facts demonstrating its legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding.² In addition, the Commission has broad discretion to grant a petition for intervention when the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.³

5. KIC represents a unique facet of the electric energy market and, derivatively, a unique segment of consumers that are dependent upon electric energy for a significant component of the economy of the state of Kansas, including large volume consumers of electric energy.⁴ KIC is a Kansas corporation that is active and in good standing in all respects.

6. The representation of KIC's interests in this proceeding by other existing parties is or may be inadequate.

² K.S.A. 77-521(a); K.A.R. 82-1-225(a). The petition must also be properly filed with the Commission at least three (3) business days before the hearing.

³ K.S.A. 77-521(b); K.A.R. 82-1-225(b).

⁴ KCC Consolidated Docket Nos. 08-ANGG-295-CCN and 08-TKOG-314-COC, Order Granting SWKIA's Petition to Intervene and Motion to Consolidate Dockets, ¶¶ 8-12. In its Order, the Commission granted intervention to an incorporated entity in good standing representing "a unique facet of the natural gas market and, derivatively, a unique segment of consumers for natural gas who are dependent upon gas service for a significant component of the economy of southwest Kansas...."

7. KIC will be bound by Commission Orders in this proceeding and may be adversely affected thereby.

8. Granting KIC intervention and full party status in this docket is in the interest of justice and will not impair the orderly and proper conduct of this proceeding. In fact, KIC's representation of multiple large-volume user interests through one active participant should greatly enhance the orderly and prompt conduct of the Commission's business.

9. As a condition to KIC intervention, the KCC has previously required identification of entities participating through KIC.⁵ KIC expects multiple Westar customers will participate through KIC in this proceeding. However, a list of such entities is not yet available, as Westar's request for expedited review necessitated an immediate filing by KIC. KIC commits to notify the Commission of its participating members as such entities opt to participate. KIC does not object to its intervention being approved on a provisional basis until one or more participating members are identified.

10. KIC respectfully requests the right to intervene without limitation in this matter and to fully participate in all aspects of this Docket, including but not limited to the rights to serve relevant discovery, present witness testimony and other evidence, file briefs, motions, and other documents, as appropriate, and fully participating in any Commission hearings.

III. Objection to Expedited Review

11. A preliminary review of the Application indicates the transaction would clearly benefit Westar by mitigating certain business and financial risks that are not subject to rate recovery. By purchasing the 8% JEC interest and recovering such costs from customers, Westar would be insulated from the financial risks associated with its troubled business relationship with

⁵ Docket No. 18-WSEE-328-RTS, Order Granting Intervention to Kansas Industrial Consumers Group, Inc., March 20, 2018, ¶¶ 8-11.

MWP, as detailed in Westar's Application. However, it is unclear to KIC how the transaction benefits customers.

12. Westar does not contend its customers need 174 MW of additional coal generating capacity. In fact, the KCC Staff has recently found Westar's heavy reliance on coal generation capacity has been a material contributor to its regionally-high electric rates.⁶ Further, KIC has a concern that this additional capacity may harm customers by reducing the value of current energy efficiency and demand response programs.

13. In addition, while customers may benefit from revenues produced by the additional 8% of JEC, those revenues do not appear to offset the substantial additional costs associated with owning of the 8% interest. While Westar claims the 8% of JEC can produce monthly revenues of \$1.4 million, it does not claim these revenues will offset all costs of the 8% interest (capital, operations & maintenance, fuel, etc.).⁷ In fact, in a recent Commission proceeding, Westar claimed the 8% interest in JEC would produce annual losses of \$10 to \$10.5 million during the next three years and never produce a profit in any year through 2034.⁸ Given this analysis, it is unclear how Westar can now claim ownership of the 8% interest will benefit customers.

⁶ Docket No. 18-KCPE-095-MER, Rate Study of Kansas City Power & Light and Westar Energy for the years 2008 to 2018, January 14, 2019, pp. 8, 142, 145.

⁷ KIC notes Westar retail customers will be receiving a \$41.5 million rate increase in 2020 associated with lost wholesale revenues from Mid-Kansas Electric Company, which was receiving power from the 8% JEC during Westar's lease of such interest. MKEC's non-renewal of this contract indicates such revenue levels cannot be expected from the 8% JEC interest in the future.

⁸ Docket No. 19-MPCE-064-COC, Initial Brief of Westar Energy, Inc. and Kansas Gas and Electric Company, December 28, 2018, p. 8, "Under a forecast prepared by Westar, which both Westar and Staff believe is more realistic, the Trust will have approximately \$138 million in cumulative unpaid obligations for MWP's share of JEC expenses by 2035. Mr. Unrein explained that '[a]t a high level, Westar predicts MWP's cash flow shortfall between \$10 million to \$10.5 million per year over the first three years, and the Westar model does not produce a single year of financial profits through 2034.' He concludes that '[g]iven that Westar has had operational control over JEC and used GMO's 8% interest as a barometer,' Westar's data is 'more convincing of the on-going operations of MWP's interest given the current economics of coal plant operation, low market energy prices, and the overall excess capacity that currently exists in the SPP market.'"

14. In short, while the benefits of this transaction to Westar are obvious, KIC has been unable to verify Westar's claim that customers will also benefit from the transaction. KIC is open to exploring the potential costs and benefits of this transaction. However, a 60-day review period is inappropriate when such benefits are not apparent from Westar's Application and supporting testimony. This procedural timeframe is not feasible for KCC Staff and intervenors to fully review the Application and set forth any positions regarding the net benefits or costs to customers of the proposed transaction.

WHEREFORE, KIC respectfully requests the Commission grant its Petition to Intervene and deny Westar's request for expedited review. KIC also requests all other relief to which the Commission determines it may be entitled.

Respectfully submitted,



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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

James P. Zakoura, being duly sworn upon his oath, deposes and states that he is the Attorney for the Kansas Industrial Consumers Group, Inc., that he has read and is familiar with the foregoing *Petition to Intervene of Kansas Industrial Consumers Group, Inc., and Objection to Request for Expedited Review of Application*, and the statements therein are true to the best of his knowledge, information, and belief.


James P. Zakoura

SUBSCRIBED AND SWORN to before me this 8th day of March, 2019.


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 8th day of March, 2019, to the parties below:

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