

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

In the Matter of the General Investigation
To Examine Issues Surrounding Rate
Design for Distributed Generation Customers

Docket No. 16-GIME-403-GIE

PETITION FOR RECONSIDERATION BY CLIMATE AND ENERGY PROJECT OF THE
COMMISSION'S ORDER OF SEPTEMBER 21, 2017

Pursuant to K.S.A. 66-118b and 77-529(a)(1) Intervenor Climate and Energy Project hereby respectfully presents its Petition for Reconsideration of the Commission's Order of September 21, 2017, (hereinafter "Order") in the above-captioned matter.¹

A. The Order's reliance on comments of parties to support its findings does not conform to rules of evidence.

1. The finding that residential distributed generation customers should be "uniquely identified within the ratemaking process because of their potentially significant different usage characteristics"² is not supported by substantial competent

¹ The Commission's Order at p. 7, footnote 57, indicates it considered all arguments and record citations offered by parties but included in the Order only those that support the Commission's findings and conclusions. Under K.A.R. 82-1-235(b) a petition for review that relies on the ground that the Commission did not consider any evidence is required to cite to the record where such testimony appears. CEP recognizes that the standard applicable to judicial review of agency orders at K.S.A. 77-621(d) is not applicable to the Commission. Nevertheless, because CEP seeks clarification of the Commission's findings and conclusions in light of the entire record, it will, *inter alia*, reference record evidence that was considered by the Commission (per footnote 57) but not otherwise addressed in the Order.

² Order, para. 20

evidence. The support for this finding consists of various comments of parties but the Order cites no testimony or other evidence to buttress the finding.³

2. K.S.A. 60-401(a) defines evidence as “the means from which inferences may be drawn as a basis of proof in duly constituted judicial or fact-finding tribunals, and includes testimony in the form of opinion, and hearsay.” (Emphasis added).

K.S.A. 60-401(c) defines proof as “all of the evidence before the trier of the fact relevant to a fact in issue which tends to prove the existence or non-existence of such fact.” (Emphasis added). K.S.A. 60-401(f) defines finding of fact as “the determination from proof or judicial notice of the existence of a fact as a basis for a ruling on evidence. A ruling implies a supporting finding of fact. (Emphasis added).

3. K.A.R. 82-1-204(f) specifies what constitutes a “formal record” or “record” in Commission proceedings. It provides as follows:

"Formal record" or "record" shall include the following, when filed with the commission:

- (1) All applications, complaints, petitions, and other papers seeking commission action;
- (2) all answers, replies, responses, objections, protests, motions, stipulations, exceptions, other pleadings, notices, depositions, certificates, proofs of service, transcripts of oral arguments, and briefs in any matter or proceeding;
- (3) all exhibits, all attachments to exhibits, all appendices to exhibits, amendments of exhibits, corrections of exhibits, supplements to exhibits, and all letters of transmittal or withdrawal of any items mentioned in this subsection;
- (4) any notice or commission order initiating the matter or proceeding;
- (5) any commission order designating a hearing examiner, attorney, or other employee, for any purpose;

³ Order, footnote 58

- (6) the official transcript of the hearing made and transcribed by the reporter;
 - (7) all exhibits received in evidence;
 - (8) all prefiled testimony or proposed exhibits offered but not received in evidence; however, any prefiled testimony or proposed exhibit which was not offered in evidence shall not be included in the record;
 - (9) all offers of proof; and
 - (10) all motions, stipulations, subpoenas, proofs of service, and anything else ordered by the commission or presiding officer to be made a part of the record.
4. K.A.R. 82-1-204(f) differentiates between information that is “of record” and “evidence” as that term is defined by K.S.A. 60-401(a) and “proof” as defined by K.S.A. 60-401(c). For example, subsections (6) and (7) of K.A.R. 82-1-204(f) are encompassed within the definitions of evidence and/or proof. The hearing transcript and exhibits “received in evidence” are evidence and proof that would support a finding of fact as defined by K.S.A. 60-401(f). Additionally, K.A.R. 82-1-204(f)(8) distinguishes prefiled testimony that is filed from that which is actually offered to and admitted by the Commission into the record.
5. The comments specified in footnote 58⁴ do not meet the statutory definitions of evidence or proof. Additionally, the comments are not admitted testimony or admitted exhibits and consequently, do not qualify as findings of fact. Further, the comments were not ordered to be made part of the record under K.A.R. 82-1-204(f)(10).
6. K.A.R. 82-1-230(a) specifies that the rules of evidence in Article Four of the Kansas Code of Civil Procedure “shall be applied by the Commission at all of its hearings.” However, this requirement may be relaxed. K.A.R. 82-1-230(a)

⁴ Order, p. 8

provides that “the presiding officer may relax the rules of evidence if the presiding officer believes that it is in the public interest to do so and will aid in ascertaining the facts.” During the hearing of this matter, the presiding officer did not make any ruling on a motion of a party or on the Commission’s own initiative that the rules of evidence should be relaxed.

7. The comments specified in footnote 58 were not offered as evidence.

Accordingly, there was no opportunity for any party to object to the admissibility of such.

B. The evidence in this docket does not support a finding that residential DG usage patterns differ significantly from non-DG ratepayers.

8. The assertion that usage patterns differ between ratepayers with DG and those without DG systems has been central to the assertion that a separate class for residential DG ratepayers is justified.⁵ This issue prompted Rick Gilliam, CEP’s expert witness, to undertake a comparative analysis of the usage patterns of Westar’s DG and non-DG residential ratepayers.⁶
9. Pursuant to a Data Request to Westar Mr. Gilliam received from Westar “hourly data for all residential DG customers for which the Company has data”. Mr. Gilliam received a “voluminous amount of raw customer data.” Indeed, the response included more than 30 files, many with more than one million lines of data.⁷ The data included 15 minute load information for each of the two registers on the meter – Channel 1: “kWh received by the customer from Westar (billable

⁵ List of Contested Issues, p. 2

⁶ Gilliam prefiled direct testimony, p. 6, l. 12- p. 9, l. 4

⁷ Hearing Tr. Vol. 2, p. 400, ll. 12-25

usage)” and Channel 11: “kWh sent to Westar (net meter kWh).” In other words, Channel 1 recorded the load of the customer that Westar serves, and Channel 11 measured exported energy.⁸

10. In order to compare the load characteristics of non-DG customers with DG customers, it is necessary to look only at the load placed on the system, i.e. the energy measured by Channel 1. Channel 11 is effectively a measure of the reduction in load for the circuit due to the customer’s DG system. It is not a measure of customer load. Indeed it reduces the amount of generation the Company must provide to meet the needs of customers on that circuit, thus providing a savings to customers.⁹

11. Mr. Gilliam’s analysis compared the load placed on Westar by DG customers with the equivalent characteristic for non-DG customers and found that the differences were not significant.¹⁰ Table 1 shows the mean consumption is comparable between non-grandfathered DG ratepayers and non-DG ratepayers.¹¹ Table 2 shows that the load factors of the two groups are nearly the same with the mean being nearly identical.¹² Table 3 compares consumption of all DG residential ratepayers (grandfathered and non-grandfathered) to non-DG ratepayers. These data evidence comparable consumption levels for DG and non-DG ratepayers. Table 4 compares load factors of all DG residential ratepayers (grandfathered and non-grandfathered) to non-DG ratepayers. These data

⁸ Gilliam prefiled direct testimony, p. 9, ll. 5-18; Hearing Tr. Vol. 2, p. 401, l. 1-p. 402, l. 25

⁹ Gilliam prefiled testimony opposing S&A, p. 9, ll. 5-18; Hearing Tr. Vol. 2, p. 401, l. 10-p. 402, l. 12; p. 409, ll. 2-23; p. 418, l. 13-p. 419, l. 2

¹⁰ Gilliam prefiled testimony opposing S&A, p. 9, ll. 19-p. 12, l. 16; Hearing Tr. Vol. 2, p. 409, l. 24-p. 415, l. 8

¹¹ Gilliam prefiled testimony opposing S&A, p. 9, l. 20- p. 10, l. 5

¹² Gilliam prefiled testimony opposing S&A, p. 10, ll. 6-15

evidence comparable load factors for DG and non-DG ratepayers.¹³ Mr. Gilliam's analysis and conclusions track with recent comparable load data from Utah.¹⁴ Mr. Gilliam concluded, based on a review of Westar usage data, that there is no significant difference in usage patterns of residential DG ratepayers compared to residential ratepayers, generally.¹⁵ The absence of substantial competent evidence to support the new residential DG rate class renders the S&A, if adopted as a final order, "unreasonably discriminatory or unduly preferential". K.S.A. 66-101b.

12. Dr. Faruqui used the sum of the two registers (1 and 11) in an erroneous attempt to show that the resulting DG "loads" which are negative in some periods, are different than the loads of non-DG customers.¹⁶ This is an apples to oranges comparison that is irrelevant. Negative load is an oxymoron. Only the loads measured by register 1 are comparable to loads measured by non-DG customers' meters. The excess energy measured by Channel 11 serves neighboring loads who pay Westar for the energy, even though Westar did not generate it. As Mr. Gilliam pointed out during cross-examination, from the Company's perspective those transactions are a wash.¹⁷
13. The fact remains that Mr. Gilliam's data and analysis represent the only factually relevant comparison of load characteristics of DG and non-DG customers in this docket. Mr. Gilliam concludes they are similar. Thus, the basis for paragraph 9 in the non-unanimous settlement agreement is lacks supportive substantial and competent evidence, and it (along with paragraphs 10 and 11) must be rejected.

¹³ Gilliam prefiled testimony opposing S&A, p. 11, ll. 1-14

¹⁴ Gilliam prefiled testimony opposing S&A, p. 12, l. 17-p. 13, l. 10).

¹⁵ Hearing Tr. Vol. 2, p. 435, l. 16-p. 439, l. 5

¹⁶ Faruqui rebuttal testimony, p. 5, ll. 1-9

¹⁷ Hearing Tr. Vol. 2, p. 409, ll. 11-23

C. Proponents of the S&A failed to prove that costs to serve DG customers are greater than their non-DG counterparts.

14. Jeffrey Martin of Westar testified that costs to serve DG customers are not recovered under existing rate designs.¹⁸
15. However, Mr. Martin testified that there has been no identification of what those costs consist of nor a quantification of such costs.¹⁹
16. Mr. Martin testified that DG residential customers cause increased costs because of volatility of demand. However, Mr. Martin could not quantify such costs.²⁰
17. DG customers allegedly cause additional planning costs. However, these costs have not been studied and thus, are not quantified.²¹
18. Dispatch costs are allegedly increased due to the presence of DG customers, according to Mr. Martin. However, such have not been quantified. He does not know whether such costs actually exist.²²
19. Metering costs for DG customers are allegedly increased. However, such have not been studied nor quantified.²³
20. Relaying costs are allegedly increased due to DG customers. But no study or quantification of such was offered for the record.²⁴
21. Load flow costs are allegedly increased due to DG customers. However, no study or quantification of such was offered for the record.²⁵

¹⁸ Hearing Tr., Vol. 1, p. 79, l.16-p. 80, l.7

¹⁹ Hearing Tr., Vol. 1, p. 100, l. 20-p. 101, l. 11

²⁰ Hearing Tr., Vol. 1, p. 101, l. 12-p. 102, l. 10

²¹ Hearing Tr., Vol. 1, p. 103, l. 25-p. 104, l. 16; p. 114, l. 18-p. 115, l. 12

²² Hearing Tr., Vol. 1, p. 105, l. 25-p. 106, l. 6; p. 116, ll. 4-16

²³ Hearing Tr., Vol. 1, p. 113, l. 19-p. 114, l. 4

²⁴ Hearing Tr., Vol. 1, p. 114, ll. 5-17

22. Transactional costs are allegedly increased due to DG customers. However, no study or quantification of such was offered for the record.²⁶
23. The Commission's Order in this docket states that, presently, there exists only the potential that DG customer usage patterns differ significantly from their non-DG counterparts.²⁷ The recognition that only a potential for different usage patterns presently exists implicitly recognizes that the segregation of DG customers into a separate class is not supported by substantial and competent evidence. *Water Dist. No. 1*, 19 Kan. App. 2d 236, 241-242.

D. Proponents of the S&A failed to prove that DG customers are subsidized by their non-DG counterparts.

24. The Commission's Order related to cross-subsidization also suffers a lack of evidentiary support. To support this finding the Commission relies on Staff's Initial Comments.²⁸ This reliance suffers from the same legal defects as related to the segregation of DG customers into a separate rate class. The arguments and authorities in paragraphs 1-8, *supra*, are incorporated herein by reference in support of the contention that the Order does not have substantial and competent evidence to warrant a finding that DG customers are subsidized by their non-DG counterparts.

²⁵ Hearing Tr., Vol. 1, p. 115, l. 13-p. 116, l. 3

²⁶ Hearing Tr., Vol. 1, p. 117, ll. 3-10

²⁷ Order, para. 20

²⁸ Order, para. 61

25. The Commission also relies on Mr. Martin's testimony on this subsidy question.²⁹

This testimony cites a study referenced by Mr. Martin that Westar chose not to include in the record. The study Mr. Martin referenced and that the Commission now relies upon "there was a study out there that showed there was maybe a 3 cents per customer subsidy...." Westar learned of this "study" from an unidentified solar installer that neither disclosed the data relied upon nor the methodology used for analysis. Presumably, had this "study" been persuasive Westar or some other party would have offered it considering there was no other substantial and competent evidence to support the alleged subsidization. Reliance on a study that is not in the record is not consistent with the requirements of K.S.A. 77-526(c) that an order be supported by substantial and competent evidence.

26. Further, Mr. Martin conceded that Westar has attempted no study in an attempt to quantify this alleged subsidization.³⁰

27. And Dr. Faruqi acknowledged that, based on Kansas data, he does not know the magnitude, if any, of subsidies realized by Kansas residential DG ratepayers at the expense of non-DG ratepayers.³¹

E. The proposed residential three part rate design is not supported by substantial competent evidence.

28. The Order's adoption of a three-part rate design for DG customers also relies only on comments that do not meet the requirements of the rules of evidence.³² This

²⁹ Order, fn. 61

³⁰ Hearing Tr., Vol. 1, p. 112, l. 11-p. 113, l. 13

³¹ Hearing Tr. Vol. 1, p. 209, l. 7-p. 211, l. 18

reliance suffers from the same legal defects as related to the findings related segregation of DG customers into a separate rate class and the alleged subsidization of DG customers. Accordingly, the arguments and authorities in paragraphs 1-8, *supra*. are incorporated herein by reference in support of the contention that the Order does not have substantial and competent evidence to warrant a finding that DG customers should be subject to a three-part rate design.

29. A central tenant of the S&A is to take unsupported assumptions about residential DG costs and benefits and enshrine them in a rate design that has discriminatory impacts on residential DG ratepayers. But the primary problem is that it assumes, absent factual support, that residential customers create more costs than benefits.³³ Midwest Energy's experience indicates that costs to serve DG and non-DG customers are similar. For example, Midwest Energy has a small number of residential DG customers.³⁴ Residential DG customer specific costs have not been quantified. However, Mr. Parke testified that Midwest's early experience with installation might require travelling up to two hours to get to an installation site. But with experience has come reduced costs. Mr. Parke testified "As we've gotten more experienced especially with inverter based solar units, we don't even go out to the site. If the equipment has the proper certificates, we don't visit." Other costs expected, though either not incurred or unquantified, are grid enhancements and unpredictability. Mr. Parke acknowledged that there may be no costs related to unpredictability. In any event, Midwest Energy has not undertaken a study to

³² Order, footnotes 60, 61

³³ See paras. 14-23, *supra*.

³⁴ Hearing Tr. Vol. 2, p. 309, ll. 9-25

support its suppositions because such is not justified due to the small number of residential DG systems in its territory.³⁵

30. The unsupported assumption that DG customers cost more to serve is essential to the rate design advocated in the proposed S&A.³⁶ But it also puts policy ahead of data that are available through a value of resource study and/or a cost of service study for residential DG ratepayers.³⁷ Mr. Martin testified that the essential information necessary to establish a separate residential rate class is in the record of this docket. While Mr. Martin asserts the supportive data are in this record, he also acknowledges that it will be left to the next rate case for the utility “to provide all the data to show that that’s the case” and that Westar does not know costs of service for residential DG ratepayers.³⁸

31. Mr. Gilliam also drew the distinction between a utility’s reduction in revenue and incurring additional incremental costs. An additional incremental cost might include new equipment to serve a DG customer such as a larger transformer. But a reduction in revenue is a reduction in existing cost recovery, which is not a new cost. In this docket there has been no evidence of additional incremental costs that utilities have incurred to serve residential DG ratepayers.³⁹ Accordingly, the three-part rate design will recover alleged costs for serving residential DG customers that lack evidentiary support in this record.

32. Nevertheless, before the next rate case Westar wants a “policy” decision from the Commission, in the form of rate design findings that establish the current two-part

³⁵ Hearing Tr. Vol. 2, p. 310, l. 10-p. 312, l. 10

³⁶ See paras. 15-24, *supra*.

³⁷ Hearing Tr. Vol. 1, p. 133, l. 22-p. 134, l. 16; p. 142, l. 20-p. 143, l. 4

³⁸ Hearing Tr. Vol. 1, p. 134, l. 20-p. 135, l. 9

³⁹ Hearing Tr. Vol. 2, p. 440, l. 10-p. 442, l. 11

rate designs are problematic, that net costs attributed to residential ratepayers are being imposed on non-DG ratepayers and that DG residential ratepayers cost more to serve. Mr. Martin testified that such a policy would avoid a “fight” concerning the issue in the next general rate case.⁴⁰

33. This raises questions about the endorsement of a rate design policy finding in this docket that makes its adoption in a future rate case a *fait accompli* by making it the presumptive rate design. But any subsequent application of such a far-reaching policy requires a careful quantification of costs and benefits in the residential DG context. Without such, a rate design would lack supporting substantial and competent evidence contrary to KSA 77-526(d) and effect an unreasonable discrimination against residential DG ratepayers prohibited by K.S.A. 66-101b.
34. Based on the record citations, arguments and authorities cited herein CEP respectfully requests that its Petition for Reconsideration be granted

Respectfully submitted,


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⁴⁰ Hearing Tr. Vol. 1, p. 126, l. 18- p. 127, l. 16

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF DOUGLAS)

Robert V. Eye, of lawful age, being first duly sworn upon oath, deposes and states:
That he is an attorney for Climate + Energy Project, that he has read the above and foregoing and
that the statements therein contained are true and correct according to his knowledge,
information and belief.

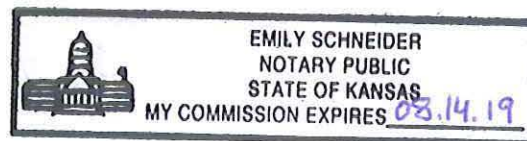
R. Eye

Robert V. Eye

Subscribed and sworn to before me this 5th day of October, 2017.

My appointment expires: 08.14.19

Emily Schneider
Notary Public



CERTIFICATE OF SERVICE

Undersigned certifies that on October 5, 2017, the above and foregoing Petition for Reconsideration was emailed to the following:

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