

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

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

POST-HEARING BRIEF OF COMMISSION STAFF

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Staff of the State Corporation Commission of the State of Kansas (“Staff” and “Commission”, respectively), submits its Post-Hearing Brief regarding the joint Application of Westar Energy, Inc. and Kansas Gas and Electric Company for recovery of certain costs through their RECA.

I. EXECUTIVE SUMMARY

1. As the owner-operator of Jeffrey Energy Center (JEC), Westar operates JEC on behalf of the ownership group and incurs all of the operating and maintenance expense and all of capital costs necessary to keep the plant operating. Westar operates its current 84% ownership interest in JEC to serve Kansas retail ratepayers, and Westar sister company Kansas City Power and Light – Greater Missouri Operations uses its 8% ownership interest to support its retail operations. Westar has recently entered into a settlement agreement with Midwest Power Company (MWP) to lease the remaining 8% undivided interest in JEC for 7 months and at the end of the lease Westar will purchase the undivided 8% interests from MWP. Westar has filed an application to recover the lease expense and the non-fuel operations and maintenance (NFOM) expenses associated with the 8% undivided interest in JEC through their Retail Energy Costs Adjustment (RECA).

2. In the most recent general rate case, Docket No. 18-WSEE-328-RTS (18-328), a settlement agreement was reached which included directions on how to handle these costs being incurred associated with the undivided 8% interest. The Settlement Agreement provided that in the event Westar enters into a new lease or purchases the 8% undivided interest of JEC, Westar will have the burden of showing the new lease or purchase agreement is a prudent decision for retail customers.

3. Kansas Industrial Consumers, Inc., (KIC) and Citizens' Utility Ratepayer Board (CURB) intervened on this docket and took the position that Westar could not meet the burden of showing the new lease and purchase price prudent until it first showed the energy and capacity from that 8% undivided interest was needed to serve Kansas customers. KIC and CURB did not perform an independent net present value (NPV) analysis evaluating the prudence of the lease expense and purchase price.

4. Staff, after a thorough analysis of the 18-328 Settlement Agreement, believes the proper analysis should be a prudence evaluation of the lease and purchase price of the 8% undivided interest in JEC. Staff performed a NPV analysis of the incremental cost of the Westar's decision to extend the lease and purchase the undivided 8% interest in JEC and contends the lease and purchase are prudent decisions for Westar customers. The only issue raised by KIC and CURB regarding Staff's NPV analysis is that it failed to include the fixed NFOM expenses in the analysis, which Staff asserts is incorrect. Staff recommends approval of the application.

II. PROCEDURAL HISTORY

5. On March 4, 2019, Westar filed an Application with the Commission for recovery of certain costs through their RECA.¹ Westar witness, Darrin Ives, filed Confidential Direct Testimony requesting authority from the Commission to recover: (1) pursuant to paragraphs 28 and 29 of the 18-328 S&A, the deferred lease and NFOM expenses associated with the 8% undivided interest in JEC that incurred after the effective date of the lease extension and the expenses that continue being deferred through the date the Commission issues its order²; and (2)

¹ Westar Energy, Inc. and Kansas Gas and Electric Company Joint Application, (Mar. 4, 2019).

² Direct Testimony of Darrin Ives, at 16-17, Total lease expense incurred during the seven-month lease period and recovered through the RECA will be 4.83 Million. Estimated total NFOM expense related to the 8% interest in JEC

pursuant to paragraph 28 of the 18-328 S&A, the future NFOM expenses associated with the 8% undivided interest in JEC after Westar's purchase.³

6. On March 28, 2019, the Commission issued an Order granting KIC and CURB's intervention in the docket.

7. On April 4, 2019, the Commission issued an Order setting the procedural schedule.

8. On June 4, 2019, Staff witness, Justin Grady, filed Confidential Direct Testimony recommending Commission approval of Westar's application.

9. On June 4, 2019, KIC witness, Michael Gorman, filed Confidential Direct Testimony recommending the Commission deny Westar's request.

10. On June 4, 2019, CURB witness, Andrea Crane, filed Direct Testimony recommending the Commission deny Westar's request.

11. On June 14, 2019, Staff witness, Justin Grady, filed Cross Answering Testimony.

12. On June 14, 2019, KIC witness, Michael Gorman, filed Cross Answering Testimony.

13. On June 21, 2019, Rebuttal Testimony of Darrin Ives on Behalf of Westar was filed.

14. On July 16, 2019, an Evidentiary Hearing was held before this Commission.

III. BACKGROUND

15. In 1991 UtiliCorp (later changed its name to Aquila), transferred its 8% interest in JEC to a Trust company (held for the benefit of MWP's predecessor) as part of a sale/leaseback

being leased, recovered through the RECA, is approximately \$3.03 million during the seven-month lease. (Jun. 4, 2019).

³ *Id.* at 17, Westar estimates the NFOM associated with the 8% interest of JEC will be approximately \$435,000 per month going forward.

transaction. In 2007, during the sale of Aquila's electric assets in Kansas to the Mid Kansas Electric Company (MKEC) in Docket No. 06-MKEE-524-ACQ (06-524 Docket), Westar assumed Aquila's leasehold interests and lease of the 8% interest in JEC. At the same time, Westar and MKEC entered into a Power Purchase Agreement (PPA) where MKEC agreed to take all of the capacity and energy from the 8% portion of JEC through January 3, 2019, which is the date the lease on the 8% portion expired.

16. In the 2018 18-328 Docket, the parties agreed to a settlement that laid out a few different ways to handle the treatment of the undivided 8% interest in JEC. The settlement provided that the \$8.3 million in annual lease expense and \$6.9 million in NFOM expense associated with the 8% interest in JEC would be removed from base rates.

17. Prior to the lease expiration, MWP filed a certificate application, Docket No. 19-MPCE-064-COC. Due to Westar's significant interest in the outcome of that proceeding, Westar intervened. In the Certificate Docket, Staff's testimony discussed its concerns about MWP's ability to meet the financial component of the Commission's standard for reviewing certificate applications. Staff recommended a parental guaranty be required of MWP. MWP's response to the Staff's recommendation was contractual provisions in documents dating back to 1991 allowed it to rely on Westar to pay for all operating cost shortfall associated with the 8% portion of JEC. While MWP would provide Westar with the SPP wholesale market revenues and capacity sales, these revenues were not projected to exceed the full operational costs of its 8% ownership interest in JEC. Staff recommended the Commission deny MWP's application for a Certificate of Convenience and Necessity.

18. On February 8, 2019, MWP and Westar executed a Settlement Agreement that will result in the transfer of ownership of the 8% interest from MWP to Westar. The terms of

settlement have Westar and MWP agreeing to a seven-month lease, of the 8% undivided interest. The lease payment is \$690,000 per month, retroactively set on January 4, 2019. At the end of the seven-month lease, MWP will transfer its 8% interest in JEC to Westar upon Westar's payment of \$3.7 million.

IV. ISSUES AND APPLICABLE STANDARDS

- a. *Whether Westar should be allowed to recover NFOM and lease expenses through their RECA.***

Just and Reasonable Rates

19. The applicable legal standard to decide whether to allow Westar recovery of certain costs through their RECA is set out in K.S.A. 66-101b. In general, the main inquiry is whether the applicant demonstrates that allowing recovery will result in just and reasonable rates.

K.S.A. 66-101b states:

Every electric public utility governed by this act shall be required to furnish reasonably efficient and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied or produced by such electric public utility, to establish just and reasonable rates, charges and exactions and to make just and reasonable rules, classifications and regulations. Every unjust or unreasonably discriminatory or unduly preferential rule, regulation, classification, rate, charge or exaction is prohibited and is unlawful and void. The commission shall have the power, after notice and hearing in accordance with the provisions of the Kansas administrative procedure act, to require all electric public utilities governed by this act to establish and maintain just and reasonable rates when the same are reasonably necessary in order to maintain reasonably sufficient and efficient service from such electric public utilities.

20. The goal of state regulatory agencies should be to establish a rate fixed within the zone of reasonableness after the application of a balancing test in which the interest of all concerned parties are considered. Parties whose interest must be considered and balanced are

utility investors, present ratepayers, future ratepayers and the public interest.⁴ The rate setting process is a balancing process involving the weighing of certain enumerated interests of the consumer and the investor.⁵

21. Before breaking down the more nuanced issues to understand this case, it must be understood the fundamental issue is whether Commission approval of Westar's requested tariff will result in just and reasonable rates for ratepayers and customers. In order to understand this legal standard, Staff provides analysis of case law, past dockets and Commission authority to grant applications such as this one.

Commission's Broad Discretion

22. The Kansas legislature created the Kansas Corporation Commission and granted it exclusive authority and jurisdiction to supervise, control, and regulate public utilities in this state.⁶ The Commission is vested with wide discretion and its findings have a presumption of validity on review.⁷ The Commission is an administrative body whose delegated authority must be supported by a clear standard governing the exercise of the delegated authority.⁸

The 18-328 Settlement Agreement

F. 8% of JEC Lease Payment and O&M

27) The Parties agree that the \$8.3 million of lease payment expense associated with Westar's lease of the 8% interest of Jeffrey Energy Center (JEC) that is currently owned by Midwest Power Company will be removed from base rates and that such removal is reflected in the revenue requirement decrease agreed to by the Parties and stated above. In addition, the Parties agree that the 8% portion of the non-fuel operating and maintenance (NFOM) expense related to the portion of JEC currently owned by Midwest Power Company that is approximately \$6.9 million will be removed from base rates and that

⁴ *Kan. Gas and Elec. Co. v Kan. Corp. Comm'n*, 239 Kan. 483, 488, 720 P.2d 1063, 1070 (1986).

⁵ *Id.* at 489, 1071.

⁶ *Id.* at 491, 1073.

⁷ *Cent. Kansas Power Co. v. State Corp. Comm'n*, 221 Kan. 505, 511, 561 P.2d 779 (1977).

⁸ *See Kansas One-Call Sys. Inc. v. State*, 294 Kan. 220, 231, 274 P.2d 625, 634 (2012).

such removal is reflected in the revenue requirement decrease agreed to by the Parties and stated above.

- 28) In the event that Westar enters into a new lease for this 8% share of JEC, or purchases the 8% portion of JEC outright, the Parties agree that Westar will be permitted to file a request to include these expenses (lease expenses and NFOM) through the RECA. Any additional wholesale sales that are directly attributable to this lease extension or purchase shall also be included in the RECA in the event that the Commission approves this request. Westar shall be allowed to utilize a regulatory asset to defer actual lease expense and/or NFOM associated with the 8% portion of JEC in the event that a new lease or purchase agreement is reached. In the filing before the Commission, Westar shall have the burden of showing that the new lease or purchase agreement is a prudent decision for its retail customers.
- 29) In the event that the Commission approves Westar's filing, it may also include the amortization of the regulatory asset into the RECA. In the event that the Commission denies Westar's filing, Westar shall not be allowed to recover the regulatory asset containing deferred lease and NFOM expenses, and Westar shall be allowed to retain any wholesale sales that are directly attributable to the 8% portion of JEC for which the Commission denies Westar recovery of the incurred cost of owning or leasing and operating the 8% portion of JEC. In the event that Westar ends up negotiating a zero-cost transfer of ownership (defined as \$0 or \$1), Westar is automatically entitled to begin recovering actual NFOM expenses and fuel expenses associated with the 8% ownership of JEC without prior Commission approval.
- 30) The Parties agree that Westar shall also be allowed to defer any of the 8% of NFOM or capital costs it is unable to recover from Midwest Power Company (or any other third-party owner) as a regulatory asset. Specifically, Westar shall be entitled to begin accruing unrecovered costs to the regulatory asset when Midwest Power Company (or any other third party owner) is more than 60 days late in making a payment. If Midwest Power Company (or the other third-party owner) ultimately makes payment, the regulatory asset will be reduced for such payment. At the time of Westar's next general rate case, Westar may request recovery of the balance of unrecovered costs that have been deferred in the regulatory asset upon a showing that Westar made reasonable efforts to recover the costs from Midwest Power Company, or any other third-party owner.
- 31) Nothing in this settlement is intended to prejudge Westar's claim for recovery of the unrecovered NFOM and capital costs deferred in the regulatory asset; recoverability will be determined by the

Commission at the time that Westar makes its request for recovery of the regulatory asset. Staff, CURB, and other intervenors specifically reserve their right to make any argument with regard to recovery of the regulatory asset, including the right to argue that none of the regulatory asset should be recovered from customers.

- 32) Additionally, Staff and CURB agree that in the event Westar is unable to recover any of the NFOM or capital costs for which Midwest Power Company, or any third-party owner is responsible after the expiration of the lease for the 8% portion of JEC, Staff and CURB will consider taking steps to encourage the Commission to exercise its jurisdiction over Midwest Power Company (or any other third-party owner) and enforce the party's payment obligations

V. ANALYSIS

23. Staff views both of Westar's decision to extend the JEC lease and purchase the 8% portion of JEC to be prudent given Staff's NPV analysis projects it will create \$1.13 million in benefits for customers. Staff argues that KIC and CURB have made critical errors in their analysis to recommend denial of Westar's request. Both parties have misinterpreted key clauses in the 18-328 Settlement Agreement to somehow create a higher burden on Westar. Both parties illogically believe Staff's NPV analysis should consider fixed, sunk costs.

Interpretation of the 18-328 Settlement Agreement

24. The first thing that needs to be established with this docket is the Commission is not or has not been bound by prior Commission approval of the contract in 2007 or the 18-328 Settlement Agreement.⁹ On the other hand some of the parties to this docket may have bound themselves to certain paths going forward, but the Commission has not. "I mean, one common theme that you'll always see in these agreements, right, we bend over backwards and do everything we can to ensure that the Commission's hands aren't tied for any future decision."¹⁰

⁹ Tr. at 156, ll. 15-22, (Grady).

¹⁰ *Id.* at 170, ll. 12-16. (Grady).

25. The second thing that needs to be established is the full understanding of the Settlement Agreement in Docket No. 18-328. What needs to be highlighted in those six clauses (paragraphs 27, 28, 29, 30, 31 and 32) is there are several of references to a “regulatory asset” that are similar but are referring to completely different things. There are actually two different regulatory assets contemplated in the Settlement Agreement. Paragraphs 27, 28 and 29 are explaining the situation that brought about this docket. Westar has extended the lease and executed an agreement to purchase the undivided 8% interest in JEC.¹¹ Westar then makes the request to include the lease expenses and NFOM through the RECA.¹² “Westar shall be allowed to utilize a regulatory asset to defer actual lease expense and/or NFOM associated with the 8% portion of JEC in the event that a new lease or purchase agreement is reached.”¹³ This “regulatory asset” is to be used for time between when Westar makes the request in paragraph 28 and when or if the Commission approves Westar’s filing to recover the lease expenses and NFOM expenses through the RECA.

26. The “regulatory asset” discussed in paragraphs 30 and 31 is a completely different accounting vehicle than the “regulatory asset” discussed in paragraphs 28 and 29. This regulatory asset is created in the event the Westar makes the request to recover lease and NFOM expenses through the RECA, gets denied and then must wait for the duration of the rate moratorium to request recovery of “NFOM or capital costs” or “unrecovered costs”. These “unrecovered costs” are not the same lease and NFOM expenses from the regulatory asset in paragraph 28.

¹¹ Order Approving Non-Unanimous Settlement and Agreement, attachment 1, at 7-9, paragraph 28, (Sep. 27, 2018).

¹² *Id.*

¹³ *Id.*

27. CURB witness Andrea Crane has misinterpreted the language in paragraph 31 to explain the flaw in her argument that Westar must demonstrate the need for capacity.¹⁴ KIC and CURB witnesses testify that instead of just analyzing the prudence of the lease extension and purchase, Westar first should be required to show the purchase of the 8% portion of JEC is 1) needed to serve capacity and energy needs of Kansas retail customers; and 2) is a cost effective way of meeting this requirement.¹⁵ At the hearing, Ms. Crane tried to explain how she can use this new “capacity” threshold for Westar. Referring to paragraph 31, Ms. Crane states “the settlement agreement gave the Commission the authority to either approve or deny the regulatory assets including the regulatory asset for the NFOM.”¹⁶ “[I]t also says that nothing is prejudging Westar claim that all parties reserve all their rights.”¹⁷ Staff interprets Ms. Crane’s testimony to mean, that because of this language in paragraph 31, KIC and CURB are well within the terms of the Settlement Agreement to create a new threshold or elevate the burden that Westar has to show capacity is needed to serve retail customers. Staff disagrees that showing is necessary or required for the Commission to find Westar’s request is just and reasonable.¹⁸

Staff’s NPV Prudence Analysis

28. Presented with the Application and issue of whether Westar should be allowed to recover NFOM and lease expenses associated with 8% interest in JEC, Staff looked to the Settlement Agreement in Docket No. 18-328. Paragraph 28 of the Settlement Agreement provides that Westar has the burden of showing the new lease extension or purchase of JEC is a prudent decision for ratepayers.¹⁹ The next clause in paragraph 29 of the 18-328 Settlement

¹⁴ Direct Testimony of Andrea Crane at 12, (Jun. 4, 2019).

¹⁵ *Id.* at 12, ll. 1-8, (Jun. 4, 2019).

¹⁶ Transcripts p. 129 line 12-15 (Crane)

¹⁷ *Id.* at ll. 19-20.

¹⁸ Cross Answering Testimony of Justin T. Grady, at 5-6, (Jun. 14, 2019)

¹⁹ *Id.* at 4, ll. 4-6, (Jun. 14, 2019).

Agreement states as long as the purchase price is \$0 or \$1, Westar does not have to make that showing in order to begin recovering NFOM costs.²⁰ Reading these two clauses in conjunction, Staff interprets this to mean that Westar retains the burden to show the \$3.7 million purchase price and the \$4.83 million lease extension are prudent decisions for Westar customers.

29. In order to evaluate the prudence of Westar's decision to extend the JEC lease and then purchase 8% undivided interest in JEC, Staff performed an incremental NPV analysis based on the incremental costs and incremental revenues associated with the decision.²¹ The incremental costs included in the analysis are \$4.83 million in lease expenses that customers would pay in 2019, return on and return of the \$3.7 million purchase price beginning in 2024, fuel expense associated with running the 8% portion, variable NFOM expenses associated with running the 8% portion, then projected out through 2035.²² The result of the analysis is a \$1.13 million benefit for Westar customers.²³

30. Staff's interpretation of KIC and CURB's position is not that they are violating the 18-328 Settlement agreement, it is that their positions are logically inconsistent with the entirety of the Settlement Agreement.²⁴ Fixed NFOM will be present and paid for by Westar in all scenarios. Based on their testimony, the only concern KIC and CURB have with Staff's NPV analysis is that fixed costs should be included in the model. Neither KIC nor CURB provide an independent NPV analysis but argue Staff's evaluation is incorrect because it does not consider the fixed costs associated with 8% undivided interest in JEC.²⁵ Because of this fixed cost concern, KIC and CURB hold two positions that contradict each other. One being that if the

²⁰ *Id.* at ll. 6-10.

²¹ *Id.*

²² Direct Testimony of Justin T. Grady, at 21, ll. 1-8, (Jun. 4, 2019).

²³ *Id.*

²⁴ Tr. at 154, ll. 19-22, (Grady).

²⁵ *Id.* at 12, 13.

plant were transferred for \$0 or \$1, then Westar can recover automatically and KIC and CURB are completely unconcerned with fixed costs.²⁶ The second position is that once Westar extends the lease or makes a \$2 dollar purchase for the 8% portion of the plant, we must now factor fixed costs into the evaluation. As stated before, fixed NFOM will be present and paid for by Westar whether they negotiate a \$0, \$1, or \$2 transfer of the 8% portion of the plant. KIC and CURB cannot logically hold both positions that fixed NFOM should be ignored in a \$0 or \$1 transfer but analyzed in a \$2 transfer offered in their testimony. If the Commission accepts KIC and CURB's positions, then even if Westar negotiated a transfer of the plant for free under paragraph 29, the purchase is still a bad decision. The fact that Westar decided to pay \$3.7 million should not suddenly create concern on the part of CURB about recovery of fixed NFOM expense.²⁷ Staff agrees the additional lease expenses and \$3.7 million purchase price should be evaluated for reasonableness, but the decision should be based on the incremental costs and revenues associated with the decision.²⁸ Sunk or fixed NFOM costs will occur regardless of the decision to purchase and are not appropriate to consider in the cost/benefit analysis.²⁹

31. To further explain the conundrum presented by KIC and CURB's argument, highlighted in the previous section, KIC witness Andrea Crane uses the term "regulatory asset" in paragraph 31 of the 18-328 Settlement Agreement to qualify her all-in examination of NFOM expense under the scenario described in paragraph 28.³⁰ If paragraph 31 correctly applies to all NFOM and lease expenses, CURB and KIC can't truthfully take the position that paragraph 29 was ever valid. Based on KIC and CURB's interpretation, no matter what the circumstances are, fixed NFOM can be evaluated in a prudence analysis, whether the purchase price is \$0 or \$2.

²⁶ Tr. at 134, ll. 6-10, (Crane).

²⁷ Cross Answering Testimony of Justin T. Grady, at 8, ll. 6, (Jun. 14, 2019).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Tr. at 129, ll. 18-20, (Crane).

This line of reasoning is inconsistent with the paragraphs 28 and 29 of the Settlement Agreement.

Shareholder Responsibility and Deregulating JEC

32. Both Staff and Westar have provided financial analysis to the impact of the transaction from a NPV perspective. As part of Staff's NPV analysis, Staff has provided a financial model that shows Westar's purchase of the 8% ownership interest would produce a \$1.13 million benefit to Kansas ratepayers.³¹ While both KIC and CURB assert that Staff's financial analysis does not include the fixed NFOM expense, Staff and Westar contend these expenses are "sunk costs" from Westar's ownership perspective, and these costs would be inappropriate to include in any incremental forward-looking NPV analysis. Westar does not have the ability to avoid incurring fixed NFOM expenses, and these costs are not currently being recovered in Westar's rates.³² Finally, Westar's action in executing the lease agreement was deemed prudent at the time it executed the lease agreement and ratepayers have received substantial benefits of the transaction since 2007.³³

33. Both KIC and CURB suggest that the Commission should consider deregulating the 8% portion of JEC and allowing Westar the opportunity to retain all wholesale revenue produced by energy sales.³⁴ While KIC and CURB make generalized suggestions on deregulating the ownership interest, the parties offer no path forward on the process of deregulating the asset or provide any financial analysis as to the impact that decision has on Westar's utility operation. A Commission order that suggests deregulation would have a plethora of outstanding issues that KIC and CURB have ignored and the record is completely

³¹ Grady Direct Testimony, at 6, line 12-13.

³² *Id.* at 8, line 13-15.

³³ Ives Direct at 14, ll. 19-21

³⁴ Direct Testimony of Michael Gorman, at 17, ll. 13-15 (Jun. 4, 2019).

silent on.³⁵ The Commission would be tasked with drafting an order suggesting or requiring deregulation with no guidance or evidence from this docket. Deregulating the asset will not change the fact that current wholesale market revenue will not fully cover these costs. Thus, KIC and CURB's position only attempts to shift these costs on to Westar's shareholders. To disallow costs that a utility cannot avoid that were based on a prudent decision is unprincipled regulatory policy.³⁶ Deregulating is the last viable option.³⁷ In the end, which ever route the Commission decides to go, market revenue will not cover those fixed, sunk cost associate with the 8% portion of JEC.³⁸

Westar's decision not to sue MWP

34. Finally, CURB and KIC spent a lot of time at the hearing questioning Westar on their decision to execute a settlement agreement with MWP instead of forcing litigation and foreclosure for that 8% portion of JEC.³⁹ It is apparent that neither party understands what MWP actually was. Throughout the discovery process in the 19-064 docket it became clear that MWP actually had no assets and no employees. KIC and CURB repeatedly mention the option of instigating litigation and taking MWP to court as viable option and point to the fact that Westar had not done so as a reason why their course of action was improper. However, this line of thought is just not feasible and ignores the facts. The statement made by KIC that Commission approval here sends a message to other utilities that they can get out of bad contracts is illogical.⁴⁰ MWP's plan was to rely on Westar as a financial backstop for any potential revenue shortfalls.⁴¹ Westar was not going to be able to avoid taking responsibility for the fixed NFOM

³⁵ Tr. at 174, ll. 16-21 (Grady).

³⁶ Tr. at 156, ll. 18-22 (Grady).

³⁷ Tr. at 101, ll. 11-13 (Ives).

³⁸ Tr. at 71, ll. 1-5 (Ives).

³⁹ Tr. at 79 (Ives); p 186 (Zakoura).

⁴⁰ Tr. at 186 (Zakoura).

⁴¹ Direct Testimony of Justin T. Grady, p. 4, ll. 4-7 (Jun. 4, 2019).

because as the owner/operator, Westar is required by law to take the steps necessary to operate and maintain JEC in an efficient and sufficient manner.⁴² The truth is MWP had no desire to own and operate the 8% portion of JEC. There is value in eliminating the risk of expensive litigation and eliminating the possibility of an adverse outcome in litigation.⁴³ Resolution of the dispute between Westar and MWP allows the Commission to be unburdened with the regulation of an unwilling out-of-state owner of the 8% interest of JEC.⁴⁴

VI. STAFF'S RECOMMENDATION

35. Staff recommends the Commission approve Westar' application to recover deferred lease expenses associated with the seven-month JEC lease extension, deferred NFOM expenses associated with the 8% portion of JEC, and ongoing NFOM expenses associated with the 8% undivided portion of JEC.

VII. CONCLUSION

The Commission should find that Westar's Application for recovery of NFOM and lease expenses through its RECA will result in just and reasonable rates and approve the tariff revision as requested.

⁴² *Id.* at ll. 14-17.

⁴³ *Id.* at 16.

⁴⁴ *Id.*

WHEREFORE, Staff respectfully submits its Post-Hearing Brief and requests the Commission approve the Joint Application of Westar Energy, Inc. and Kansas Gas and Electric Company for recovery of certain costs through their RECA.

Respectfully submitted,

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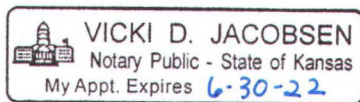
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

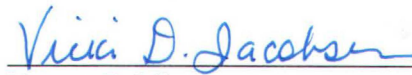
Cole Bailey, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Post-Hearing Brief of Commission Staff*, and attests that the statements therein are true and correct to the best of his knowledge, information and belief.



Cole Bailey, S. Ct. #27586
Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 31st day of July, 2019.





Notary Public

My Appointment Expires: June 30, 2022

CERTIFICATE OF SERVICE

19-WSEE-355-TAR

I, the undersigned, certify that a true and correct copy of the above and foregoing Post-Hearing Brief of Commission Staff was electronically served this 31st day of July, 2019, to the following:

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