

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

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

**RESPONSE OF WESTAR ENERGY, INC. AND KANSAS GAS AND ELECTRIC  
COMPANY TO PETITION TO INTERVENE AND OBJECTION TO REQUEST FOR  
EXPEDITED REVIEW OF APPLICATION OF KANSAS INDUSTRIAL CONSUMERS  
GROUP, INC.**

COME NOW Westar Energy, Inc. and Kansas Gas and Electric Company (collectively, “Westar”) and file their response to the Petition to Intervene and Objection to Request for Expedited Review of Application that was filed by Kansas Industrial Consumers (“KIC”). In support of their Response, Westar states:

1. On March 4, 2019, Westar filed an Application to recover costs related to acquisition of an 8% interest in Jeffrey Energy Center (“JEC”) from Midwest Power Company (“MWP”) through an eight-month lease of that interest and then a purchase of the interest in August 2019. As part of its Application, Westar requested that the Commission issue its order in this docket within 60 days of Westar’s Application.

2. On March 8, 2019, KIC filed its Petition to Intervene and Objection to Request for Expedited Review of Application.

**A. Response to Petition for Intervention**

3. With respect to its request for intervention, KIC stated:

As a condition to KIC intervention, the KCC has previously required identification of entities participating through KIC. 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.

4. In other words, despite the clear Commission precedent requiring KIC to identify its participating members before being granted intervention,<sup>1</sup> KIC seeks to intervene in this docket without identifying any participating members and, it appears, before it even has any such participating members agreeing to participate in the docket.

5. K.A.R. 82-1-225 states that the presiding officer shall grant a petition for intervention if it meets certain conditions. K.A.R. 82-1-225(a)(2) includes the requirement that the petition state:

facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law.<sup>2</sup>

6. KIC is not a Westar customer and KIC's Petition did not list any Westar customer as a party to the proposed intervention. KIC may not intervene in this proceeding other than as a representative of entities that have "legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding." While KIC's Petition states the purpose of KIC, the Petition does not indicate that KIC represents any Westar customer nor does the Petition identify any legally cognizable interest of its own that may be affected by this proceeding.

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<sup>1</sup> See Docket No. 05-WSEE-981-RTS, *Order Denying Petition to Intervene and Order Granting Petition to Intervene*, at ¶¶8-10 (May 20, 2005); Docket No. 18-WSEE-328-RTS, *Order Granting Intervention to Kansas Industrial Consumers Group, Inc.*, at ¶¶ 8-11 (March 20, 2018).

<sup>2</sup> The Kansas Administrative Procedure Act contains identical language. K.S.A. 77-521(a)(2) states that the presiding officer shall grant intervention if, among other things:

the petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law.

Therefore, KIC's Petition does not meet the legal requirements for intervention and should be denied unless it is amended.

7. Westar suggests that the Commission grant KIC ten days in which to amend its Petition and come into compliance with the applicable regulation. This approach would be consistent with previous Commission rulings on the same issue. For example, in Docket No. 05-WSEE-981-RTS, KIC filed a petition to intervene that is largely identical to KIC's Petition in this matter. Westar objected to the petition on the grounds that KIC had failed to meet the requirements of K.A.R. 82-1-225. Westar stated that it would have no objection to the intervention of KIC if it would identify its members and suggested that the Commission give KIC ten days in which to identify its members or have its petition denied. The Commission agreed with Westar stating:

The Commission finds that without identification of the interests represented by KIC, it is unable to determine that the petition should be granted.

. . . . the Commission has an interest in the explicit identification of the interests represented by each intervening party. Likewise, the Commission finds it should order KIC to similarly identify the parties it represents for the same rationale underlying K.A.R. 2004 Supp. 82- 1 -204(i)(2).

Westar noted that upon identification by KIC of the entities it represents, Westar would withdraw its objection. The Commission finds that KIC should have 10 days to amend its petition by identifying its membership and asserting that those members are entitled to intervention according to K.A.R. 82-1-225.<sup>3</sup>

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<sup>3</sup> *Order Denying Petition to Intervene and Order Granting Petition to Intervene*, Docket No. 05-WSEE-981-RTS, at ¶¶ 8-10 (May 20, 2005).

**B. Response regarding Request for Expedited Treatment**

8. In its Petition, KIC also opposed Westar's request for expedited treatment, arguing that it needs more time to review Westar's Application. However, KIC's opposition to Westar's request for expedited treatment is not well-founded.

9. As Westar explained in its Application, allowing Westar to begin recovering lease expense and NFOM expense through the RECA will result in less of a deferral balance and will smooth recovery of those expenses over time, rather than recovering a larger deferred amount all at one time. It will also match the timing of the recovery of expenses with the timing that customers are receiving benefits from gaining access to additional capacity and energy from JEC.

10. Additionally, this docket simply completes a regulatory process that was well negotiated by the parties, including KIC, in Westar's last general rate case, Docket No. 18-WSEE-328-RTS. The Non-Unanimous Stipulation and Agreement ("Rate Case S&A") filed in that docket, which was signed and supported by KIC, clearly set out the process for Westar to follow to request recovery of costs related to an agreement with MWP to acquire the 8% interest in JEC and that process was approved by the Commission. Westar's request for recovery of costs in this docket is entirely consistent with the process agreed to in the Rate Case S&A. As such, the workload of this docket is narrow and manageable and there is no reason the parties would not be able to complete their review in the 60-day time period requested by Westar. Moreover, because KIC was a party to the general rate case, it is familiar with all of the facts and should have no trouble completing its review, if in fact KIC actually has clients interested in participating in the docket (none of which have yet been identified).

WHEREFORE, Westar respectfully requests that KIC's Petition to Intervene be denied unless within ten days of the Commission's Order, KIC amends its Petition for Intervention to

identify its members that are Westar customers and participating in this matter. Westar also requests that the Commission grant its request for expedited treatment and issue its order in this matter with 60 days of the Application and for such other and further relief as may be appropriate.

Respectfully submitted,

*/s/ Cathryn J. Dinges*

Cathryn J. Dinges (#20848)

Corporate Counsel

818 South Kansas Avenue

Topeka, Kansas 66612

Telephone: (785) 575-8344

Fax: (785) 575-8136

[Cathy.Dinges@westarenergy.com](mailto:Cathy.Dinges@westarenergy.com)

**Counsel 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 14<sup>th</sup> day of March, 2019, to the following counsel of record:

COLE BAILEY, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
[c.bailey@kcc.ks.gov](mailto:c.bailey@kcc.ks.gov)

MICHAEL DUENES, ASSISTANT GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
[m.duenes@kcc.ks.gov](mailto:m.duenes@kcc.ks.gov)

AMBER SMITH, CHIEF LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
[a.smith@kcc.ks.gov](mailto:a.smith@kcc.ks.gov)

*/s/ Cathryn J. Dinges*