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

MAY 09 2012

In the Matter of Westar Energy, Inc. and)
Kansas Gas and Electric Company Seeking)
Commission Approval to Implement)
Changes in Their Transmission Delivery)
Charges Rate Schedules)

Docket No. 12-WSEE-651-TAR

by
State Corporation Commission
of Kansas

RESPONSE OF WESTAR ENERGY, INC. AND
KANSAS GAS AND ELECTRIC COMPANY
TO PETITION FOR RECONSIDERATION

COME NOW Westar Energy, Inc. and Kansas Gas and Electric Company (collectively referred to as "Westar") and file this Response to the Petition for Reconsideration filed by Occidental Chemical Corporation (OXY) on April 30, 2012. In support of this Response, Westar states:

I. INTRODUCTION

1. On February 24, 2012, Westar filed with the Commission notice of its intent to update its transmission delivery charge (TDC) tariffs pursuant to K.S.A. 66-1237(c). Westar updated its TDC rates to reflect its current transmission-related costs. It was also necessary for Westar to allocate those transmission-related costs among its various customer classes. As was discussed in Westar's Response to OXY's April 6, 2012 Petition for Reconsideration, in order to mitigate impacts to certain customers, including OXY, Westar proposed to allocate the TDC costs using a method that differs from the method contemplated by the current TDC tariff and proposed a corresponding change to the tariff language.

2. On March 21, 2012, OXY filed a Protest and Motion to Dismiss. Also on March 21, 2012, the Commission issued its Suspension Order and Order Granting Temporary Waiver (March 21 Order) in which the Commission authorized Westar to recover its TDC costs on an

interim subject-to-refund basis using the allocation method proposed by Staff in its Motion for a Suspension Order and Order Granting Temporary Waiver.

3. On April 11, 2012, the Commission issued its Order Denying Occidental Chemical Corporation's Protest and Motion to Dismiss (April 11 Order).

4. On April 30, 2012, OXY filed its Petition for Reconsideration of the Commission's April 11 Order. In its Petition for Reconsideration, OXY renewed its request that the Commission dismiss Westar's application.

5. The Commission should reject OXY's Petition for Reconsideration.

II. WESTAR FOLLOWED THE STATUTORY PROCESS FOR RECOVERING ITS UPDATED TRANSMISSION-RELATED COSTS

6. OXY contends that Westar failed to follow the statutory process for amending its tariff and that the Commission's order approving interim rates was unlawful. However, OXY provides no support for its assertion that the Commission's action violates K.S.A. 66-1237 and K.S.A. 66-117. *See* OXY Petition, at ¶ 6.

7. OXY's assertion is, in fact, unsupported. Westar's recovery of transmission-related costs is pursuant to the provisions of K.S.A. 66-1237(c), not K.S.A. 66-117. Nevertheless, in its pleadings in this docket, OXY has attempted to confuse the issues by conflating Westar's request to recover its unquestioned transmission-related costs with Westar's separate proposal to modify the allocation of such costs in rate recovery. No party to this docket has questioned that Westar is incurring increased transmission-related costs to serve its KCC-jurisdictional customers or that such costs are accurately reflected in the filing in this docket.

8. As part of its effort to encourage the construction of new transmission facilities, the legislature intentionally made the process for recovery of transmission-related costs very simple. As K.S.A. 66-1237(c) provides:

All transmission-related costs incurred by an electric utility and resulting from any order of a regulatory authority having legal jurisdiction over transmission matters, including orders setting rates on a subject-to-refund basis, shall be conclusively presumed prudent for purposes of the transmission delivery charge and **an electric utility may change its transmission delivery charge whenever there is a change in transmission-related costs resulting from such an order. . . .** An electric utility shall submit a report to the commission at least 30 business days before changing the utility's transmission delivery charge. . . .

(Emphasis added). The Commission, within the limits of its statutory discretion, acted properly by approving recovery of the costs addressed by this filing in Westar's rates as required by K.S.A. 66-1237(c).

9. Pursuant to applicable law, Westar is entitled to begin recovering its updated transmission-related costs on 30 business days notice to the Commission regardless of how those costs are allocated. The fact that Westar proposed amendments to the tariff language related to allocation of costs at the same time that it gave the Commission notice of its intent to update the TDC is wholly irrelevant to Westar's statutory right to begin recovering its updated TDC costs with 30 business days notice.

III. BY MAKING THE RATE SUBJECT TO REFUND, THE COMMISSION PROVIDED PROTECTION FOR CUSTOMERS

10. Also with no support, OXY asserts that OXY and other customers "are irrevocably harmed" by the Commission's April 11 Order. OXY Petition, at ¶ 7. There is no basis in law or fact for OXY's assertion.

11. OXY asserts that the rates approved by the Commission are “illegal” because they “conflict with the approved TDC tariff.” *Id.* In making this assertion, OXY ignored the fact that the Commission waived application of the tariff – an action that no party, including OXY has challenged. The purpose of a waiver is to allow variance from a generally applicable rule in order to avoid harsh consequences that would flow from inflexible application of the rule. As the D.C. Court of Appeals has stated: “The agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.” *Wait Radio v. F.C.C.*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *citing Permian Area Rate Cases*, 390 U.S. 747 (1968). By waiving the application of the tariff, the Commission eliminated any conflict between the tariff and Staff’s proposal in the interest of mitigating impacts on customers.

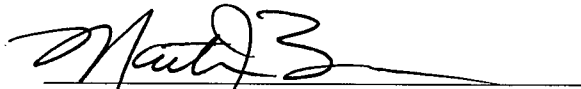
12. Moreover, it is clear that the Commission’s imposition of a refund obligation on Westar eliminates the possibility of “irrevocable harm.” The Kansas courts have stated that “where there is a full, complete, and adequate remedy at law through recovery of calculable money damages, the injury is not irreparable harm” *Persimmon Hill First Homes Ass’n v. Lonsdale*, 31 Kan. App. 2d 889, 894 (2003); *Wichita Wire v. Lenox*, 11 Kan. App. 2d 459, 465 (1986); *see also Atlantic Refining Co. v. PSC*, 360 U.S. 378, 388-89 (1959) (the Natural Gas Act provides “consumers a complete, permanent and effective bond of protection from excessive rates and charges” by guaranteeing that consumers “may recover refunds for moneys paid under excessive increases.”) Customers are completely protected by Westar’s refund obligation.

IV. CONCLUSION

13. OXY’s arguments are baseless and unsupported by the facts of this case or the applicable law. Other than vague, broad references to K.S.A. 66-1237 and 66-117, OXY provided no legal citations at all in its Petition for Reconsideration.

WHEREFORE, Westar requests that the Commission deny OXY's Petition for Reconsideration and for such other and further relief as may be appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin J. Bregman", is written over a horizontal line.

Martin J. Bregman, #12618

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ATTORNEYS FOR
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VERIFICATION

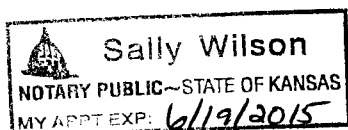
STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

Martin J. Bregman, being duly sworn upon his oath deposes and says that he is one of the attorneys for Westar Energy, Inc. and Kansas Gas and Electric Company; that he is familiar with the foregoing **Response to Petition for Reconsideration**; and that the statements therein are true and correct to the best of his knowledge and belief.

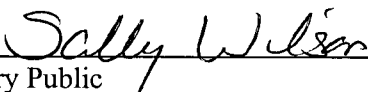


Martin J. Bregman

SUBSCRIBED AND SWORN to before me this 9th day of May, 2012.



My Appointment Expires:



Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 2012, the original and eight copies of the foregoing **Response to Petition for Reconsideration** were delivered to:

Patti Peterson-Klein
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Martin J. Bregman



MARTIN J. BREGMAN
Executive Director, Law

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State Corporation Commission
of Kansas

Patti Petersen-Klein
Executive Director
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604

Re: In the Matter of the Application of Westar Energy, Inc. and Kansas Gas and Electric Company seeking Commission Approval To Implement Changes in Their Transmission Delivery Charges Rate Schedules; Docket No. 12-WSEE-651-TAR

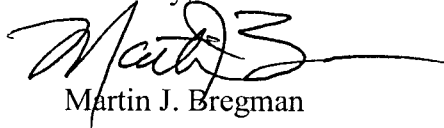
Dear Ms. Petersen-Klein:

Enclosed for filing please find the original and eight photocopies of the **Response to Petition for Reconsideration**.

Please file stamp one copy for my files.

Thank you for your assistance.

Sincerely,



Martin J. Bregman

cc: Service List