

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       )  
Electric Company for Approval to Make       ) Docket No. 18-WSEE-328-RTS  
Certain Changes in their Charges for Electric       )  
Services.    )

**RESPONSE TO SIERRA CLUB AND VOTE SOLAR'S**  
**PETITION FOR RECONSIDERATION**

The Kansas Industrial Consumers Group, Inc. ("KIC"), respectfully files this *Response to Sierra Club and Vote Solar's Petition for Reconsideration*. In support of its Response, KIC states to the State Corporation Commission of the State of Kansas ("Commission" or "KCC") as follows:

**I. Background**

1. On February 1, 2018, Westar Energy, Inc., and Kansas Gas and Electric Company (collectively referred to as "Westar") filed a Joint Application ("Application") requesting authorization to make certain changes to its charges for electric service in Kansas. Accompanying its Application, Westar filed the direct testimonies of eighteen (18) witnesses.

2. On June 11, 2018, KIC, Staff of the Commission ("Staff"), the Citizens' Utility Ratepayer Board ("CURB"), and several other parties filed the direct testimonies of twenty-nine (29) witnesses in response to Westar's Application.<sup>1</sup> On June 22, 2018, KIC, CURB, and several other parties filed the cross-answering testimonies of nine (9) witnesses to address issues raised in the direct testimonies of Staff and other intervening parties.

3. On July 3, 2018, Westar filed the rebuttal testimonies of seventeen (17) witnesses to address issues raised by Staff and the intervening parties.

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<sup>1</sup> Two of Staff's direct testimonies were filed subsequent to June 11, 2018. The Direct Testimony of Steve R. Dean on Behalf of KeyCorp and Midwest Power Company was not offered into evidence during the evidentiary hearing.

4. Beginning the week of July 9, the parties met to discuss potential settlement of disputed issues. Following several days of negotiations, a global settlement was achieved between many parties to this proceeding (the "Non-Unanimous Settlement" or "the Settlement"). The Non-Unanimous Settlement was filed with the Commission on July 17, 2018.

5. The following parties are signatories to the Non-Unanimous settlement and recommended its approval: Staff, Westar, CURB, KIC, Unified School District No. 259, The Kroger Co., U.S. Department of Defense and all other Federal Executive Agencies ("DOD-FEA"), HollyFrontier El Dorado Refining LLC, Wal-Mart Stores, Inc., and Tyson Foods, Inc. ("the Signatories"). The Topeka Metropolitan Transit Authority and the Kansas State Board of Regents were not signatories but indicated they would not oppose the Settlement.

6. In the Non-Unanimous Settlement, the Signatories recommended an overall decrease in Westar's base rate revenue requirement of \$66 million. The Settlement also addressed customer refunds related to federal income tax reform and the subsequent over-collection of corporate income tax expense in Westar's base rates. In addition, the Settlement proposed a prospective rate design intended to equitably collect Westar's revenue requirement from customers. On July 18, 2018, Westar, Staff, CURB, and KIC filed the testimonies of six (6) witnesses in support of the Non-Unanimous Settlement.

7. The parties opposing the Settlement were Sierra Club, Vote Solar, and the Climate + Energy Project ("CEP") (collectively referred to as "the non-signatory parties").<sup>2</sup> Sierra Club and Vote Solar filed the testimonies of two (2) witnesses in opposition to the Non-Unanimous Settlement. These parties generally oppose two aspects of the Settlement. First, they opposed the rate design proposed for Residential DG customers in the Non-Unanimous Settlement. The non-

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<sup>2</sup> Objection to the Non-Unanimous Stipulation and Agreement and the Joint Motion to Approve the Same, July 18, 2018.

signatories also raise concerns regarding the current and continuing costs associated with Westar's coal-fired generating units and whether such costs represent efficient and prudent spending.<sup>3</sup>

8. On September 27, 2018, the Commission issued its Order Approving Non-Uniform Stipulation and Agreement. In its Order, the Commission stated it had reviewed all pre-filed testimony submitted in this case. The Commission further noted the Settlement was the product of "extensive negotiation and compromise on the part of the signatory Parties, resulting in a different overall outcome than any initially proposed by the parties in this proceeding..."<sup>4</sup> However, the Commission also found the Non-Uniform Settlement "and its specific terms are supported by substantial, competent evidence in light of the entire record."<sup>5</sup>

9. On October 12, 2018, Sierra Club and Vote Solar (together, "Petitioners") jointly filed a Petition for Reconsideration of the Commission's Order ("PFR"). In particular, Petitioners claim the allocation of the revenue reduction set forth in the Settlement and the RS-DG tariff are not supported by substantial competent evidence, the RS-DG rate violates state and federal law, and the RS-DG rate is not in the public interest.<sup>6</sup>

## **II. KIC Response**

10. KIC solely responds to Petitioners' contention that the Settlement's allocation of the revenue decrease is not supported by substantial competent evidence. KIC will not offer commentary on the remaining issues, which it considers solely related to residential rate design. However, KIC fully supports the Settlement and considers its terms interdependent.

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<sup>3</sup> See Sierra Club, Vote Solar, and Climate and Energy Project's Contested Issues List, July 19, 2018.

<sup>4</sup> Order Approving Non-Uniform Stipulation and Agreement, September 27, 2018, ¶ 34. (Order on Settlement, ¶ 34.)

<sup>5</sup> Order on Settlement, ¶ 50.

<sup>6</sup> Sierra Club and Vote Solar's Petition for Reconsideration, October 12, 2018, ¶ 1.

11. KIC agrees every Commission decision must be supported by substantial competent evidence in the record as a whole. But rate design is a legislative function where the Commission is granted significant deference.<sup>7</sup>

12. The Kansas Supreme Court has held “[t]he touchstone of public utility law is the rule that one class of consumers shall not be burdened with the costs created by another class.”<sup>8</sup> However, the application of this rule has been somewhat relaxed by the Kansas Courts, which do not always require rates to strictly follow a Cost of Service Study (“COSS”).<sup>9</sup>

13. While the Commission is granted particular discretion to design rates and need not follow a specific COSS, the Commission's decision in this proceeding is fully supported by the official record. By approving the revenue allocation and rate design in this case, the Commission did not strictly follow one specific COSS. Instead, it approved a compromise of the Signatories, which they reached by referencing the various COSS results filed in the official record.

14. Both Westar and Staff created full COSSs to guide their rate designs. In addition, KIC and DOD-FEA each reviewed the Westar COSS and offered adjustments.<sup>10</sup> The results of the Westar and Staff studies are set forth in the official record and are summarized in a table at page 4 of Petitioners' PFR. These studies both show the “large power”<sup>11</sup> and Large General Service classes (industrial classes) providing excessive revenue – subsidizing other classes. Both COSSs also show Westar's Residential class is providing insufficient revenue. The studies reached divergent results on most other classes.

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<sup>7</sup> *Sw. Bell Tel. Co. v. State Corp. Comm'n*, 192 Kan. 39, 46, 386 P.2d 515, 523 (1963).

<sup>8</sup> *Jones v. Kansas Gas & Elec. Co.*, 222 Kan. 390, 401, 565 P.2d 597, 606 (1977).

<sup>9</sup> *Midwest Gas Users Ass'n v. State Corp. Comm'n*, 3 Kan. App. 2d 376, Syl. ¶ 5, 388-92, 595 P.2d 735 (1979). See also, *Midwest Gas Users Ass'n v. State Corp. Comm'n*, 5 Kan. App. 2d 653, 657-58, 623 P.2d 924, 928-29 (1981).

<sup>10</sup> Direct Testimony and Exhibits of Brian C. Andrews, June 11, 2018, p. 13; Cross-Answering and Exhibits of Brian C. Andrews, June 22, 2018, p. 15; Direct Testimony of Larry Blank, June 11, 2018, pp. 6-10.

<sup>11</sup> “Large power classes” generally refer to ILP, LTM, INT, and Special Contract customers.

15. In their cross-answering testimonies, both KIC and DOD-FEA relied on Staff's COSS to propose revenue allocations that would move the classes nearer to cost of service. As a result, KIC and DOD-FEA proposed the industrial classes receive relatively larger rate decreases than other classes, including the residential classes.<sup>12</sup> However, while both KIC and DOD-FEA proposed larger decreases for the industrial classes than the system average decrease, both recommendations exercised gradualism and stopped short of fully eliminating the interclass rate subsidies indicated by Staff's COSS.

16. The allocation of the \$66 million rate decrease in the settlement recognizes the industrial classes were providing Westar a significantly higher rate of return than other classes. However, in Appendix C of the Settlement, the signatories adopted an even more moderate approach than was advocated by either KIC or DOD-FEA.<sup>13</sup> The Settlement did allocate more of the rate decrease to the industrial classes.<sup>14</sup> But, according to Staff's COSS, the revenue allocation in the Settlement was only a very small step toward eliminating interclass rate subsidies.

17. Petitioners are apparently most concerned about the disparate rate decreases between the residential and residential-DG classes (Residential received a larger percent decrease than RS-DG). KIC takes no position on how the revenue decrease should be allocated between the residential classes, though it is difficult to assign a precise cost to the DG class when the COSS results diverge so widely on their assessment of that class. Further, Staff's Direct Testimony and testimony during the hearing underscores the difficulty of reliably identifying the cost of service

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<sup>12</sup> Cross-Answering Testimony of Michael P. Gorman, June 22, 2018, p. 4, Exhibit MPG-CA-1; Cross-Answering Testimony of Larry Blank, June 22, 2018, pp. 3-7.

<sup>13</sup> Compare Appendix C of the Settlement to the proposed revenue allocations of KIC and DOD-FEA: Cross-Answering Testimony of Michael P. Gorman, Exhibit MPG-CA-1; Cross-Answering Testimony of Larry Blank, p. 4.

<sup>14</sup> See Testimony in Support of Non-Unanimous Stipulation and Agreement of Robert H. Glass, PhD, July 18, 2018, p. 6, lines 9-14.

for a small and dynamic class such as RS-DG.<sup>15</sup> Ultimately, the Settlement arrived at a negotiated result within the range of the parties' pre-filed positions.

18. While rates need not be supported by a COSS to be approved by the KCC, the allocation adopted by the settlement does generally follow the studies filed in the case. In fact, the settlement was clearly the result of compromise among all parties, where no party fully achieved the position it had advocated in pre-filed testimony.

WHEREFORE, KIC respectfully requests the Commission deny Sierra Club and Vote Solar's Petition for Reconsideration and affirm the revenue allocation in the Non-Unanimous Stipulation and Agreement is supported by substantial competent evidence in the record as a whole.

Respectfully submitted,

/s/ **Andrew J. French**

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<sup>15</sup> Direct Testimony of Robert H. Glass, PhD, June 13, 2018, pp. 34-35; Evidentiary Hearing Transcript, Vol. 2, July 25, 2018, p. 287-88.


**VERIFICATION**

STATE OF KANSAS       )  
                                  )  
COUNTY OF JOHNSON   )   ss:

Andrew J. French, 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 *Response to Sierra Club and Vote Solar's Petition for Reconsideration*, and the statements therein are true to the best of his knowledge, information, and belief.

  
\_\_\_\_\_  
Andrew J. French

SUBSCRIBED AND SWORN to before me this 22<sup>nd</sup> day of October, 2018.

  
\_\_\_\_\_  
Nancy L. Carlson  
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 22<sup>nd</sup> day of October, 2018, to the parties below:

\* Denotes individual receiving only non-confidential items

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