

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

Before Commissioners: Thomas E. Wright, Chairman
Joseph F. Harkins
Ward Loyd

In the Matter of the Petition of Westar) Docket No. 11-WSEE-377-PRE
Energy, Inc. And Kansas Gas and Electric)
Company (collectively “Westar”) for)
Determination of the Ratemaking Principles)
and Treatment that Will Apply to the)
Recovery in Rates of the Cost to be Incurred)
by Westar for Certain Power Purchase)
Agreements under K.S.A. 2003 Supp. 66-)
1239)

**PREHEARING OFFICER’S REPORT & RECOMMENDATIONS; GRANT OF CURB’S
PETITION TO INTERVENE**

The above captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. On November 19, 2010, the Commission issued its Order Designating Prehearing Officer and Setting Scheduling Conference. The Commission designated Charles Reimer, Advisory Counsel, to act as Prehearing Officer in this proceeding. Having examined the files and records, and being duly advised in the premises, the Prehearing Officer makes the following findings and recommendations:

Background

1. On November 10, 2010, Westar Energy, Inc. (Westar North) and Kansas Gas and Electric Company (Westar South) (collectively, Westar), filed a petition (Petition) with the Commission for a predetermination, pursuant to K.S.A. 2009 Supp. 66-1239, of the ratemaking

principles and treatment that will apply to the recovery in rates of the costs to be incurred by Westar pursuant to certain power purchase agreements (PPAs) for the purchase of wind energy.

2. The Commission has jurisdiction in this matter pursuant to K.S.A. 2009 Supp. 66-1239, K.S.A. 66-101, and K.S.A. 66-104.

3. On November 16, 2010, the Citizens' Utility Ratepayer Board (CURB) filed a Petition for Intervention and Motion for Protective Order. On November 19, 2010, the Commission issued an Order Assessing Costs and an Order Designating Prehearing Officer and Setting Scheduling Conference. On December 3, 2010, the Commission issued a Suspension Order, a Protective Order, and a Discovery Order.

Prehearing Conference

4. As provided in the Commission's order of November 19, 2010, the Prehearing Conference was held November 30, 2010, at 1:30 p.m. Transcript of Prehearing Conference held November 30, 2010 (Tr.) The following appearances were made: Martin J. Bregman (present) and Cathryn J. Dinges for Westar; David Springe (present), Niki Christopher (present) and C. Steven Rarrick for CURB; and Dana Bradbury and Colleen Harrell, both present for Staff. Tr., 3-4.

5. Dick Rolfs and Mike Lennen were also present for Westar. Michael Wegner, KCC Staff, attended. Vicki Buening, the Commission's Director of Public Affairs and Consumer Protection (PACP) also attended. Tr., 3-4. Staff reported that notice was properly made in the Commission order issued November 19th, 2010 and recommended the Prehearing Officer had jurisdiction to hear the matter at the time and place. Tr., 4. Hearing no objection, the Prehearing Officer so found. Tr. 4.

CURB's Motions

6. In CURB's petition to intervene, CURB states it is statutorily authorized to represent the interests of Kansas residential and small commercial ratepayers and that its Consumer Counsel has been granted discretion, under K.S.A. 66-1223 et seq., to intervene and represent the interests of Kansas residential and small commercial ratepayers in any utility proceeding before the Commission. CURB requests permission to intervene to represent the interests of the residential and small commercial ratepayers of Kansas. CURB stated that the rates paid and the service received by those customers will or may be affected by any Commission order or activity in this proceeding, and that representation of CURB's interests in this proceeding by existing parties is or may be inadequate.

7. CURB requested that counsel for CURB David Springe, Niki Christopher, C. Steven Rarrick be served with all electronic notices, pleadings, and correspondence. CURB additionally made the same request for Shonda Smith, Office Manager, email sd.smith@curb.kansas.gov and Della Smith, Administrative Specialist, email d.smith@curb.kansas.gov.

8. CURB also noted that Westar had filed Exhibits GAG-1 and GAG-2 as confidential information. CURB requested that the Commission issue a Protective Order to allow CURB and its consultant access to the information.

9. The Commission has broad discretion to grant a petition for intervention if it is in the interest of justice, if it will not impair the orderly and prompt conduct of the proceeding, and if the party has stated facts demonstrating its legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding. K.S.A. 77-421(a)(3); K.A.R. 82-1-225. At any time during a proceeding, the Commission may impose limitations on an intervener's participation. K.S.A. 77-521(c).

10. There were no objections to CURB's motion to intervene, or the motion for a protective order. Tr. 4-5. The Prehearing Officer finds that CURB has met the requirements of K.A.R. 82-1-225 and should be granted intervention. Tr., 4-5. CURB will be added to the service list, and service of all pleadings, communications, and correspondence should be delivered to counsel of record, as follows: David Spring, Niki Christopher, and C. Steven Rarrick, Citizens' Utility Ratepayer Board, 1500 SW Arrowhead Rd, Topeka, KS, 66604. In addition, service of electronic pleadings, communications, and correspondence should be delivered to Shonda Smith, sd.smith@curb.kansas.gov, and Della Smith, d.smith@curb.kansas.gov.

11. The Prehearing Officer also found that CURB's motion for a protective order should be granted. As noted above, a Protective Order was issued by the Commission on December 3, 2010.

Electronic Service

12. During the Prehearing Conference, the Prehearing Officer inquired of the parties about the use of electronic service for testimony, briefs, and orders in this proceeding and the waiver by the parties of receipt of a hard copy follow-up as required by K.A.R. 82-1-216(a)(6). Tr., 5. The parties agreed to use of electronic service of testimony, briefs, and orders. The parties agreed that all testimony, briefs, and orders be served electronically without hard copy follow-up, with confidential papers served either electronically if confidentiality can be retained or by some other method such as providing information on a compact disc. The parties also agreed that service of other motions and pleadings may also be made electronically. The parties agreed electronic service would be made by 3:00 p.m. on the day indicated as a due date or deadline. Electronic courtesy copies would be provided to the Prehearing Officer. Tr., 5-6, 9.

13. Parties expressed some concerns regarding keeping of an official service list and issues that might arise with maintaining a list, particularly dockets that may be more controversial with more intervenors and intervenors seeking to join a docket late. Tr., 7-8. Staff suggested that if another party intervened in this docket, the order granting intervention might indicate that the party needed to provide email addresses for electronic service and email the parties to advise them that the new intervenor is on the email service list. Tr., 8.

14. The Prehearing Officer recommends the Commission approve electronic service in general for parties in this docket, to include briefs, testimony, orders, and motions, without requiring provision of a hard copy follow-up as required by K.A.R. 82-1-216(a)(6). The Prehearing Officer observes that this docket is on a compressed statutory time frame and electronic service will facilitate this proceeding. The Prehearing Officer also observes that parties have successfully used electronic service in several dockets. The Prehearing Officer recommends that any service via electronic mail specifically state that this electronic service constitutes service and that a hard copy will not follow. Parties must continue to file an original and at least seven paper copies with the Commission, as required by Commission regulations. K.A.R. 82-1-215(a). The Prehearing Officer recommends the parties be directed to include electronic service of briefs and testimony to the Prehearing Officer, at c.reimer@kcc.ks.gov.

15. The Prehearing Officer recommends the Commission provide that any entity filing a petition to intervene submit email addresses for electronic service with their petition to intervene. As a courtesy, the Prehearing Officer suggests any intervenors, using the email addresses they have provided for electronic service, also notify the other parties via email that they are on the email service list, as suggested by Staff. Tr., 8.

Public Hearings and Notice

16. The Prehearing Officer observes that the Commission has historically conducted public hearings in rate cases to provide the public directly affected by a utility's proposed changes an opportunity to obtain information and ask questions of the utility, Staff, and intervenors regarding the utility's application, and an opportunity to make or provide statements to the Commission regarding the utility's proposed changes. The Legislature has provided that the Commission hold public hearings when a utility seeks to construct an electric transmission line. K.S.A. 66-1,178. However, the legislature has not directed the Commission to hold public hearings in rate or other cases. Therefore whether, when, and the manner in which to hold a public hearing in this proceeding is a matter solely for the Commission's discretion. In recent dockets, the Commission has conducted public hearings in proceedings other than rate cases as well, to facilitate public knowledge and understanding about a utility's proposal and to facilitate the public's ability to provide comments to the Commission.

17. The Prehearing Officer notes that when deciding to hold such hearings and the manner in which to hold them, the Commission balances its judgment of the degree of public interest and concern about a particular docket with time and expense incurred in travel, facility rental, staff time, and costs for providing notice of the meeting to ratepayers and to the public in the utility's service territory. The costs for a public hearing are ultimately born by the ratepayers of the utility. Use of video-conferencing technology is an option that may be utilized by the Commission to permit the Commission to significantly expand the availability of and potential audience for a public hearing while enabling prudent management of expenses and Commissioner and Commission Staff time.

18. Prior to the Prehearing Conference, the Prehearing Officer sent an email to counsel of record, including CURB's counsel, advising that the Commission desired to hold a

public hearing in this docket and noting potential public hearing dates of February 1, 2, 3, and 8, 2011. Westar, CURB, and Staff all responded via email on November 29, 2010 indicating these dates were workable, except Staff desired to avoid February 2.

19. At the Prehearing Conference, the Prehearing Officer addressed the matter of public hearings in this docket. Vicki Buening, PACP Director, and Cara Sloan-Ramos, Director of Communications, provided their recommendation to the Prehearing Officer and the parties. They recommended a public hearing from 6:00 to 8:00 p.m. at the KCC Offices in Topeka, with a video link to the Finney State Office Building in Wichita. Tr., 10.

20. The Prehearing Officer and parties discussed the recommendation. CURB recommended the Commissioners add Salina as an additional video-conference venue. CURB also suggested the Commissioners should consider holding two public hearings instead of one, with the second hearing in Wichita. Tr., 13-14, 15. PACP Director Buening pointed out that she had attended meetings where video conferencing had been utilized and that the public had every opportunity to express their opinion to the Commission on the same basis as anyone who was sitting in the room with the Commissioners. She observed that there have been several very active question-and-answer sessions via video conferencing and the use of video-conferencing had not appeared to limit public participation or the public's ability to participate. Tr., 15. CURB, however, did not entirely agree that video-conferencing provides a similar degree of opportunity for public comment and participation. Tr., 15. PACP Director Buening also pointed out that the Wichita area is a high service area for Westar and utilizing video-conferencing technology would enable customers there to participate while avoiding issues with compressed time schedules as well as managing costs. Tr., 12.

21. CURB also suggested that instead of having the video-conference venue at the Commission's offices in Wichita, the Commission consider a different location which would be more easily accessible, particularly for ratepayers who may be older. Tr., 15. Staff expressed concerns about the cost of notice publication. Tr., 10-11; 14. Staff agreed that a second video-conference location in Salina might be considered by the Commission. Tr., 12, 14. Westar had no objection to the recommendation and also indicated Westar was not opposed to an additional video location in Salina or a change of venue in Wichita. Tr., 16.

22. The PACP Director and Director of Communications have provided the Prehearing Officer with a revised recommendation based on the comments made at the Prehearing Conference. This recommendation, Dated December 2, 2010, is attached. The PACP Director advised that PACP recommended changing the Wichita video-conference site from the Commission's downtown office location to a more accessible site, as suggested by CURB, at the WSU Hughes Complex. The PACP Director advised the Prehearing Officer that an attempt was made to find an appropriate Salina video site but PACP was not able to resolve some technical difficulties for this particular event. PACP continues to recommend that one public hearing be held.

23. As recommended, the Prehearing Officer suggests that a public hearing be conducted on Tuesday, February 1, 2011, at the Commission's offices in Topeka, Kansas, with video-conferencing technology utilized to link to a satellite location at the WSU Eugene M. Hughes Metropolitan Complex, Sudermann Commons, Room 132, 5015 E. 29th North, Entrance "C", Wichita, Kansas 67220. The Prehearing Officer notes that decisions about public hearings are based on the circumstances of each case. The Prehearing Officer observes, as observed by the PACP Director at the Prehearing Conference, that the Commission has successfully used

video-conferencing technology for public hearings in other dockets. The Prehearing Officer also notes that the degree of public interest and concern for this docket does not appear to be such that more than one hearing would necessarily be helpful or necessary to provide opportunity for the public to comment at this time. Also, the parties have not indicated they believe this docket will be particularly controversial. In addition, this docket has also not received significant coverage in the press. For this docket, the Prehearing Officer recommends the arrangement recommended by PACP, as it will provide accessibility to Westar customers to provide comments to the Commission through appropriate utilization of video-conferencing technology as has been determined to be feasible, prudently manage expenses and Commissioner and Commission Staff time while facilitating public participation in light of the degree of public concern, interest and participation this docket may generate, and avoid weather related travel or scheduling issues due to the season.

24. The Prehearing Officer has consulted with the PACP Director and Director of Communications with regard to issuance of notice and publication of notice for the public hearings. They have recommended that notice be provided to Westar customers via a bill insert with the monthly billing statement for each customer in Westar's service territory, and that notice be provided the general public via publication in newspapers. The Prehearing Officer notes that this is the standard method of notice provision utilized by the Commission for most public hearings. The Prehearing Officer also observes that K.A.R. 82-1-231(g) specifically provides for publication notice.

25. At the public hearing, the parties discussed the provision of notice to Westar customers and the public. Westar advised that it would require a notice in final form by December 10 in order to provide a bill insert to its customers with timely notification of the

public hearing. Tr., 9-10. The parties agreed that the Commission's Director of Communications and the Director of Public Affairs and Consumer Protection, in consultation with Westar, would provide a proposed bill insert to the Prehearing Officer and the parties by 3:00 p.m., via electronic mail, on Monday, December 6, 2010. The parties agreed they would submit any comments via electronic mail by Wednesday, December 8, 2010, at 3:00 p.m. to provide the Prehearing Officer with input, if any, regarding the proposed bill insert. The Prehearing Officer would rule on any dispute regarding the bill insert and provide a final notice for use by Westar by December 10. Tr., 10-11.

26. The parties also discussed newspaper publication for notice to the public in Westar's service territory. The Prehearing Officer recommends that Westar provide information to the public about this proceeding by publishing notice in larger newspapers throughout its territory. See K.A.R. 82-1-231(g). The Prehearing Officer recommends that Westar propose a list of newspapers for publishing such notice, and work with the Director of Communications and Director Of Public Affairs and Consumer Protection to determine the timing of publication and the newspapers in which notice will be published. Such notice shall comply with applicable Commission regulations, including K.A.R. 82-1-231(g). The Prehearing Officer recommends that notice be published once a week for two consecutive weeks, with the final notice at least one week before the public hearing is held. The Prehearing Officer also recommends that the Director of Communications and the Director of Public Affairs and Consumer Protection explore other avenues to notify the public in addition to publication notice in newspapers.

Public Comment Period

27. The Prehearing Officer recommends that the Commission encourage the public to submit public comments about this docket via electronic mail and in writing, and that the bill

insert provide Westar customers with information indicating that the Commission is accepting comments regarding Westar's Petition. The Prehearing Officer also recommends that the Commission's website and Westar's website provide information regarding this proceeding and explain how the public can submit comments. At the Prehearing Conference, the Prehearing Officer noted that initial and final reports on public comments sent to the Commission are generally made about a week prior to the public hearing and the evidentiary hearing, respectively. There was no objection to this procedure. Tr., 17.

28. The Prehearing Officer recommends that the public comment period begin immediately and end on March 18, 2011, at 5:00 p.m. The Prehearing Officer recommends that the PACP Office submit two reports summarizing public comments received. The initial report should be submitted on January 25, 2011, by 5:00 p.m. The final report should be submitted on March 21, 2011, by 5:00 p.m.

Procedural Schedule

29. At the prehearing conference, the parties discussed a procedural schedule off the record and subsequently proposed the following schedule for the Commission's consideration (Tr., 17-20). The Prehearing Officer has added suggested locations for the prehearing conference and evidentiary hearing and an evidentiary hearing start time of 10:00 a.m.:

30.

ACTION	DATE	TIME & Place if applicable
Staff & Intervenor Direct Testimony due	February 17, 2011	3:00 p.m.
Staff & Intervenor Cross- Answering Testimony due	March 3, 2011	3:00 p.m.

Westar Rebuttal Testimony due	March 17, 2011	3:00 p.m.
Settlement Conference	March 21, 2011 (or as arranged by parties)	As arranged by parties
Prehearing Motion Cutoff	March 23, 2011	3:00 p.m.
List of Disputed Issues due	March 24, 2011	3:00 p.m.
Prehearing Conference	March 25, 2011	1:30 p.m., Third Flr Hrg Rm, Commission's Offices, Topeka
Evidentiary Hearing (Commission presiding)	March 30-31, 2011	10:00 a.m., First Flr Hrg Rm, Commission's Offices, Topeka
Initial Briefs due from Westar, Staff, & Intervenors (to include proposed Findings of Fact and Conclusions of Law)	April 13, 2011	3:00 p.m.
Responsive Brief due from Westar, Staff, & Intervenors	April 20, 2011	3:00 p.m.
Order due	May 9, 2011	5:00 p.m.

31. The Prehearing Officer recommends that the Commission adopt the procedural schedule set forth above.

32. The Prehearing Officer recommends that the Commission schedule a Prehearing Conference, with the Prehearing Officer presiding, to address any pending matters and to establish procedures to be used during the Evidentiary Hearing, on March 25, 2011, beginning at 1:30 p.m., in the Commission's Third Floor Hearing Room, 1500 SW Arrowhead Road, Topeka, KS 66604-4027.

33. The Prehearing Officer further recommends that an Evidentiary Hearing, with the Commission presiding, be scheduled for March 30 through March 31, 2011, beginning at 10:00 a.m., in the Commission's First Floor Hearing Room, 1500 SW Arrowhead Road, Topeka, KS 66604-4027.

Opportunity to Object and Comment

34. Parties are given an opportunity to respond to matters set forth in this Report and Recommendations of Prehearing Officer. If parties wish to object to or comment on matters set forth in this Report and Recommendation, these responses must be filed by Monday, December 13, 2010, at 3:00 p.m. As agreed by the parties at the Prehearing Conference, any comments pertaining to the public hearing and notice and publication should be made by Wednesday, December 8, 2010, 3:00 p.m.

35. The Prehearing Officer directs that a copy of this Prehearing Officer's Report and Recommendations be served electronically on all parties involved in this proceeding through email addresses listed for this docket.

WHEREFORE, the Prehearing Officer makes the following findings and recommendations:

A. CURB's Petition to Intervene is granted, as discussed above at paragraphs 6 through 11. CURB's motion for a Protective Order is also granted; a Protective Order as well as a Discovery Order has been issued in this docket on December 3, 2010.

B. The Prehearing Officer recommends the Commission approve the use of electronic service for serving all testimony, briefs, orders, and motions in this proceeding, as agreed by the parties, without requiring provision of hard copy follow-up, as set forth in paragraphs 14 and 15, above.

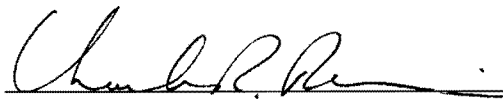
C. The Prehearing Officer recommends the Commission adopt the revised recommendation of the PACP Director and Director of Communications (attached hereto as Attachment I) regarding a public hearing in this docket, as further set forth in paragraphs 22 and 23, above. The Prehearing Officer recommends the Commission adopt the procedural schedule proposed by the parties, including a prehearing conference and evidentiary hearing, as set forth in paragraph 30 through 33, above.

D. The Prehearing Officer recommends that notice of the public hearing be provided by Westar to Westar customers via a bill insert and to the public in Westar's service territory via notice in larger newspapers throughout its service territory as discussed in paragraphs 24 through 26, above. Westar and the PACP Director and Director of Communications should work together to develop the notices and publication. As agreed by the parties, and to meet bill insert deadlines, Westar, in consultation with the PACP Director and the Director of Communications, should provide a draft notice to the parties and Prehearing Officer via email by Monday, December 6, 2010 at 3:00 p.m. The parties shall have until Wednesday, December 8, at 3:00 p.m. to provide comments via email. In the event of any disputes that are not resolved informally, the Prehearing Officer shall rule by close of business on Friday, December 10.

E. The Prehearing Officer recommends the public comment period begin and end, with reports by the PACP Office, as discussed in paragraph 27, above.

F. The Prehearing Officer directs service of this Report and Recommendations of Prehearing Officer on the parties using electronic service through email addresses listed for this docket, as provided for in K.A.R. 82-1-216(a)(6), without hard copy follow-up as agreed to by the parties at the Prehearing Conference. The email notice to parties should state that no hard copy will follow. Parties are provided an opportunity to respond to matters set forth in this Report. As noted in paragraph D, above, by agreement of the parties, any comments on matters pertaining to the public hearing and to notice and publication should be made by Wednesday, December 8, 2010, due to the pending deadline for notice of the public hearing via bill inserts. Other objections or comments, if any, must be filed by Monday, December 13, 2010, at 3:00 p.m.

Dated: 12-6-2010



Charles Reimer
Prehearing Officer

crr

ATTACHMENT I



Mark Parkinson, Governor
Thomas E. Wright, Chairman
Joseph F. Harkins, Commissioner

MEMORANDUM

To: Charles Reimer, Advisory Counsel

From: Vicki Buening, Director of Public Affairs and Consumer Protection
Cara Sloan-Ramos, Director of Communications

Date: December 2, 2010

Re: Revised Proposal for Locations of Public Hearings
Docket No. 11-WSEE-377-PRE

On Nov. 10, 2010, Westar Energy, Inc. and Kansas Gas and Electric Company filed for determination of the ratemaking principles and treatment that will apply to the recover of rates of the costs to be incurred by Westar for certain power purchase agreements.

Because Westar provides electric service at retail throughout the state of Kansas to approximately 687,000 customers, the Commissioners have indicated that they would like to hold one public hearing in Topeka with a video-conference to Wichita to allow the public to participate in this docket.

As a result of the pre-hearing conference held on November 30 and the feedback from CURB regarding our proposed sites we are agreeable to changing the Wichita conference site from our downtown office location to the more accessible site at the WSU Hughes Complex. We did attempt to find an appropriate Salina video site but were not able to resolve some technical difficulties for this particular event.

We submit this revised recommendation for the public hearing on Tuesday, February 1, 6-8 pm with the Commissioners on site at our Topeka office.

Primary site
Kansas Corporation Commission
1500 SW Arrowhead Rd.
Topeka, KS 66604

Video-Conference to:
WSU Eugene M. Hughes Metropolitan Complex
Sudermann Commons, Room 132
5015 E. 29th North (Entrance "C")
Wichita, KS 67220

CERTIFICATE OF SERVICE

11-WSEE-377-PRE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Prehearing Officer's Report and Recommendations, was served by electronic mail this 6th day of December, 2010, to the following parties/who have waived receipt of follow-up hard copies:

Grant of CURB's Petition to Intervene *CR*

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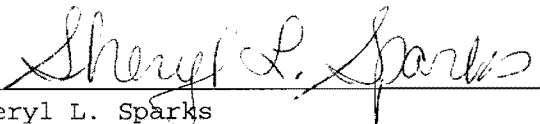
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