

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

with Westar that “the policy issues addressed in the 16-403 Docket must not be re-litigated in this proceeding,”³ but found that “Vote Solar’s stated intention of providing evidence and argument on the results of Westar’s proposed rate design for DG customers will not necessarily amount to re-litigation of the DG policy matters determined in the 16-403 Docket.”⁴

6. On June 18, 2018, Westar filed a “Motion to Strike . . . portions of testimony filed on behalf of Sierra Club and Vote Solar.” (Motion).⁵ Westar’s Motion quoted various portions of the *Final Order* in the 16-403 Docket⁶ for the ostensible purpose of arguing that Sierra Club and Vote Solar are attempting to re-litigate the 16-403 Docket.⁷ Westar argued that “page 33, line 1 through page 38, line 5 and . . . page 38, lines 18 through 20” of Madeline Yozwiak’s direct testimony constitute “a collateral attack on the Commission Final Order in the 16-403 Docket and should be stricken as an attempt to relitigate those issues in direct contravention of the Consolidation Order.”⁸

7. On June 26, 2018, Sierra Club and Vote Solar responded in opposition to Westar’s Motion, arguing that Westar improperly appealed to the 16-403 Docket as a basis for requesting that portions of Sierra Club’s and Vote Solar’s testimony should be stricken.⁹ Sierra Club and Vote Solar argued that “the portion of the testimony that Westar seeks to strike” is responsive and relevant to Westar’s testimony on Residential Distributed Generation (RS-DG).¹⁰ Sierra Club and Vote Solar acknowledged the Commission’s finding

³ *Id.* at ¶ 13.

⁴ *Id.*

⁵ Motion, p. 1.

⁶ Motion, ¶ 6.

⁷ Motion, ¶ 7.

⁸ Motion, ¶ 8.

⁹ Sierra Club and Vote Solar’s Response in Opposition to Westar’s Motion to Strike, ¶ 16 (June 26, 2018) (Response).

¹⁰ Response, ¶¶ 6-11.

in the 16-403 Docket that “the current two-part residential rate design is problematic and a cost-based three-part rate to improve cost recovery is an appropriate rate design option, among others, for residential DG customers.”¹¹ Sierra Club and Vote Solar noted the Commission’s further finding that the appropriateness of a three-part rate design for DG customers does not serve as a predetermination that such a rate design will result in just and reasonable rates.¹² Sierra Club and Vote Solar argued that DG customers have the same right as any other customer class to receive Westar’s service at just, reasonable, non-discriminatory and non-preferential rates.¹³ Sierra Club and Vote Solar also argued that DG customers “have a right not to be charged higher rates or charges for [Westar’s] service, or otherwise be prejudiced or disadvantaged, based on their use of renewable energy sources.”¹⁴

Findings and Conclusions

8. K.A.R. 82-1-204(f)(8) states that the “[f]ormal record” or “record” shall include the following, when filed with the commission . . . (8) all prefiled testimony or proposed exhibits offered but not received in evidence.” K.A.R. 82-1-230(a) gives the Prehearing Officer discretion to admit evidence into the record.

9. Regarding Westar’s request that “the direct testimony of Madeline Yozwiak, from page 33, line 1 through page 38, line 5 and . . . page 38, lines 18 through 20” be stricken from the record,¹⁵ the Commission finds that pursuant to K.A.R. 82-1-204(f)(8), everything in Ms. Yozwiak’s direct testimony is already part of the “formal record” or “record.” Therefore, based on the Commission’s discretion under K.A.R. 82-1-230(a), the

¹¹ Response, ¶ 13.

¹² Response, ¶ 14.

¹³ Response, ¶ 15.

¹⁴ Response, ¶ 15.

¹⁵ Motion, p. 4.

Commission will not formally strike any portion of Ms. Yozwiak's direct testimony from the record.

10. However, the Commission has discretion to weigh Sierra Club's and Vote Solar's proffered evidence.¹⁶ Pursuant to its *Order Consolidating Vote Solar and Sierra Club Interventions*, the Commission will give no weight to testimony it finds to be an attempt to re-litigate the policy issues addressed in the 16-403 Docket. Thus, any testimony arguing or implying that "[a] cost of service based three-part rate consisting of a customer charge, demand charge, and energy charge" is *per se* or by its very nature unjust, unreasonable, prejudicial, disadvantageous, unduly discriminatory or unduly preferential will be given no weight.¹⁷ However, the Commission will give due weight to any testimony addressing the questions of whether Westar's proposed rate design for DG customers *in this docket* will result in just and reasonable rates for such customers¹⁸ or will subject such customers to higher rates or charges or any other prejudice or disadvantage.¹⁹

THEREFORE, THE COMMISSION ORDERS:

A. Westar's Motion to Strike portions of testimony filed on behalf of Sierra Club and Vote Solar is denied.

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).²⁰

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

¹⁶ *Sw. Kansas Royalty Owners Ass'n v. State Corp. Comm'n*, 244 Kan. 157, 166 (1989); *Colorado Interstate Gas Co. v. State Corp. Comm'n*, 192 Kan. 1, 18 (1963).

¹⁷ *See* 16-403 Docket, *Final Order*, ¶ 23 (Sept. 21, 2017).

¹⁸ *See id.* at ¶ 24.

¹⁹ *See* K.S.A. 66-117d.

²⁰ K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: _____

A handwritten signature in cursive script, reading "Lynn M. Retz", positioned above a horizontal line.

Lynn M. Retz
Secretary to the Commission

MJD

CERTIFICATE OF SERVICE

18-WSEE-328-RTS

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 07/10/2018.

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