

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Received on

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IN THE MATTER OF THE APPLICATION OF)
KANSAS GAS AND ELECTRIC)
COMPANY FOR APPROVAL OF THE)
ENERGY SUPPLY AGREEMENT BETWEEN)
KANSAS GAS AND ELECTRIC)
COMPANY AND FRONTIER EL DORADO)
REFINING LLC)
COMMERCIAL OR INDUSTRIAL)
CUSTOMERS)
_____)

by
State Corporation Commission
of Kansas
DOCKET NO. 12-KG&E-718-CON

**RESPONSE TO FRONTIER'S FILING IN SUPPORT OF WESTAR'S REPLY TO
OXY'S PETITION TO INTERVENE AND FOR HEARING**

COMES NOW, Occidental Chemical Corporation ("OXY") and respectfully files this Response to the Filing in Support of Westar's Reply to OXY's Petition to Intervene and Hearing filed by Frontier El Dorado Refining ("Frontier") on April 23, 2012. OXY requests that the Corporation Commission of the State of Kansas ("KCC" or "Commission") grant its Petition to Intervene and Request for Hearing for the reasons set forth below:

1. On March 28, 2012, Kansas Gas and Electric Company ("KGE"), d/b/a Westar Energy, Inc. ("Westar") (Westar and KGE, collectively "Westar") filed an Application ("Application") for an order approving the Energy Supply Agreement ("Agreement") between KGE and Frontier.

2. On April 6, 2012, OXY filed a Petition to Intervene and a Request for Hearing ("Petition"). OXY stated in its Petition that (1) Westar did not file any testimony supporting its application; (2) Westar's Application and the attached Agreement lack clarity on numerous points that are material to whether the Agreement would be in the

public interest; and (3) certain terms of the Agreement raise serious questions regarding the claimed benefits of the Agreement. As a customer of Westar that will be affected by the cost of the discount being proposed and the potential reliability implications raised by Westar's Application, OXY has established its right to intervene¹ and to be heard in this proceeding.

3. On April 19, 2012, Westar filed a Reply to Petition to Intervene and for Hearing ("Reply"), which opposed OXY's request for hearing. OXY filed a Response to Westar's Reply on April 30, 2012.

4. On April 23, 2012, Frontier made a Filing in Support of Westar's Reply to OXY's Petition to Intervene and for Hearing ("Filing"). OXY incorporates by reference its Response to Westar's Reply and makes the following additional response.

5. Frontier's Filing and accompanying affidavit contain conclusory and unsubstantiated statements that do not support approval of the Agreement. For example, Frontier asserts that "Westar has the right to request [Frontier] to start its cogeneration facility for economic reasons."² However, there is no provision in the agreement that obligates Frontier to operate its cogeneration facility "for economic reasons" at Westar's request.³ In fact, the only statement that mentions economic operation of the cogeneration facility explicitly reserves that decision to Frontier.⁴ These statements, when compared with the language in the Agreement, continue to

¹ Notably, Frontier did not oppose OXY's request to intervene.

² Filing at 13.

³ See generally Agreement.

⁴ See Agreement at Section 4.4C, which provides that "*Customer* may, at its sole discretion, start its Cogeneration Plant at such operating level as *Customer* deems economically necessary" (emphases added). To the extent that Frontier is attempting to reference the Load Buy-Down provision of the Agreement (Article 6), that section of the Agreement creates no obligation whatsoever for Frontier to start its co-generation facility. Notably, Section 6.1 provides that Frontier can even ignore a Load Buy-Down offer and the "Offer shall be deemed rejected." Under the terms of the Agreement, there is simply no obligation on Frontier to start its cogeneration facility for economic reasons.

support OXY's request for hearing, which will allow the Commission to evaluate whether the Agreement would lead to rates that are "unjust or unreasonably discriminatory or unduly preferential."⁵

6. Frontier provides no evidence that the discounts it has received at the expense of Westar's other customers have led to any plant expansions or jobs in Kansas. In fact, Frontier is exceedingly careful not to make this claim. Frontier states that electricity costs are important to its operation and that it has deployed capital that has led to expanded operations and new products.⁶ Frontier then touts its ultra-low sulfur diesel and low sulfur gasoline products, implying that they were the result of these discounted electricity rates. *At no point, however, does Frontier actually say that the lower rates resulted in these impacts.* Because the use of ultra-low sulfur diesel and low sulfur gasoline products were mandated by the federal government beginning in 2006,⁷ it is highly doubtful that Frontier can make any causal connection. At a minimum, OXY is entitled to question these unsubstantiated claims through discovery and the presentation of evidence at a hearing.

7. Frontier further claims that the discounted rate offered by Westar has allowed it to "continue to effectively manage its cost of electricity" and that this, in turn, "will have a positive impact on the financial performance of the refinery."⁸ These statements provide no support whatsoever for the level of the discount or the particular terms of the Agreement at issue in this case. It is axiomatic that a discount on electricity rates will assist any customer in managing "its cost of electricity" and that this will have "a positive impact on the financial performance" of any facility. Such

⁵ See K.S.A. 66-101b.

⁶ See Filing at ¶15; see also Goodmanson Affidavit at ¶9.

⁷ See 40 C.F.R. Part 80, Subpart I.

⁸ Filing at ¶15 see also Goodmanson Affidavit at ¶12.

statements are merely truisms that would be the case whether the discount were unreasonable, unlawful, or both. It is also axiomatic that the higher rates that other customers will be required to pay as a result of the Agreement will have the exact opposite effect on them—making it more difficult for them to manage their electricity costs and having a negative impact on the financial performance of their facilities. Again, the Commission should grant OXY's request for hearing so that the factual issues regarding the actual impact of the discounted rate on Westar's other customers can be properly examined.

8. In summary, Frontier's Filing supports OXY's position that issues of material fact exist that should be explored through a hearing. OXY's request for a hearing should be granted.

WHEREFORE, OXY respectfully requests that the Commission grant OXY's Petition to Intervene and Request for Hearing and grant such other relief as is just and proper.

Respectfully submitted;



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was sent via U.S. First Class mail on this 3rd day of May, 2012, to:

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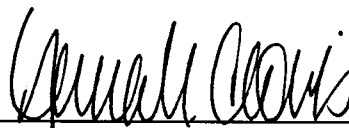
In addition, on May 3, 2012, a copy of the foregoing document was sent via email to:

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