

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

In the Matter of the Application of Kansas City)
Power & Light Company For Approval of Its)
Demand-Side Management Portfolio Pursuant) Docket No. 16-KCPE-446-TAR
to the Kansas Energy Efficiency Investment)
Act (“KEEIA”), K.S.A. 66-1283.)

**STAFF’S RESPONSE TO WESTAR ENERGY INC.’S
PETITION TO INTERVENE OUT OF TIME**

The Staff of the State Corporation Commission of the State of Kansas (“Staff,” and “Commission,” respectively), files its Response to Westar Energy, Inc. and Kansas Gas and Electric Company’s (Westar’s) Petition to Intervene in this proceeding. In support of its Response, Staff states as follows:

I. BACKGROUND

1. On April 19, 2016, Westar filed its Petition to Intervene in the instant proceeding.¹

2. Westar states it is a duly incorporated, vertically integrated, electric public utility operating within the State of Kansas and holds certificates of convenience and authority necessary to engage in such utility business practices.²

3. In Westar’s Petition to Intervene, Westar notes that, “[Kansas City Power & Light Company’s] [(KCP&L’s)] Application will be the first instance where the Commission will consider energy efficiency programs and cost recovery under the [Kansas Energy Efficiency Investment Act] (KEEIA) and will consider the effect of KEEIA on its previous orders regarding requirements for energy efficiency programs.”³

¹ Petition of Westar Energy, Inc. and Kansas Gas and Electric Company to Intervene (Apr. 19, 2016) (Petition to Intervene).

² See *id.* at p. 1.

³ *Id.* at p. 2.

4. Westar states it has several energy efficiency programs in place, and the “Commission’s interpretation and application of KEEIA and its findings on how KEEIA interacts with prior Commission orders will have a direct impact on Westar’s interests and ability to propose energy efficiency programs to benefit its customers in the future.”⁴

II. STAFF’S RESPONSE

5. Staff agrees with Westar that KCP&L’s KEEIA Application represents the first instance where the Commission will review energy efficiency programs and cost recovery methods under KEEIA’s untested regulatory framework. Staff certainly appreciates Westar’s desire to glean from this proceeding insight that may affect future proposals from Westar. However, Staff wishes to memorialize its anxiety regarding Westar’s premise for intervention.

6. The fact that *KCP&L* is the first to bring an application under KEEIA does not institute or grant *Westar* a legal right, duty, privilege, immunity, or any other legal interest that may be substantially affected by this proceeding. As such, Staff remains cautious of the import that an intervenor may somehow be gifted a legal right based on the idea that a different entity was the first to do something.

7. The Commission in this proceeding is *not* conducting a general, policy-setting, investigation concerning energy efficiency programs. The Commission has previously conducted multiple general investigations into energy efficiency programs, wherein the Commission outlined review standards, allocation methodologies, and established numerous other policy positions.⁵

⁴ *See id.*

⁵ *See e.g.* Final Order, Docket No. 07-GIMX-247-GIV (Oct. 10, 2007); Final Order, Docket No. 08-GIMX-441-GIV (Nov. 14, 2008); Order Setting Energy Efficiency Policy Goals, Docket No. 08-GIMX-442-GIV (Jun. 2, 2008); Order Following Collaborative, Docket No. 08-GIMX-442-GIV (Apr. 4, 2008).

8. The Kansas Legislature codified aspects of Kansas' energy efficiency policy when it passed KEEIA.⁶ It is true that this proceeding will be the first instance where the Commission will have to square its previously articulated policy positions with KEEIA. However, this does not directly affect Westar's interests or ability to propose energy efficiency programs in the future. Westar is free to bring such proposals today under KEEIA, irrespective of the Commission's decision in this proceeding. The Commission's final order in this proceeding will directly affect *KCP&L's* Application, not *Westar's* right to bring a KEEIA Application. Broad assertions that this proceeding "will have a direct impact on Westar's interests and ability to propose energy efficiency programs"⁷ simply do not contain the level of detail necessary to mandate intervention in this proceeding.⁸ As such, Westar has not demonstrated it must be granted mandatory intervention in this proceeding.

9. Staff recognizes it would be unwise for Westar to disregard the Commission's holdings related to *KCP&L's* KEEIA Application, or the interaction between KEEIA and the Commission's previous energy efficiency orders. Nevertheless, this is true for any major proceeding before the Commission. If a public utility requests an item the Commission deems unnecessary or unsupported by evidence (for example, an arbitrarily high return on investment or

⁶ For example, "It is the goal of the state to promote the implementation of cost-effective demand-side programs in Kansas. It shall be the policy of the state to value demand-side program investments equal to traditional investments in supply and delivery infrastructure as much as is practicable, but public utilities shall not be required to offer, implement or continue demand-side programs." K.S.A. 66-1283(b).

⁷ Petition to Intervene, p. 2.

⁸ See Docket No. 13-MKEE-447-MIS, Order on Jurisdiction and Standing, ¶ 9 (April 26, 2013) ("Intervention in Commission proceedings is not automatic. In the future, the Commission will require petitions to include a more detailed demonstration of their interests and an explanation of why those interests are not properly represented by other parties. In keeping with the requirements of K.S.A. 77-521, prospective intervenors should provide docket-specific facts demonstrating their rights, duties, privileges, immunities, or other legal interests affected by the proceeding and the relief they seek from the Commission. The Commission notes in proceedings with multiple parties asserting an attenuated or speculative nexus about the possible impact of a Commission decision on their interests can impair the orderly and prompt conduct of the proceedings and may not add materially to the record upon which the Commission must base its decisions.").

the absence of a required benefit-cost test), any other application requesting something similar does so at its own peril unless a distinct justification or contrast is demonstrated.

10. The Kansas Administrative Procedure Act and the Commission's own regulations allow for the permissive granting of intervention to a proceeding, or limiting an intervenor's participation in a proceeding.⁹ However, Westar's overly broad assertions that this proceeding may impact its future energy efficiency filings does not buttress Westar's request to: participate in this proceeding's proposed weekly technical conferences, review discovery responses or participate in an evidentiary hearing.¹⁰

11. K.S.A. 77-521 makes clear the responsibility of proving intervention is merited lies with the party seeking intervention. Beyond that, the granting of permissive intervention requires a determination that such intervention is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.¹¹ Westar's rationale for intervening in this proceeding does not detail how Westar's participation will promote the interests of justice (i.e. aid the Commission's review of KCP&L's KEEIA Application).

12. Staff believes Westar's request for limited intervention (in the event the Commission does not grant Westar unlimited intervention in this docket)¹² provides no benefit to this proceeding. Westar describes these limitations as such that would allow Westar to participate in proposed weekly technical conferences, review discovery requests, and participate in any evidentiary hearings this docket may require.¹³ However, Westar "would not submit written testimony or issue discovery requests."¹⁴ Essentially, Westar's intervention request

⁹ See K.S.A. 77-521(b), (c); See also K.A.R. 82-1-225(b), (c).

¹⁰ See Petition to Intervene, p. 3.

¹¹ See K.S.A. 77-521(c), See also K.A.R. 82-1-225(c).

¹² See Petition to Intervene, p. 3.

¹³ See *id.*

¹⁴ *Id.*

seeks to obtain all (or substantially all) data relevant to KCP&L's KEEIA Application without the obligation to submit its own thoughts on the matter (i.e. written testimony). The fact that Westar states it will not issue discovery requests offers nothing of substance to support limited intervention. KCP&L has offered to hold weekly technical conferences in this docket to "improve the overall understanding of [KCP&L's] filing and to assist with the expedited procedural schedule."¹⁵ Presumably, Westar could pose any discovery-related question during these weekly technical conferences. The offer to forgo one avenue of discovery in place of another does not fortify Westar's request for limited intervention in this proceeding.

13. Westar's only stated reason for participating in this proceeding is how the Commission's analysis of KEEIA and its findings on how KEEIA interacts with prior Commission orders will affect Westar's ability to bring energy efficiency proposals in the future.¹⁶ Staff asserts that such basis for intervention should also come with the limitation that Westar not be permitted to review discovery amongst the parties, participate in technical conferences, or participate in settlement discussions or evidentiary hearings.

14. This docket will not set statewide policy as to how the Commission's previously issued energy efficiency orders interact with KEEIA. Instead, this docket will answer whether the Commission should approve or deny KCP&L's KEEIA Application when examined under the totality of Kansas' energy efficiency policy. Westar is able to accomplish its stated goal for intervention by following this docket as a non-intervenor. Whether Westar contemplates the Commission's findings and conclusions related to KCP&L's KEEIA Application (if and when Westar creates its own KEEIA Application) is for Westar alone to decide.

¹⁵ Application for Kansas City Power & Light Company, p. 7 (Apr. 6, 2016).

¹⁶ Petition to Intervene, p. 2.

III. OUT OF TIME

15. Westar filed its Petition to Intervene on April 19, 2016. Pursuant to K.A.R. 82-1-218(d), responses to a party's petition for intervention may be filed within ten days after receiving service of such petition. Accordingly, the response date to Westar's Petition to Intervene in this proceeding was April 29, 2016. Staff's Response to Westar's Petition to Intervene is being filed and served beyond this date.

16. Staff attempted to file its responsive pleading on April 29, 2016, but was unable to do so due to a technical error with the Commission's electronic filing service. Staff made the Commission's information services team aware of this problem, and was able to file its response the following business day.

17. Regardless of the reason for the delayed filing, Staff recognizes that its Response to Westar's Petition to Intervene is out of time according to the Commission's regulations. Therefore, Staff respectfully requests the Commission accept Staff's Response to Westar's Petition to Intervene out of time. As stated above, Staff agrees with Westar that this proceeding will be the first application of KEEIA to an electric public utility's energy efficiency proposal. Ensuring a party's participation is justified will only assist the Commission in its review of KCP&L's KEEIA Application. Staff maintains that, due to the minor period of delay in submitting and serving its response, accepting Staff's Response to Westar's Petition to Intervene out of time will not harm or prejudice any party to this proceeding.

WHEREFORE, Staff respectfully requests the Commission accept Staff's Response to Westar's Petition to Intervene Out of Time, deny Westar's Petition to Intervene in this proceeding or in the alternative limit Westar's intervention as described above, and for any other relief the Commission finds just and reasonable.

Respectfully submitted,

/s/ Robert Elliott Vincent

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CERTIFICATE OF SERVICE

16-KCPE-446-TAR

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Response to Westar Energy Inc.'s Petition to Intervene Out of Time was served by electronic service on this 2nd day of May, 2016, to the following:

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