

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Dwight D. Keen

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.)

**ORDER GRANTING LIMITED INTERVENTION TO THE KANSAS STATE BOARD
OF REGENTS AND UNIVERSITIES; ORDER DENYING MOTION FOR LEAVE TO
FILE TESTIMONY OUT OF TIME**

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

Background

1. On February 1, 2018, Westar Energy, Inc. (Westar) and Kansas Gas and Electric Company (KG&E) (Westar and KG&E collectively referred to as "Westar") filed a Joint Application requesting authorization to make certain changes to their charges for electric service in Kansas pursuant to K.S.A. 66-117 and K.A.R. 82-1-231.¹

2. The deadline for filing of Staff/Intervenor direct testimony in this docket was June 11, 2018.² Westar's rebuttal testimony was due on July 3, 2018.³

3. On June 18, 2018, the Kansas State Board of Regents (Regents), together with Emporia State University, Kansas State University, Pittsburg State University, the University of

¹ Joint Application, p. 1 (Feb. 1, 2018).

² Order Setting Procedural Schedule, ¶ 4 (Mar. 8, 2018).

³ Order Granting Enlargements of Time for Prefiled Testimony, Ordering Clause C (June 19, 2018).

Kansas and Wichita State University (collectively Universities), petitioned to intervene in this proceeding.

4. The Regents and Universities requested intervention to protect their interest in just and reasonable rates and terms of service by Westar for facilities totaling 816 sites.⁴ The Regents and Universities advised they “stand to be substantially and detrimentally impacted by the rate proposals in this case.”⁵ The Regents and Universities asserted the range and complexity of rates used to serve the Regents and Universities present a unique circumstance not adequately addressed by the participation of other parties in the docket, and therefore, no other party to the proceeding represents or claims to represent such interests.⁶ The Regents and Universities stated that their intervention will “serve justice and will not result in delay or impair the orderly conduct of proceedings.”⁷ The Regents asked for full intervention and participation.⁸

5. On June 28, 2018, the Regents filed a Motion for Leave to File Testimony Out of Time (Motion for Leave). The Regents claimed that their “positions relate to issues already raised by other parties in this docket and therefore will not add complexity to the proceeding or require delay. Because these issues are already present in this docket, the admission of testimony by [the Regents] will not prejudice other parties.”⁹ The Regents also attached a copy of their proposed testimony “to allow parties responding to this motion opportunity to fully comment.”¹⁰

6. On July 2, 2018, Westar filed its Response to the Regents’ Motion for Leave, arguing that the Commission approves intervention requests “with a finding that the intervention

⁴ Petition to Intervene of The Kansas State Board of Regents, p. 2 (Jun. 18, 2018) (Petition).

⁵ Petition, ¶ 4.

⁶ Petition, ¶ 6.

⁷ Petition, ¶ 9.

⁸ Petition, ¶ 7.

⁹ Motion for Leave, ¶ 4.

¹⁰ See Motion for Leave, ¶ 5.

will not ‘impair the orderly and prompt conduct of the proceeding.’”¹¹ Westar also argued that “[a] party intervening at a later date during a proceeding is typically required to accept the record as it exists at the time of their intervention, including the procedural schedule that has been set.”¹² Westar asserted that, given the long-standing procedural schedule and the close proximity between the Regents’ request for leave to file out of time and Westar’s rebuttal testimony deadline, any request for an adjustment to the procedural schedule at this point is “entirely unreasonable.”¹³ Westar argued that inclusion of the Regents’ testimony now would not give Westar adequate time to respond to the testimony in its rebuttal, and therefore, the Commission should deny the Regents’ Motion for Leave.

7. On July 6, 2018, the Regents filed a Reply to Westar’s Response (Reply). The Reply referenced the copy of the Regents’ proposed testimony attached to its Motion for Leave, wherein the Regents stated their support for Staff’s proposed rate reduction and their request that the Commission order the development of a multi-site rate for the Regents’ multiple facilities.¹⁴ The Regents stated a readiness to accept a reasonable time extension for Westar to file rebuttal testimony, should the Commission grant the Regents’ Motion for Leave.¹⁵ The Regents also stated that no new issues previously unaddressed by Westar or other parties will be raised in the Regents’ testimony, and Westar has not objected that the proposed testimony is irrelevant, lacking foundation, biased or cumulative.¹⁶ Thus, the Regents asked the Commission to grant its Motion for Leave.¹⁷

¹¹ Response to Motion for Leave to File Testimony Out of Time of Westar Energy, Inc. and Kansas Gas and Electric Company, ¶ 3 (July 2, 2018) (Westar Response).

¹² Westar Response, ¶ 3.

¹³ Westar Response, ¶ 4.

¹⁴ Reply of the Kansas State Board of Regents to Response of Westar to Motion for Leave to File Testimony Out of Time, ¶ 3 (July 6, 2018).

¹⁵ Reply, ¶ 5.

¹⁶ Reply, ¶ 6.

¹⁷ Reply, p. 2.

Legal Standards

8. The Commission shall grant intervention if the petition: (1) is submitted in writing and properly served; (2) states facts demonstrating the petitioner's legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and (3) the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.¹⁸ The Commission has discretion to grant intervention at any time where intervention is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.¹⁹ At any time during a proceeding, the Commission may impose limitations on an intervenor's participation, which may include limiting an intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition, limiting intervenor discovery, cross-examination and other procedures, and requiring intervenors to consolidate their participation in the proceedings.²⁰

Findings and Conclusions

9. The Regents and Universities submitted their Petition to Intervene in writing and properly served it, pursuant to K.S.A. 77-521(a)(1). The Regents and Universities also provided facts demonstrating their legal rights and interests may be substantially affected by this proceeding. Moreover, the Commission finds that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the Regents' intervention.

10. However, the Commission finds that granting full intervention to the Regents and Universities, including leave to file testimony at this late date, will impair the prompt and orderly

¹⁸ K.S.A. 77-521(a); K.A.R. 82-1-225(a).

¹⁹ K.S.A. 77-521(b); K.A.R. 82-1-225(b).

²⁰ K.S.A. 77-521(c); K.A.R. 82-1-225(c).

conduct of the proceedings. The Commission finds that allowing the Regents to file testimony now does not provide Westar time to respond with rebuttal. Further, if the Regents' testimony does not raise any new issues, as the Regents asserted, the Commission finds no reasonable basis for its filing. In addition, the Commission agrees with Westar that it would be entirely unreasonable to adjust the procedural schedule at this point.²¹ Thus, the Commission denies the Regents' Motion for Leave to File Testimony Out of Time.

11. Although the Commission finds that the Regents and Universities have met the intervention requirements of K.A.R. 82-1-225 and K.S.A. 77-521, the Commission also finds it reasonable and proper to limit the Regents' and Universities' intervention. The Commission finds that the Regents and Universities must accept the record as it exists at the time of their intervention, and their intervention shall be limited to the use of discovery, the cross-examination of witnesses at the evidentiary hearing, if applicable, and the submission of a post-hearing brief, if applicable.

12. The Regents and Universities will be added to the mailing list, service of pleadings, communications, and correspondence should be delivered to counsel of record, as follows:

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THEREFORE, THE COMMISSION ORDERS:

A. The Regents and Universities are granted limited intervention pursuant to the limitations provided in paragraph 11 above.

B. The Motion for Leave to File Testimony Out of Time of the Kansas State Board of Regents is denied.

²¹ See Westar Response, ¶ 4.

C. 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).²²

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

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

07/10/2018

Dated: _____



Lynn M. Retz
Secretary to the Commission

MJD/sc

²² K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

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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