

**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 Application of Kansas Gas)
and Electric Company for Approval of the)
Amendment to the Energy Supply Agreement) Docket No. 18-KG&E-303-CON
between Kansas Gas and Electric Company)
and Occidental Chemical Corporation.)

**ORDER APPROVING AMENDMENT TO THE ENERGY SUPPLY AGREEMENT
BETWEEN KANSAS GAS AND ELECTRIC COMPANY AND OCCIDENTAL
CHEMICAL CORPORATION**

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

1. On January 16, 2018, Kansas Gas and Electric Company, d/b/a Westar energy (Westar) and Occidental Chemical Corporation (Occidental) filed a Joint Application for approval of an Energy Supply Agreement (ESA) between Westar and Occidental, which would extend the ESA that expired on May 31, 2018.¹ The proposed ESA would not alter the terms of the expiring ESA.²

2. On January 26, 2018, Brenda Harris filed Direct Testimony in support of the Application on behalf of Occidental, explaining the Agreement provides: (1) a cost benefit to other customers; (2) material benefits to Westar; and (3) substantial benefits to the Kansas economy by allowing Occidental to continue its operations in Wichita.³ She clarified that the Agreement does

¹ Joint Application, Jan. 16, 2018, ¶ 3.

² *Id.*

³ Direct Testimony of Brenda Harris (Harris Direct), Jan. 26, 2018, p. 3.

not change the terms and conditions of the current ESA or the rates Occidental pays under the current ESA; instead it simply extends the current ESA for an additional five-year term.⁴ Harris testified that if the extension is not granted, Occidental would be forced to reexamine its level of ongoing operations at the Wichita facilities.⁵

3. On May 17, 2018, the Commission granted the Parties' request to extend the current ESA through the end of the first billing cycle following a final Commission Order in this Docket.⁶

4. On August 15, 2018, Stacey Harden filed testimony on behalf of Citizens' Utility Ratepayer Board (CURB),⁷ and Darren Prince filed testimony on behalf of Staff. Harden recommends the Commission exclude the Energy Efficiency Demand Response Rider (EEDR) from the proposed ESA.⁸ If the Commission rejects her first recommendation, Harden believes the Commission should approve the discounted rates proposed in the ESA, without approving Westar's EEDR program and that Westar should defer the revenue lost from the special contract rate reduction as a regulatory asset to be recovered in its next general rate case.⁹

5. Prince recommends the Commission approve the 2018 Special Contract and continue the EEDR because the 2018 Special Contract meets the Commission's requirements and will result in just and reasonable rates; and the EEDR meets the benefit-cost test.¹⁰ More specifically, Prince explained Staff concludes that without the 2018 Special Contract, Occidental's Wichita facility will be at a rate disadvantage and Occidental's threat to close its Wichita plant is credible.¹¹ Staff's variable cost analysis reveals the revenue Westar derives from Occidental rates

⁴ *Id.*, p. 4.

⁵ *Id.*, pp. 4-5.

⁶ Order Approving Procedural Schedule; Extension of Agreement & Waiver of Statutory Deadline, May 17, 2018, ¶ 12.

⁷ CURB was granted intervention on April 17, 2018.

⁸ Direct Testimony of Stacey Harden, Aug. 15, 2018, p. 5.

⁹ *Id.*

¹⁰ Direct Testimony of Darren L. Prince (Prince Direct), Aug. 15, 2018, p. 2.

¹¹ *Id.*, p. 13.

exceeds its fixed costs in serving Occidental, meaning Westar's other customers benefit from Occidental staying on the system.¹² Since Westar's other customers benefit from Occidental being on the system and Occidental's threat to leave the system is credible, Staff views the 2018 Special Contract rates to be just and reasonable.¹³

6. On August 29, 2018, Jeffry Pollock filed rebuttal testimony on behalf of Occidental and John Wolfram filed rebuttal testimony on behalf of Westar. Pollock explained that Harden's recommendation to remove the EEDR would defeat the 2018 Special Contract's purpose – to supply Occidental's Wichita facility with more competitively priced electricity.¹⁴ Wolfram testified that CURB fails to consider long run marginal costs, likely to reflect the long-term costs for generation asset replacement and system reliability from a supply standpoint, in its analysis of avoided capacity costs.¹⁵ While he does not agree with Staff's approach to developing its avoided costs value, Wolfram recognizes that Staff concludes the EEDR is cost effective.¹⁶ But Wolfram claims CURB's avoided cost value does not properly consider Westar's long-term marginal capacity costs, and is therefore unreasonable.¹⁷

7. On October 2, 2018, the Commission issued an Order Granting Staff's Motion to Allow Dr. Robert Glass as an Additional Witness on questions regarding the Commission's Order in Docket No. 16-KCPE-446-TAR (16-446 Docket) and Dr. Glass's testimony in that Docket that exceed the scope of Prince's testimony or personal knowledge.

¹² *Id.*

¹³ *Id.*

¹⁴ Rebuttal Testimony and Exhibits of Jeffry Pollock, Aug. 29, 2018, pp. 3-4.

¹⁵ Rebuttal Testimony of John Wolfram (Wolfram Rebuttal), Aug. 29, 2018, pp. 2-3. A utility incurs avoided capacity cost savings when a successful energy efficiency program allows it to avoid or delay the cost of building additional generation. *See* Transcript of October 10, 2018 Evidentiary Hearing (Tr.), p. 31.

¹⁶ Wolfram Rebuttal, p. 5.

¹⁷ *Id.*

8. On October 5, 2018, Westar and Occidental jointly filed Notice of Addendum to Energy Supply Agreement to update the new base rates for Westar customers, including the ILP rate class, approved on September 27, 2018, in the Westar rate case, Docket No. 18-WSEE-328-RTS.

9. An evidentiary hearing was held on October 10, 2018. Westar, Occidental, Staff, and CURB appeared by counsel. The Commission heard live testimony from Wolfram on behalf of Westar, Harden on behalf of CURB, and Prince and Dr. Glass on behalf of Staff. The parties had the opportunity to cross-examine the witnesses at the evidentiary hearing as well as the opportunity to redirect their own witnesses.

10. Following the evidentiary hearing, the Parties submitted post-hearing briefs.

11. At the hearing, Westar explained the ESA meets the Commission's standards to approve a special contract because it provides a cost benefit to the remaining core customers.¹⁸ Among the benefits Westar and its customers receive from the ESA is an incentive for Occidental to coordinate maintenance outages with its facilities to avoid Westar's summer peak, assurances that Occidental is subject to all applicable riders and surcharges, a requirement that Occidental pay its pro rata share of any general rate increases, and allowing Westar to request Occidental reduce its load.¹⁹ Significantly, the ESA also requires Occidental to maintain a certain employment level at its facilities and continue to make capital improvements in its Wichita facilities.²⁰

12. Occidental explained the EEDR makes Occidental's load fully interruptible, which produces two benefits: (1) it enables Westar to purchase less generating capacity and (2) it allows Westar to quickly respond to local system conditions.²¹

¹⁸ Tr., p. 10.

¹⁹ *Id.*, p. 9.

²⁰ *Id.*, p. 10.

²¹ *Id.*, pp. 14-15.

13. CURB asserted the EEDR does not pass any of the Commission's cost benefit tests for energy efficiency programs and should be excluded from the ESA.²² Instead, CURB advocated for allowing Westar to defer the revenue lost from the EEDR as a regulatory asset to be considered in Westar's next general rate case.²³

14. CURB's witness Stacey Harden opined, "I don't think the lack of an EEDR would cause Oxy to leave the system and I similarly don't think that it would cause Westar to terminate its agreement with Occidental."²⁴ But when asked the basis of her opinion, Harden offered, "[j]ust based on my review of the Application."²⁵ Harden's testimony is in sharp contrast to Harris's testimony that Occidental would be forced to reexamine its level of ongoing operations at the Wichita facilities if the ESA were not extended,²⁶ and Prince's testimony that Occidental's threat to leave the system is credible.²⁷

15. Harden acknowledges that Occidental is among Westar's largest, if not the largest, customer.²⁸ She also agrees there is a need to keep Occidental on the system.²⁹ Based on Occidental's importance to Westar's revenue collection, it would be tremendously risky to accept Harden's suspicion that Occidental would not really leave Westar's system without the EEDR. The Commission cannot afford to take that risk as there is overwhelming evidence suggesting Occidental's threat to leave Westar's system is credible. It would be highly irresponsible for the Commission to treat Occidental's warning as an empty threat.

²² *Id.*, p. 18.

²³ *Id.*

²⁴ *Id.*, p. 86.

²⁵ *Id.*

²⁶ Harris Direct, pp. 4-5.

²⁷ Prince Direct, p. 13.

²⁸ Tr., p. 87.

²⁹ *Id.*, p. 110.

16. Even Harden admits, “I don’t have any reason to disagree with the testimony provided by Mr. Prince that the ESA is a reasonable rate to provide Occidental to remain on the system.”³⁰ The Commission finds Harris’s and Prince’s testimony more compelling than Harden’s unsubstantiated belief that Occidental will not leave Westar’s system without the EEDR.

17. In addition to keeping Occidental on Westar’s system, the EEDR offers two other important benefits that CURB is unable to refute: (1) it greatly reduces regulatory lag and (2) it allows Westar to purchase less generating capacity.

18. The EEDR eliminates a sizeable regulatory lag for Westar.³¹ Harden estimates the resulting regulatory asset would accrue at \$4 million per year.³² Due to the five-year rate moratorium agreed to in the KCP&L-Westar merger, Westar would not be able to recover the revenue lost from the EEDR as a regulatory asset until next general rate case. While both Harden and Glass agree the cost recovery would occur in 3 ½ years as opposed to the full five years,³³ even under the shortened timeline, Westar would be carrying \$14 million as a regulatory asset under CURB’s proposal.³⁴ As Glass testified, “[t]hat is a large regulatory asset that you are asking the utility to carry and it’s going to be paid for. It’s going to be paid for by customers...”³⁵ Glass noted there will be carrying costs on top of the \$14 million,³⁶ which will also be passed on to Westar’s customers.

19. The EEDR allows Westar to purchase less generating capacity in two ways: (1) it allows Westar to interrupt Occidental’s energy consumption during emergencies or in periods of

³⁰ *Id.*

³¹ *Id.*, p. 157.

³² *See id.* at 96.

³³ *Id.*

³⁴ *Id.*, p. 150.

³⁵ *Id.*

³⁶ *Id.*, p. 151.

heavy load³⁷ and (2) the demand response capacity of the EEDR counts toward Westar's capacity requirements for the Southwest Power Pool (SPP).³⁸ In determining its total reserve margin, Westar includes 80% interruptible performance by Occidental.³⁹ If the EEDR is not continued, Westar's reserve margin drops.⁴⁰ If Westar's reserve margin drops, it will be forced to build or purchase additional generation to meet its capacity requirement under SPP. Therefore, the EEDR allows Westar to meet its capacity requirement without acquiring additional generation, saving ratepayers the expense of acquiring more generation.

20. The Commission finds the EEDR is a cost-effective demand response program that benefits Westar and its customers. Accordingly, the Commission approves the ESA and allows the EEDR to continue as an energy efficiency program, with its costs recovered through the Energy Efficiency Rider.

THEREFORE, THE COMMISSION ORDERS:

A. The Amendment to the Energy Supply Agreement between Kansas Gas & Electric Company and Occidental Chemical Corporation is approved. The EEDR is allowed to continue as an energy efficiency program, with its costs recovered through the Energy Efficiency Rider.

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).⁴¹

C. The Commission retains jurisdiction over the subject matter and the parties to enter further orders as it may deem necessary.

³⁷ Commission Staff's Closing Brief, Oct. 24, 2018, ¶ 3.

³⁸ Prince Direct, p. 21.

³⁹ Wolfram Rebuttal, p. 6.

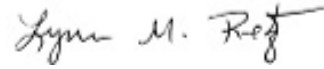
⁴⁰ *Id.*

⁴¹ 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: 11/20/2018



Lynn M. Retz
Secretary to the Commission

BGF

CERTIFICATE OF SERVICE

18-KG&E-303-CON

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 11/20/2018.

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CERTIFICATE OF SERVICE

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/S/ DeeAnn Shupe

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* Denotes those receiving the Confidential version