

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

Before Commissioners: Thomas E. Wright, Chairman
 Michael C. Moffet
 Joseph F. Harkins

In the Matter of Westar Energy, Inc. and Kansas Gas)
and Electric Company (KEG) d/b/a Westar Energy)
Seeking Commission Approval to Revise its)
Environmental Cost Recovery (ECRR) Tariff.) Docket No. 09-WSEE-737-TAR

PROTECTIVE ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. The Commission, having examined its files and records, and being duly advised in the premises, makes the following findings:

1. K.S.A. 2008 Supp. 66-1220a and K.A.R. 82-1-221a set forth requirements for the designation and treatment of information deemed confidential in Commission proceedings. The Commission finds that it is appropriate to issue this Protective Order to establish further procedures relating to confidential data and information.

2. K.S.A. 2008 Supp. 66-1220a limits disclosure of trade secrets or confidential commercial information of regulated utilities. Under K.S.A. 2008 Supp. 66-1220a(a)(4), the Commission is to consider alternatives to disclosure that will serve the public interest and protect the regulated entity. This Protective Order provides an interim procedure under K.S.A. 2008 Supp. 66-1220a(a)(4) to facilitate the prompt and orderly conduct of this case. This Protective Order will govern the treatment and handling of confidential information until further order of the Commission.

3. A party may designate as confidential any information that it believes, in good faith, to be a trade secret or other confidential commercial information. *The party designating the information as confidential must provide a written statement of the specific grounds for the designation at the time the designation is made.* K.A.R. 82-1-221a(a)(5). The party claiming confidentiality has the burden of proving the confidential status of the information. Designating information as confidential does not establish that the information will not be subject to disclosure after review by the Commission. *See* K.S.A. 2008 Supp. 66-1220a.

4. This Protective Order applies to all parties in this proceeding, unless specifically stated otherwise. The provisions of the Protective Order apply to Commission Staff (“Staff”), except that Staff is not required to sign nondisclosure certificates or view voluminous materials on site, as discussed in Paragraph 6, and is not required to return to destroy confidential information upon request at the conclusion of a proceeding, as referenced in Paragraph 12. Outside experts and consultants used by Staff shall have access to information and voluminous materials on the same basis as staff, except that outside Staff experts and consultants are required to read this Protective Order and to sign nondisclosure certificates as contained in Appendix A.

5. The following definitions shall apply:

Information: “Information refers to all documents, data, including electronic data, studies, and other materials furnished pursuant to requests for information or other modes of discovery, or any other information, or documents that are otherwise a part of the Commission record.

Confidential Information: “Confidential information” refers to information which, if disclosed, would likely result in harm to a party’s economic or competitive interests, or which would result in harm to the public interest, generally, and which is not otherwise available from public sources. “Confidential information” may include, but is not limited to: (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under

consideration (6) contract negotiations; and, (7) information concerning trade secrets, as well as private technical, financial, and business information.

6. A party designating information as confidential shall make the confidential information available to parties seeking access or discovery under the restrictions in this Protective Order, if such disclosure is not otherwise privileged or objectionable on other evidentiary grounds. Disclosure of confidential information shall be made to attorneys of record and to authorized representatives, including outside experts, who are consulting with parties or intend to file testimony in this proceeding. Attorneys or authorized representatives seeking access to confidential information shall first read this Protective Order and sign a nondisclosure certificate as provided in Appendix A. In cases where a utility's rates are being reviewed, attorneys and representatives of the utility whose rates are being reviewed are not required to sign nondisclosure certificates in order to receive copies of documents containing the utility's own confidential information. The nondisclosure certificate shall contain the signatory's name, permanent address, title or position, date signed, and an affirmation that the signer is acting on behalf of a party to this proceeding. The nondisclosure certificate shall be filed in the docket. The party claiming confidentiality shall provide legible copies of the confidential information to requesting parties by serving one copy upon counsel for the requesting party. The requesting party may copy the confidential information and make it available to its authorized representatives who have signed and filed nondisclosure certificates. If a response to a discovery request requires the duplication of voluminous material, or the material is not easily copied because of its binding or size, the furnishing party may require that the voluminous material be viewed on its own premises. If duplication of voluminous material can be accomplished without undue burden on the party disclosing the information, the voluminous material may be copied at

the expense of the requesting party. Voluminous material shall include documents or materials comprised of two hundred pages or more.

7. A party may designate prefiled testimony and exhibits as confidential pursuant to this Protective Order. *The specific grounds for the confidential designation shall be stated in writing at the time the designation is made or the testimony filed.* Any party obtaining confidential information may use or refer to such information in prefiled or oral testimony provided that the confidentiality be maintained, unless otherwise ordered by the Commission.

8. If information to be disclosed in response to a data request contains confidential information designated by another party in this docket, the furnishing party shall maintain the confidential status by marking the information as confidential and only provide response to parties that have signed nondisclosure certificates. If information that a party intends to use in this proceeding or that would be disclosed in response to a data request contains confidential information obtained from a source outside of this proceeding, the party intending to use or provide the confidential information must notify the original source which claimed confidential status to allow that entity to decide whether to claim confidentiality in this proceeding.

9. When pleadings, prefiled testimony, or exhibits include confidential information, the parties are to follow these procedures:

- a. File seven copies of the complete document, including all confidential information. The cover is to clearly state "CONFIDENTIAL VERSION." Confidential pages shall be stamped "CONFIDENTIAL," and the specific confidential information shall be identified by being underlined.
- b. File one copy with the confidential portions redacted, for use as a public document. The cover is to clearly state "PUBLIC VERSION."
- c. File one copy of the pages that contain confidential information in a separate envelope marked "CONFIDENTIAL." This filing will be maintained in the docket room file under seal. If there are multiple pages with confidential information and it is impracticable to separate the pages

with the confidential information, the party may file instead one copy of the entire document that is stamped "CONFIDENTIAL."

10. Confidential testimony may be offered or subject to cross-examination at hearings. Parties have the right to object to the admissibility of confidential information on standard evidentiary grounds such as relevance. Confidential information that is received into evidence will be kept under seal. Confidential information shall be discussed only after the hearing is closed to all persons except the Commission, its Staff, hearing examiners, court reporters, attorneys of record, and individuals to whom the designated information is available under the terms of this Protective Order. Parties shall make every effort at hearings to ask and answer questions in such a way as to preserve the confidentiality of the information without the need to close the hearing. The transcript of live testimony or oral argument disclosing confidential information shall be kept under seal and copies provided only to persons entitled access to confidential information. Neither the parties nor their attorneys shall disclose or provide copies of the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order.

11. If a party disagrees with a claim that information is confidential or should not be disclosed, the parties shall first attempt to resolve the dispute on an informal basis. If the parties cannot resolve the dispute informally, the party contesting the confidential treatment may file a motion with the Commission. Commission Staff should also be prepared to challenge a confidential designation when Staff believes that the information does not meet the definition of confidential information. When a dispute concerning the confidentiality is brought before the Commission, the Commission will review the matter to determine (1) if the party claiming confidentiality has met its burden of establishing the confidential designation is proper, and (2)

whether disclosure is warranted under K.S.A. 2008 Supp. 66-1220a. The contested information shall not be disclosed pending the Commission's ruling.

12. All persons who are afforded access to confidential information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and litigation of this proceeding. During the course of this proceeding, parties shall keep confidential information secure in accordance with the purposes and intent of this order. At the conclusion of this proceeding, including judicial review, a party claiming that information was confidential may require that other persons in possession of its confidential information return or destroy all such confidential information and all notes, tapes, documents, and any other medium containing, summarizing, or otherwise embodying such confidential information. If the party claiming confidentiality requests destruction, the person destroying the information shall certify its destruction. Counsel shall be entitled to retain memoranda or pleadings including or embodying confidential information to the extent reasonably necessary to preserve a file on this proceeding.

IT IS, THEREFORE, BY THE COMMISSION ORDERED:

- A. The above Protective Order shall be issued.
- B. This Protective Order shall govern the treatment and handling of confidential information in this docket.
- C. The parties have fifteen days, plus three days if service is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issues decided herein. K.S.A. 66-1118; K.S.A. 2008 Supp. 77-529(a)(1).
- D. The Commission retains jurisdiction over the subject matter and the parties for entering such further order, or orders, as it may deem necessary.

BY THE COMMISSION, IT IS SO ORDERED.

Wright, Chmn.; Moffet, Comm.; Harkins, Comm.

Dated: APR 22 2009

ORDERED MAILED

APR 23 2009

 **EXECUTIVE
DIRECTOR**

Susan K. Duffy
Executive Director

***:kd

DOCKET NO. ***

APPENDIX A

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

NONDISCLOSURE CERTIFICATE

I, _____, have been presented a copy of the Protective order issued in Docket No. 09-WSEE-737-TAR on the _____ day of _____, 2009

I have requested review of confidential information produced in Docket No. 09-WSEE-737-TAR on behalf of _____.

I hereby certify that I have read the above-mentioned Protective Order and agree to abide by its terms and conditions.

Dated this _____ day of _____, 2009.

Printed Name and Title

Signature

Party/Employer

Address (City, State and Zip)

Telephone

Facsimile