

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Westar)
Energy, Inc. and Kansas Gas and Electric)
Company for Approval of Revisions to) Docket No. 14-WSEE-148-TAR
Their General Terms and Conditions to)
Implement an Optional Prepay Service Pilot)
Program.)

**RESPONSE OF WESTAR ENERGY, INC. AND
KANSAS GAS AND ELECTRIC COMPANY
TO MOTION TO DISMISS**

COME NOW Westar Energy, Inc. and Kansas Gas and Electric Company (collective as “Westar”) and for their Response to the Motion to Dismiss filed by the Citizens’ Utility Ratepayer Board (CURB) state:

I. Introduction

On October 1, 2013, Westar filed its Application for approval of its Optional Prepay Service Pilot Program (the Prepay program). The Prepay program is a voluntary pilot program limited to 1,000 customer participants. It is designed to give customers the option to prepay for their electric service. The voluntary Prepay program would allow customers to make smaller payments in advance for service rather than receiving a larger bill at the end of the monthly billing period and would eliminate the deposit requirement for those customers. The Prepay program was designed to be the foundation for a new set of optional programs of customer choice from which Westar can build upon to meet customers’ expectations and preferences. Westar’s goal is to utilize pilot programs to gather information and determine how best to respond to customers’ interests and expectations and then create a more permanent set of programs. This approach allows Westar, CURB, Staff, customers, and other interested parties to try new programs in a small, controlled, and voluntary fashion. This approach removes risk of

new programs for all parties and allows the knowledge gained in the pilot to help shape the full scale program for those programs that prove beneficial. This approach constitutes more of a step-by-step approach to implementing new customer options as opposed to making a large number of permanent changes all at once, which could be overwhelming and unmanageable for both Westar and customers.

When Westar filed for approval of the Prepay program, it provided an Application and a draft of the tariff language necessary to implement the program. The tariff identified the requirements for a customer to participate in the program, the service fee that will be charged, the disconnection and reconnection fees, and the method through which notice will be provided, addressed how payments will be applied when a customer's bill is in arrears, and addressed how a customer electing to participate can return to Residential Standard Service.¹ The Prepay program was clearly identified as a voluntary pilot program for up to 1,000 customer participants. If Westar wishes to expand the program to more customers or make changes to the program in the future, Westar will be required to return to the Commission for approval.

Westar's Application in this docket was filed subsequent to a pre-filing meeting with Staff that occurred on June 25, 2013. During that pre-filing meeting, Westar discussed with Staff the goal of creating a portfolio of customer options to address changing customer expectations and utilize changing technology for the benefit of customers. Westar explained that it would like to utilize pilot programs to gather information regarding customers' interests and determine how various customer options would function for Westar and its customers. Westar proposed to Staff that it be permitted to utilize an abbreviated application process to implement those voluntary

¹ The Application and proposed tariff also included a provision that would have allowed Westar to limit a customer's load during the Cold Weather Rule period if the customer was in default. Westar, as part of its discovery responses, has notified Staff and CURB that it is withdrawing the load-limiting provision of the program.

pilot programs, including the Prepay program proposed in this docket. Westar explained that this abbreviated process would include an application and proposed tariff filed by Westar and would include a cooperative discovery process, with both formal discovery requests and informal working sessions among the parties as needed. Westar also proposed a shortened period for Staff to file a report and recommendation and a shortened period for the Commission to issue an Order for these voluntary pilot programs. The outline of issues addressed at the pre-filing meeting with Staff is attached hereto as Exhibit A. Westar discussed the proposed process for the voluntary pilot programs with Staff for a second time in August 2013.

Based on Staff's reaction to Westar's proposal during the pre-filing meeting, Westar moved forward with its application for approval of the Prepay pilot program. During the first two months that Westar's application in this docket was on file – consistent with the process discussed at the pre-filing meeting – Westar held two meetings with Staff and CURB. Both of these meetings, each of which lasted close to two hours, were initiated by Westar to answer any and all questions presented by Staff and CURB regarding the Prepay program. Westar representatives also participated in follow-up phone calls with Staff to continue to answer questions about the program.

Westar, consistent with the response timing agreed to by all parties, has responded to 24 written discovery requests from Staff and CURB, with responses to Staff's first round of questions provided on November 4, 2013, and responses to Staff's second round and CURB's first round of questions provided on January 7, 2014. Notably, CURB was aware that Westar would be providing responses to the questions CURB asked in discovery on the previously agreed upon date of January 7, 2014 – many of which were identical to the list of questions identified by CURB in its motion to dismiss – but yet CURB chose to file its motion to dismiss

on January 6, 2014, suggesting that Westar had not provided information in response to those questions. In fact, the majority of the questions identified by CURB in its motion to dismiss have been asked by CURB and answered by Westar through formal discovery or during the working sessions discussed above. Westar is more than willing to respond to additional discovery requests or schedule another meeting to answer those listed that have not yet been asked by CURB and any additional questions raised by Staff.

Westar received no objection to the process it had proposed during the pre-filing meeting until the first week of December 2013 when Westar received notice that Staff wished to meet to discuss a procedural schedule. Initially, Westar understood this request to mean that Staff was asking Westar to file testimony. During this meeting it was further revealed that Staff wished to take this voluntary pilot program to a full evidentiary hearing. After discussing this further internally, Westar management felt that this request was outside of the agreed upon approach and notified Staff that Westar would not be in favor of a full procedural schedule with an evidentiary hearing.

On January 6, 2014, CURB filed its motion to dismiss, suggesting that Westar has not met its burden of proof because it did not file testimony with the Application and because Westar has not answered a list of questions – all of which have in fact been addressed through the discovery process or not previously asked by CURB. On January 8, 2014, Staff filed a response to CURB's motion to dismiss, indicating that Staff supports CURB's request for dismissal.

As discussed below, the process contemplated by Westar for the Commission's evaluation and approval of voluntary pilot programs, including the Prepay program, is reasonable, consistent with Commission precedent, and helps facilitate the development of new

customer options with minimal risk to any party— something that both Staff and CURB would presumably be interested in. CURB’s motion to dismiss should be denied in its entirety.

II. Westar’s Response to Motion to Dismiss

The process proposed by Westar for voluntary pilot programs, including the Prepay program in this docket, is consistent with Commission precedent as discussed below and is a reasonable way to develop evidence on which the Commission can rely when issuing its order in the docket. Westar has provided sufficient information through its Application, proposed tariff, and the formal and informal discovery process to allow Staff, CURB, and the Commission to evaluate and the Commission to make a determination regarding the proposed Prepay program – a voluntary, pilot program limited to 1,000 participants. Requiring a full procedural process for such voluntary and limited scope programs is inefficient for the Commission and discourages the development of new programs and services that can better serve customers.

Westar does not disagree with CURB that, as the applicant, Westar has the burden of proof and that any Commission order must be based on substantial, competent evidence. However, the amount and type of information that constitutes substantial competent evidence and the method used to provide that information can vary depending on the nature and scope of the issues before the Commission. The Commission has wide discretion to determine what information is required and what process will be used to evaluate any given application, based on the specific facts and circumstances involved. *See Midwest Gas Users Association v. State Corporation Commission*, 3 Kan. App. 2d 376 (1979) (Commission has “wide discretion in determining the factors upon which it may base” its approval of a rate schedule); *see also Southwestern Bell Telephone Co. v. State Corporation Commission*, 4 Kan. App. 2d 44 (1979) (level of detail required to be provided to Commission to support affiliated entity transaction

depends on what is “practicable and reasonable under the conditions and circumstances of the particular case involved”).

There is no requirement that the Commission must require testimony and a hearing when reviewing an application filed by a utility. The Commission has the discretion to determine what process is reasonable and appropriate based on the nature and scope of a specific docket. The level and type of information that is necessary in order for the Commission to evaluate the application may vary depending on the scope of what is being proposed. In the past, the Commission has utilized a process similar to the process proposed by Westar in this docket for evaluating applications for tariff changes and new customer programs. For example, in Docket No. 12-WSEE-652-TAR, Westar proposed to make an amendment to its Green Tariff. Westar filed an application, along with its proposed changes to the tariff. Staff conducted discovery and issued a report and recommendation and the Commission issued an order based on the report and recommendation. A similar process has been used in many Commission dockets, including Docket No. 12-WSEE-197-TAR, when Westar proposed its LED Street Lighting pilot program, Docket No. 11-WSEE-449-MIS, when Westar requested a waiver of the comment form requirement contained in the Billing Standards, and Docket No. 13-WSEE-144-TAR, when Westar requested a waiver of the requirement to provide registered meter reads on customers’ bills. In each of these instances, testimony and a hearing were not required. Instead, Westar and Staff worked cooperatively through the discovery process and Staff issued a report and recommendation on which the Commission could base its order.

In the pre-filing meeting with Staff, Westar outlined the process it planned to use for obtaining approval of pilot programs, beginning with the application for the Prepay program. The process discussed at that meeting was seemingly agreed to by Staff and utilized for the first

two months in this docket is consistent with Commission precedent. Staff did not object to the proposed process until over two months after Westar filed its Application and after the parties were well into the formal and informal discovery process that had been proposed by Westar. In fact, Staff and CURB had already participated in the meetings organized by Westar to discuss and answer questions about the Prepay program consistent with the process discussed in the pre-filing meeting before Staff indicated that it thought a process other than what Westar had proposed and the parties had been acting on was necessary.

The purpose of implementing a pilot program is to allow Westar and all parties to gather information about how the program works, how the required technology works with Westar's system, what level of customer interest there is in the program, and whether the program impacts customer participants in unexpected ways or other aspects of Westar's tariff or business. The Prepay program proposed in this docket is a voluntary pilot program for a maximum of 1,000 people. Much of the information that CURB and Staff suggest is missing from Westar's Application will be learned and developed through execution of the pilot program. If Westar is required to provide the same level of information at the time it files an application for a pilot program that it would be required to provide with an application for a permanent, mandatory tariff change for all customers, the purpose and benefits of using a pilot program will be lost. Such an approach would greatly reduce the customers' ability to benefit from new programs and services that changing technology can provide to improve their customer experience. It would not be sensible for Westar to go through such an extensive process just to implement a pilot when Westar would then have to repeat that process in order to implement a permanent version of the program. In that situation, it would be more efficient to simply put the program in place on a permanent, full-scale basis from the start. However, some programs may get significantly

delayed, or never proposed, due to uncertainty in the value the program would provide customers resulting in Westar focusing its resources on other less risky activities.

CURB's suggestion that a full procedural schedule with testimony and a hearing be required seems, at least in part, to be based on CURB's belief that the Prepay program is not really a voluntary program. CURB's belief is completely unfounded and incorrect. CURB argues that if a customer is going to be disconnected unless he or she provides a deposit or payment, if the Prepay program is approved, the customer's only option to avoid disconnection will be to enter the Prepay program. This is based on faulty logic. What CURB ignores is the fact that today, when there is no prepay option, a customer in this situation that could not pay the deposit would simply be disconnected. Implementation of the Prepay program gives the customer another option to avoid disconnection that he or she does not have today. There will be no requirement that the customer enter the Prepay program – instead, the customer could pay the deposit or be disconnected, just as he or she would today. It is hard to understand why CURB – a group that advocates for the interests of all residential customers – would be opposed to implementation of a voluntary program that provides customers a new option to avoid being disconnected.

CURB also ignores the fact that customers other than those facing disconnection may be interested in participating in the voluntary Prepay program. Specifically, Westar expects customers in the 18-35 age group (millennials) to show interest in the prepay option. National market research shows that this demographic may prefer these types of programs, because they use the prepay option as a form of budgeting, or for various other reasons. [REDACTED]

[REDACTED]

III. Conclusion

Westar's Application in this docket, together with the discovery process contemplated by Westar, is consistent with Commission precedent. By providing information in its Application and proposed tariff and during the discovery process, Westar will provide sufficient information for Staff to file a report and recommendation on which the Commission can base its decision. There is no legal requirement for the Commission to require testimony and a hearing in all cases and a docket involving a voluntary pilot program that is only available to a limited number of customers is not the type of docket that requires the use of a full procedural schedule. Instead, the Commission should allow pilot programs such as the Prepay program to be reviewed and evaluated using a more abbreviated process as proposed by Westar, with a collaborative-type discovery process. This will allow for Staff and other parties to have input into the development of the pilots and allow pilot programs to be put into place on a timely basis in order for all parties to gather information and better develop customer programs to meet growing customer needs and expectations.

Respectfully submitted,



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ATTORNEYS FOR
WESTAR ENERGY, INC. AND KANSAS GAS
AND ELECTRIC COMPANY

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

Cathryn J. Dinges, being duly sworn upon her oath deposes and says that she is one of the attorneys for Westar Energy, Inc. and Kansas Gas and Electric Company; that she is familiar with the **Response to Motion to Dismiss** and that the statements therein are true and correct to the best of her knowledge and belief.

Cathryn Dinges
Cathryn J. Dinges

SUBSCRIBED AND SWORN to before me this 14th day of January, 2014.



Debbielee A. Papps
Notary Public

My Appointment Expires:

June 26, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January, 2014, the original and eight copies of the **Response to Motion to Dismiss** were hand-delivered to:

Kim Christiansen
Executive Director
KANSAS CORPORATION COMMISSION
1500 SW Arrowhead Road
Topeka, Kansas 66604

and that one copy served to each party on the Commission's official service list in this matter.



Cathryn J. Dinges

Framework for approval of Pilot Programs

Summary

To support the interest of building a suite of customer programs that offer choices in how our customers do business with Westar an expedited process for regulatory review and approval is desired. This process would apply to voluntary, low cost pilot programs meant to provide early stage insight to potential customer response to programs prior to larger expenditures. Prior to full deployment or implementation an additional review may be necessary to assure all stakeholders can provide input on the program. This additional review may be incorporated into a general rate review.

Pilot Characteristics

Initiatives that qualify for abbreviated review would meet all of the following characteristics;

- Length – a specific term of the pilot offering will be identified
- Limited – offering will be specifically limited to a set number of participants
- Voluntary – customer participation will be completely voluntary
- Cost Recovery – no or limited specific cost recovery for the pilot will be requested Review & Reporting – specific review and reporting requirements will be determined

Example of types of pilots

Advancing technology, particularly advanced metering infrastructure (AMI), provides a technical platform from which customer programs can be more easily launched. Historically, special equipment at a customer premise, meter reading and on-going field inspection was required for many optional programs. Today, all that is generally required is the AMI environment and the technical infrastructure which Westar has already invested capital to install the infrastructure. . Examples of programs include;

- Prepayment options
- Variable pricing plans
- Demand side management options
- Robust self service options
- Consumer electronic product integration

Approach

In collaboration with KCC Staff and other interested parties, Westar would develop a framework of requirements for a pilot initiative that when met would qualify the pilot for an abbreviated KCC review. The objective would be to have the review and approval completed within 90 days. Westar would then move ahead with the pilot launch and regularly report pilot status to KCC Staff as determined. Should a pilot be determined to be successful and a candidate for a availability to all similarly situated customers Westar, would seek permission to expand the pilot program through an additional filing subject to further review from the Commission and interested parties if necessary.

Benefits

The ability to more quickly launch optional customer programs that can eventually achieve the objective of affording customers more choices in their service from Westar. A process to review and implement a pilot program provides an approach that will save KCC Staff and Westar valuable time that can be used for other formal regulatory needs.