

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

MAR 21 2012

In the Matter of the Application of )  
The Kansas Power Pool ("KPP"), A )  
Municipal Energy Agency, for Approval )  
of Its Annual Transmission Revenue )  
Requirement (ATRR) for Its Transmission )  
Facilities )

by  
State Corporation Commission  
of Kansas

Docket No. 12-KPPE-630-MIS

**PETITION OF WESTAR ENERGY, INC.  
TO INTERVENE**

Westar Energy, Inc. (Westar) moves that the Commission issue its order allowing Westar to intervene in the above-captioned matter. In support of its Petition, Westar states:

**I. INTRODUCTION AND MOTION TO INTERVENE**

1. Westar is a corporation duly incorporated under the laws of the State of Kansas and is engaged, among other things, in the business of an electric public utility, as defined by K.S.A. 66-104, in legally designated areas within the State of Kansas. Westar holds certificates of convenience and authority issued by this Commission authorizing it to engage in such utility business. Westar does business under the name "Westar Energy."

2. Westar is a vertically integrated electric utility, serving over 687,000 retail and over 75 wholesale customers in the State of Kansas. Westar is a transmission-owning member of the Southwest Power Pool (SPP) Regional Transmission Organization (RTO) and is an active market participant in the SPP-administered energy market.

3. On October 20, 2011, SPP filed with the Federal Energy Regulatory Commission (FERC) proposed revisions to its Open Access Transmission Tariff (OATT) to implement Kansas Power Pool's (KPP) formula rate for transmission service and to incorporate the resulting Annual Transmission Revenue Requirement into the Zonal ATRR for Westar's zone. FERC

Docket No. ER 12-140-000. As a transmission customer of SPP, Westar will be directly affected by the proposed tariff revisions and, as such, Westar requested intervention in the FERC docket and which was granted. As fully set forth in KPP's Application, this Commission intervened in the FERC docket and took the position that KPP should have sought the Commission's approval of KPP's ATRR before SPP made its filing before FERC.

4. The parties to the FERC docket agreed to stay the FERC docket while the issue was submitted to this Commission resulting in the present docket. As in the FERC docket, Westar submits that its interests cannot be represented by any other party and that it has the right to intervene herein.

5. The tariff revisions proposed by SPP in the above-captioned docket are intended to incorporate KPP's formula rate into the SPP OATT and allow KPP to recover costs associated with providing transmission service across several 69 kV transmission lines and associated substation facilities owned by a KPP-member city, the City of Winfield, Kansas. Winfield transferred functional control of these transmission facilities to KPP. KPP has now become a transmission owning member under the SPP Tariff and transferred functional control of the facilities to SPP.

6. In order to determine the ATRR to be recovered through the SPP OATT, KPP has proposed to utilize a transmission formula rate that can be adjusted annually. This proposal would allow KPP to recover costs associated with the Winfield transmission facilities as well as any additional existing or new transmission facilities of which KPP transfers functional control to SPP in the future.

7. As a member of SPP, and as a transmission customer of SPP, Westar and its wholesale and retail customers will ultimately a portion of the costs of KPP's transmission

facilities. As such, Westar has unique interests that cannot be represented by any other entity and respectfully requests this Commission grant its petition to intervene.

## II. PROTEST

8. There are several significant problems with KPP's proposed formula rate. KPP has not provided sufficient evidence to support its development of the initial costs to be included in the formula or the accuracy of the inputs into the calculations done by its consultants. Additionally, KPP has not demonstrated that future updates to the formula will result in just and reasonable rates or that customers will have an adequate opportunity to review the accuracy of the updates to ensure that they are correct.

9. As KPP's witness, Mr. Reising explains, "the City of Winfield does not maintain its books and records for its electric utility in accordance with the Federal Energy Regulatory Commission's Uniform System of Accounts and the City's financial reports do not separate plant in service, accumulated depreciation, or operating expenses by function." Direct Testimony of Paul Reising, at p. 6. Thus, "data were not available to determine the exact costs attributable to the City's 69 kV transmission facilities." *Id.* As a result, KPP has attempted to estimate the gross plant in service, accumulated depreciation, and net plant in service by computing the cost to reproduce the system at current costs and indexing those costs back to the original installation date using the Handy-Whitman Index. *Id.* at pp. 6-7. KPP utilized Westar's average transmission depreciation rate as a proxy for KPP's transmission assets and Westar's weighted cost of capital to determine the return component of KPP's ATRR. *Id.* at pp. 8-10. In order to develop the operating expenses to be included in the ATRR, KPP used the ratio of Westar's transmission operating expenses to Westar's transmission gross plant in service as a proxy for the ratio for its facilities. *Id.* at pp. 11-12.

10. Westar does not object conceptually to the method KPP used to estimate its costs and develop its ATRR. However, Westar does have concerns about the lack of support and detail provided regarding how certain portions of the estimate were developed. For example, when developing the estimate of the construction costs for the transmission facilities, KPP relied on an engineering firm to develop the estimate. However, the only information provided regarding the work done by that engineering firm was contained in Exhibit PDR-4 to Mr. Reising's testimony – a spreadsheet identifying the final cost estimates included in the ATRR calculation. The engineer that performed the study did not provide testimony and no information was provided regarding how the estimates were developed or whether or not those estimates are reasonable.

11. Additionally, Westar has identified a number of apparent inaccuracies in the data provided and relied on by the engineer when developing construction costs for the transmission facilities. For example, some of the line lengths in the schedules were inaccurate in the original FERC filing, may have been corrected in the KCC filing, but would nonetheless need to be verified. KPP also indicates that the transmission lines to be included in the SPP OATT were constructed in 1991; however, Westar's records indicate the lines were in existence in 1968. KPP's estimate of today's construction cost for these facilities was based on the lengths and service dates identified in the filing. If this information is incorrect, the resulting ATRR calculation would be inaccurate and unreasonable. KPP should be required to provide detailed support for the engineering calculations and evidence that the line lengths and service dates utilized by the engineer are accurate.

12. Westar believes that the actual costs and expenses for KPP's facilities should be utilized in calculating the updated ATRR values each year and supports KPP's change from its earlier filing with FERC to tracking and utilizing actual O&M expenses in its annual updates. *Id.*

at p. 12. However, Westar takes issue with allowing any O&M expenses in the first year of the formula without a “good faith” showing that there was actual O&M expended on the transmission facilities. A first year estimate, based on Westar’s formula data, is acceptable only after KPP provides evidence that work was performed on the transmission facilities (e.g., work authorizations). Additionally, Westar is concerned that the other components of the formula continue to utilize Westar’s costs as proxies. For example the use of Westar’s A&G expenses, property tax and average depreciation rates. *Id.* Although KPP has explained why it needs to use a ratio to estimate these expenses for the first year the formula rate is effective – because sufficient records do not exist to determine its current costs – there is no reason whatsoever that KPP should not be required to begin maintaining its records in a manner that will allow the actual expenses incurred by KPP for these transmission facilities to be recovered through the formula rate. Outside of the general assertions made by Mr. Reising about the appropriateness of the continued use of the Westar ratios, nowhere does he demonstrate that the ratios give results that are consistent with the expenses incurred by KPP. In addition, KPP should be required to file for, and support, its own plant depreciation rates by plant account. Westar’s average depreciation rate is a weighted average of various individual depreciation rates times month-by-month plant balances in the plant account. Utilizing Westar’s average depreciation rate on a continuing basis can distort the resultant depreciation amount if the mix of KPP’s plant costs is not the same as Westar’s.

13. Second, Mr. Reising indicates that if KPP makes improvements to the transmission facilities included in the formula rate, he recommends that it “record the details of the cost of plant additions and retirements in accordance with the Uniform System of Accounts and the plant instructions embodied in the USofA.” *Id.* at p. 16-17. He also states that if KPP

wishes to include additional transmission assets in the formula rate, he “understands that KPP will record the details of the cost of plant additions and retirements in accordance with the Uniform System of Accounts” *Id.* at p. 16. Despite Mr. Reising’s understanding that KPP and its member cities will maintain their books and records in accordance with the Uniform System of Accounts for any new investments in the future, nowhere in KPP’s filing does it make a commitment to follow the Uniform System of Accounts rules in the future. Again, while KPP has explained the need to utilize estimates in place of past data that is not available, KPP and its member cities should be required to immediately begin maintaining its asset and expense records in accordance with the Uniform System of Accounts rules for any project included in the formula rate.

14. Finally, the only discussion in the KPP filing regarding what opportunity customers will have to review the data and the formula calculations after the annual update is completed is found in a single-page document titled “Kansas Power Pool Protocols.” The Protocols proposed by KPP do not provide customers with any opportunity to challenge the annual ATRR calculation or ensure that any necessary corrections are made to the calculation.

15. The customers’ right to review the annual updates for accuracy and make necessary corrections is particularly important in the context of KPP’s formula rate. Unlike many other SPP Transmission Owners that utilize formula rates to calculate their ATRR, KPP does not file a FERC Form 1 and its member cities do not appear to have audited accounting records. The inputs to KPP’s formula rate come from the “Investment Analysis Worksheet” created by Mr. Reising which is completed with manual inputs from KPP. Without sufficient protocols in place, customers have no way to ensure the accuracy, adequacy, and sufficiency of the data and the resulting ATRR calculation. The Commission should require KPP to implement protocols

similar to those contained in Westar's and Prairie Wind Transmission, LLC's formula rates, approved by the FERC in Docket Nos. ER05-925-000 and ER09-36-000, respectively. *See Westar Energy, Inc.* 117 FERC ¶ 61,172 (2006); *Prairie Wind Transmission, LLC*, 125 FERC ¶ 61,248 (2008).

### III. LEGAL ISSUES RAISED BY SUNFLOWER ELECTRIC POWER CORPORATION AND MID-KANSAS ELECTRIC COMPANY, LLC

16. On March, 15, 2012, Sunflower Electric Power Corporation (Sunflower) and Mid-Kansas Electric Company, LLC (MKEC) filed a joint petition to intervene in this docket. In their joint petition, Sunflower and MKEC raised several issues that, should Sunflower, MKEC, and Westar be granted intervention, may be at issue during the pendency of this docket at the KCC. While Westar may take no position or only provide brief input on these issues at this time, Westar would like to participate in the development of these issues during the pendency of this docket.

17. Sunflower and MKEC argue that the KCC has the power and authority to regulate KPP's transmission rates at issue in this docket and that the Protocols must be amended to reflect KCC jurisdiction over annual updates, reviews, and disputes. In its December 15, 2011, Order<sup>1</sup>, FERC stated that KPP is not a public utility within the meaning of section 201 of the Federal Power Act and would not otherwise fall within the Commission's jurisdiction under FPA section 205.<sup>2</sup> However, FERC further stated that it does have jurisdiction under section 205 and 206 of the FPA over the rates for transmission service provided by SPP.<sup>3</sup> FERC further stated that court decisions have made clear that when a non-jurisdictional transmission owner voluntarily joins an

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<sup>1</sup> *Southwest Power Pool, Inc.*, 137 FERC ¶ 61,197 (Dec. 15, 2011).

<sup>2</sup> *Id.*, ¶ 15.

<sup>3</sup> *Id.*

RTO and has its revenue requirement recovered as part of the RTO's rates, the Commission can examine the non-jurisdictional utility's revenue requirement to ensure that the RTO's rates will ultimately be just and reasonable.<sup>4</sup> While Westar understands there may be a legitimate discussion of jurisdiction and preemption between FERC and the KCC regarding KPP's ATRR and transmission rates, Westar takes no position at this time other than to point out that the Protocols must specify a procedure for interested parties to file challenges to KPP's formula and annual updates including an appropriate venue in which to do so. In light of FERC's Order, this may not be as simple as selecting the KCC as the sole venue for resolving future disputes. Westar is willing to participate in the development of the issue during the pendency of this docket.

18. Sunflower and MKEC have also argued that KPP cannot collect its ATRR without approval by the KCC, essentially arguing that FERC's Order accepting KPP's formula rate subject to refund is inappropriate if a component of that formula, the cost of service, is not first approved by the KCC. Again, Westar is not taking a position on this legal argument at this time, but is willing to participate in the development of the issue during the pendency of this docket.

19. Sunflower and MKEC have also argued that KPP has failed to adhere to the requirements of K.S.A. 66-136 by not seeking KCC approval of the transfer of functional control of its transmission facilities to SPP. Sunflower and MKEC also raise the concern about the actual ownership of the transmission facilities and the authority to transfer control of such facilities to SPP. Westar shares in these concerns. It is unclear to Westar who between KPP and the City of Winfield actually own and/or have the authority to transfer control of the facilities to

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<sup>4</sup> *Id.*

SPP. Westar would like to see this issue resolved in this docket and, in the least, obtain clarity as to the relationship between KPP and the City of Winfield regarding ownership and control of the subject facilities.

#### IV. CONCLUSION

20. KPP has not provided adequate support for the tariff revisions proposed in the above captioned docket. Although KPP has proposed what appears to be a reasonable method to determine the initial level of investment that should be included in its ATRR, it has provided no evidence to support the estimates of the new construction costs used to estimate the investment amount and has not demonstrated that the line lengths and ages utilized when developing construction costs are accurate. Additionally, in order to ensure that the costs recovered through KPP's formula rate are just and reasonable, KPP and its member cities must be required to begin maintaining their books and records in accordance with the Commission's accounting rules for any transmission facility included in the formula rate. KPP should not be allowed O&M expenses during the first year of the formula without a showing that actual work was performed on the transmission facilities and be required to utilize its actual expenses in the future and that those costs be audited and made available to customers as part of its annual update. KPP must also be required to implement an appropriate set of protocols that provide customers a meaningful opportunity to review the inputs to and results of the annual update to the formula and the ability to require corrections to the inputs and results if necessary.

21. Westar also expresses its willingness to participate in the development and resolution of the various other legal issues raised by KCC Staff, Sunflower, and MKEC.

22. In addition to undersigned counsel, the names, addresses and telephone numbers of Westar's representatives upon whom all notices, pleadings, correspondence, and other documents regarding this Application should be served are as follows:

Kelly B. Harrison  
Westar Energy, Inc.  
Vice President, Transmission  
P.O. Box 889  
818 S. Kansas Avenue  
Topeka, Kansas 66601  
(785) 575-1636  
[kelly.harrison@westarenergy.com](mailto:kelly.harrison@westarenergy.com)

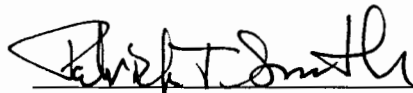
Jeffrey L. Martin  
Westar Energy, Inc.  
Executive Director, Regulatory Affairs  
P.O. Box 889  
818 S. Kansas Avenue  
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(785) 575-6362  
[jeff.martin@westarenergy.com](mailto:jeff.martin@westarenergy.com)

23. Due to its clear interests in these matters Westar respectfully requests that it be allowed to intervene and participate as a party to this docket.

WHEREFORE, Westar requests that the Commission issue its order granting Westar's petition to intervene in this matter for such other and further relief as may be appropriate.

Respectfully submitted,

WESTAR ENERGY, INC.




Patrick T. Smith, #18275  
Corporate Counsel  
Cathryn J. Dinges, #20848  
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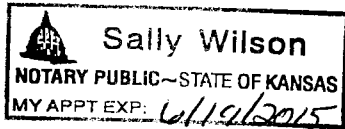
VERIFICATION

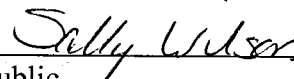
STATE OF KANSAS )  
 )  
COUNTY OF SHAWNEE )      SS:

Patrick T. Smith, being duly sworn upon his oath deposes and says that he is one of the attorneys for Westar Energy, Inc.; that he is familiar with the **Petition of Westar Energy, Inc. to Intervene** and that the statements therein are true and correct to the best of his knowledge and belief.

  
\_\_\_\_\_  
Patrick T. Smith

SUBSCRIBED AND SWORN to before me this 21<sup>st</sup> day of March, 2012.



  
\_\_\_\_\_  
Notary Public

My Appointment Expires:

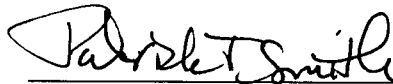
6/19/2015

CERTIFICATE OF SERVICE

I hereby certify that on this 21<sup>st</sup> day of March, 2012, the original and eight copies of the **Petition of Westar Energy, Inc. to Intervene** were hand-delivered to:

Patti Peterson-Klein  
Executive Director  
KANSAS CORPORATION COMMISSION  
1500 SW Arrowhead Road  
Topeka, Kansas 66604

and that one copy was served by electronic mail to all parties of record in the docket.



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Patrick T. Smith



PATRICK T. SMITH  
Corporate Counsel

March 21, 2012

Received  
on

MAR 21 2012

by  
State Corporation Commission  
of Kansas

Patti Petersen-Klein  
Executive Director  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, Kansas 66604

Re: In the Matter of the Application of The Kansas Power Pool ("KPP"), A Municipal Energy Agency, for Approval of Its Annual Transmission Revenue Requirement (ATRR) for Its Transmission Facilities; Docket No. 12-KPPE-630-MIS

Dear Ms. Patti Petersen-Klein:

Enclosed please find the original and eight (8) copies of the **Petition to Intervene** filed in behalf of Westar Energy, Inc.

Please file stamp one copy for my files.

Thank you for your assistance.

Sincerely,

Patrick T. Smith

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cc: Service List