

STATE CORPORATION COMMISSION

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

APR 21 2009

In the Matter of the General Investigation)
Into Commission Policy Regarding)
Pension and Retirement Costs for)
Investor-Owned Utilities.)

Docket No. 07-GIMX-1041-GIV

 Docket
Room

**COMMENTS OF WESTAR ENERGY, INC. AND KANSAS GAS AND ELECTRIC
COMPANY IN RESPONSE TO STAFF'S REPORT AND RECOMMENDATION**

COME NOW Westar Energy, Inc. (Westar North) and Kansas Gas and Electric Company (Westar South) (collectively referred to as "Westar") and file their comments in response to the Staff Report and Recommendation filed on March 18, 2009, in this proceeding.

INTRODUCTION

1. On October 17, 2006, Westar, along with several other utilities, filed an application in Docket No. 07-ATMG-387-ACT (387 Docket) requesting that the Commission issue an accounting authority order (AAO) authorizing the utilities to:

1. Establish a regulatory asset or regulatory liability to track the difference between the amounts recognized in rates and the pension, post-retirement and post-employment expenses recorded according to Generally Accepted Accounting Principles (GAAP) as defined in the Statement of Financial Accounting Standards (SFAS) 87, 88, 106, 112, and 132(R) (Expense Tracker).
2. Recognize for ratemaking purposes any charges recorded against equity in compliance with SFAS No. 158 and SFAS Nos. 87, 88, 106, and 132(R) as amended through either the establishment of a regulatory asset or an adjustment to the equity percentage in their utility's capital structure.
3. Recognize for ratemaking purposes the companies' contributions to their pension, post-retirement, and post-employment plans in excess of pension, post-retirement, and post-employment plan expense recorded in compliance with SFAS No. 87, 88, 106, 112, 132(R), or 158 (Contribution Tracker).

2. In the 387 Docket, Staff recommended that the Commission approve Request No. 2 and open a generic docket to further consider Requests No. 1 and 3. On January 24, 2007, the Commission issued an Order in the 387 Docket approving Request No. 2 and indicating its intent to open a generic docket with respect to Request Nos. 1 and 3. Then, on March 29, 2007, the Commission opened the above-captioned generic docket to further consider Request Nos. 1 and 3.

3. On March 18, 2009, Staff filed its Report and Recommendation in the above-captioned generic docket. Staff did not address Request No. 2 in its Report and Recommendation because the Commission had previously ruled on it in the 387 Docket.

4. With respect to Request No. 1, Staff recommended that the Commission approve implementation of an Expense Tracker, provided that the affected utility meets a mandatory minimum funding level equal to pension, post-retirement, and post-employment costs included in the utility's cost of service. Staff recommended that the Commission deny Request No. 3 because of concerns it had that the Contribution Tracker would be asymmetrical or could possibly lead to gaming by the utilities.

5. As discussed in greater detail below, Westar agrees with Staff's recommendation regarding Request No. 1, provided that one modification is made with respect to the minimum funding target. Westar acknowledges Staff's concerns about Request No. 3 regarding asymmetry but suggests simple modifications to address those concerns.

6. Due to the recent volatility in capital markets and the significant effect that volatility has on Westar's pension and post-retirement trusts (Pension Trusts), Westar respectfully requests that the Commission issue an Order in this docket making its decisions effective for the 2009 calendar year and that the Commission issue its Order by June 1, 2009.

REQUEST NO. 1 – EXPENSE TRACKER

7. In Request No. 1, Westar requested an Expense Tracker that would establish a regulatory asset or liability to track the cumulative difference between pension, post-retirement, and post-employment expenses calculated under GAAP (GAAP Pension Expense) and the pension expense included in its cost of service. As Staff explained in its Report and Recommendation,

utilities include in cost of service a component for pension, postretirement, and post employment expenses. These costs are recovered through rates charged to consumers until the next rate case. During the time between rate cases, these expenses usually change, but funds received from consumers remain constant. Between rate cases, the utilities have no mechanism to collect the amount of pension, postretirement and post employment costs which are greater than or less than the amount included in the cost of service.

Staff Report and Recommendation, ¶ 6. The Expense Tracker proposed in Request No. 1 provides such a mechanism for utilities to ultimately collect or refund the difference between GAAP Pension Expense and the amount previously approved and included in rates.

8. Staff recommended approval of Request No. 1, provided that the affected utility meets a mandatory minimum funding level equal to pension, post-retirement, and post-employment costs included in the utility's cost of service. Staff Report and Recommendation, ¶ 9. Staff was concerned that absent such a minimum funding requirement, Request No. 1 might not ensure funding of the Pension Trusts.

9. Westar agrees with Staff's recommendation that the Commission permit utilities to implement an Expense Tracker. Westar also generally concurs with the need for and concept of a minimum target for funding the Pension Trusts. Westar, however, believes that the

minimum funding target¹ should be based on GAAP Pension Expense instead of the pension expense included in a utility's cost of service.

10. Westar believes that GAAP Pension Expense is the proper standard for setting a minimum funding target because GAAP Pension Expense is the amount of pension, post-retirement, and post-employment expense which will be incurred by the utility and recognized in its cost of service during a rate review. Using GAAP Pension Expense as the minimum funding target will ensure that the pension expense included in a utility's rates is equal to the amount contributed by the utility to the Pension Trusts.

11. Staff describes the implementation of the Expense Tracker using a regulatory asset/liability account in detail in its Report and Recommendation. Westar agrees with Staff's description and requests that the Commission adopt Staff's approach regarding Request No. 1, with the modification to the funding target discussed above.²

REQUEST NO. 3 – CONTRIBUTION TRACKER

12. Originally, Request No. 3 asked for rate base treatment of contributions made by utilities in excess of GAAP Pension Expense. Staff recommended that the Commission deny this request because the utilities' original proposal was not symmetrical and Staff thought there was a risk that utilities could "play games" with pension funding.

Westar refers to this funding requirement as a target because there may be instances where Westar is required by law to contribute more than the target amount or where the full amount of GAAP Pension Expense is not tax deductible. Westar discusses its proposal with respect to contributions in excess of or less than the minimum funding target below in its discussion of Request No. 3.

² Staff's Report and Recommendation did not address the possibility that a utility would have negative pension expense for a given year or the manner in which such negative expense would be incorporated into the Expense Tracker. Westar suggests that the Commission follow the method established for Kansas City Power & Light Company (KCPL) in Docket No. 04-KCPE-1025-GIE to address negative pension expense. This method is described in paragraphs E(2)(d) and E(2)(f) of Appendix C of the Stipulation and Agreement filed by KCPL in Docket No. 04-KCPE-1025-GIE.

13. In order to address the concerns expressed by Staff, Westar suggests that the Commission modify the Contribution Tracker as described below. If implemented, this modification will make the Contribution Tracker symmetrical and will provide benefits to both Westar and its customers. The modified Contribution Tracker would track contributions made by Westar to the Pension Trusts in excess of or less than Westar's GAAP Pension Expense. The tracker would accumulate carrying charges to Westar if excess contributions are made, until such excess contributions are included in Westar's rates. It would accumulate carrying charges to the customers if contributions less than Westar's GAAP Pension Expense are made, until the time that Westar reaches its minimum funding target. This Contribution Tracker is symmetrical and simply provides the time value of money to the party – Westar or its customers – that is advancing capital for the Pension Trusts.³

14. Westar will only make contributions in excess of its GAAP Pension Expense when required by the provisions of the Pension Protection Act of 2006 (PPA), which was enacted after the initiation of the above-captioned docket. The PPA significantly changed the rules on employer contributions for defined benefit pension plans subject to minimum funding standards. The PPA will ultimately require plan sponsors to make contributions necessary to amortize unfunded benefit liabilities over seven years. The new rules will force sponsors of under-funded plans to contribute substantially more than under prior laws. The contributions determined under PPA could lead to significant volatility from year to year. Plans that are fully funded in one year may become under-funded the next year.

³ The Commission has previously approved a Contribution Tracker for KCPL in Docket No. 04-KCPE-1025-GIE. See Stipulation and Agreement, Docket No. 04-KCPE-1025-GIE, Appendix C, ¶ E(2)(e). Approval of Westar's modified Request No. 3 will ensure that the Commission's decisions on these issues are consistent for the various utilities throughout the state.

15. The requirements of the PPA may require Westar to make contributions to the Pension Trusts in excess of its GAAP Pension Expense in the following situations:

- i. Contributions are necessary to avoid Pension Benefit Guaranty Corporation (PBGC) variable premiums;
- ii. Contributions are necessary to avoid benefit restrictions as defined by the PPA; and
- iii. Contributions are necessary to avoid shortfall amortization charges as defined by the PPA.

These three instances represent the only times when Westar would utilize the Contribution Tracker for contributions in excess of GAAP Pension Expense.

16. In the event Westar is required to make such excess contributions, its customers will benefit from the tracker because the contributions will be treated as a prepayment towards future contributions that would otherwise be required under the minimum funding target established as part of Request No. 1. Tracking the excess contributions provides a benefit to customers by reducing future pension expense and eliminating or reducing PBGC premiums, all of which serve to reduce the cost of utility service. As Staff explained in its Report and Recommendation, “funding of the employee’s retirement benefits and the time value of money will work towards decreasing future costs.” Staff Report and Recommendation, ¶ 9.

17. If such excess contributions are made, Westar will accumulate – as a regulatory asset – a carrying charge on the difference between its GAAP Pension Expense and the excess amount contributed to the Pension Trusts. The carrying charges will continue to accrue until the excess contributions made by Westar are included in its rates.

18. Westar contemplates only one circumstance where it would be inadvisable to contribute less than the amount established as a minimum funding target in Request No. 1, and

that condition would be if the entire amount were not tax deductible. Westar's contribution of money to the Pension Trusts if it were not tax deductible would actually increase the costs to customers because they would ultimately pay additional taxes as part of their rates. If this occurs, Westar would make contributions to reach the minimum funding target as soon as those contributions became tax deductible. In the meantime, Westar would accumulate – as a regulatory liability – a carrying charge on the difference between the amount actually contributed to the Pension Trusts and the minimum funding target. These carrying charges would accrue in favor of Westar's customers until its contributions reach the minimum funding target.

CONCLUSION

19. Westar requests that the Commission adopt Staff's position with respect to Request No. 1, the Expense Tracker, but modify the minimum funding target to be equal to Westar's GAAP Pension Expense instead of the amount of pension expense included in Westar's cost of service. Westar's proposal ensures a minimum level of funding, as recommended by Staff, by requiring a funding target equal to GAAP expense.

20. Westar also requests that the Commission approve its modified Request No. 3 and allow Westar to implement a Contribution Tracker. The modifications made by Westar to Request No. 3 address Staff's concerns regarding asymmetry, eliminate the possibility of gaming, and thus result in a Contribution Tracker that would be in the public interest. The Commission's approval of a Contribution Tracker would recognize that there can be certain instances when it is in the public interest for Westar to contribute more or less to the Pension Trusts than the minimum funding target set under Request No. 1 and would ensure that such differences, if they occur, are accounted for fairly. The Contribution Tracker simply provides

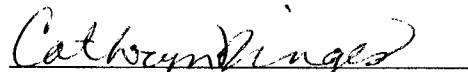
Westar – if excess contributions are made – or its customers – if the target is not met because of tax issues – the time value of their money.

21. Westar believes that it would be beneficial for the utilities to meet with Staff in an attempt to resolve any remaining differences with respect to the issues pending in this docket. Westar has already approached the other utilities and Staff about such a meeting and believes that it will be scheduled in the near future.

22. Westar respectfully requests that the Commission's order approve these requests effective for 2009 and issue its Order by June 1, 2009.

Respectfully submitted,

WESTAR ENERGY, INC.
KANSAS GAS AND ELECTRIC COMPANY



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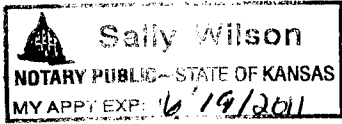
VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

Cathryn J. Dinges, being duly sworn upon her oath deposes and says that she is the attorney for Westar Energy, Inc. and Kansas Gas and Electric Company; that she is familiar with the foregoing **Comments**; 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 21st day of April, 2009.



Sally Wilson
Notary Public

My Appointment Expires: 6/19/2011

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April, 2009, the original and eight copies foregoing **Comments** were delivered to:

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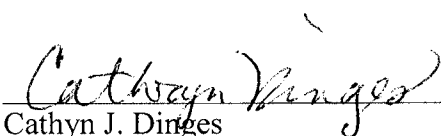
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