

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

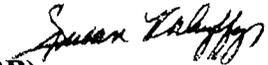
In the Matter of Westar Energy, Inc. and )  
Kansas Gas and Electric Company (KEG) )  
d/b/a Westar Energy Seeking Commission )  
Approval to Revise its Environmental Cost )  
Recovery (ECRR) Tariff. )

Docket No. 09-WSEE-737-TAR

STATE CORPORATION COMMISSION

MAY 18 2009

**Comments of the Citizens' Utility Ratepayer Board (CURB)**

 Docket  
Room

The following comments of the Citizens' Utility Ratepayer Board are submitted pursuant to the procedures established in Docket No. 07-WSEE-978-TAR for consideration of the annual Environmental Cost Recovery Rider (ECRR) tariff filings of Westar Energy, Inc. and Kansas Gas and Electric Company (collectively, Westar).

**Background.** The ECRR was approved in Docket No. 05-WSEE-981-RTS. The ECRR was designed to pass through to customers, between base rate cases, the revenue requirement associated with expenditures for significant environmental upgrades to six of Westar's plants. The Commission also approved Staff's proposal to require Westar to file a summary of each project that it proposes to include in the ECRR six months before the project is commenced. The ECRR was designed with the intent that costs would be rolled into base rates with each base rate case filed by Westar.

In Docket Nos. 06-WSEE-1088-TAR and 07-WSE-978-TAR, the Commission slightly refined the procedure for the annual update of the ECRR surcharge. In Docket No. 08-WSEE-849-TAR, Westar proposed to eliminate the requirement that costs recovered through the ECRR surcharge shall be transferred to base rates in each

successive base rate case. CURB opposed this proposal and the issue was deferred to Westar's next base rate case, which was filed on May 28, 2008 as Docket No. 08-WSEE-1041-RTS. In that case, Westar proposed to continue to recover all environmental costs through the ECRR instead of moving costs into base rates each time new base rates are established. CURB once again opposed this proposal. In the Stipulation and Agreement ("S&A") in Docket No. 08-WSEE-1041-RTS, the parties agreed to roll environmental expenditures made through 2007 into base rates. Thus, approximately \$234.7 million in capital costs that had previously been recovered through the ECRR were transferred to base rates in that case. The revenue requirement impact of transferring these projects to base rates was an increase to ratepayers of approximately \$29 million annually. In addition, the parties received a rate increase of \$130 million effective January 2009 that was unrelated to recovery of environmental expenditures.

On March 17, 2009, just two months after receiving a base rate increase of \$130 million and an additional \$29 million base rate increase relating to the roll-in of environmental expenditures, Westar filed a revision to its ECRR tariffs to reflect incremental expenditures for environmental projects through December 31, 2008. In that Petition, Westar is seeking to implement a surcharge of \$25,802,236 for Westar North and of \$7,923,510 for Westar South. On April 23, 2009, Staff filed its Memorandum and Recommendation of the Commission Staff ("Report and Recommendation") recommending that the KCC approve a surcharge of \$25,063,238 for Westar North and of \$7,389,942 for Westar South. Staff's Report corrected several errors relating to project costs as reflected in the filing and also corrected two cell reference errors from Westar's previous filing in Docket No. 08-WSEE-849-TAR.

**Motion for Extension of Time.** On May 5, 2009, CURB filed a Motion for Extension of Time to File Comments (“Motion”). Pursuant to the annual procedural schedule for Westar’s ECRR filings that was established in Docket No. 07-WSEE-978-TAR, CURB’s responsive comments were due May 15, 2009. In its Motion, CURB requested an additional five business days to file responsive comments. CURB argued that the extension was appropriate, given the errors identified by Staff in its Report and Recommendation and given the magnitude of the surcharges that Westar proposed. On May 8, 2009, the KCC issued an order granting a four-day extension to file responsive comments.

**Quantification of the ECRR Surcharge.** CURB appreciates the KCC’s indulgence in granting the four-day extension for responsive comments. CURB issued data requests in this case on April 27, 2009, only two business days after Staff issued its Report. At the time that CURB filed its Motion, it did not know when it would receive responses to its discovery requests or what issues might be identified as a result of that discovery.

Westar responded in a timely manner to the discovery issued by CURB and CURB appreciates the Company’s efforts in that regard. In addition, informal discussions with Staff were helpful in clarifying the impact of the errors identified by Staff in its Report and Recommendation, and in resolving other concerns of CURB relating to the quantification of the proposed surcharges. As a result of its review of discovery responses and its discussions with Staff, CURB is not recommending an

adjustment to the surcharges as quantified in Staff's Report and Recommendation. However, CURB continues to have concerns about the magnitude of the rate increases being passed through the ECRR, about the accuracy of the Company's projections of future capital expenditures, and about the abbreviated process for review of the ECRR surcharge.

**Status of Environmental Compliance Costs.** In Docket No. 05-WSEE-981-RTS, Mr. Harrison testified that the Company intended to spend \$463.2 million for environmental compliance from 2005 through 2014.<sup>1</sup> Actual expenditures reported to date have been \$474.6 million. Therefore, only a few years after the ECRR was implemented, the Company has already exceeded the ten-year estimate of capital expenditures that was made just four years ago. Moreover, Exhibit DFR-4, filed by Westar in Docket No. 09-WSEE-641-GIE, indicates that the Company expects to spend \$79.7 million in 2009, \$287.8 million in 2010, and \$411.1 million in 2011 for environmental improvements, for a total over the next three years of \$778.6 million.<sup>2</sup> When combined with the \$474.6 million already spent, the Company's total actual and projected expenditures for the period through 2011 are now **\$1.25 billion!** Thus, through 2011, the Company currently projects that it will spend approximately **170%** more than was projected for the entire period from 2005 to 2014 when the ECRR was approved.<sup>3</sup>

And that's not all: as shown in Exhibit DFR-4 in Docket No. 09-WSEE-641-GIE, Westar projects additional capital expenditures relating to environmental projects in 2012

---

<sup>1</sup> Testimony of Mr. Harrison in Docket No. 05-WSEE-981-RTS, page 23.

<sup>2</sup> These amounts reflect only 84% of JEC costs.

<sup>3</sup> For example, the JEC Gas Desulfurization Project was originally projected to cost \$270.2 million. The current estimate is \$430.6 million per the response to CURB-4.

and 2013, although the details of those projected expenditures are confidential. However, CURB encourages the KCC to examine the total expenditure projections provided in the confidential portions of Exhibit DFR-4 in Docket No. 09-WSEE-641-GIE.

Moreover, these expenditures will pass through to ratepayers with Staff having had only four weeks for review and without any public notice requirements. CURB has serious questions regarding whether the current ECRR mechanism and procedural schedule is still sufficient to provide for adequate review and analysis of these expenditures, especially when one considers the magnitude of the actual expenditures compared with original estimates. At a minimum, CURB believes that the additional reporting requirements outlined below, as well as some modification of the current practice for handling confidential material, is warranted.

**Procedural Issues.** The current procedural schedule for Westar's ECRR filings, which was approved in Docket No. 07-WSEE-978-TAR, provides for the Company to make an annual ECRR filing on or before March 31. Moreover, it requires Staff to file its Report and Recommendation on or before May 1. Intervening parties then have until May 15 to file responsive comments and the KCC must issue an order on or before May 29 of each year. New ECRR rates become effective June 1.

Clearly, the procedural schedule provides very little time for review and analysis by other parties. While Staff only has four weeks to analyze the filings and prepare its Report and Recommendation, other parties are even more severely disadvantaged, since they must first file for, and be granted, intervener status before participating in the proceeding. In addition, parties other than Staff cannot obtain access to confidential

information until a Confidentiality Agreement has been issued by the KCC, and therefore they may not have access to confidential supporting documentation in a timely manner.

It should be noted that during Commissioner questioning of CURB's witness, Andrea Crane, in Docket No. 08-WSEE-1041-RTS, she responded to several questions about CURB's general opposition to recovering costs through riders, rather than through base rates. She noted that CURB is concerned that surcharge mechanisms have much shorter review periods than does a base rate case. This concern is highlighted by the facts of this docket. Instead of having an eight-month period to review the filing, the KCC has only two months to review the Company's ECRR claim for millions and millions of dollars in additional costs to ratepayers. Moreover, instead of having many months to prepare testimony, CURB and the interveners have only six weeks to prepare comments on the filing, and only two weeks from the issuance of Staff's Report and Recommendation to prepare responsive comments. Given constraints with regard to the availability of confidential information, as well as the need to file for and receive intervener status, even these very short timeframes are further compressed.

While CURB would like to see a significant expansion of the procedural schedule, we realize that such a change is unlikely to be approved by the KCC in this case. Therefore, CURB is offering several recommendations that would enhance CURB's ability to review the annual filings within the current procedural time constraints and would also promote the public interest.

In addition, CURB has concerns about the lack of notice requirements for customers. At the present time, there is no requirement that Westar notify customers when it files its ECRR Petition, nor is there any provision for formal comments by

customers. Given the magnitude of the increases being requested, CURB believes that lack of customer notification is a serious violation of the public interest standard.

**CURB's Recommendations.** CURB makes the following recommendations with regard to Westar's ECRR filing:

First, the Commission should institute a process whereby confidential information relating to environmental expenditures recovered through the ECRR can be provided to CURB throughout the year. Concerns about protecting confidentiality can be addressed by the KCC issuing an ongoing Confidentiality Agreement spanning multiple annual proceedings, or by opening a new ECRR docket as soon as the last one is closed, so that a Confidentiality agreement can be issued promptly. Allowing CURB to access confidential information prior to the Company's filing would give CURB additional time to evaluate the Company's expenditures to date, and to anticipate issues that may arise in the review of each annual ECRR filing.

Second, CURB recommends that the KCC establish a process to provide for the Company to provide additional environmental cost information to the parties, including CURB, prior to the annual filing on March 31. The Company is currently required to submit a report to Staff six months prior to the commencement of a project for which the Company will propose recovery through the ECRR. The report shall include a) a description of the project, b) the need for the project, including how it complies with legal requirements, c) the reasons for choosing a particular technology in lieu of possible alternatives, and d) an estimate of the costs and duration of the project. CURB

recommends that the Commission require the Company to submit a copy of this report to CURB when the report is submitted to Staff.

In addition, CURB recommends an additional reporting requirement that CURB believes will facilitate ongoing review of ECRR projects. The report that the Company is required to file with Staff is filed on a project-by-project basis six months before each respective project begins. However, there is no report that provides an overview of all projects being recovered through the ECRR until the Company's annual filing is made. Moreover, the annual filing does not include information regarding the original budget for each project, the currently-projected budget, the projected completion date, or other information that may be helpful in evaluating the Company's requested surcharge.

Therefore, CURB recommends that the KCC require the Company provide a summary report each year regarding its environmental expenditures to date. Specifically, CURB requests that the Company be required to provide, for each project, a) the initial budget estimate, b) the amount spend to date, by year, c) the estimated budget to complete the project, d) the start date of the project, e) the original projected completion date, f) the current projected completion date, and g) any significant events relating to the project during the year. CURB requests that the Company provide this information for each project included in the ECRR until the Company reports that the project is complete. If possible, CURB requests that this report be provided prior to the actual ECRR filing.

Third, CURB requests that the Company agree to a meeting or conference call within two weeks of the filing date so that CURB can clarify any questions about the annual ECRR filing.

These three provisions will assist CURB in its annual review and will allow CURB to develop a better understanding of the projects and the costs being recovered through the ECRR. CURB acknowledges that it could have been more aggressive in these dockets in reviewing the ECRR filings and in issuing further discovery. However, CURB has limited resources. The three provisions outlined above will assist CURB in its review without imposing burdensome requirements on Westar or expanding the procedural schedule.

**Notice.** These ECRR filings are not simply minor tariff adjustments: the magnitude of the ECRR surcharge increases is staggering. For example, in the first three filings, a total of \$33.6 million was approved for recovery by the KCC. The amount transferred to base rates in Docket No. 08-WSEE-1041-RTS increased utility rates by approximately \$29 million. Now, less than 3 months after that increase was authorized, Westar has filed for another \$33.6 million increase in the ECRR surcharge. These increases are of special concern when one notes that there is no provision in these dockets requiring the Company to notify customers prior to the increases appearing on customer bills. Given that, according to the Company's projections, there will be more than 170% additional costs passing through this surcharge to customers than was originally anticipated, the rate increases are not insubstantial. Therefore, CURB also requests that the KCC require Westar to provide notice of its ECRR request to its customers within 30 days of the filing. CURB believes that such notice will serve to promote the public interest, will provide interested ratepayers an opportunity to gain further information about the surcharge, and will allow customers to budget for the increased costs.

In summary, CURB recommends that the KCC modify the current procedures for ECRR dockets to provide CURB access throughout the year to confidential documents relating to environmental projects. In addition, CURB recommends that the Commission require Westar to file an annual ECRR report that provides additional information, as described above, prior to making its ECRR increase requests. Westar should be prepared to meet with CURB as well as with Staff once the filing is made. Third, CURB recommends that the Commission require Westar to notify customers of proposed increases within 30 days after the Company makes its annual ECRR filings.

While these recommendations will enhance CURB's ability to evaluate the annual ECRR filings, and enhance the ability of ratepayers to prepare for these increases, a more comprehensive reevaluation of the ECRR mechanism may be appropriate. Given the magnitude of the additional expenditures projected by Westar, and the past history with regard to budget projections versus actual costs, the KCC may want to further examine the reasonableness of the current process. CURB would welcome the opportunity to participate in a comprehensive review of the ECRR mechanism and procedures for review.

Respectfully submitted,



---

David Springe #15619  
Niki Christopher #19311  
C. Steven Rarrick #13127  
Citizens' Utility Ratepayer Board  
1500 SW Arrowhead Road  
Topeka, KS 66604  
(785) 271-3200  
(785) 271-3116 Fax

VERIFICATION

STATE OF KANSAS )

COUNTY OF SHAWNEE ) ss:

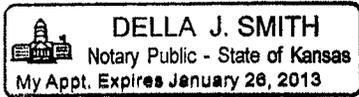
I, Niki Christopher, of lawful age, being first duly sworn upon her oath states:

That she is an attorney for the Citizens' Utility Ratepayer Board, that she has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.



\_\_\_\_\_  
Niki Christopher

SUBSCRIBED AND SWORN to before me this 18th day of May, 2009.



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

My Commission expires: 01-26-2013.

**CERTIFICATE OF SERVICE**

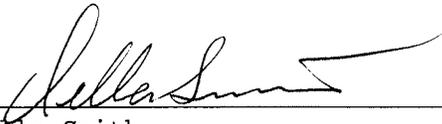
09-WSEE-737-TAR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, e-mailed, or hand-delivered this 18th day of May, 2009, to the following:

OTTO NEWTON, LITIGATION COUNSEL  
OTTO NEWTON  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
o.newton@kcc.ks.gov  
\*\*\*\* Hand Deliver \*\*\*\*

JEFFREY A ELLIOTT, SR REGULATORY ANALYST  
WESTAR ENERGY, INC.  
818 S KANSAS AVENUE  
PO BOX 889  
TOPEKA, KS 66601-0889

MIKE LENNEN, VP REGULATORY AFFAIRS  
WESTAR ENERGY, INC.  
818 S KANSAS AVENUE  
PO BOX 889  
TOPEKA, KS 66601-0889  
Fax: 785-575-8119  
michael.lennen@westarenergy.com

  
\_\_\_\_\_  
Della Smith