

Received  
on

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

AUG 19 2013

by  
State Corporation Commission  
of Kansas

In the Matter of the Applications of Westar ) Docket No. 13-WSEE-629-RTS  
Energy, Inc. and Kansas Gas and Electric )  
Company for Approval to Make Certain )  
Changes in Their Charges for Electric Service. )

**CURB'S RESPONSE TO STAFF'S MOTION FOR MODIFICATION  
OF PROCEDURAL SCHEDULE**

The Citizens' Utility Ratepayer Board (CURB) hereby submits its response to *Staff's Motion for Modification of Procedural Schedule* (Staff Motion), filed in this docket on August 9, 2013:

1. Staff's Motion noted that Westar Energy, in its abbreviated rate case application, has proposed "to create a fund, to be administered by a third party, to provide low-income energy assistance to customers' by redirecting 10% of the margins Westar receives when it makes off-system sales and all the dollars received through its RENEW tariff to the proposed low-income assistance fund." Staff's Motion, ¶2. Staff requested legal briefing of the legality of this proposal in light of the Commission's previous ruling in 04-GIMX-531-GIV, which upheld its 1982 ruling that lifeline rates for gas and electric service are prohibited under Kansas law because it is unduly discriminatory to require one set of ratepayers subsidize a discount rate for other ratepayers based on factors unrelated to the cost of service.

2. While recognizing that the proposed low-income assistance program Westar may raise questions related to prior rulings of the Commission, CURB notes for the record that the company's proposal to implement an economic development tariff is equally likely to raise such

questions concerning cross-class subsidization and undue discrimination. The funding for the discount will be subsidized by customers not eligible for the discount.

3. CURB suggests that the matter of briefing these issues could be sidestepped altogether by ruling that consideration of either proposal in the context of this abbreviated case is inappropriate because they are outside the intended scope of this proceeding. The Commission's order in Westar's last base rate case, Docket No. 12-WSEE-112-RTS, established the limited issues to be decided in Westar's abbreviated case: (1) an update of actual capital costs incurred by Westar related to environmental projects at LaCygne Energy Center that were preapproved by the Commission in Docket No. 11-KCPE-581-PRE, up to the amount of costs approved by the Commission in that docket but not included in the 112 Docket, (2) update rates to reflect the expiration of the amortization period for costs associated with the 2007 ice storm, and (3) the issues of class cost of service, class cost allocation, and rate design would be open to consideration. (See *Order Approving Nonunanimous Stipulation and Agreement with Modification*, Docket No. 12-WSEE-112-RTS, Apr. 18, 2012, at ¶¶79-80).

4. Thus, Westar's proposals for a low-income assistance program and an economic development tariff, both to be funded by subsidies derived from the rates paid by all customers, are outside the parameters established for this abbreviated case. Rather than requiring the parties to consume valuable time and effort briefing whether these proposals are legal, the Commission could simply strike the testimony on these issues as being non-germane to the current proceeding,<sup>1</sup> because raising issues beyond the prescribed scope defeats the purpose of allowing utilities to file abbreviated

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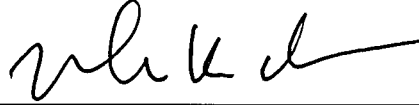
<sup>1</sup> If the Commission determines to limit this proceeding to those issues outlined in its 112 Docket order, then Westar's adjustment of its revenue requirement for bad debt should also be considered non-germane to the current proceeding.

rate case applications. This case, intended to be limited in scope to the issues outlined in the Commission's order, is simply not the appropriate venue for reconsideration of longstanding Commission policy and interpretations of Kansas law and the adoption of new programs.

5. However, if the Commission believes legal briefing of the issues concerning the low-income proposal is appropriate for this docket, then CURB suggests that the Commission widen the scope of the subject of the briefing to include addressing the legality and policy implications of the proposed economic development rider, as well. The funding mechanism of both proposed programs raises concerns about cross-class subsidization and undue discrimination in rates as defined in prior orders of the Commission. Approval of the economic development tariff would require reconsideration of the same longstanding Commission policy that Staff has identified as being of concern with the low-income program proposal. Briefing the issues raised by one program without briefing similar issues raised by the other would leave many remaining questions to be answered in this case.

6. By recognizing the implications of these proposals on Commission policy, and in suggesting that this docket is not the appropriate venue for consideration of these implications, CURB is not opposing consideration of these issues in a more appropriate context, such as a separate docket opened to consider Westar's proposals or a generic docket opened to revisit prior Commission determinations and interpretations of Kansas law concerning the permissibility of cross-class subsidization and what constitutes undue discrimination in rates. CURB has historically supported the addition of programs that provide greater access to energy efficiency and assistance to low-income customers and is interested in enhancing the availability of such programs.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Niki Christopher', written over a horizontal line.

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**CERTIFICATE OF SERVICE**

13-WSEE-629-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 19<sup>th</sup> day of August, 2013, to the following parties who have waived receipt of follow-up hard copies:

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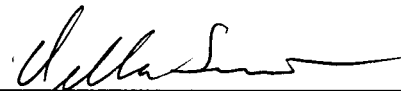
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