

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners:                   Dwight D. Keen, Chair  
  Shari Feist Albrecht  
  Jay Scott Emler

In the Matter of the Joint Application of Westar    )  
Energy, Inc. and Kansas Gas and Electric    )     Docket No. 19-WSEE-355-TAR  
Company for Recovery of Certain Costs    )  
Through Their RECA.                            )

**ORDER ON KIC AND CURB PETITIONS TO INTERVENE AND ON WESTAR'S  
REQUEST FOR EXPEDITED REVIEW OF APPLICATION**

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having reviewed its files and records, and being fully advised in the premises, the Commission makes the following findings:

1.     On March 4, 2019, Westar Energy, Inc. and Kansas Gas and Electric Company (collectively “Westar”) filed a Joint Application for recovery of certain costs through their Retail Electric Cost Adjustment (RECA) tariff. (Joint Application).<sup>1</sup>
2.     On March 8, 2019, Kansas Industrial Consumers Group, Inc. (KIC) filed a Petition to Intervene and an objection to Westar’s request for expedited review of the Application.<sup>2</sup>
3.     On March 13, 2019, the Citizens’ Utility Ratepayer Board (CURB) petitioned to intervene.<sup>3</sup>
4.     On March 14, 2019, Westar responded to KIC’s Petition to Intervene and objection to expedited review. (Westar Response).<sup>4</sup>

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<sup>1</sup> Joint Application for Recovery of Costs through RECA, p. 1 (Mar. 4, 2019).

<sup>2</sup> Petition to Intervene of Kansas Industrial Consumers Group, Inc., and Objection to Request for Expedited Review of Application (Mar. 8, 2019) (KIC Petition).

<sup>3</sup> CURB’s Petition to Intervene and Motion for Protective Order and Discovery Order (Mar. 13, 2019).

<sup>4</sup> Response of Westar Energy, Inc. and Kansas Gas and Electric Company to Petition to Intervene and Objection to Request for Expedited Review of Application of Kansas Industrial Consumers Group, Inc. (Mar. 14, 2019).

5. On March 15, 2019, Commission Utilities Staff (Staff) also responded to KIC's Petition to Intervene and objection to expedited review. (Staff Response).<sup>5</sup>

6. On March 18, 2019, KIC filed a Notice of Entities Participating through KIC.<sup>6</sup>

### **I. KIC's Intervention Request**

7. KIC noted its good standing in Kansas<sup>7</sup> and its "purpose of representing of [sic] the interests of commercial, business, industrial, and not-for-profit and educational entities that purchase large volumes of electric energy . . . for their operations and activities."<sup>8</sup> KIC also noted its intervention in the 18-WSEE-328-RTS Docket, "where the Commission approved a Settlement Agreement that addressed the costs of the . . . 8% interest in JEC [Jeffrey Energy Center] and whether such costs should be included in Westar's retail rates."<sup>9</sup>

8. KIC asserted it has interests in this proceeding that may not be adequately represented by other parties; Commission orders in this matter will bind, and may adversely affect, KIC; and intervention and full party status for KIC is in the interest of justice, will not impair the orderly and proper conduct of the proceeding, and will, in fact, "greatly enhance the orderly and prompt conduct of the Commission's business."<sup>10</sup> KIC noted the Commission's previous requirement that KIC must identify entities participating in the docket through KIC, and KIC has no objection to its intervention being conditioned on identification of one or more participating members.<sup>11</sup> KIC's Notice of Entities Participating through KIC listed the following entities as participating through KIC in this proceeding: (1) Occidental Chemical Corporation; (2) Spirit

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<sup>5</sup> Staff's Response to KIC's Petition to Intervene and Objection to Expedited Treatment (Mar. 15, 2019).

<sup>6</sup> Notice of Entities Participating through KIC (Mar. 18, 2019).

<sup>7</sup> KIC Petition, ¶ 5.

<sup>8</sup> KIC Petition, ¶ 2.

<sup>9</sup> KIC Petition, ¶ 3.

<sup>10</sup> KIC Petition, ¶¶ 6-8.

<sup>11</sup> KIC Petition, ¶ 9. *See* Notice of Entities Participating through KIC, ¶ 2.

AeroSystems, Inc.; and (3) The Goodyear Tire & Rubber Company.<sup>12</sup> KIC noted that these entities are Westar retail customers.<sup>13</sup>

9. In its Response, Westar reiterated its position from a previous Commission docket, whereby “it would have no objection to [KIC’s] intervention . . . if [KIC] would identify its members.”<sup>14</sup> KIC has done so. Staff did not object to KIC’s intervention.<sup>15</sup>

10. The Commission shall grant intervention if the petition: (1) is submitted in writing; (2) states facts demonstrating the petitioner's legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and (3) the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.<sup>16</sup> The Commission has discretion to grant intervention at any time where intervention is in the interests of justice and will not impair the orderly and prompt conduct of proceedings.<sup>17</sup> At any time during a proceeding, the Commission may impose limitations on an intervenor’s participation, which may include limiting an intervenor’s participation to designated issues in which the intervenor has a particular interest demonstrated by the petition, limiting intervenor discovery, cross-examination and other procedures, and requiring intervenors to consolidate their participation in the proceedings.<sup>18</sup>

11. The Commission finds KIC has met the requirements of K.S.A. 77-521 and K.A.R. 82-1-225 because KIC has identified participants who are Westar customers and who have indicated an intent to participate in this proceeding through KIC.<sup>19</sup> KIC’s intervention is in the interests of

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<sup>12</sup> Notice of Entities Participating through KIC, ¶ 2.

<sup>13</sup> *Id.*

<sup>14</sup> Westar Response, ¶ 7.

<sup>15</sup> Staff Response, ¶ 4.

<sup>16</sup> K.S.A. 77-521(a); K.A.R. 82-1-225(a).

<sup>17</sup> K.S.A. 77-521(b); K.A.R. 82-1-225(b).

<sup>18</sup> K.S.A. 77-521(c); K.A.R. 82-1-225(c).

<sup>19</sup> *See* Notice of Entities Participating through KIC, ¶ 2.

justice and will not impair the orderly and prompt conduct of the proceedings.<sup>20</sup> Thus, The Commission finds KIC should be granted full intervention.

12. KIC will be added to the mailing list. Service of electronic notices, pleadings, testimony, orders, communications, and other documents should be directed to the following:

James P. Zakoura  
Smithyman & Zakoura, Chartered  
750 Commerce Plaza II  
7400 West 110th Street  
Overland Park, KS 66210  
Ph: (913) 661-9800  
Fax: (913) 661-9863  
[jim@smizak-law.com](mailto:jim@smizak-law.com)

Andrew J. French  
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**II. CURB’s Intervention Request**

13. Based on its statutory authority to represent the interests of Kansas residential and small commercial ratepayers in any utility proceeding before the Commission and to function as an official intervenor in cases filed with the Commission,<sup>21</sup> the Commission finds that CURB has met the requirements of K.S.A. 77-521 and K.A.R. 82-1-225 and should be granted intervention in this docket. CURB will be added to the service list. Service of electronic notices, pleadings, communications and correspondence should be delivered to counsel of record as follows:

David W. Nickel, Consumer Counsel  
Todd E. Love, Attorney  
Citizens’ Utility Ratepayer Board  
1500 Arrowhead Road  
Topeka, KS 66604  
(785) 271-3200 (tel.)  
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[d.nickel@curb.kansas.gov](mailto:d.nickel@curb.kansas.gov)  
[t.love@curb.kansas.gov](mailto:t.love@curb.kansas.gov)

14. In addition to counsel of record for CURB listed above, service of electronic notices, pleadings and correspondence should be delivered to CURB’s other designees:

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<sup>20</sup> See K.S.A. 77-521(b); see also K.A.R. 82-1-225(b).  
<sup>21</sup> See K.S.A. 66-1223; K.S.A. 77-521(a).

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Citizens' Utility Ratepayer Board  
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1500 SW Arrowhead Road  
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### III. Request for Expedited Review

15. In the Joint Application, Westar requested the Commission issue its order within 60 days of the Application. Westar “requests this expedited treatment because allowing Westar to begin recovering lease expense and NFOM expense through the RECA will result in less of a deferral balance and will smooth recovery of those expenses over time.”<sup>22</sup> Westar also stated that expedited review will “match the timing of the recovery of expenses with the timing that customers are receiving benefits from gaining access to additional capacity and energy from JEC.”<sup>23</sup>

16. In its Response to Westar, KIC claimed that any customer benefits stemming from the Westar-Midwest Power Company (MWP) transaction at issue are unclear.<sup>24</sup> By contrast, said KIC, Westar’s benefits are obvious, and thus, the proposed expedited timeframe would not allow Staff and intervenors to properly review the Application and advocate for their positions on the transaction.<sup>25</sup>

17. Staff acknowledged Westar’s concerns,<sup>26</sup> but agreed with KIC that parties will need longer than 60 days to properly evaluate Westar’s cost/benefit analysis.<sup>27</sup> Staff recommended the parties collaborate to develop a procedural schedule that provides a reasonable yet expedited time for review of the Application so as to mitigate cost recovery risks.<sup>28</sup>

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<sup>22</sup> Joint Application, ¶ 34.

<sup>23</sup> Joint Application, ¶ 34.

<sup>24</sup> KIC Petition, ¶ 11.

<sup>25</sup> KIC Petition, ¶ 14.

<sup>26</sup> Staff Response, ¶ 6.

<sup>27</sup> Staff Response, ¶¶ 5, 7.

<sup>28</sup> Staff Response, ¶ 7.

18. In response to KIC's objections to expedited review, Westar argued that KIC's participation in Westar's recent general rate case gave KIC familiarity with all the facts at issue.<sup>29</sup> Thus, Westar stated that "the workload of this docket is narrow and manageable and there is no reason the parties would not be able to complete their review in the 60-day time period."<sup>30</sup>

19. While the Commission acknowledges Westar's desire to smooth cost recovery, the Commission finds this concern does not outweigh the need to give Staff and intervenors sufficient time to conduct a thorough review of Westar's cost/benefit analysis. Given the press of Commission business and the possibility that unanticipated issues may arise regarding the Westar-MWP transaction, the Commission will not commit itself to a review period that might prove unfeasible. Thus, the Commission adopts Staff's recommendation that the parties collaborate to develop a procedural schedule extending the review period a reasonable time beyond Westar's proposed 60-day timeframe, while also retaining expeditious deadlines. Toward that end, the Commission directs the parties to file a motion within seven (7) days of service of this Order proposing a procedural schedule.

**THEREFORE, THE COMMISSION ORDERS:**

- A. KIC and CURB are granted intervention.
- B. Westar's request for a Commission order within 60 days of the filing of the Joint Application is denied. The parties shall collaborate on a procedural schedule and file a motion within seven (7) days of service of this Order that proposes such schedule.
- C. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>31</sup>

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<sup>29</sup> Westar Response, ¶ 10.

<sup>30</sup> *Id.*


<sup>31</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering further orders as it deems necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Keen, Chair; Albrecht, Commissioner; Emler, Commissioner

Dated: 03/28/2019



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Lynn M. Retz  
Secretary to the Commission

MJD

## CERTIFICATE OF SERVICE

19-WSEE-355-TAR

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 03/28/2019.

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**CERTIFICATE OF SERVICE**

19-WSEE-355-TAR

/S/ DeeAnn Shupe

DeeAnn Shupe

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