

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

Before Commissioners: Susan K. Duffy, Chair
Shari Feist Albrecht
Dwight D. Keen

In the Matter of the Joint Application of)
Westar Energy, Inc. and Kansas Gas and)
Electric Company for Approval to Make) Docket No. 18-WSEE-328-RTS
Certain Changes in their Charges for Electric)
Services.)

ORDER SETTING PROCEDURAL SCHEDULE ON RATE DESIGN

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, the Commission finds and concludes as follows:

1. On February 1, 2018, Westar Energy, Inc. (Westar) and Kansas Gas and Electric Company (KG&E) (collectively Westar) filed a Joint Application for a rate increase of approximately \$52.6 million to cover costs prudently incurred for Westar to continue providing reliable, efficient service at a reasonable cost to customers, all in accordance with its public service obligation.¹ Westar's requested rate increase is motivated by several factors: (1) the change in the corporate tax rate implemented by the Tax Cuts and Jobs Act of 2017, which reduces Westar's revenue requirement by \$74 million;² (2) costs associated with Westar's investment in the Western Plains wind farm;³ (3) Westar's efforts to aggressively refinance debt since its most recent rate case, saving almost \$29 million annually in interest expense;⁴ and (4) increased depreciation expense.⁵ Westar's Application was accompanied by supporting testimony from 18 witnesses.

¹ Joint Application, Feb. 1, 2018, ¶¶ 1, 5.

² *Id.*, ¶ 7.

³ *Id.*, ¶ 8.

⁴ *Id.*, ¶ 9.

⁵ *Id.*, ¶ 10.

2. The Citizens' Utility Ratepayer Board (CURB);⁶ Kansas Industrial Consumers Group, Inc. (KIC);⁷ Cargill, Incorporated; Coffeyville Resources Refining & Marketing, LLC; Occidental Chemical Corporation; Spirit Aerosystems, Inc.; Goodyear Tire & Rubber Company;⁸ HollyFrontier El Dorado Refining, LLC (HollyFrontier);⁹ the Kroger Co. (Kroger);¹⁰ the United States Department of Defense;¹¹ Unified School District #259 (USD 259);¹² Tyson Foods and Wal-Mart Stores, Inc. (Walmart);¹³ the Sierra Club;¹⁴ Vote Solar;¹⁵ KeyCorp and Midwest Power Company (MWP);¹⁶ CCPS Transportation, LLC;¹⁷ and Learjet Inc.¹⁸ were granted intervention. Topeka Metropolitan Transit Authority;¹⁹ the Kansas State Board of Regents and Universities;²⁰ and Climate and Energy Project (CEP)²¹ were granted partial intervention.

3. On May 22, 2018 and June 28, 2018, respectively, the Commission held public hearings in Topeka and Wichita. On July 25, 2018, the Commission's Office of Public Affairs and Consumer Protection (PACP) filed a report summarizing the public comments received between the Joint Application filing date of February 1, 2018 and the end of the comment period on July 18, 2018.

⁶ Order Designating Prehearing Officer, Suspension Order, Protective Order, Discovery Order, and Order Granting Intervention to the Citizens' Utility Ratepayer Board, Feb. 8, 2018.

⁷ Order Granting Intervention to Kansas Industrial Consumers Group, Inc., Mar. 20, 2018.

⁸ Order Granting Intervention to Cargill, Incorporated; Coffeyville Resources Refining & Marketing, LLC; Occidental Chemical Corporation; Spirit Aerosystems, Inc.; and the Goodyear Tire & Rubber Company, Mar. 22, 2018.

⁹ Order Granting Intervention to HollyFrontier El Dorado Refining, LLC, Mar. 22, 2018.

¹⁰ Order Granting intervention to the Kroger Co., Mar. 22, 2018.

¹¹ Order Granting Intervention to the DOD/FEA, Mar. 27, 2018.

¹² Order Granting Intervention to USD 259, Mar. 27, 2018.

¹³ Order Granting Intervention to Tyson Foods and Wal-Mart Stores, Inc., Apr. 26, 2018.

¹⁴ Order Granting Sierra Club's Petition to Intervene, May 3, 2018.

¹⁵ Order Consolidating Vote Solar and Sierra Club Interventions, June 7, 2018.

¹⁶ Order Granting Intervention and Motion for Leave to File Intervenor Testimony to Keycorp and Midwest Power Company, June 14, 2018.

¹⁷ Order Granting CCPS Transportation, LLC's Petition to Intervene, July 10, 2018.

¹⁸ Order Granting Learjet Inc.'s Petition to Intervene, July 12, 2018.

¹⁹ Order Granting Limited Intervention to Topeka Metropolitan Transit Authority, May 24, 2018.

²⁰ Order Granting Limited Intervention to the Kansas State Board of Regents and Universities; Order Denying Motion for Leave to File Testimony Out of Time, July 10, 2018.

²¹ Order Granting Limited Intervention to Climate and Energy Project, July 10, 2018.

4. On July 17, 2018, Commission Staff (Staff), CURB, KIC, USD 259, the Kroger Co. (Kroger), the U.S. Department of Defense, HollyFrontier, Walmart, Tyson Foods, Topeka Metropolitan Transit Authority, and the Kansas State Board of Regents filed a Joint Motion to Approve Non-Unanimous Stipulation and Agreement (S&A). In relevant part, the Parties to the S&A agree that Westar will implement a three-part rate for the Residential DG class with a demand charge of \$9.00 for the summer and of \$3.00 for the winter.²²

5. On July 18, 2018, the Sierra Club, Vote Solar, and Climate and Energy Project filed their Objection to the Non-Unanimous Stipulation and Agreement,²³ and testimony opposing the S&A from Paul L. Chernick and Madeline Yozwiak. Ms. Yozwiak voiced opposition to the rate design and revenue allocation to customers with DG, proposed in the S&A, arguing that it imposes rates and charges for the Residential DG (RS-DG) class that are not cost-based; not just and reasonable; and that are unreasonably discriminatory and unduly preferential.²⁴

6. Also on July 18, 2018, Andrea C. Crane, on behalf of CURB; Dr. Robert H. Glass, PhD., and Justin Grady of Staff; Ahmad Faruqui and Greg Greenwood on behalf of Westar; and Michael P. Gorman on behalf of KIC filed testimony in support of the S&A.

7. Beginning on July 24, 2018, the Commission held a two-day hearing on the S&A. Twenty-three parties, including Vote Solar and the Sierra Club, participated in the hearing and appeared by counsel.

8. On September 27, 2018, the Commission issued its Order Approving Non-Unanimous Stipulation and Agreement (Order), finding in relevant part, that: (1) the expert witnesses from Westar, Staff and CURB provides substantial, competent and compelling evidence

²² Non-Unanimous Stipulation and Agreement, July 17, 2018, ¶ 46.

²³ Sierra Club, Vote Solar, and Climate and Energy Project's Objection to the Non-Unanimous Stipulation and Agreement and the Joint Motion to Approve the Same, July 18, 2018, ¶ 3.

²⁴Testimony in Opposition to Non-Unanimous Stipulation and Agreement and Exhibits of Madeline Yozwiak, July 18, 2018, pp. 2-3.

to approve the S&A's three-part rate design;²⁵ (2) the evidence demonstrates that RS-DG customers' usage patterns, rather than their use of renewable energy is the basis for paying a different rate than their non-DG counterparts;²⁶ and (3) RS-DG customers are not disadvantaged by any alleged difficulty in understanding or responding to the three-part RS-DG rate.²⁷

9. On October 12, 2018, Sierra Club and Vote Solar filed a Petition for Reconsideration (PFR), alleging the Commission: (1) erred in finding that the S&A's revenue reduction allocation and residential distributed generation tariff (RS-DG tariff) are supported by substantial competent evidence;²⁸ (2) erred in approving a proposed RS-DG rate that violates state and federal law;²⁹ and (3) erred in finding that the RS-DG rate is in the public interest.³⁰

10. On November 8, 2018, the Commission denied the Sierra Club and Vote Solar's PFR.³¹ On December 10, 2018, the Sierra Club and Vote Solar filed their Notice of Appeal. Pursuant to K.S.A. 66-118a(b), the Court of Appeals had exclusive jurisdiction over the appeal.

11. On April 12, 2019, the Court of Appeals issued an unpublished Memorandum Opinion, affirming the Commission's Order.³² The Court of Appeals found that: (1) while the parties presented conflicting evidence on the reasonableness of the new RS-DG rate design, there was substantial competent evidence supporting the Commission's finding that the new rate design was based on a neutral cost-based rationale,³³ and (2) because the rate design bears a rational relationship to Westar's cost recovery, while not imposing a disproportionate burden on the RS-DG

²⁵ Order Approving Non-Unanimous Stipulation and Agreement, Sept. 27 2018, ¶ 51.

²⁶ *Id.*, ¶ 58.

²⁷ *Id.*, ¶ 60.

²⁸ PFR, p. 2.

²⁹ PFR, p. 7.

³⁰ PFR, p. 28.

³¹ Order on Petition for Reconsideration, Nov. 8, 2018.

³² *In the Matter of the Joint Application of Westar Energy, Inc. and Kansas Gas and Electric Company*, No. 120,436, 2019 WL 1575480 (Kan. App. Apr. 12, 2019).

³³ *Id.*, *6.

class, the new rate is not discriminatory simply because it imposes higher charges on the RS-DG class than they would receive under the standard residential rate.³⁴

12. On May 10, 2019, the Sierra Club and Vote Solar filed a Petition for Review with the Supreme Court. On September 3, 2019, the Supreme Court granted the Petition for Review. The Supreme Court heard oral argument on the Petition for Review on December 19, 2019.

13. On April 3, 2020, the Supreme Court reversed and remanded the Court of Appeals' decision, finding, "[t]here is no question that the RS-DG rate at issue here is not built on a time-of-use rate or a minimum bill. It is simply price discrimination. And this price discrimination undermines the policy preferences of our Legislature -- as expressed in K.S.A. 66-117d -- which has codified the goal of incentivizing renewable energy production by private parties."³⁵

14. The Court opined,

We can think of several ways the Utilities could attempt to reduce or eliminate their economic "free rider" problem without creating a regime of price discrimination. For example, the Utilities could simply restructure their rates so that their fixed costs are fully recovered by the flat fee charged to each customer hooked to the grid. Alternatively, the Utilities could impose a nondiscriminatory time-of-use rate, or a sliding scale rate that decreased the per-unit price as the customer purchased a higher volume of energy—thus rewarding high volume purchasers. Of course it is beyond the scope of this opinion to predict whether these alternative price schemes would clear either the political or legal hurdles they might face. These examples simply illustrate that price discrimination is not the only way to achieve an equitable market for the sale of electricity within statutory parameters. Our decision today does not impose any restrictions on the Utilities' and Commission's economic judgments concerning how best to structure the generation and sale of electricity other than the restriction imposed by the Kansas Legislature in K.S.A. 66-117d.³⁶

³⁴ *Id.*, *7.

³⁵ *In the Matter of the Joint Application of Westar Energy, Inc. and Kansas Gas and Electric Company*, 460 P.3d 821, 827, (Kan. 2020).

³⁶ *Id.*, at 827.

The Supreme Court reversed the judgment of the Court of Appeals and the Commission and remanded the matter back to the Commission for further proceedings consistent with its opinion.³⁷

15. As directed by the Supreme Court, the Commission reopens this Docket for further proceedings to determine an appropriate rate design for Westar.

16. Since the issue of distributed generation is not unique to Westar, the Commission directs all jurisdictional electrical utilities to enter their appearance in this Docket. Other interested parties may file Petitions to Intervene by June 30. Parties previously granted intervention do not need to seek intervention again and will remain on the certificate of service.

17. The Parties are instructed to file comments addressing the two options for rate design suggested by the Supreme Court: (1) restructuring rates to fully recover fixed rates by the flat fee charged to each customer hooked to the grid and (2) imposing a nondiscriminatory time-of-use rate, or a sliding scale rate that decreased the per-unit price as the customer purchased a higher volume of energy—thus rewarding high volume purchasers. The Parties are also directed to propose other alternative rate designs consistent with K.S.A. 66-117d. Comments are due by August 14, 2020, with replies due September 10, 2020.

18. The Commission establishes the following procedural schedule going forward:

DATE	ACTION	TIME
June 30, 2020	Deadline for Petitions to Intervene and Entries of Appearance	5:00 p.m.
August 14, 2020	Initial Comments due	5:00 p.m.
September 10, 2020	Reply Comments due	5:00 p.m.
October 13, 2020	Westar to file proposed rate design with supporting testimony	5:00 p.m.
November 13, 2020	Staff and Intervenor testimony in response to Westar's proposed rate design due	5:00 p.m.

³⁷ *Id.*

December 4, 2020	Rebuttal testimony due	5:00 p.m.
December 7, 2020	Prehearing conference (3d Floor Hearing Room in Topeka)	9:00 a.m.
December 16-17, 2020	Evidentiary hearing (1 st Floor Hearing Room in Topeka)	9:00 a.m.
January 11, 2021	Post-hearing briefs due	5:00 p.m.
February 25, 2021	Commission Order due	5:00 p.m.

THEREFORE, THE COMMISSION ORDERS:

A. All jurisdictional electrical utilities are directed to enter their appearance in this Docket by June 30, 2020. Other interested parties may file Petitions to Intervene by June 30. Parties previously granted intervention do not need to seek intervention again and will remain on the certificate of service.

B. The Parties are instructed to file comments evaluating the two options for rate design suggested by the Supreme Court and proposing other alternative rate designs consistent with K.S.A. 66-117d, by August 14, 2020. Reply comments are due September 10, 2020.


C. Westar shall file its proposed rate design with supporting testimony by October 13, 2020. Responsive testimony is due November 13, 2020, with rebuttal testimony due December 4, 2020.

D. An evidentiary hearing is scheduled for December 16, 2020, beginning at 9:00 a.m., in the 1st Floor Hearing Room of the Commission's Topeka Offices.

BY THE COMMISSION IT IS SO ORDERED.

Duffy, Chair; Albrecht, Commissioner; Keen, Commissioner

Dated: 06/16/2020



 Lynn M. Retz
 Executive Director

BGF

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18-WSEE-328-RTS

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 06/16/2020.

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