

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Westar)
Energy, Inc. and Kansas Gas and Electric) Docket No. 15-WSEE-115-RTS
Company to Make Certain Changes in Their)
Charges for Electric Service.)

**RESPONSE OF THE CITIZENS' UTILITY RATEPAYER BOARD TO THE KIC AND
DOD/FEA JOINT MOTION TO STRIKE THE PORTION OF THE CROSS-
ANSWERING TESTIMONY OF CURB WITNESS BRIAN KALCIC INTRODUCING A
STAFF REVISED COST OF SERVICE STUDY**

The Citizens' Utility Ratepayer Board (CURB) files its Response to Joint Motion filed by the Kansas Industrial Customers (KIC) and the U.S. Department of Defense and all other Federal Executive Agencies (DOD/FEA) seeking to strike a portion of CURB witness Brian Kalcic's Cross-Answering Testimony filed in this docket. CURB states that Mr. Kalcic's Cross-Answering testimony is proper and the KIC and DOD/FEA Motion to Strike must be denied. In support, CURB states the following:

Background

1. This dispute arises out of the current rate case proceeding for Westar Energy, Inc. and Kansas Gas and Electric Company (Westar). The intervening parties and the Commission Staff filed Direct Testimony on July 9, 2015. On July 29, the parties filed cross-answering testimony addressing the various positions taken by the other intervenors and Commission Staff. CURB witness Brian Kalcic timely filed Direct Testimony and Cross-Answering Testimony on various rate design and cost allocation issues raised by Staff and the other parties. The Motion to Strike objects to portions of Mr. Kalcic's Cross-Answering Testimony that addresses the flaws in the class cost of service study filed by Staff witness Dorothy Myrick.

2. Mr. Kalcic did not sponsor a class cost-of-service study (“CCOS”) in his Direct Testimony and, contrary to the Motion to Strike, Mr. Kalcic did not sponsor a CCOS in his Cross-Answering Testimony. Instead, Mr. Kalcic recommended that the Commission rely on KCC Staff’s hybrid Peak and Average (“P&A”) CCOS to determine an appropriate class revenue allocation in this case. Generally speaking, in the absence of a Base, Intermediate and Peak (“BIP”) CCOS, CURB believes Staff’s hybrid P&A cost study is the most reasonable cost-of-service methodology on which to base a class revenue allocation, due to the fact that the P&A approach allocates some portion of total generation plant balances to classes based on energy use.

3. Mr. Kalcic is very familiar with Staff’s formulation of the P&A methodology, having reviewed Staff’s model in both Westar’s most recent rate case, Docket No. 13-WSEE-629-RTS and in Kansas City Power & Light’s current rate case, Docket No. 15-KCPE-115-RTS. Staff’s CCOS was filed on May 11, 2015 in the KCPL case and on July 9, 2015 in this proceeding. In his direct testimony, Mr. Kalcic offered his recommendation to rely on Staff’s CCOS based on how Staff formulated its cost-of-service model in the KCPL proceeding. However, at some point between May 11 and July 9, Staff changed the formulation of its model.

4. Admittedly, when recommending the use of Staff’s CCOS, Mr. Kalcic had no knowledge that Staff witness Dorothy J. Myrick would change the formulation of the Staff model from that filed less than two months prior. Nor could CURB anticipate the material impact this change would have on Staff’s class cost-of-service results.

5. In his Cross-Answering testimony, Mr. Kalcic addresses a single change in the methodology contained in Staff’s CCOS in this case compared to the methodology used by Staff in the past two rate cases. In developing its model in this case, Staff witness Ms. Myrick

allocated Deferred Income Taxes (DIT) and Investment Tax Credits (ITC) balances in proportion to each rate class's responsibility for current income taxes. As Mr. Kalcic points out in his Cross-Answering Testimony, in the prior two formulations of Staff's model, in both the Westar rate case and the KCPL rate case, Staff allocated DIT and ITC to each class based on its share of total plant in service. (Kalcic, Cross-Answering at 6).

6. CURB believes that the rationale for Ms. Myrick's DIT and ITC allocation in this case is flawed and that the Commission should reject this change in the formulation of Staff's model. DIT is unrelated to current income taxes and should not be allocated based on current taxes. Likewise Westar's ITC balance is based on an amortization over the life of the utility asset that generated the ITC. Again, this balance is unrelated to current income taxes. Both DIT and ITC are a function of Westar's investment in utility plant, and Mr. Kalcic believes that these balances should be allocated to classes, as was done in Staff's prior two CCOSs, based on each class's allocated share of total plant.

7. Based on Mr. Kalcic's concern about the unbalanced results of Staff's model and upon reading Staff's Direct Testimony, CURB sent Staff the following data request:

Please provide a revised page 1 of Exhibit DJM-E1 that reflects an allocation of Staff's (i) provision for Deferred Income Taxes and (ii) Investment Tax Credit lines to rate classes on the basis of "Total Plant in Service" (shown on page 7 of Exhibit DJM-E 1), which is the allocation method used in Staff's Class Cost-of-Service Study submitted in KCPL Docket No. 15-KCPE-116-RTS.

Staff did not object to the information sought in the data request, and in response supplied CURB an answer which included the results of rerunning Staff's CCOS model with DIT and ITC allocated on total plant balances, as was done in the Westar and KCPL rate cases. Staff labeled

this model result “Revised Exhibit DJM-2”. CURB attached “Revised Exhibit DJM-2” to Mr. Kalcic’s Cross-Answering testimony to show the Commission the impact on allocation results due to this single methodological change.

CURB’s Cross-Answering Testimony is Proper

8. Cross-answering testimony is the appropriate forum for responding to the direct testimony of other parties to the case. The proper place and time to address concerns with Staff’s new formulation of its model is in cross-answering testimony. Mr. Kalcic offered his critique of the new Staff model and used the data response from Staff to show the impact of Ms. Myrick’s alteration of the prior Staff model on class cost of service. He explained and demonstrated why his critique is valid, and explained why he does not support Staff’s new methodology. There is nothing improper about his cross-answering testimony.

9. Effective cross-answering testimony makes counter-arguments that are supported by substantial competent evidence. There is nothing improper about using Staff’s response to CURB’s data request to support Mr. Kalcic’s critique of Staff’s revised model. There is also nothing inappropriate about Mr. Kalcic explaining to the Commission why he changed his mind about the wisdom of relying on Staff’s cost of service study methodology in this case. Yes, Mr. Kalcic mistakenly expected Staff’s methodology in this case would be consistent with the methodology Staff used in the KCPL case, but it wasn’t. As a result, Mr. Kalcic has withdrawn his support of Staff’s filed methodology and has offered a sound argument for why the methodology used in this case is not as fair and balanced as the methodology used recently by Staff in the KCPL case. Mr. Kalcic’s change of position is supported by information he received in discovery. Demonstrating the new model’s flaw with evidence is more effective and useful to the Commission in understanding

why Mr. Kalcic prefers one model over than the other than it would be if Mr. Kalcic simply complained about the flaw without offering a solution. Mr. Kalcic's cross-answering testimony thus fulfills the express purpose of cross-answering testimony. There is absolutely nothing improper with any aspect of the way Mr. Kalcic presented his critique of the Staff's revised model.

10. There's no value to the Commission in allowing cross-answering testimony if all the parties do is argue the other party is wrong without supporting their arguments, and there is no point to allowing discovery on other parties' testimony if no one is allowed to use the information obtained in discovery as evidence to support their arguments, or to explain why they have revised their original position during the course of the 240-day proceeding. As long as a party provides evidentiary support for a change in position, there is no reason to bar a witness from testifying as to the reasons why he now disagrees with a position he took earlier.

11. Further, CURB would be well within its rights to raise these same questions and to use Staff's data request response in cross-examination of Ms. Myrick at trial. Since this is an administrative proceeding, the procedural schedule allows for this type of information to be pre-filed as testimony, for all to review, rather than be raised and entered at trial through cross-examination. What can be used in cross-examination at trial cannot be considered improper cross-answering testimony.

Mr. Kalcic did not present “an entirely new CCOS of his own.”

12. KIC and DOD/FEA state that that in his Cross-Answering testimony Mr. Kalcic “has created and submitted an entirely new CCOS of his own.” (Motion to Strike, at ¶ 9). That's simply not true. Mr. Kalcic has not created and submitted an “entirely new CCOS of his own.” As explained above, Mr. Kalcic included with his cross-answering testimony a response of Staff to a

data request from Mr. Kalcic that requested Staff utilize the CCOS model used in its two most recent rate case filings to allocate DIT and ITC. The result shown in the data request supports Mr. Kalcic's contention that Staff's new CCOS methodology used in this case is flawed and explains why he does not support it, unless the study is revised to conform with the methodology Staff recently used in the current KCPL case. At no point does Mr. Kalcic represent this Staff CCOS data response as being his own work.

13. KIC and DOD/FEA state that "allowing CURB to submit a "Revised Staff Cost-of Service Study" at this point in the proceeding prejudices all other parties, placing them at a material disadvantage." (Motion to Strike, at ¶11). First, CURB did not submit a "revised cost of service study", as noted above. Further, there is nothing improper about CURB asking the Commission to adopt a change in one piece of Staff's model presented in its direct testimony to make its methodology and results consistent with prior versions of the same model.

14. Second, as argued above, there is nothing improper about Mr. Kalcic supporting his argument against Staff's new model with evidence that demonstrates the difference in how the two models allocate costs to customers. Further, as also noted above, CURB could wait to raise these same issues at the evidentiary hearing and seek to introduce Staff's data request response through cross-examination. Instead, CURB is making this evidence available to all of the parties by putting this evidence on the record weeks in advance of the hearing. This also gives plenty of notice to the other parties before the evidentiary hearing that Mr. Kalcic would like to clarify that his favorable opinion of Staff's model applies only to the model used in the current KCPL case, not the model used in this case. This hardly disadvantages the parties, but rather promotes judicial economy and gives the parties advance notice of the information provided to CURB in the discovery process.

15. Third, KIC and DOD/FEA state that allowing CURB to submit an “entirely new CCOS” at this late stage of the proceeding is a “severe burden” on all the parties. (Motion to Strike, at ¶13). Again—it’s not Mr. Kalcic’s model, and it isn’t new. Further, the notion that the parties involved would not be able to deal with the revelation that Mr. Kalcic regards the new Staff CCOS model as including a fundamental flaw is absurd. He has pointed out the precise flaw in Staff’s model, and Staff itself provided the evidence showing the impact of the difference between the two models, by responding to CURB’s data request. He explains the difference and how it impacted the results of Staff’s CCOS in this case. Mr. Kalcic has produced nothing “new”, he has simply uncovered the difference in Staff’s previous model and the model used in this case, discussed why it is important and has asked the Commission to adopt Staff’s previous model as more fair and reasonable. If KIC and DOD/FEA find this process too difficult or too severe a burden to bear, it is not the fault of Mr. Kalcic. He laid out his argument clearly and they are free to decide whether to support it or disagree with it. But it is not complicated and it isn’t burdensome.

16. Fourth, KIC and DOD/FEA also use their own Cross-Answering testimony to critique Staff’s CCOS methodology. In his Cross-Answering testimony, KIC witness Michael P. Gorman critiques Staff’s methodology for classifying and allocating production and distribution plant and related costs.¹ Similarly, DOD/FEA witness Jeff N. Hoppe critiques the (i) demand allocation factors and (ii) distribution plant classification factors used in Staff’s CCOS.² So if CURB has placed the other parties at a “severe” disadvantage by critiquing Staff’s CCOS, then KIC and DOD/FEA have done so, as well. However, there’s no severe disadvantage imposed on

¹ See the Cross-Answering testimony of Mr. Gorman at pages 5-18.

² See the Cross-Answering testimony of Mr. Hoppe at pages 2-4, and pages 6-7.

any party here. The parties properly have offered critiques of other parties' recommendations and argued for their own recommendations. That is the function and purpose of cross-answering testimony.

17. Finally, KIC and DOD/FEA also argue that CURB is “cherry picking” CCCOS that are more favorable to its clients. (Motion to Strike, at ¶ 12.). CURB first notes that it is the job of all good advocates, including KIC and DOD/FEA, to support arguments and evidence that are favorable to their clients, but also notes that evidence and arguments can be favorable toward one's client and be fair to all the parties, as well. However, Mr. Kalcic is a technical witness, not an attorney, and his main point was to highlight that Staff has changed its CCOS methodology from that used in the current KCPL case, and that he does not agree with that methodological change. Seeking consistency in the model Staff uses from case-to-case can hardly be deemed “cherry picking.” CURB could counter-argue that this Motion to Strike is intended by KIC and DOD/FEA to suppress valid evidence in a last-ditch attempt to promote CCOS models that that do not allocate production plant based on energy, an approach that has been rejected by the Commission in Docket Nos. 10-KCPE-415-RTS and 12-KCPE-764-RTS. But it will not make that argument here.

18. Instead, CURB simply stands on the arguments made above that the evidence included in Mr. Kalcic's Cross-Answering testimony was requested by CURB, produced by the Commission Staff, and provided to CURB in the ordinary course of the discovery process. It is not “an entirely new study” and it was not designed or developed by Mr. Kalcic. It is however, evidence that is relevant to and supportive of his critique of Staff's revised model. The argument Mr. Kalcic makes is an argument that is entirely appropriate for cross-answering testimony.

Rather than informing the parties through cross-examination at the evidentiary hearing of the flaw he has discovered in Staff's new model, Mr. Kalcic has made the information available to all parties well in advance of the evidentiary hearing. He explains why, contrary to his statement in his Direct Testimony, he is not supporting Staff's filed CCOS methodology, and argues for adoption of the model used in the current KCPL rate case to allocate Westar's awarded revenue increase. There is nothing improper with including evidence in cross-answering testimony that supports one's arguments and is also helpful to the Commission in understanding the reason for the revision of one's opinion. It would be admissible at trial and is properly included in Mr. Kalcic's Cross-Answering Testimony.

Therefore, for all the reasons stated above, CURB respectfully requests that the Commission deny the Motion to Strike.

Respectfully submitted,



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CERTIFICATE OF SERVICE

15-WSEE-115-RTS

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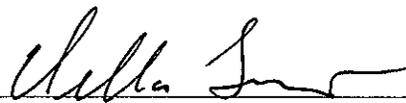
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