

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of Westar Energy, Inc. and)
Kansas Gas and Electric Company Seeking) Docket No. 16-WSEE-021-TAR
Commission Approval for Tariff Revisions to)
the 2015 Energy Efficiency Rider.)

**NOTICE OF FILING OF CURB'S REPLY
TO STAFF'S REPORT AND RECOMMENDATION**

The Citizens' Utility Ratepayer Board (CURB) submits its *Reply to Staff's Report and Recommendation* filed on September 15, 2015.

CURB's Reply sets forth the evidentiary basis for CURB's recommendation.

Respectfully Submitted,



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REPLY TO STAFF'S REPORT AND RECOMMENDATION

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Pat Apple

FROM: Stacey Harden

DATE: September 23, 2015

SUBJECT:

In the Matter of Westar Energy, Inc. and Kansas Gas and Electric Company Seeking Commission Approval for Tariff Revisions to the Energy Efficiency Rider in Docket No. 16-WSEE-021-TAR.

EXECUTIVE SUMMARY:

On July 14, 2015, Westar Energy, Inc. and Kansas Gas and Electric Company ("Westar") filed an application seeking Commission approval to recover \$4,558,828 in costs associated with Westar's various energy-efficiency programs. Westar's application shows that from July 1, 2014 through June 30, 2015, Westar spent \$4,700,093 to offer five energy-efficiency programs. During the same period, Westar over-recovered its 2014 Commission approved Energy Efficiency Rider ("EER") by \$141,625.

On September 15, 2015, the Staff of the Kansas Corporation Commission ("Staff") filed a report identifying calculation errors in Westar's true-up of its previous EER, as well as recommending the disallowance of \$137 expenses associated with the Simple Savings program. Staff recommended the Commission approve Westar's application using Staff's corrections to the true-up amounts, and allow Westar to recover \$4,700,962 through its EER.

CURB recommends the Commission:

1. Disallow \$1,597,077 in expenses for Westar's Energy Efficiency Demand Response program which were incurred after the expiration of the program's Commission-approved five-year budget;
2. Disallow \$137 in expenses for Westar's Simple Savings program which were incurred after the expiration of the program;
3. Disallow \$7,876.11 in expenses that were associated with Westar's application in Docket No. 15-WSEE-181-TAR;
4. Approve Staff's corrections to Westar's true-up calculation; and
5. Allow Westar to recover \$3,096,009 through its EER. This will result in an EER rate of \$0.000156 per kWh.

BACKGROUND

Westar's energy-efficiency and demand-response programs were approved under the guidelines established in the Commission's general investigations in 08-GIMX-441-GIV ("441 Docket") and 08-GIMX-442-GIV ("442 Docket"). The 441 Docket established guidelines for recovery of costs associated with energy-efficiency and demand-response programs. In the 441 Docket, the Commission indicated that EERs should be implemented in a manner that "...maintains the Commission's responsibility to review costs for prudence."¹

This is the sixth EER application filed by Westar.² Appendix A shows a summary of program costs that were approved by the Commission for recovery through Westar's previous EER applications. If the Commission approves this EER as requested by Westar, Westar will have collected \$48,685,449 from its customers in exchange for energy-efficiency programs.

Staff has long maintained that because all energy-efficiency programs and program budgets have been previously approved by the Commission, the annual EER proceedings are not the appropriate dockets in which to review prudence. Staff has indicated that "(a) determination of whether the expenditures are prudent will be made within an Evaluation, Measurement, and Verification ("EM&V") proceeding or within a rate case where there is sufficient data available

¹ Docket No. 08-GIMX-441-GIV, November 14, 2008, *Final Order*, at ¶38.

² Previous Westar EER application dockets are KCC Docket Nos. 11-WSEE-032-TAR, 12-WSEE-063-TAR, 13-WSEE-033-TAR, 14-WSEE-030-TAR, and 15-WSEE-021-TAR.

to fairly evaluate the program.”³ Accordingly, Staff limits its review of EERs to examinations of expenditure consistency – both in scope and amount – with that previously approved by the Commission.

CURB recognizes that the Commission has previously indicated that the purpose of EER filings is to allow the utility to seek recovery for its Commission-approved energy-efficiency programs, and that Staff accordingly limits its review to an examination of expenditures. However, Westar’s current situation is unique, in that Westar is requesting recovery of costs for energy-efficiency programs that no longer have Commission-approved budgets and are pending the outcome of Commission-ordered EM&V. It is CURB’s opinion that Westar’s request to recover these costs requires more than just an examination of the consistency of expenditures. Accordingly, my report will evaluate not only Westar’s expenditures, but also will report on the current status of Westar’s programs.

CURRENT STATUS OF PROGRAMS

A. Background of Program Budget Filings

On January 6, 2015, the Commission ordered Westar to submit new operating budgets for each of its energy-efficiency programs in accordance with the guidelines established in the 441 Docket. Additionally, the Commission ordered that Westar must petition for approval of interim program budgets for its programs undergoing EM&V.⁴

On March 16, 2015, Westar submitted operating budgets for three energy-efficiency programs: WattSaver, Energy Efficiency Demand Response, and Energy Efficiency Education in Docket No. 15-WSEE-021-TAR (“15-021 Docket”). Westar did not provide budgets for the Building Operator Certification program or the Simple Savings program. In the March 16, 2015 filing, Westar did not petition for approval of interim budgets for any of its programs.

On May 7, 2015, based on a conversation between Staff and Westar, Westar refiled its budgets, requesting interim approval of the budgets in Docket No. 15-WSEE-532-MIS (“532 Docket”). This docket was opened for Westar to seek approval of its energy-efficiency program budgets, as well as to complete the EM&V process. Westar’s new application in the 532 Docket provided the same operating budgets for WattSaver, Energy Efficiency Demand Response, and Energy Efficiency Education that were provided in the March 16, 2015 filing in the 15-021 Docket.

On July 14, 2015, in the 15-021 Docket, the Commission issued an order requiring Westar to file operating budgets for each of its ongoing energy-efficiency programs. In its order, the

³ KCC Docket No. 11-WSEE-032-TAR, September 22, 2010, *Staff’s Response to Comments of CURB*, at ¶6.

⁴ Docket No. 15-WSEE-021-TAR, January 6, 2015, *Order on Operating Budgets and EM&V Studies*, at page 4.

Commission stated that “(w)ithout an operating budget, the Commission is unable to sufficiently conduct an audit to ensure program expenditures are within the scope of the approved programs and are appropriate for recovery.”⁵

On September 2, 2015, Staff filed a *Report and Recommendation and Motion for Commission Order* in the 532 Docket. Staff recommended that before the Commission grants interim budget approval for energy-efficiency programs, Westar be required to submit detailed budgets that comply with the guidelines established in the 441 Docket. Additionally, Staff recommended that Westar be required to file for re-approval of its Building Operator Certification, along with a detailed budget, and that Westar extend the term of the Simple Savings program through January 2027 and file a detailed budget for the Simple Savings program.

On September 2, 2015, CURB filed a response supporting the conclusions made in Staff’s Report and Recommendation. Westar did not file a response to Staff’s September 2, 2015 Report and Recommendation.

B. Expenses Incurred Outside of Commission-Approved Budget

With the exception of the Simple Savings Program, each of Westar’s programs was approved in 2009 with a five-year budget. Because more than five years have passed since approval of programs in 2009, each of the Commission-approved budgets expired in 2014.

On June 11, 2015, the Commission approved a Stipulation and Agreement in Docket 15-WSEE-181-TAR (“181 Docket”) that extended the term and operating budget for the WattSaver program for three additional years, through December 2017.

In this application, Westar is requesting approval of its annual EER, which would allow Westar to recover of expenses incurred while operating three energy-efficiency programs (WattSaver, Energy Efficiency Demand Response, and Simple Savings). Westar’s application requests recovery of expenses incurred from July 1, 2014 through June 30, 2015.

Because the Commission-approved budgets expired in 2014, CURB recommends the Commission disallow recovery of expenses that were incurred without a Commission-approved budget. The chart below shows the date each program was approved by the Commission, the expiration of Commission-approved budgets and the amount of expenses incurred by Westar after the expiration of the budgets:

⁵ Docket No. 15-WSEE-021-TAR, July 14, 2015, *Order Granting Westar Energy, Inc. and Kansas Gas and Electric Company’s Motion for Approval of Third-Party to Conduct EM&V*, at ¶ 14.

	Date program approved by Commission	Date of Program Budget Expiration	Expenditures after expiration of program budget
Energy Efficiency Education 09-WSEE-986-ACT	7/28/2009	7/28/2014	0
Building Operator Certification 09-WSEE-738-MIS	6/15/2009	6/15/2014	0
Watt Saver Air Conditioner Cycling 09-WSEE-636-TAR	5/27/2009	12/31/2017	0
Energy Efficiency Demand Response 10-WSEE-141-TAR	12/9/2009	12/9/2014	\$1,597,077
Simple Savings Program Rider 10-WSEE-775-TAR	1/31/2011	1/31/2015	\$137

Staff recommended removal of the \$137 of Simple Savings expense that was incurred after the program expired on January 31, 2015. Staff stated that “because this program has expired ... all expenses related to the Simple Savings program that were incurred subsequent to the program’s expiration should be removed from the EER calculation.”⁶

In contrast to the Simple Savings expenses, Staff elected to include all expenses associated with Westar’s Energy Efficiency Demand Response program in its EER calculation, despite the expiration of the program’s budget in December 2014. Staff’s report recognizes that Westar does not currently have Commission-approved budgets for its energy efficiency programs, but none-the-less concludes that “Westar’s EER expenditures appear to be reasonable as they exceed neither the original program budgets nor the proposed updated budgets.”⁷

CURB does not support Staff’s conclusion that expenses incurred for Westar’s Energy Efficiency Demand Response outside of a Commission-approved budget are reasonable and should be approved as part of the EER. First, the Commission has long maintained that EERs should be implemented in a manner that “...maintains the Commission’s responsibility to review costs for prudence.”⁸ Additionally, the Commission determined that “(w)ithout an operating budget, the Commission is unable to sufficiently conduct an audit to ensure program expenditures are within the scope of the approved programs and are appropriate for recovery.”⁹

⁶ Docket No. 16-WSEE-021-TAR, September 15, 2015, *Staff Report and Recommendation*, at page 4.

⁷ Docket No. 16-WSEE-021-TAR, September 15, 2015, *Staff Report and Recommendation*, at page 5.

⁸ Docket No. 08-GIMX-441-GIV, November 14, 2008, *Final Order*, at ¶38.

⁹ Docket No. 15-WSEE-021-TAR, July 14, 2015, *Order Granting Westar Energy, Inc. and Kansas Gas and Electric Company’s Motion for Approval of Third-Party to Conduct EM&V*, at ¶ 14.

Westar's Energy Efficiency Demand Response does not have a Commission-approved budget. Its Commission-approved five-year budget expired in December 2014. Any costs incurred by Westar after the expiration of the Commission-approved budget in December 2014 should be excluded from the EER calculation because these costs cannot be sufficiently audited to ensure that they are within the scope of the approved program and are therefore appropriate for recovery.

Second, Staff recommends approval of costs associated with the Energy Efficiency Demand Response program in part because the costs do not exceed the proposed updated budgets. This is in direct conflict with Staff's report and recommendation filed in the 532 Docket on September 2, 2015, which states "(t)he budgets Westar submitted lack sufficient detail for the Commission to make a determination whether interim approval should be granted."¹⁰ Further, in the same report Staff concludes that Westar's proposed budgets "do not provide enough detail for Staff to adequately evaluate how money would be spent under each program."¹¹

CURB is unable to reconcile the inconsistencies between Staff's reports, which were filed less than two weeks apart. However, because Staff has concluded that the proposed budgets filed by Westar in the 532 Docket lack sufficient detail to be approved, and that the proposed budgets don't provide enough detail for Staff to evaluate how money would be spent for the program, it stands to reason that these same budgets cannot be used to determine whether expenditures are appropriate.

Because the Commission has determined that EERs should be implemented in a manner that maintains the Commission's responsibility to review costs for prudence, and the Commission has determined that without an operating budget, the Commission is unable to sufficiently conduct an audit to ensure expense are appropriate, it is CURB's recommendation the Commission disallow all expenses associated with Westar's energy-efficiency programs incurred after the expiration of the Commission-approved budgets.

C. WattSaver Expenses

Westar's application requests recovery of \$1,131,295 in expenses associated with its WattSaver program. Staff recommends the Commission approve Westar's request. CURB recommends the Commission disallow \$7,876.11 in specific expenses incurred by Westar in the 181 Docket, to engage the services of a consultant, Victor Eusebio, to assist with data request responses.¹²

¹⁰ Docket 15-WSEE-532-MIS, September 2, 2015, *Staff's Report and Recommendation and Motion for Order*, at pages 5-6.

¹¹ Docket 15-WSEE-532-MIS, September 2, 2015, *Staff's Report and Recommendation and Motion for Order*, at page 6.

¹² Westar's response to CURB Data Request 1.

In its Order in the 441 Docket, the Commission indicated that it “prefers that program pre-implementation costs be handled via traditional rate-making, but will consider applications for recovery of approved program pre-implementation costs in an approved rider.”¹³

While the services of Mr. Eusebio are related to the WattSaver program, it is CURB’s recommendation that costs of hiring a consultant to assist with discovery responses, should be treated like program administration or implementation costs, and handled via traditional rate-making. In the 181 Docket, Westar petitioned to make changes to the WattSaver program, specifically to freeze WattSaver program participation and enter the program into maintenance and service mode. According to Westar, Mr. Eusebio was contracted to provide assistance to Westar in answering data requests in the 181 Docket. Even though Westar’s consultant was engaged to assist with data requests related to the WattSaver program, it is CURB’s recommendation that these costs should be excluded from the EER calculation and instead be treated like program administration or implementation costs, and handled via traditional rate-making

D. Energy Efficiency Demand Response Program

Westar’s Energy Efficiency Demand Response Program is a demand-response program, which in general are intended to shift demand away from peak periods when the demand for power is greatest and the cost of providing that power is highest. When used effectively, demand-response programs will provide a benefit to all ratepayers because the utility is able to shift its load during the most expensive hours of the year. Ratepayers benefit directly from these programs through avoided fuel charges.

The Energy Efficiency Demand Response Program was primarily designed as a means to address Occidental Chemical Corporation (commonly known as “OxyChem”) concerns for low cost electricity to keep its Wichita facility competitive, while providing Westar the additional ability to curtail OxyChem’s demand in responding to emergency system conditions. In exchange for participating under the proposed rider, customers, like OxyChem, are given a monthly capacity incentive credit equal to \$4.00 per kW of Demand Response Load. Participants additionally receive an event payment credited to the customer’s monthly bill for all reduced load during a curtailment event.¹⁴

Since Westar’s initial EER was approved in 2010, Westar has reported and billed \$22,606,759 to consumers for its Energy Efficiency Demand Response Program. In context of Westar’s total energy efficiency portfolio, the Energy Efficiency Demand Response Program has accounted for 46% of Westar’s total energy-efficiency expenditures.

¹³ Docket No. 08-GIMX-441-GIV, November 14, 2008, *Final Order*, at ¶37.

¹⁴ Docket No. 10-WSEE-141-TAR, November 3, 2009, *Notice of Filing of Staff Memorandum*.

Westar's Energy Efficiency Demand Response Rider program has not been used since 2012, when it was used to reduce peak demand on two occasions.¹⁵ Because demand-response programs like the Energy Efficiency Demand Response Rider only produce benefits when utilized, and because the Energy Efficiency Demand Response Rider has not been used in over three years, the program has cost customers millions of dollars but has not provided any direct benefit.

Westar has conducted an EM&V of the Energy Efficiency Demand Response program. The EM&V is currently being analyzed by Staff and CURB. The future of the Energy Efficiency Demand Response Program will likely be addressed during the EM&V discussions. However, for purposes of Westar's annual EER application, CURB believes it is important to identify that the Energy Efficiency Demand Response Program accounts for 76% of Westar's energy-efficiency expenditures from July 1, 2014 through June 30, 2015. Furthermore, \$1,597,077 of the reported Energy Efficiency Demand Response Program cost for the same period was incurred outside of a Commission approved budget. Considering the expiration of the Commission-approved budgets, and the pendency of the program's EM&V, it is CURB's recommendation that the Commission disallow \$1,597,077 in costs for the Energy Efficiency Demand Response program.

RATE DESIGN

Westar's application calculates the EER rate for Westar customers based upon an EER of \$4,558,828. The EER rate for residential customers is calculated by Westar as \$0.000228 per kWh.

Staff recommends a total EER of \$4,700,962. The EER rate based for residential customers is calculated by Staff as \$0.000235 per kWh. CURB recommends that the Commission approve an EER of \$3,096,009. If approved, CURB's recommended EER rate would be \$0.000156 per kWh.

Westar's current Commission-approved EER rate is \$0.000280 per kWh. For a customer using 900 kWh per month, the current EER is \$0.25 per month, or \$3.00 per year. If the Commission approves CURB's recommended EER, the same customer would have an EER charge of \$0.14 per month, or \$1.68 per year – a 44% decrease.

In its Order in the 441 Docket, the Commission that "(f)or a rider to be implemented, program costs destined for recovery should be significant, as suggested by Staff. By "significant," the

¹⁵ Docket No. 15-WSEE-021-TAR, September 29, 2014, *CURB's Reply to Staff's Report and Recommendation*, at page 12.

Commission simply means a level of expense necessary to justify putting a rider on customers' bills."¹⁶ The Order also stated that the Commission may consider using as a useful measure of this amount the guideline of 1/2 % of base revenue that has been established by the legislature as a minimum expense level for approval of a GSRS in K.S.A. 66-2203, and that the Commission views this legislation as simply a useful indication of what the legislature believed was sufficient to justify imposing a rate adjustment in that context.

According to Westar's most recent general rate case, Westar's base revenue exceeds \$2 billion. This means that if Westar were to seek implementation of an EER today, its total energy efficiency expenditures would need to exceed \$10 million dollars before being considered significant enough to justify being placed in a rider on customer's bills. Westar's current EER application reports energy efficiency expenditures of \$4,700,093 – which is 60% less than the EER just three years ago.

At this time, CURB is not recommending that Westar's EER be discontinued. However, considering that Westar's energy-efficiency programs are either educational, frozen, or in maintenance and service mode, as well as understanding that these programs may or may not continue based upon the outcomes of Commission-ordered evaluations, CURB recommends the Commission address the appropriateness of continuing Westar's EER rider, pending the outcome of the evaluations.

RECOMMENDATIONS

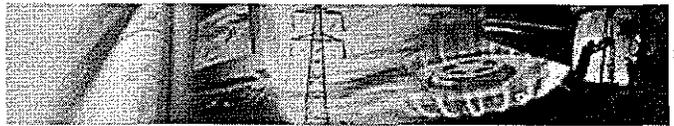
CURB recommends the Commission:

1. Disallow \$1,597,077 in expenses for Westar's Energy Efficiency Demand Response program which were incurred after the expiration of the program's Commission-approved five-year budget;
2. Disallow \$137 in expenses for Westar's Simple Savings program which were incurred after the expiration of the program;
3. Disallow \$7,876.11 in expenses that were associated with Westar's application in Docket No. 15-WSEE-181-TAR;
4. Approve Staff's corrections to Westar's true-up calculation;
5. Allow Westar to recover \$3,096,009 through its EER. This will result in an EER rate of \$0.000156 per kWh.

¹⁶ Docket No. 08-GIMX-441-GIV, November 14, 2008, *Final Order*, at ¶37.

APPENDIX A

	Program costs approved in 11-WSEE-032-TAR	Program costs approved in 12-WSEE-063-TAR	Program costs approved in 13-WSEE-033-TAR	Program costs approved in 14-WSEE-030-TAR	Program costs approved in 15-WSEE-021-TAR	Program costs requested in 16-WSEE-021-TAR	Total Program Costs
Energy Efficiency Education 09-WSEE-986-ACT	175,299.22	321,711.00	227,223.00	132,042.00	40,897.00	0.00	897,172.22
Building Operator Certification 09-WSEE-738-MIS	72,822.01	51,308.00	75,112.00	60,365.00	44,323.00	0.00	303,930.01
Watt Saver Air Conditioner Cycle 09-WSEE-636-TAR	3,498,756.95	5,545,869.00	6,755,547.00	6,269,581.00	1,571,276.00	1,131,295.00	24,772,324.95
Energy Efficiency Demand Response 10-WSEE-141-TAR	2,083,612.99	4,623,818.00	4,517,703.00	3,955,622.00	3,857,757.00	3,568,246.00	22,606,758.99
Simple Savings Program Rider 10-WSEE-775-TAR	0	29,040.00	71,934.00	2,569.00	1,168.00	552.00	105,263.00
Total Amount of Westar Energy Efficiency and Demand Response programs:							\$48,685,449.17



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Thursday, September 17, 2015
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Docket: [16-WSEE-021-TAR] Energy Efficiency Rider - 2015
Requestor: [CURB] [David Springe]
Data Request: CURB-01 :: Key Staffing Scope of Work
Date: 2015-09-17

Question 1 (Prepared by Scott Unekis)

Please provide explanation of the scope of work performed for the following payments to Key Staffing: 8.5 \$1,269.14 201501 Data Request on EE Filing KEY STAFFING 30.75 \$4,591.28 201501 Data Request on EE filing KEY STAFFING 13.5 \$2,015.69 201504 Data Request on EE Filing KEY STAFFING 18 \$2,687.58 201506 Regulatory Economic Analysis KEY STAFFING

Response:

Please find attached the file titled "CURB DR 1.xls" which details the scope of work for the selected payments.

Attachment File Name	Attachment Note
CURB DR 1.xlsx	

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Business Unit	Operating Unit	Account	Debit	Credit	Quantity	Amount	Month	Number	decr	long_description	name1	Detailed Description of Scope of work	
10000	10000	1823650	DR		8.5	\$1,269.14	201501			Data Request on EE Filing	AP_Transactions	KEY STAFFING	Payment to Victor Eusebio, consultant, to help respond to data requests on the WattSaver program in the Energy Efficiency filing (specifically CURB-18, 20 and 23; also KCC-15 and 16).
10000	10000	1823650	DR		30.75	\$4,591.28	201501			Data Request on EE filing	AP_Transactions	KEY STAFFING	Payment to Victor Eusebio, consultant, to help respond to data requests on the WattSaver program in the Energy Efficiency filing (specifically CURB-18, 20 and 23; also KCC-15 and 16).
10000	10000	1823650	DR		13.5	\$2,015.69	201504			Data Request on EE Filing	AP_Transactions	KEY STAFFING	Payment to Victor Eusebio, consultant, to help respond to data requests on the WattSaver program in the Energy Efficiency filing (specifically CURB-18, 20 and 23; also KCC-15 and 16).
10000	10000	1823650	DR		18	\$2,687.58	201506			Regulatory Economic Analysis -	AP_Transactions	KEY STAFFING	Payment to Victor Eusebio, consultant, to begin the EM&V process for WattSaver program.

CERTIFICATE OF SERVICE

16-WSEE-021-TAR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 23rd day of September, 2015, to the following:

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