

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.)

CURB's Response to the Commission Staff's Response to CURB's Report and Recommendation and Westar Energy, Inc. and Kansas Gas and Electric Company's Response to CURB's Reply to Staff's Report and Recommendation

The Citizens' Utility Ratepayer Board ("CURB") submits its Response to comments filed by the Staff of the Kansas Corporation Commission ("Staff") and Westar Energy, Inc. and Kansas Gas and Electric Company ("Westar") filed in the above-captioned docket on September 28, 2015 and October 5, 2015, respectively:

1. In their responses, both Staff and Westar agree that the budget for the Energy Efficiency Demand Response program ("EEDR") has expired, and that Westar has continued to incur expenses outside of a Commission-approved budget. Both Staff and Westar argue that the Commission should grant Westar recovery of 100% of the costs of the EEDR program that were incurred outside of a Commission-approved budget. CURB responds as follows:

2. First, Westar has failed to submit budgets for its energy-efficiency programs in accordance with the guidelines established in the 441 Docket, despite being ordered by the Commission to do so on January 6, 2015. If Westar had simply complied with the conditions of the Commission's January 6, 2015 Order in a timely manner, it is possible that interim and operating budgets would have been approved by the Commission prior to Westar's request to approve its current EER. However, because Westar has chosen not to submit its energy-

efficiency budgets in accordance with the guidelines established in the 441 Docket, Westar cannot expect the Commission to reward this failure by granting recovery of \$1,597,077 in expenses that were incurred outside of a Commission-approved budget.

3. Second, Staff suggests that the lack of a budget should not hinder Westar's ability to recover costs and that it would be "unjust" to deny Westar cost recovery. This is in direct conflict with the Commission's July 14, 2015 Order in Docket No. 15-WSEE-021-TAR. In its Order, 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."¹

4. Considering the Commission has long maintained that EERs should be implemented in a manner that "...maintains the Commission's responsibility to review costs for prudence,"² and that without an operating budget, the Commission cannot conduct an audit to determine if costs are appropriate for recovery, Staff's conclusion that it would be "unjust" to deny Westar cost recovery is in direct conflict with Commission orders. If anything, CURB contends that it would be "unjust" for the Commission to require ratepayers to provide Westar with \$1,597,077 for program costs that the Commission cannot determine are appropriate for recovery.

5. Third, if the Commission grants recovery of \$1,597,077 in costs, that later are disallowed, there may be no legal way to return these dollars to ratepayers. Westar's response states that if the Commission's audit of the EEDR program and its costs determines that the

¹ 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.

² Docket No. 08-GIMX-441-GIV, November 14, 2008, *Final Order*, at ¶38.

program should not be continued, Westar's ability to recover EEDR costs would be affected "prospectively but not on a retroactive basis ..." ³ Westar's statement implies that if the Commission grants Westar request to recover \$1,597,077 in this docket, that these dollars cannot be retroactively returned to ratepayers, even if they are later determined to be imprudent or are disallowed.

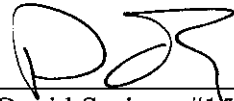
6. Finally, Westar stated that "the Commission reapproved the EEDR and the change making it available to special contract customers as well as customers taking service under the high load factor tariff" in Docket No. 13-KG&E-451-CON ("451 Docket"). This statement is misleading. In the 451 Docket, the Commission approved Westar's request to change the language in the EEDR Tariff, so that the Occidental Chemical Corporation – the only customer voluntarily taking service through the EEDR program – could continue receiving incentive payments for participating in the EEDR program. In the 451 Docket, the Commission did not reapprove the EEDR program; it simply approved three language modifications to the existing tariff. Westar's insinuation that the Commission reapproved the EEDR in 2013 and therefore made a determination about Westar's ability to recover costs through the EER is false.

7. CURB continues to recommend the Commission reject Westar's request to recover \$1,597,077 in costs associated with Westar's EEDR. These costs were incurred outside of a Commission-approved budget and according to Commission order, cannot be sufficiently audited to ensure the costs are appropriate for recovery. For this reason and the reasons set forth in this response, CURB continues to recommend the Commission approve each of the

³ Docket No. 16-WSEE-021-TAR, October, 2015, *Westar Energy, Inc. and Kansas Gas and Electric Company's Response to CURB's Reply to Staff's Report and Recommendation*, at ¶ 10.

recommendations offered in Ms. Stacey Harden's September 23, 2015, *Reply to Staff's Report and Recommendation*.

Respectfully Submitted,

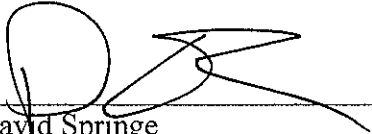


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VERIFICATION

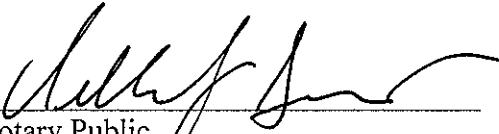
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, David Springe, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.

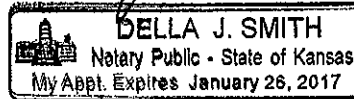


David Springe

SUBSCRIBED AND SWORN to before me this 7th day of October, 2015.



Notary Public



My Commission expires: 01-26-2017.

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 7th day of October, 2015, to the following:

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