

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Complaint of Kansas Gas Service,)
a Division of ONE Gas, Inc., Against Westar Energy,)
Inc., Regarding Westar's Practice of Offering) Docket No. 19-WSEE-061-COM
Payments to Developers in Exchange for the)
Developers Designing All Electric Subdivisions.)

KANSAS GAS SERVICE'S REPLY TO WESTAR ENERGY'S ANSWER

Kansas Gas Service, a Division of ONE Gas, Inc. ("KGS"), submits the following Reply to the Answer filed by Westar Energy ("Westar").

I. INTRODUCTION

1. On August 7, 2018, KGS filed its Complaint against Westar in this matter. KGS claimed Westar violated K.S.A. 66-101c, by failing to obtain approval from the Kansas Corporation Commission ("Commission") of its practice of having its ratepayers fund a program whereby Westar pays developers cash rebates in exchange for those builders agreeing to build total all-electric housing in their subdivisions. KGS also claimed that Westar's practice was not in the public interest for the reasons set forth in its Complaint. KGS asked the Commission to order Westar to cease its practice and to pay sanctions and penalties for violating the statute.¹

2. On September 11, 2018, the Commission issued an Order in this matter finding and concluding that KGS's Complaint against Westar complied with the Commission's procedural requirements and the Complaint should be served on Westar for an Answer, with an investigation into the Complaint to be undertaken by the Commission.²

¹Complaint of Kansas Gas Service Against Westar Energy, Inc., Docket No. 19-KGSG-061-COM, filed August 7, 2018 ("Complaint").

²Order Adopting Legal Memorandum, Docket No. 19-KGSG-061-COM filed September 11, 2018.

3. On September 27, 2018, Westar filed its Answer to the Complaint.³
4. KGS submits the following Reply to the Answer filed by Westar.

II. WESTAR'S STATEMENTS REGARDING ITS TOTAL ELECTRIC SUBDIVISION HEAT PUMP PROGRAM ARE CONTRARY TO THE CLEAR AND UNAMBIGUOUS READING OF THE AGREEMENT WESTAR REQUIRES DEVELOPERS TO SIGN TO BE ELIGIBLE FOR THE PROGRAM

5. In paragraphs 4 and 11a of its Answer, Westar states that its Total Electric Subdivision Heat Pump Program Agreement ("Agreement") with subdivision developers does not require those developers to build total electric buildings in their subdivisions to qualify for the cash rebates set forth in the Agreement.⁴ Westar also states that said Agreement can be cancelled by the developers at any time.⁵ However, the Westar Agreement attached to the Complaint, on its face, clearly requires "all buildings within the subdivision **to be built Total Electric** with a full heat pump split system as the primary heating source." (Emphasis added).⁶ It is untenable for Westar to state in its Answer that its Agreement and Total Electric Subdivision Heat Pump Program do not require the developer to agree that all housing built in the subdivision shall be total electric to qualify for the cash rebates, given the clear language in the Agreement. In fact, the term "Total Electric" is included in the name of Westar's program.⁷ Furthermore, Westar's contention that its Agreement is non-binding on developers also is inconsistent with the clear language contained in the Agreement. The Agreement specifically states, right above where the developer is required to sign the Agreement, the following: "**Company agrees**

³Answer of Westar Energy, Docket No. 19-KGSG-061-COM filed September 27, 2018 ("Answer").

⁴Answer, pages 1-2, paragraph 4; page 3, paragraph 11a.

⁵Answer, page 1, paragraph 4.

⁶Complaint, Exhibit A.

⁷*Id.*

to the above agreement and accepts the above conditions." (Emphasis added.).⁸ The Agreement also indicates that the Agreement is in effect for five years from the date of signature.⁹ There is no language in the Agreement that indicates that it is non-binding on the developer, or that the developer can simply walk away from the program during its term. It is also untenable for Westar to contend that the developer can decide at any time that all buildings within the subdivision do not need **to be built total electric**, when the clear provisions in the Agreement state just the opposite: "**all buildings within the subdivision to be built Total Electric...**" (Emphasis added.) Westar in its Answer is attempting to inappropriately re-write the restrictive and anti-competitive terms of its Agreement with developers under its Total Electric Subdivision Heat Pump Program so as to avoid the legitimate concerns raised by KGS in its Complaint that Westar's practice results in anti-competitiveness and actively damages rather than promotes the public interest.

III. WESTAR ADMITS ITS PRACTICE AND PROGRAM HAVE NOT BEEN APPROVED BY THE COMMISSION AND THAT SAID PROGRAM IS BEING FUNDED BY ITS RATEPAYERS

6. In paragraph 11b of its Answer, Westar admits that its Total Electric Subdivision Heat Pump Program was not submitted to the Commission and was not approved by the Commission.¹⁰

7. In paragraph 8 of its Answer, Westar admits that the cash rebates it provides to developers under its Total Electric Subdivision Heat Pump Program are paid for by Westar's ratepayers.¹¹

8. In paragraph 13a of its Answer, Westar contends that it was not required to seek

⁸*Id.*

⁹*Id.*

¹⁰Answer, page 3, paragraph 11b.

¹¹Answer, page 2, paragraph 8.

Commission approval of its Total Electric Subdivision Heat Pump Program and that Westar believes that the Commission Staff was aware that Westar was having its ratepayers fund the cash rebates Westar was paying to developers under the Program.¹²

9. Finally, at paragraph 15 of its Answer, Westar contends that the program was implemented and benefits its ratepayers because it allows the utility to balance out seasonal loads and day-to-day loads.¹³

10. In order to support its position that it did not need to obtain approval from the Commission to implement its Total Electric Subdivision Program, Westar refers to a statement made by the Staff in Docket No. 09-GIMX-160-GIV ("160 Docket") that the Commission does not have authority to impede utilities from promoting their product through non-tariffed activities.¹⁴

11. However, Westar conveniently omitted the remaining portion of Staff's statement in the 160 Docket that it was important that any promotional non-tariff activities (1) not be subsidized by ratepayers and (2) not be easily confused with tariff programs. The Commission in its Order to Close Docket in the 160 Docket made the following finding regarding Staff's position on this particular matter:

Staff replied to KGS's arguments that Kansas utilities have excess capacity on both the electric and natural gas side, and nothing should prevent utilities from promoting their fuels through non-tariff stakeholder ventures, **but that it is important that these are not subsidized by ratepayers and that they are not easily confused with tariff programs.** (Emphasis added).¹⁵

¹²Answer, page 4, paragraph 13a.

¹³Answer, page 5, paragraph 15.

¹⁴Answer, pages 2-3, paragraphs 9 and 10.

¹⁵Order to Close Docket, Docket No. 09-GIMX-160-GIV, pages 5-6, paragraph 13 ("Order to Close Docket").

In its Answer, Westar conceded that its Program is subsidized and paid for by its ratepayers.¹⁶ In addition, its Program is very similar to some of the ratepayer-funded energy efficiency programs that have been proposed in the past by other electric utilities, for example, Kansas City Power & Light's various vendor programs, that were submitted for approval by the Commission but rejected for failure to meet the Commission's cost/benefit tests. The similarity of Westar's Program with those programs submitted and rejected by the Commission also means said Program violates Staff's other tenant in the 160 Docket that said programs should not be "easily confused with tariff programs." Finally, the Commission and Staff made it clear that the 160 Docket related only to the fuel switching issue in terms of energy efficiency programs and the docket would not and did not address the public interest issue raised in this Complaint, i.e, whether it is in the public interest for an electric public utility to have a program or practice that creates economic waste and anti-competitive behavior by effectively (1) prohibiting the installation of natural gas facilities in new subdivisions, creating areas, (pockets, or islands within urban communities) where residents only have access to electricity for space, cooking and water heating purposes, and (2) eliminating competition and customer choice.¹⁷

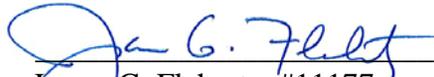
12. Because Westar concedes that (1) its Total Electric Subdivision Program was not submitted to the Commission for approval; (2) the Program is funded and paid for by ratepayers; and (3) the alleged purpose of the Program was to better manage the utility's demand and load and therefore looks very similar to some customer-funded energy efficiency vendor programs that were submitted as tariff programs for Commission approval and rejected, Westar's justification for not seeking Commission approval of its Program fails and the Commission should find that Westar violated K.S.A. 66-101c as set forth in the Complaint by implementing its Program and practice

¹⁶Answer, page 2, paragraph 8.

¹⁷Order to Close Docket, page 4, paragraph 9.

without first obtaining approval to do so by the Commission.

WHEREFORE, for the reasons set forth herein and in the Complaint, KGS respectfully requests that the Commission issue an order granting the relief set forth in the Complaint.



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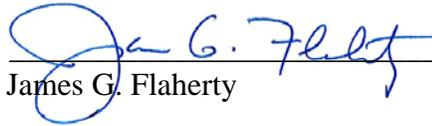
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VERIFICATION

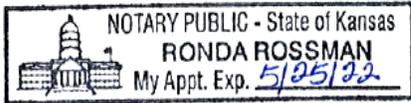
STATE OF KANSAS, COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being first duly sworn on oath, states that he is the attorney for Kansas Gas Service, A Division of ONE Gas, Inc.; that he has read the forgoing Reply to Westar Energy's Answer, and the statements contained therein are true.



James G. Flaherty

SUBSCRIBED AND SWORN to before me this 8th day of October, 2018.





Notary Public

Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via electronic mail, this 8th day of October, 2018, addressed to:

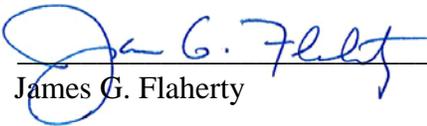
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