

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

In the Matter of the Application of Kansas )  
Gas and Electric Company for Approval )  
of the Amendment to the Energy Supply ) Docket No. 18-KG&E-303-CON  
Agreement Between Kansas Gas and )  
Electric Company and Occidental )  
Chemical Corporation )

---

**POST-HEARING BRIEF OF THE  
CITIZENS' UTILITY RATEPAYER BOARD**

---

**REDACTED VERSION**

**October 24, 2018**

## **Table of Contents**

<b>I.</b>	<b>Introduction.....</b>	<b>3</b>
A.	Background .....	4
<b>II.</b>	<b>Outline of Pertinent Authority .....</b>	<b>7</b>
A.	Commission Energy Efficiency Policy .....	9
<b>III.</b>	<b>Issues Before the Commission.....</b>	<b>10</b>
<b>IV.</b>	<b>Arguments and Authorities.....</b>	<b>11</b>
A.	The rates proposed in the ESA are in the Public Interest, but the EEDR should be removed from the ESA. ....	11
1.	EEDR Proponents have not demonstrated that the EEDR is needed, or being used; therefore, the EEDR is not necessary to provide efficient and sufficient service and does not meet the K.S.A. 66-128 requirement of “used and required to be used.” .....	11
2.	The EEDR should be denied because it cannot pass any of the Commission prescribed benefit-cost tests that are required for energy-efficiency programs.....	13
3.	The EEDR has been heavily criticized by Staff. ....	16
<b>V.</b>	<b>Conclusion .....</b>	<b>18</b>

COMES NOW, The Citizens' Utility Ratepayer Board (“CURB”) and respectively submits its *Post-Hearing Brief* pertaining to the Joint Application (“Application”) filed by Kansas Gas and Electric Company d/b/a Westar Energy, Inc. (“Westar Energy”) and Occidental Chemical Corporation (“Occidental”) seeking approval of an Energy Supply Agreement (“ESA”) between Westar and Occidental (collectively known as the “Joint Applicants”). CURB recommends that the State Corporation Commission of the State of Kansas (“Commission”) approve the rates proposed by the ESA, but deny the inclusion of the Energy Efficiency Demand Response program (“EEDR”). In support thereof, CURB states as follows:

**I. Introduction**

1. As stated above, CURB recommends that the Commission approve the rates proposed in the ESA, but deny the inclusion of the EEDR. CURB also recommends that Westar be permitted to defer the revenues lost as a result of the removal of EEDR, as a regulatory asset, and Westar should be permitted to seek recovery of the amount deferred in its next general rate case. CURB believes that the special rates can be approved, as an economic incentive, without the approval of the EEDR which is no longer a cost-effective energy efficiency program. The record supports CURB’s position that the EEDR fails the Commission required cost-benefit tests. As supported below, CURB has also provided substantial competent evidence that the EEDR program does not avoid or delay the construction of new generation in the near-term or the long-term. Given this fact, the record clearly supports CURB’s avoided capacity-cost of \$0. Yet, even if the Commission makes the necessary correction to remove avoided transmission capacity costs from Commission Staff’s (“Staff”) overall avoided capacity cost, and adopts Staff’s corrected avoided generation capacity cost, the EEDR still fails the Commission’s required cost-benefit tests and must be denied.

2. CURB believes that the EEDR also violates the Kansas statutory requirement that a supply-side resource must be used to provide efficient and sufficient service in order for it to be collected in rates.<sup>1</sup> The record shows that the EEDR has not been used since 2012 and that the Joint Applicants have not provided any evidence that the EEDR will ever be used to provide service to customers.<sup>2</sup> The Joint Applicants bear the burden of proving that the EEDR is cost-effective and meets Kansas law. They simply have not done so. For these reasons, among others supported below, CURB believes that the EEDR should be removed from the ESA.

### **A. Background**

3. On January 16, 2018, Joint Applicants filed an Application requesting Commission approval of an ESA.<sup>3</sup> Joint Applicants also filed pre-filed direct testimony.<sup>4</sup> In its Application, Joint Applicants have requested an additional five year-term (extension) of the current ESA that was initially approved by the Commission on May 24, 2018, in Docket No. 13-KG&E-457-CON (“457 Docket”), and amended in Docket No. 17-KG&E-352-CON.<sup>5</sup> The additional five-year term will not be substantively different than the current ESA. The current ESA provides Occidental with:

- A. an incentive for Occidental to coordinate maintenance outage schedules for its cogeneration plant and refinery plant to avoid Westar’s summer peak;
- B. a summer/winter pricing differential to reflect Westar’s higher cost of incremental fuel and generation during the summer months;
- C. contract clauses that ensure that Occidental will be subject to all Riders and Surcharges, if applicable;

---

<sup>1</sup> K.S.A. 66-101b; See K.S.A. 66-128(a).

<sup>2</sup> Direct Testimony of Stacey Harden on Behalf of CURB, p. 11 (Harden Direct) (August 15, 2018). ; Transcript of Evidentiary Hearing, p. 28 (Tr.) (October 10, 2018).

<sup>3</sup> See Joint Application (January 16, 2018).

<sup>4</sup> Direct Testimony of Chad Luce on Behalf of Kansas Gas and Electric Company (“Luce Direct”) (January 16, 2018); Direct Testimony of Brenda Harris on Behalf of Occidental Chemical Corporation (“Harris Direct”) (January 26, 2018).

<sup>5</sup> Joint Application, p. 1.

- D. a requirement for Occidental to pay its pro rata share of any general rate increase authorized by the Commission;
- E. Westar's ability to utilize Occidental's cogeneration facility during periods of "System Condition" or a load buy down; and
- F. an increase in the amount of interruptible load provided to Westar by Occidental.<sup>6</sup>

In addition to the conditions listed above, Occidental also takes service under the EEDR.<sup>7</sup> The EEDR provides Occidental \$4.00 per kW per month for capacity above 15,000 kW.<sup>8</sup> Occidental also receives an event payment of \$75 per MWh for each MWh of curtailed load.<sup>9</sup> The EEDR requires ten minute notice for eight curtailments and an hour notice for all remaining curtailments.<sup>10</sup> Westar recovers the costs associated with the EEDR through its Energy Efficiency Rider ("EER") which allows Westar to recover those costs on an expedited basis.<sup>11</sup> Occidental also participates in the Interruptible Service Rider ("ISR") program which provides Occidental \$3.00 per kW per month for capacity up to 15,000 kW.<sup>12</sup> The ISR requires a two hour notice for curtailment.<sup>13</sup> Westar recovers the costs associated with the ISR in a general rate case.

4. On March 22, 2018, CURB filed its Petition to Intervene and Motion for Protective Order and Discovery Order and Motion for Procedural Schedule. CURB's Motion for Protective Order and Discovery Order was granted on April 17, 2018.<sup>14</sup>

5. On May, 14 2018, the Commission issued its Order Approving Procedural

---

<sup>6</sup> Joint Application, p. 2.

<sup>7</sup> Harden Direct, p. 4.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Direct Testimony of Darren L. Prince Filed on Behalf of the Staff of the Kansas Corporation Commission, p. 5 (Prince Direct) (August 15, 2018).

<sup>11</sup> Tr. at p. 51.

<sup>12</sup> Prince Direct, p. 4.

<sup>13</sup> *Id.* at p. 5.

<sup>14</sup> Order Designating Prehearing Officer; Granting Intervention to CURB; Protective and Discovery Order (April 17, 2018).

Schedule; Extension of Agreement & Waiver of Statutory Deadline.<sup>15</sup> The Order Approving Procedural Schedule set deadlines and dates for testimonies, a public hearing, settlement conference(s), discovery cut-off, contested issues lists, a prehearing conference, an evidentiary hearing, etc.<sup>16</sup> The Order also approved a temporary extension of the ESA to avoid a lapse of the current ESA during the pendency of this docket and through the end of the first billing cycle after a final Commission Order.<sup>17</sup>

6. On August 15, 2018, CURB and Staff filed direct testimony, each advocating differing viewpoints regarding the approval of the Joint Applicants' ESA.<sup>18</sup> More specifically, CURB filed testimony recommending the Commission deny the inclusion of the EEDR in the proposed ESA because it cannot pass any of the Commission-prescribed benefit-cost tests that are required for energy efficiency programs.<sup>19</sup> CURB also recommended that the Commission approve the proposed ESA (without the inclusion of the EEDR), and permit Westar the opportunity to defer the revenues lost as a result of the special contract rate reduction, to include the value of the EEDR, as a regulatory asset, and be permitted to seek recovery of the amount deferred in its next general rate case.<sup>20</sup> Staff recommended that the Commission approve the ESA, including the continuation of the EEDR.<sup>21</sup>

7. On August 29, 2018, Joint Applicants filed rebuttal testimony arguing that the ESA should be approved, to include the EEDR.<sup>22</sup> Both the Joint Applicants and Staff advocate that the

---

<sup>15</sup> Order Approving Procedural Schedule; Extension of Agreement & Waiver of Statutory Deadline ("Procedural Schedule") (May 17, 2018).

<sup>16</sup> *Id.* at p. 4.

<sup>17</sup> *Id.* at p. 5.

<sup>18</sup> Direct Testimony of Stacey Harden on Behalf of CURB (Harden Direct) (August 15, 2018); Prince Direct.

<sup>19</sup> Harden Direct, p. 5.

<sup>20</sup> *Id.*

<sup>21</sup> Prince Direct, p. 2.

<sup>22</sup> See Rebuttal Testimony and Exhibits of Jeffrey Pollock on Behalf of Occidental Chemical Corporation (Pollock Direct) (August 29, 2018); See Rebuttal Testimony of John Wolfram on Behalf of Westar Energy, Inc. (Wolfram Direct) (August 29, 2018).

ESA and EEDR are in the public interest (Staff and the Joint Applicants will collectively be referred to as “EEDR Proponents”).

8. On October 10, 2018, the Commission held an evidentiary hearing (“Hearing”) on this matter.

## **II. Outline of Pertinent Authority**

9. The Commission has a broad grant of authority pursuant to K.S.A. 66-101.<sup>23</sup> Rates, fares, tolls, and charges imposed by a public utility must be just and reasonable, not unjustly or unreasonably discriminatory, and not unduly preferential.<sup>24</sup> The Commission balances the interests of utility’s investors, ratepayers, and the public in setting just and reasonable rates.<sup>25</sup> In Kansas, electric public utilities are required to “furnish reasonably efficient and sufficient service and facilities” in its service territory.<sup>26</sup> Furthermore, the Commission has the power to require all electric public utilities “to establish and maintain just and reasonable rates when the same are reasonably necessary in order to maintain reasonably sufficient and efficient service....”<sup>27</sup>

10. In other words, recovery of costs are not appropriate unless the costs are reasonably necessary to provide efficient and sufficient service to ratepayers. In order for an electric public utility to include property into rates, the property must be “used and required to be used.”<sup>28</sup> More specifically, the Kansas Court of Appeals has stated that, “capital costs for new plants, generators, or other facilities are allowed into rates only when they become ‘used and required to be used’ in service to ratepayers.”<sup>29</sup> Essentially, utility property is required to be used when the utility

---

<sup>23</sup> “The commission is given full power, authority and jurisdiction to supervise and control the electric public utilities, as defined in K.S.A. 66-101a, doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.” K.S.A. 66-101.

<sup>24</sup> See K.S.A. 66-101d.

<sup>25</sup> Kansas Gas and Elec. Co. v. State Corp. Com'n, 239 Kan. 483, 488 (1986).

<sup>26</sup> K.S.A. 66-101b.

<sup>27</sup> *Id.*

<sup>28</sup> See K.S.A. 66-128(a).

<sup>29</sup> Kansas Indus. Consumers Grp., Inc. v. State Corp. Comm'n of State of Kan., 36 Kan. App. 2d 83, 97, 138 P.3d

property is reasonably necessary to provide the utility’s customers with efficient and sufficient service.<sup>30</sup>

11. The Kansas Energy Efficiency Investment Act (KEEIA) authorizes the Commission to approve energy efficiency programs in accordance with requirements of the Act.<sup>31</sup> KEEIA requires the termination of EE programs that are found not to be cost-effective or prudent.<sup>32</sup> KEEIA states:

The commission shall allow recovery of the reasonable and prudent costs associated with delivering commission-approved demand-side programs, so long as the program: (A) Results in energy or demand savings; and (B) is beneficial to customers in the customer class for which the programs were implemented, whether or not the program is utilized by all customers in such class. The fact that a commission-approved program proves not to be cost-effective is not by itself sufficient grounds for disallowing cost recovery. Programs determined to be non-cost-effective, other than programs targeted to low-income customers or general education campaigns, shall be modified to address deficiencies or terminated following such determination.<sup>33</sup>

12. The KEEIA treats cost-effective demand side program investments “equal to traditional investments in supply and delivery infrastructure...”<sup>34</sup> In other words, the KEEIA treats cost-effective DSM programs, the same as, and as an alternative to supply side generation. The KEEIA does not restrict the Commission’s authority to set policy in regards to energy efficiency programs, rather, the KEEIA broadens the Commission’s authority to determine whether an energy efficiency program is cost-effective and therefore will promote the public interest.<sup>35</sup> In these regards, the policies established (TRC, RIM, etc.) prior to the KEEIA by the Commission (see below) remain applicable and should be treated with deference.

---

338, 350 (2006) (emphasis added).

<sup>30</sup> *Id.*

<sup>31</sup> *See* K.S.A. § 66-1283.

<sup>32</sup> K.S.A. § 66-1283(c)(2).

<sup>33</sup> *Id.* (emphasis added).

<sup>34</sup> K.S.A. § 66-1283(b).

<sup>35</sup> *See* K.S.A. § 66-1283.

## A. Commission Energy Efficiency Policy

13. The Commission has defined energy efficiency as follows:

Energy Efficiency refers to using less energy to provide the same or improved level of service to the energy consumer in an economically efficient way. The term energy efficiency as used here includes using less energy at any time, including at times of peak demand through demand response and peak shaving efforts.<sup>36</sup>

14. The Commission has emphasized that it “believes DR programs can produce results by shaving demand peaks which reduces the need for peaking capacity and therefore helps keep energy costs down. The Commission favors implementation of DR programs as a means of mitigating the need for expensive new power generation.”<sup>37</sup> The Commission has stated that “a balanced approach between the use of traditional and alternative energy sources, such as wind, must be utilized in meeting the state’s energy needs.”<sup>38</sup> The Commission has further stated that it “views energy efficiency as an additional resource to be considered in this balanced approach.”<sup>39</sup> Energy efficiency must also “produce cost-effective, firm energy savings. Energy efficiency programs should be used to achieve both energy and demand reductions.”<sup>40</sup>

15. To determine whether or not a proposed energy-efficiency program will produce cost-effective, firm energy savings the Commission emphasized the Total Resource Cost (“TRC”) test which measures the cost-effectiveness of a program to the utility system as a whole whether or not the customer participates in the energy-efficiency program.<sup>41</sup> In order for an energy-efficiency program to be cost-effective it must score greater than 1.0 on the TRC.<sup>42</sup> The

---

<sup>36</sup> Docket 08-GIMX-442-GIV, Order Following Collaborative on Benefit-Cost Testing and Evaluation, Measurement, and Verification, p. 61 (Order Following) (April 13, 2009).

<sup>37</sup> 08-GIMX-441-GIV, Final Order, p. 6 (November 14, 2008).

<sup>38</sup> Docket 08-GIMX-442-GIV, Order Setting Energy Efficiency Policy Goals, Determining a Benefit-Cost Test Framework, and Engaging a Collaborative Process to Develop Benefit-Cost Test Technical Matters and an Evaluation, Measurement, and Verification Scheme, p. 10 (Order Setting) (June 2, 2008).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at pp. 10-11 (emphasis added).

<sup>41</sup> Harden Direct, p. 7.

<sup>42</sup> *Id.* at p. 8.

Commission is unlikely to approve a program that fails the TRC test.<sup>43</sup> The Commission also considers the Ratepayer Impact Method (“RIM”) test in deciding whether or not an energy-efficiency program is cost-beneficial.<sup>44</sup> The RIM test determines the impact of an energy efficiency program on customers’ bills.<sup>45</sup> A RIM test score of below 1.0 indicates that the energy efficiency program will put upward pressure on rates.<sup>46</sup> A score of greater than 1.0 indicates that it will have no impact or could put downward pressure on customer’s rates.<sup>47</sup> The Commission has still considered energy-efficiency programs that scored less than 1.0 on the RIM; however, it is dependent on the degree of failure and the performance of the program(s) on the other tests.<sup>48</sup>

### **III. Issues Before the Commission**

16. In this docket, the Commission has asked the parties to analyze whether the rates proposed in the ESA (special contract) will promote the public interest. CURB analyzed the Joint Application and supporting evidence accordingly. CURB believes that the rates in the ESA are reasonable, and in the public interest; however, CURB believes that the EEDR should be eliminated from the ESA because the EEDR Proponents have not provided substantial competent evidence in the record showing that the EEDR is being used; therefore, the EEDR is not necessary to provide sufficient and efficient service and as such does not meet the K.S.A. 66-128 requirement of “used and required to be used,” and therefore must be removed from the ESA. Moreover, the EEDR does not meet the Commission required energy efficiency standards; therefore, it is not cost-effective and must be removed from the ESA pursuant to statutory requirements of KEEIA and prior Commission policy.

---

<sup>43</sup> Docket 08-GIMX-442-GIV, Order following, p. 10.

<sup>44</sup> Harden Direct, p. 9.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

#### IV. Arguments and Authorities

##### A. The rates proposed in the ESA are in the Public Interest, but the EEDR should be removed from the ESA.

###### 1. EEDR Proponents have not demonstrated that the EEDR is needed, or being used; therefore, the EEDR is not necessary to provide efficient and sufficient service and does not meet the K.S.A. 66-128 requirement of “used and required to be used.”

17. The EEDR is not needed, nor being used, to provide efficient and sufficient service to Westar’s customers. The Joint Applicants bear the burden of proof regarding this issue. Simply put, the Joint Applicants have not met that burden, nor any other party to this docket, and as a result the EEDR should be removed from the ESA. Conversely, CURB has provided substantial competent evidence into the record that the EEDR is not and will not be used to provide efficient and sufficient service to Westar’s ratepayers. According to Westar Witness, Mr. Wolfram, the EEDR has only been used seven times (2010, 2011, and 2012) since its approval in late 2009.<sup>49</sup> In fact, the last time the EEDR was used (curtailment event) was July 26, 2012.<sup>50</sup> CURB is troubled by the fact that it has been more than 6 years since the EEDR program has been used for the purpose of serving Westar’s customers. Since the EEDR’s inception in 2009, ratepayers have paid \$33.5 million for the program.<sup>51</sup> What is staggering is that out of the \$33.5 million spent (in total) for the program, \$22 million was spent from August 2012 to June of 2018 which is the period of time that Westar did not call upon the EEDR even one time.<sup>52</sup>

18. Westar argues that the EEDR provides a benefit to the system regardless of whether or not a cycling event ever takes place.<sup>53</sup> More specifically, Westar argues that having access to

---

<sup>49</sup> Tr. at p. 28.

<sup>50</sup> Harden Direct p. 11; Tr. at p. 28.

<sup>51</sup> Tr. at p. 29.

<sup>52</sup> Tr. at p. 30.

<sup>53</sup> Tr. at p. 36.

interruptible load over any period is beneficial to the system.<sup>54</sup> However, this runs counter to the statutory requirement that the investment be “used and required to be used” before the utility can collect those costs in rates. The argument that the EEDR is beneficial for simply existing, whether or not it used, does not cure the statutory requirement that the EEDR, which is to be treated like a supply side investment according to KEEIA, be used to provide reasonably efficient and sufficient service to ratepayers. This is analogous to a utility asking ratepayers to pay for a new coal plant (or peaker plant) “just in case” the utility may need it someday to serve customers, regardless of whether that plant is ever used. That argument fails on its face. Clearly, ratepayers should not be paying for an investment that has not served them in 6 years, and will not serve them now or in the future.

19. The EEDR Proponents argue that the EEDR is used to serve customers because Westar counts on the interruption of Occidental’s load when determining its total reserve margins.<sup>55</sup> This argument also fails. The EEDR is not required to meet Westar’s SPP Planning Reserve Requirement until 2029.<sup>56</sup> CURB Exhibit No. 6 is Westar’s response to CURB’s data request number 30. This response quantifies, among other things, Westar’s peak responsibility, generating capacity, and reserve margin. According to the data provided by Westar, as verified by Mr. Wolfram, Westar maintains a reserve margin higher than the 12% minimum planning reserve margin currently required by the SPP until the year 2029.<sup>57</sup> While Westar’s witness was unable to identify that the 80 MW of interruptible power provided by the EEDR was in fact accounted for in the reserve margin, the final page of CURB’s Exhibit 6 reports Westar’s interruptible load from

---

<sup>54</sup> *Id.*

<sup>55</sup> Tr. at p. 35.

<sup>56</sup> Tr. at pp. 43-44.

<sup>57</sup> Tr. at p. 44.

2018-2036.<sup>58</sup> This confirms that the 80 MW of interruptible load provided through the EEDR is in fact included in the calculation of the reserve margin. As a result, Mr. Wolfram ultimately agrees that Westar will not fall below SPP's required 12% planning reserve margin until 2029, regardless of whether Westar has access to 80 MW of interruptible load from Occidental.<sup>59</sup> Said another way, the 80 MW of interruptible power provided through the EEDR has no impact on when Westar predicts that it will fall below the SPP's required 12% planning reserve margin.

20. It is clear from the record that the EEDR has not been used to serve customers since 2012. It is also clear that the EEDR may not be needed to meet future capacity needs, and based on Westar's projections, is not beneficial in meeting SPP reserve margins. For these reasons CURB recommends that the Commission deny the inclusion of the EEDR in the ESA.

**2. The EEDR should be denied because it cannot pass any of the Commission prescribed benefit-cost tests that are required for energy-efficiency programs.**

21. The EEDR does not pass the TRC and RIM tests when properly measured. CURB's evidence clearly shows that, Westar's benefit-cost tests results are inflated due to Westar's use of inflated avoided capacity costs. CURB witness Ms. Harden testified that Westar's EEDR program does not avoid or delay the construction of new generation.<sup>60</sup> As a result, CURB witness Ms. Harden testified that the appropriate value for avoided generation capacity cost is \$0 per kW.<sup>61</sup> Ms. Harden concluded in testimony that the EEDR program does not pass the TRC or RIM tests, using the correct avoided generation capacity cost value of \$0 per kW, and should be denied from inclusion in the proposed ESA.<sup>62</sup> With regard to the avoided capacity cost, CURB believes that

---

<sup>58</sup> *Id.*

<sup>59</sup> Tr. at pp. 48-49.

<sup>60</sup> Harden Direct, p. 16.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at p. 17.

the evidence dictates a finding that the appropriate avoided capacity cost is \$0. CURB believes the record clearly shows that Westar does not need capacity. From the record, it is unclear exactly when Westar will need to add generation capacity. What is clear, is that Westar reports that it will not need generation capacity before 2029, at the earliest.<sup>63</sup> Westar Witness Mr. Wolfram confirmed this fact at hearing.<sup>64</sup> Given that Westar has no short term and potentially long term plan to build capacity, CURB believes that its analysis is reasonable. Westar Witness Mr. Wolfram criticized CURB's analysis as only taking into consideration near-term market costs. This is clearly incorrect given that CURB analyzed Westar's capacity needs in the long-term. Mr. Wolfram agreed that anything past 10-15 years should be considered long-term.<sup>65</sup> Given that Westar does not have any plans to add generation capacity until, at the earliest, 2029, CURB believes that it analyzed this issue appropriately.

22. Even assuming that CURB's avoided capacity cost of \$0 per kW is incorrect, and accepting Staff's corrected avoided capacity cost (minus avoided transmission capacity costs) value, it is CURB's position that the EEDR fails the TRC and RIM tests after Staff's avoided capacity cost of \*\*█\*\* per kW is appropriately corrected to \*\*█\*\* per kW to reflect the removal of avoided transmission capacity costs. It is clear from the record that transmission capacity costs are not avoided by the EEDR program.<sup>66</sup> This is evidenced by the testimony of Mr. Wolfram at hearing:

**Q.** (BY MR. CONNORS) Mr. Wolfram, what I've handed you is Westar's response to CURB DR 33. Are you familiar with that response?

**A.** Yes.

**Q.** Can you please read both CURB's question and Westar's response into the record for

---

<sup>63</sup> Tr. at pp. 43-44.

<sup>64</sup> *Id.*

<sup>65</sup> Tr. at pp. 34-35.

<sup>66</sup> Tr. pp. 128-131.

me?

**A.** Yes. The question is: Question 1. Does Westar consider avoided transmission capacity a benefit achieved as a result of the EEDR? If yes, please quantify in dollars the appropriate value of avoided transmission capacity achieved as a result of the EEDR. Response: No, the EEDR primarily provides generation capacity support.

**Q.** Thank you. So the \$58 per kilowatt of avoided costs using your analysis represents the avoided cost of generation not transmission?

**A.** That is correct. It is an avoided production or generation capacity cost.<sup>67</sup>

23. Avoided transmission capacity costs are not included as a benefit achieved because as a practical purpose they are hard to calculate. Mr. Wolfrom testified that "...many utilities do not include because it [avoid transmission capacity costs] is rarely calculated and can be difficult to calculate particularly for those entities, those transmission-owning entities who belong to RTOs or ISOs and have coordinated regional transmission planning."<sup>68</sup> In view of that fact that the record clearly reflects that the transmission capacity costs are not affected by the EEDR, CURB believes that Staff's overall avoided capacity cost should be corrected to \*\*\$20\*\* per kW. If avoided transmission capacity costs are removed the EEDR fails the TRC and RIM. Staff witness Darren Prince acknowledged this fact at hearing:

**Q.** [Mr. Connors] Would you agree subject to check that if the avoided capacity cost changed to \*\*\$20\*\* per kW in order to represent the value of avoided capacity contract that's removing the avoided transmission cost from that analysis that the EEDR Program's TRC score is 0.7 and the RIM score is 0.41?

**A.** [Mr. Prince] Can you direct me to where that's at in this?

**Q.** [Mr. Connors] It's not in there. It's just if based on their model, Westar's model that they've used to calculate the TRC score and the RIM score, if Staff's number was reduced to reflect avoided transmission cost, would you agree with me subject to check that would change the TRC score to 0.7 and the RIM score to about 0.41?

**A.** Subject to check, yes.

**Q.** Would an Energy Efficiency Program with I TRC score of 0.7 and a RIM score of 0.41

---

<sup>67</sup> Tr. at p. 33.

<sup>68</sup> Tr. at p. 32.

meet Staff's criteria for Commission approval in your opinion?

A. No.<sup>69</sup>

24. The record evidence clearly supports CURB's analysis that the avoided capacity cost is \$0 per kW. However, if the Commission assumes that there is some avoided capacity cost value to the EEDR the Commission should remove the \*\*█\*\* per kW avoided transmission capacity cost value from Staff's overall avoided capacity cost, which would correctly value Staff's avoided generation capacity cost at \*\*█\*\* per kW. Given that correction, CURB believes that the Commission should deny the EEDR based on the record evidence that the EEDR does not pass the Commission required benefit-cost tests.

### **3. The EEDR has been heavily criticized by Staff.**

25. CURB is not the only party concerned about the continuation of the EEDR program. In Staff's Report and Recommendation, from Docket No. 15-WSEE-532-MIS (Docket 15-532), Staff stated that "from June 2013 through June 2016 Westar paid \$10.7 million dollars for a program that has not been used. Staff doubts the insurance value of the EEDR program is equivalent to \$10.7 million."<sup>70</sup> Additionally, in Staff's Recommendation in Docket 15-532 Staff stated, "as discussed above, the program has not been used since 2012, the program cannot currently be used for spinning reserves, the program is probably not needed, and the program is probably over valued because of the avoided capacity cost used in the EM&V analysis is greater than the market value for avoided capacity. Finally, when the market avoided capacity cost is used to evaluate the EEDR program, the program costs exceed its benefits."<sup>71</sup>

26. It is clear from Staff's prior Report and Recommendations that Staff highly doubts

---

<sup>69</sup> Tr. pp. 130-131 (emphasis added).

<sup>70</sup> Staff Report and Recommendation, 15-WSEE-532-MIS, at p. 13 (July 19, 2018).

<sup>71</sup> *Id.*

the value of the EEDR program. Furthermore, at hearing Staff Witness Dr. Glass admitted that Kansans are better off if the EEDR is never called because it is more expensive than other options.

Dr. Glass stated:

We hope – I mean, the longer the EEDR isn't used, the better off Kansans are because it's a relatively expensive implementation cost because -- can I say the amount? It's not the \$4. I am talking about how much you have to pay them during this. Yeah, it's in the tariff. \$75, as I recall, \$75 a megawatt hour. You know the price in the SPP most of the time on an average basis is somewhere between 20 and \$30 at the most. So that's expensive. That explains to me why Westar did not use it when they had Jeffrey down. . . .<sup>72</sup>

27. Staff further criticized the program and also admitted that Energy Efficiency Programs are not ideal to use as an economic incentive at hearing. Staff Witness, Dr. Glass, testified:

I don't know what the answer to this is and I will admit that using an Energy Efficiency Program as an economic incentive is not the best idea in the world and, at times, you know, as I've said, well, as you read, we wrote that we had -- we were skeptical about this program. We basically have come around to the point that this may not be the best program in the world.<sup>73</sup>

Given Staff's criticism it is unclear to CURB why Staff supports the EEDR.

28. Lastly, the EEDR Proponents argue that the EEDR will provide tangible benefits in the event of an extreme system emergency. Moreover, the EEDR Proponents equate the benefits of the program to an "insurance" policy that can be called upon in the remote chance that an extreme system emergency occurs. It is clear that Staff believes that the EEDR program allegedly provides some insurance value. However, Staff admittedly did not calculate the insurance value of the EEDR. Staff witness Darren Prince testified:

I cannot give you a monetary figure of what the insurance value of the program is. . . . I just know it has a value and the value would be very difficult to calculate. It would be the probability of a probability of times the system conditions and the

---

<sup>72</sup> Tr. pp. 148-149.

<sup>73</sup> Tr. pp. 161-162.

value and cost of that system condition.<sup>74</sup>

CURB is unaware of any Commission approved energy efficiency policy that takes into account the benefits of a program based on its insurance value. Furthermore, CURB is unaware of any statute that supports the investment in supply-side resources based on a hypothetical system condition. Even if that was the case there is nothing in the evidentiary record to support the calculation of any type of insurance value. CURB is also unaware of an exception to allow utilities to invest in supply side resources as an insurance policy in case of an extreme system emergency. As stated above, supply-side investments are only prudent if they are being used to provide ratepayers with efficient and sufficient service. From CURB's perspective there is concern that this could be a slippery slope. If we start allowing utilities to offer energy efficiency programs that are economic incentives, to its largest users, based solely on insurance value, CURB is concerned that it could lead to wasteful and unnecessary investments in energy-efficiency, which would ultimately hurt the ratepayer.

## **V. Conclusion**

29. The record clearly supports CURB's position that the EEDR is no longer a cost-effective energy efficiency program. CURB has provided substantial competent evidence that the EEDR fails the Commission cost-benefit tests that are required for energy-efficiency programs to be approved. The record is also clear that the program is no longer being used, and no evidence has been provided in the record that it will likely ever be used. This clearly violates Kansas law and well established regulatory principles. For these reasons, the Commission must deny the EEDR from inclusion in the ESA.

WHEREFORE, CURB respectfully submits its *Post-Hearing Brief* and recommends the

---

<sup>74</sup> Tr. at pp. 119-120.

Commission approve the ESA, but deny the inclusion of the EEDR, permit Westar to defer the revenues lost as a result of the removal of EEDR, as a regulatory asset, and permit Westar the ability to seek recovery of the amount deferred in its next general rate case.

Respectfully submitted,

  
Thomas J. Connors, Attorney #27039  
Citizens' Utility Ratepayer Board  
1500 SW Arrowhead Road  
Topeka, KS 66604  
(785) 271-3200  
[tj.connors@curb.kansas.gov](mailto:tj.connors@curb.kansas.gov)

**VERIFICATION**

STATE OF KANSAS )  
 ) ss:  
COUNTY OF SHAWNEE )

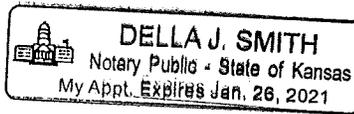
I, Thomas J. Connors, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge,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

  
\_\_\_\_\_  
Thomas J. Connors

SUBSCRIBED AND SWORN to before me this 24<sup>th</sup> day of October, 2018.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 01-26-2021.



**CERTIFICATE OF SERVICE**

18-KG&E-303-CON

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 24<sup>th</sup> day of October, 2018, to the following:

MICHAEL NEELEY, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
[m.neeley@kcc.ks.gov](mailto:m.neeley@kcc.ks.gov)

BRIAN G. FEDOTIN, DEPUTY GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
[b.fedotin@kcc.ks.gov](mailto:b.fedotin@kcc.ks.gov)

CATHRYN J. DINGES, CORPORATE COUNSEL  
KANSAS GAS & ELECTRIC CO. D/B/A WESTAR ENERGY  
818 S KANSAS AVE  
PO BOX 889  
TOPEKA, KS 66601-0889  
[cathy.dinges@westarenergy.com](mailto:cathy.dinges@westarenergy.com)

JAMES P. ZAKOURA, ATTORNEY  
SMITHYMAN & ZAKOURA, CHTD.  
7400 W 110TH ST STE 750  
OVERLAND PARK, KS 66210-2362  
[jim@smizak-law.com](mailto:jim@smizak-law.com)

ANDREW J. FRENCH, ATTORNEY AT LAW  
SMITHYMAN & ZAKOURA, CHTD.  
7400 W 110TH ST STE 750  
OVERLAND PARK, KS 66210-2362  
[andrew@smizak-law.com](mailto:andrew@smizak-law.com)

  
\_\_\_\_\_  
Della Smith  
Administrative Specialist