

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

**In the Matter of Application of
Westar Energy
to Make Certain Changes in
its Charges for Electric Service
To Change its Existing Rate Structure
Including a Higher Customer Charge**

Docket No. 15-WSEE-115-RTS

**CLIMATE AND ENERGY PROJECT'S PETITION FOR RECONSIDERATION OF
THE COMMISSION'S ORDER ON LIMITED INTERVENTION**

Pursuant to K.S.A. 77-529(a) and K.A.R. 82-1-235 Intervenor Climate and Energy Project (CEP) hereby petitions for reconsideration of the Commission's Order of July 23, 2015 (hereinafter referenced as "Order"), that granted CEP limited intervention. In support of this petition for reconsideration the following is offered for the Commission's consideration.

1. In the Commission Order of July 23, 2015, CEP was granted limited intervention. (Order para. 61).
2. The Commission limited intervention because "the subject matter of this docket does not substantially affect CEP's interests and therefore CEP does not meet the criteria for intervention under K.S.A. 77-521(a). (Order, para. 59).
3. Consistent with the Commission's discretion over matters of intervention, CEP was granted limited intervention. The Commission limited CEP's intervention by barring its participation in the hearing. (Order, para. 61).

4. CEP respectfully requests that the Commission finding that CEP's interests are not impaired be reconsidered and that CEP be granted full intervention rights including participation in the hearing.
5. The Commission observed that CEP's mission revolves around the objective of reducing emissions of greenhouse gases by promoting energy efficiency and use of renewable fuels. However, the Commission also found that CEP's advocacy and activism does not include consideration of impacts on costs of electricity. The Commission stated "Lowering a consumer's monetary expense on energy does not appear to be the direct goal of CEP." (Order, para. 58).
6. CEP's organizational objectives include advocating for efficient use of electricity on the premise that such will, in the case of fossil fuel dependent utilities such as Westar, result in burning less fuel and reduced greenhouse gas emissions. (CEP Petition to Intervene, para. 10). *Inter alia*, it is through the regulatory process that this advocacy manifests. But advocacy is more than spreading CEP's message. While the Commission is correct that an increased fixed customer charge would not deter CEP's public advocacy efforts (Order, para. 58), advocacy in the regulatory arena is also an important aspect of CEP's mission. Full participation in this rate case is also an important and necessary part of CEP's advocacy.¹
7. The Commission's view that CEP's organizational purpose is not to lower costs for electricity infers that CEP's argument that higher fixed charges have the effect of deterring investments in efficiency (a relationship the Commission recognizes at para. 58 of the Order) is unrelated to its organizational interests. (Id.).

¹ As stated in the petition for intervention, CEP has been active in other KCC dockets, as well. (Petition to Intervene, para. 3)

8. CEP has an interest that is cognizable and supports full intervention. CEP's argument that increased customer charges deter investments in efficiency is directly linked to its organizational purpose of limiting greenhouse gas emissions. The Commission's decision that CEP has no legally recognized stake in the outcome of the rate design aspect of this case because it lacks a financial interest overlooks the fact that individuals affiliated with CEP do have a financial stake in the outcome. (Petition to Intervene, para. 8). And even if that interest is considered insufficient CEP's environmental interests justify full intervention. In *Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. Dept. of Interior*, 100 F. 3d 837, 841 (10th Cir. 1996) the court held that an individual who had advocated for the protection of the Mexican Owl, but did not have an economic interest in its protection, had the right to unconditional intervention under F.R.Civ. P. 24(a)(2). The court observed that predicating intervention on an economic interest was overly restrictive in light of legislative intent and jurisprudence that anticipate "a broad right of intervention." (Id.) See also: *San Juan County v. United States*, 503 F. 3d 1163, 1199 (10th Cir. 2007) (environmental concerns are legally protectable interests for purposes of intervention). The recognition that intervention may be based on grounds other than economic is important in the instant matter. The Commission's order that limited CEP's intervention implies that without an economic interest in the rate case the extent of intervention will be attenuated. (Order, paras. 58-59).
9. K.S.A. 60-224 deals with intervention in the judicial context. Our courts have consistently held that intervention of right under K.S.A. 60-224(a) should be liberally applied in favor of intervention. *In Re Petition of Shawnee*, 236 Kan. 1,11 (1984). This is

particularly the case when a proposed intervenor's interests are not adequately represented by another party. (*Id.*).

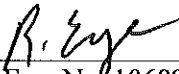
10. But CEP also has economic reasons for its intervention based on the impacts from the rate case on those affiliated with CEP. (CEP Petition to Intervene, para.8). This is significant because, to the extent that the Commission requires an economic stake in the outcome of the rate case, such is satisfied by CEP's board member's status as a Westar customer.
11. The Commission's view that the nature of CEP's advocacy precludes full participation in the hearing misconstrues the nature of public interest advocacy. CEP's positions and knowledge will be of little practical use if its witness testimony is precluded from being part of the record. Limiting intervention has the effect of denying CEP its most important advocacy tool to influence rate design in this case. Unless CEP's testimony is admitted into the record and CEP's witness subjected to cross-examination, CEP's advocacy is significantly undermined. Advocacy and activism are not ends but means to achieve objectives. CEP's full participation in the hearing is yet another means of advancing its objectives.
12. The order on CEP's intervention acknowledges that CEP has something to offer the Commission in terms of efficient use of electricity. (Order, para. 60). The Commission found that CEP's "offer of knowledge" on the issue of efficient use of electricity justified intervention in the interests of justice. (*Id.*) But without testimony and a witness to sponsor such and stand for cross examination CEP has no way to participate on the record to provide the Commission the knowledge that it acknowledges has value. And while CEP's intervention allows it to file briefs and pleadings, CEP's testimony has been

struck from the record because it is not allowed to participate in the hearing.

(Commission Order Striking Testimony of CEP Witness Ashok Gupta, Para. 9). Given that other parties are not considering the relationship between increased customer charges and investments in efficiency it is unlikely that a hearing record will provide material from which CEP can make its arguments. (Petition to Intervene, para. 10).

13. This is particularly troubling because no other party in this case focuses on the intersection between increased customer charges and the impacts on investments in efficiency.
14. To the extent the Commission limits CEP's participation it should be on the basis of subject matter. Limiting CEP's hearing participation to rate design matters that deal with efficient use of electricity recognizes CEP's interests while still limiting its participation to avoid unreasonably burdening the record.

Respectfully submitted,



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VERIFICATION

STATE OF KANSAS)
)
) ss:
COUNTY OF SHAWNEE)

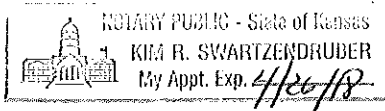
Robert V. Eye, of lawful age, being first duly sworn upon oath, deposes and states: That he is an attorney for the Climate Energy Project, that he has read the above and foregoing *Petition for Reconsideration* and that the statements therein contained are true according to his knowledge, information and belief.

Robert V. Eye
Robert V. Eye

Subscribed and sworn to before me this 7th day of August, 2015.

My appointment expires: 4/26/18

Kim R. Swartzendruber
Notary Public



CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above and foregoing was served electronically on August 7, 2015, on the following:

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