

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of Great       )  
Plains Energy Incorporated for Approval       )  
of its Acquisition of Westar Energy, Inc.       )  
**File No. EM-2017-0226,et al.**

**RESPONSE OF GREAT PLAINS ENERGY INCORPORATED TO COMMISSION  
ORDER REGARDING FERC DOCKET NO. EC16-146-000**

Great Plains Energy Incorporated (“GPE”), in response to an order of the Missouri Public Service Commission (“Commission”) issued herein on March 2, 2017, states the following:

1. By order dated March 2, 2017, the Commission directed GPE to submit a statement detailing the earliest date it anticipates receiving a FERC decision on the application in Docket No. EC16-146-000 (whereby GPE and Westar requested FERC’s approval for GPE’s acquisition of Westar).

2. As the Commission and parties are likely aware, FERC currently lacks a quorum and is therefore unable to issue an order in EC16-146-000. Although GPE does not know when a quorum will be restored, GPE knows that President Trump and his Administration have been made aware of the urgency of the matter. See Attachment 1. Consequently, GPE believes that President Trump will resolve this issue with all due dispatch. Counsel for GPE has advised that the Senate confirmation process, based on similar confirmations, is likely to take a minimum of 30 days. Because the administration of President Trump has not yet nominated a FERC candidate for the Senate’s consideration, it is not expected that FERC will issue an order on the application in Docket No. EC16-146-000 before mid-April, and that estimate could change depending on the timing of the nomination of a candidate or candidates by the administration of President Trump.

3. In addition, GPE expects that FERC Staff is preparing Docket No. EC16-146-000 to be ready for a vote once a quorum of commissioners is in place. In fact, GPE provided an update to FERC on March 3, 2017 of activities that have occurred that show continued progress toward completion of the acquisition on a timely basis. See Attachment 2. All that said, GPE believes that it remains possible FERC will be in a position to issue its decision in EC16-146-000 by April 24, 2017. This is the day the Kansas Corporation Commission (“KCC”) is required, by K.S.A. 66-131(c), to issue its order in KCC Docket No. 16-KCPE-593-ACQ (whereby GPE and Westar requested KCC authority for GPE’s acquisition of Westar). As additional context, the Federal Power Act provides FERC 180 days to act on a merger application from the date the application was submitted or last amended, and FERC can extend the 180-day review period for good cause. *See* 16 U.S.C. § 824b(a)(5). In the case of the application in Docket No. EC16-146-000, the 180-day period expires May 6, 2017, and FERC may seek to make a decision on the application in Docket No. EC16-146-000 within the 180-day period rather than extend the review period.

WHEREFORE, GPE respectfully submits this response to the Commission’s March 2, 2017 order.

Respectfully submitted,

/s/ Robert J. Hack

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[jfischerpc@aol.com](mailto:jfischerpc@aol.com)  
[lwdority@sprintmail.com](mailto:lwdority@sprintmail.com)

**Attorneys for Great Plains Energy Incorporated**

**CERTIFICATE OF SERVICE**

A copy of the foregoing was served upon all counsel of record in these consolidated proceedings by email or U.S. mail, postage prepaid, this 6<sup>th</sup> day of March, 2017.

*/s/ Robert J. Hack*  
Robert J. Hack

Monday, February 27, 2017 3:18 PM CT [Extra](#)

## Congressmen implore White House to make FERC nominations

By [Ximena Mosqueda-Fernandez](#)

Joining the energy industry and energy consumer organizations, 93 members of Congress called on President Donald Trump to prioritize replacing a commissioner and reestablishing a quorum at FERC.

"Doing so will unlock and accelerate investments in our nation's energy infrastructure and will allow FERC to continue its important regulatory oversight responsibilities to ensure American consumers have access to reliable energy," U.S. House Energy and Commerce Committee member Rep. Tim Walberg, R-Mich., and the other lawmakers wrote in a Feb. 22 letter. The letter was signed by 72 Republicans and 21 Democrats from the House of Representatives.

Walberg has [supported](#) the NEXUS natural gas pipeline proposed by [Spectra Energy Corp](#) and [DTE Energy Co.](#) as a way to lower electricity costs for people in Michigan.

FERC has been without a quorum since Feb. 3, when former Chairman Norman Bay resigned and left only two commissioners on the five-member commission. Since then, FERC has been "unable to serve its essential functions," the congressmen said, including approving new natural gas pipelines and electric transmission projects. In the week of Bay's departure, the commission issued certificate orders for [three](#) pending pipeline projects.

[Industrial consumer groups](#) and [energy trade associations](#) have also requested that Trump appoint three new commissioners to FERC as soon as possible, with letters that began before Bay's resignation.

The commission has been whittled down to acting Chairman Cheryl LaFleur and Commissioner Colette Honorable. Honorable's term will expire at the end of June. Until the commission can regain a quorum with a third commissioner, FERC's monthly meetings have been [suspended](#). LaFleur has delegated certain [authorities](#) to FERC staff.

February 2, 2017

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Mr. President:

We write to you regarding the imminent lack of a quorum at the Federal Energy Regulatory Commission (“FERC”), which will occur upon the departure of Commissioner Norman C. Bay, effective February 3, 2017. The absence of a quorum will leave the agency unable to tackle much of its important work promoting energy infrastructure for the benefit of U.S. energy consumers.

This situation will prevent the agency from making major policy decisions and could delay timely action on natural gas infrastructure certificate applications, hydropower license applications, petitions in connection with oil pipeline construction, pending mergers, and rate proceedings until such time as the agency has at least three sitting commissioners. Such delays and inaction could have profound negative impacts for the nation’s electric, natural gas, and oil customers given the need for strong national energy infrastructure and enhanced market access and opportunities.

We are a diverse coalition of interests representing a broad range of electric, natural gas, and oil industry trade associations and their member companies. Given our shared sense of the importance of regulatory certainty in promoting energy infrastructure investment and just and reasonable rates, we are aligned in urging the Administration to promptly nominate candidates to fill the Commission’s three existing vacancies as quickly as possible so a quorum can be reconstituted without undue delay.

We greatly look forward to working with you and your Administration on the vital issues facing energy consumers and the energy industry.

Sincerely,

American Gas Association  
American Petroleum Institute  
American Public Gas Association  
American Public Power Association  
Association of Oil Pipe Lines  
Edison Electric Institute  
Electric Power Supply Association

Independent Petroleum Association of America  
Interstate Natural Gas Association of America  
Large Public Power Council  
National Hydropower Association  
National Rural Electric Cooperatives Association  
Natural Gas Supply Association  
Nuclear Energy Institute

cc: Mr. Reince Priebus, White House Chief of Staff

# Congress of the United States

House of Representatives

Washington, DC 20515-2207

February 22, 2017

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Mr. President,

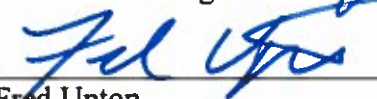
We write to ask you to prioritize the nomination and confirmation of commissioners to the Federal Energy Regulatory Commission (FERC) so that the current standstill at the agency can quickly be resolved. Doing so will unlock and accelerate investments in our nation's energy infrastructure and will allow FERC to continue its important regulatory oversight responsibilities to ensure American consumers have access to reliable energy.


As a result of Commissioner Norman Bay's resignation, FERC is without a quorum, rendering it unable to serve its essential functions and effectively halting critical infrastructure investments to our nation's energy infrastructure.

Modernizing our energy infrastructure is vitally important to ensuring American families and businesses have access to safe, affordable, and reliable energy. We urge you to swiftly nominate commissioners to FERC and restore important progress on energy infrastructure development. The U.S. economy, families, businesses, and manufacturers will all benefit from energy investments made here at home, and ensuring FERC is immediately able to perform its core functions will help make this a reality.

Sincerely,

  
Tim Walberg  
Member of Congress

  
Fred Upton  
Member of Congress

  
Joe Barton  
Member of Congress

  
Steve Scalise  
Member of Congress

  
John Shimkus  
Member of Congress

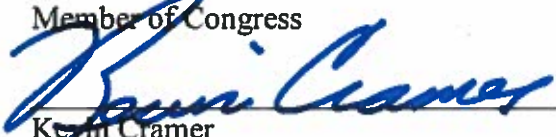
  
Tim Murphy  
Member of Congress



Marsha Blackburn  
Member of Congress



Bobby Rush  
Member of Congress



Kevin Cramer  
Member of Congress



David B. McKinley, P.E.  
Member of Congress



Gene Green  
Member of Congress



Gregg Harper  
Member of Congress



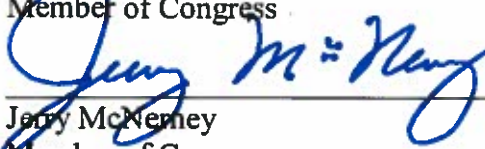
Adam Kinzinger  
Member of Congress



Bill Flores  
Member of Congress



Buddy Carter  
Member of Congress



Jerry McNerney  
Member of Congress



Bill Johnson  
Member of Congress



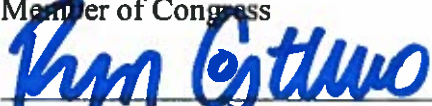
Sam Graves  
Member of Congress



Mike Johnson  
Member of Congress



Randy Weber  
Member of Congress



Ryan Costello  
Member of Congress



Bob Gibbs  
Member of Congress



Kevin Yoder  
Member of Congress



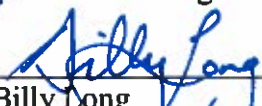
Ann Wagner  
Member of Congress




Patrick Meehan  
Member of Congress



Tom MacArthur  
Member of Congress



Billy Long  
Member of Congress



Steve Stivers  
Member of Congress





Jason Smith  
Member of Congress



Vicky Hartzler  
Member of Congress



Roger Marshall  
Member of Congress



Dave Trott  
Member of Congress



Lynn Jenkins  
Member of Congress



Donald Norcross  
Member of Congress



Joe Wilson  
Member of Congress



Mark Podan  
Member of Congress



Trent Kelly  
Member of Congress



Ken Buck  
Member of Congress



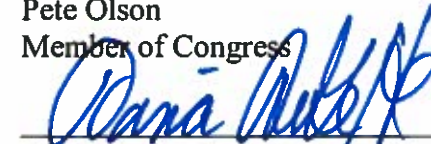
Mo Brooks  
Member of Congress



Gus Bilirakis  
Member of Congress



Pete Olson  
Member of Congress



Diana DeGette  
Member of Congress



Mike Bost  
Member of Congress



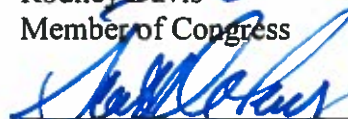
Emanuel Cleaver, II  
Member of Congress



Debbie Dingell  
Member of Congress



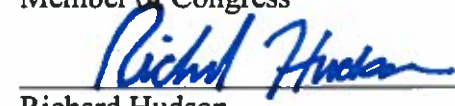
Rodney Davis  
Member of Congress



Scott Perry  
Member of Congress



Daniel W. Lipinski  
Member of Congress



Richard Hudson  
Member of Congress



Kurt Schrader  
Member of Congress



Cedric L. Richmond  
Member of Congress



Garret Graves  
Member of Congress



Mike Rogers  
Member of Congress



Blaine Luetkemeyer  
Member of Congress



Scott Peters  
Member of Congress



Bennie G. Thompson  
Member of Congress



Mimi Walters  
Member of Congress



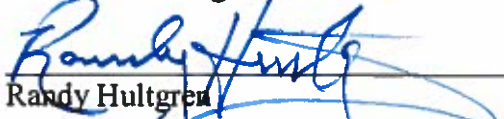
Markwayne Mullin  
Member of Congress



Bruce Westerman  
Member of Congress



Steven Palazzo  
Member of Congress



Randy Hultgren  
Member of Congress



Steve Womack  
Member of Congress



Peter Welch  
Member of Congress



Charles W. Dent  
Member of Congress



Mike Doyle  
Member of Congress



Susan W. Brooks  
Member of Congress



Bill Huizenga  
Member of Congress




John Moolenaar  
Member of Congress



Jack Bergman  
Member of Congress



John Katko  
Member of Congress



Mike Bishop  
Member of Congress



Darin LaHood  
Member of Congress





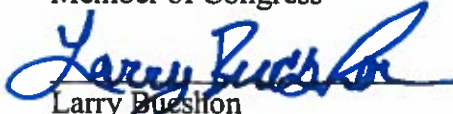
David Rouzer  
Member of Congress



Doug Lamborn  
Member of Congress



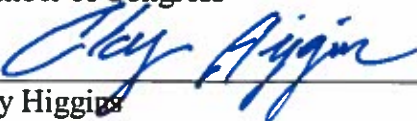
Dutch Ruppersberger  
Member of Congress



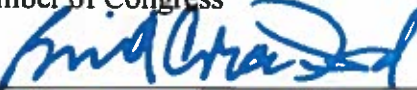
Larry Bueshon  
Member of Congress



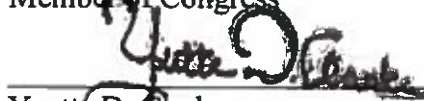
Ralph Abraham  
Member of Congress



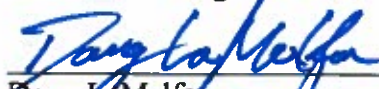
Clay Higgins  
Member of Congress



Rick Crawford  
Member of Congress



Yvette D. Clarke  
Member of Congress



Doug LaMalfa  
Member of Congress



Scott Tipton  
Member of Congress



Evan Jenkins  
Member of Congress



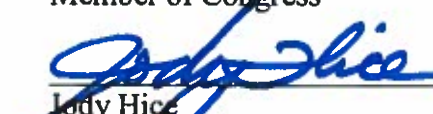
Paul Mitchell  
Member of Congress



Bradley Byrne  
Member of Congress



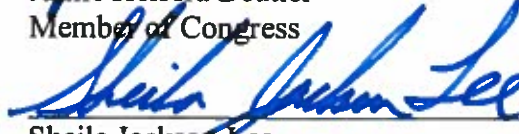
Ben Ray Lujan  
Member of Congress



Jody Hice  
Member of Congress



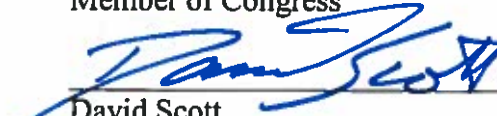
Jaime Herrera Beutler  
Member of Congress



Sheila Jackson Lee  
Member of Congress



Jim Costa  
Member of Congress



David Scott  
Member of Congress



Chris Collins  
Member of Congress



Paul Gosar  
Member of Congress

**Congress of the United States**  
**Washington, DC 20515**

February 22, 2017

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear President Trump,

We are writing to request your immediate attention to the current vacancies at the Federal Energy Regulatory Commission (FERC), the independent federal agency charged with overseeing the energy sector. Under federal law, in order to take formal action, FERC must have a minimum of three sitting commissioners. However, as of February, 3, 2017, FERC has only two commissioners. We request your prompt nomination of at least one individual to serve as commissioner who may be duly considered by the Senate.

A fully functioning and staffed Commission is critical to our economy, national security, infrastructure, and energy needs as a country. For the last several years, our offices repeatedly have raised concerns, including with the previous administration, about vacancies on the Commission. The Commission staff can address many of the actions filed, but federal statutes require the Commission to issue orders only by majority vote of at least three commissioners representing a quorum.

In FERC's nearly forty year history, it has never faced a situation where it is unable to act due to lack of a quorum. Though routine matters may be addressed at staff level, effectively, the most important actions will require at least three commissioners. Our energy sector will remain at a standstill without the Commission's ability to act.

Prior to former Chairman Bay's departure, the Commission issued an order delegating the staff additional powers in the absence of quorum. However, given the clarity of the FERC governing statutes and the uncharted territory we are currently exploring, we have significant concerns with the legal basis on which this order stands. A nomination and subsequent confirmation by the Senate would avoid protracted legal proceedings.

Energy policy is made at the local, state, regional, and federal levels. We have encouraged the entities that require FERC approval to delay filing new items with the Commission during this time. We also have offered legislation, which passed the House of Representatives on the first day of your administration, that would ensure all parties involved in the energy sector, consumers and industry alike, are able to raise adequate concerns at the administrative and judicial levels in the absence of an order issued by the Commission.

As members of Congress, we stand ready to do our part to ensure the functioning of the energy sector, but, respectfully, we cannot nominate new commissioners. For the sake of good governance, transparency, and proper oversight, we request you nominate a qualified individual as soon as possible to serve as a commissioner at FERC. We also request you work to fill the remaining vacant slots in short order to ensure the Commission is fully functioning and each filing is duly considered.

Thank you for your consideration.

Sincerely,



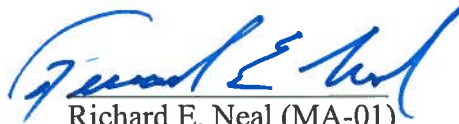
Joseph P. Kennedy, III (MA-04)  
Member of Congress



Bobby L. Rush (IL-01)  
Member of Congress



Paul D. Tonko (NY-20)  
Member of Congress



Richard E. Neal (MA-01)  
Member of Congress



William R. Keating (MA-09)  
Member of Congress



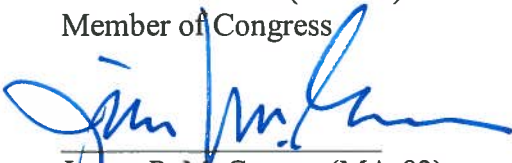
Katherine M. Clark (MA-05)  
Member of Congress



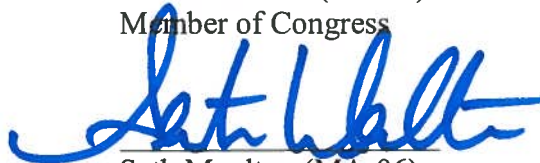
John P. Sarbanes (MD-03)  
Member of Congress



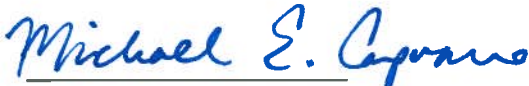
Diana DeGette (CO-01)  
Member of Congress



James P. McGovern (MA-02)  
Member of Congress



Seth Moulton (MA-06)  
Member of Congress



Michael E. Capuano (MA-07)  
Member of Congress



Peter Welch (VT-AL)  
Member of Congress



Stephen F. Lynch (MA-08)  
Member of Congress



Niki Tsongas (MA-03)  
Member of Congress



# United States Senate

WASHINGTON, DC 20510

March 2, 2017

The President  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear Mr. President:

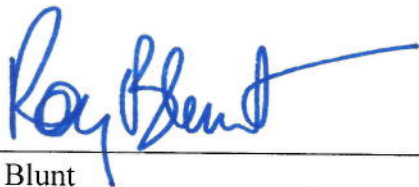
The Federal Energy Regulatory Commission (FERC) has large obligations since it is responsible for regulating the interstate transmission of electricity, natural gas, and oil. FERC also reviews proposals for hydropower and interstate natural gas pipelines.

Currently, FERC is without a quorum and, as a result, it is unable to move forward with some of its critical work. We respectfully request that you prioritize the nomination of commissioners to FERC so infrastructure investments in our nation's energy infrastructure can proceed.

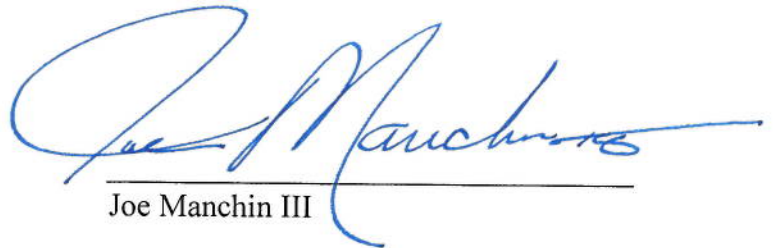
You have recognized the importance of investing in and modernizing our nation's infrastructure, including our energy infrastructure. Families and businesses across the country count on having access to safe, affordable, and reliable energy. To ensure there is no delay in important energy infrastructure investments, we urge you to proceed swiftly in nominating individuals to FERC. We commit that we will also urge our colleagues to consider and work to confirm qualified nominees so FERC can proceed in fulfilling all its responsibilities.

We look forward to assisting you.

Sincerely,



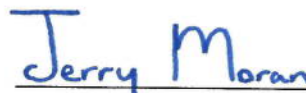
Roy Blunt



Joe Manchin III




Dean Heller




Jerry Moran

  
Thad Cochran

  
Johnny Isakson

  
James Lankford

  
John Thune

  
John Barrasso, M.D.

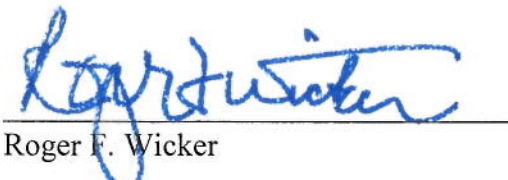
  
M. Michael Rounds

  
Steve Daines

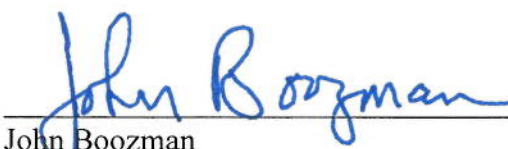
  
Richard Burr


  
Shelley Moore Capito

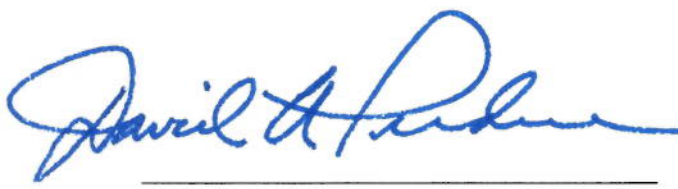
  
Ron Johnson

  
Roger F. Wicker

  
James M. Inhofe

  
John Boozman

  
Pat Roberts

  
David A. Perdue

  
Claire McCaskill

  
John Hoeven

  
Rob Portman

  
Tim Scott

  
Deb Fischer



ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641  
March 2, 2017

The Honorable Donald J. Trump  
President  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, DC 20500

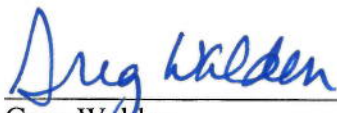
Dear President Trump:

We write to urge you to prioritize the nomination of highly qualified, experienced candidates to fill the existing vacancies at the Federal Energy Regulatory Commission (FERC).

As a result of Commissioner Norman Bay's resignation on February 3, 2017, FERC is without a quorum, which significantly limits its ability to perform its statutory mission regulating the interstate transmission of electricity, natural gas, and oil. Without a quorum, major FERC decisions are stalled, including those involving the licensing of interstate natural gas pipelines, liquefied natural gas terminals, and hydropower projects. Moreover, FERC's ability to protect consumers, review rate filings, review corporate transactions, monitor energy markets, and enforce regulatory requirements are also adversely impacted by the lack of the quorum.

We urge you to swiftly nominate commissioners to FERC so that it may execute the authorities granted by Congress and fulfill its mission to assist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means.

Sincerely,



Greg Walden  
Chairman  
Committee on Energy and Commerce



Fred Upton  
Chairman  
Subcommittee on Energy

March 3, 2017

By Electronic Filing

Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: Great Plains Energy Incorporated and Westar Energy, Inc.  
Docket No. EC16-146-000

Dear Secretary Bose:

On July 11, 2016, Great Plains Energy Incorporated (“Great Plains Energy”) and Westar Energy, Inc. (“Westar”) (collectively, the “Applicants”) submitted a request for Federal Energy Regulatory Commission (“Commission”) authorization, pursuant to Section 203 of the Federal Power Act, for a transaction whereby Great Plains Energy will acquire Westar (the “Proposed Transaction”).

In order to update the Commission on developments pertaining to the Proposed Transaction, attached is an order issued by the Missouri Public Service Commission (“Missouri PSC”) on February 22, 2017. In the order, the Missouri PSC ruled that it has jurisdiction to evaluate the potential public detriment of the Proposed Transaction before the merger is authorized and has directed Great Plains Energy to make a filing with the Missouri PSC seeking approval of the Proposed Transaction by March 4, 2017. On February 23, 2017, Great Plains Energy filed an application for approval with the Missouri PSC consistent with the Missouri PSC’s decision, motion to consolidate, and motion for expedited treatment.

In addition, the Applicants attach a recent Southwest Power Pool, Inc. (“SPP”) Market Monitoring Unit report identifying Frequently Constrained Areas in SPP (“2016 FCA Report”).<sup>1</sup> The 2016 FCA Report states, in relevant part, that “congestion in the Kansas City area has decreased over the years” and concludes that the Kansas City area is not frequently

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<sup>1</sup> See SPP Market Monitoring Unit, *SPP Frequently Constrained Areas – 2016 Study* (Dec. 2016) (“2016 FCA Report”). On January 31, 2017 in Docket No. ER17-911, SPP filed proposed tariff revisions with the Commission based on the 2016 FCA Report, identifying the updated Frequently Constrained Areas in SPP and the individual names of the constraints in each Frequently Constrained Area.

constrained.<sup>2</sup> This conclusion is consistent with earlier SPP Market Monitoring Unit findings identified in prior submittals made by the Applicants in this proceeding.

The Applicants appreciate that the Commission and Commission Staff have committed to continue to make progress on matters currently pending before the Commission so that the important duties and responsibilities of the Commission continue to be carried out during this non-quorum period. These efforts should minimize delays that may result from the lack of Commission quorum.

Great Plains Energy plans to issue approximately \$4.4 billion in debt securities in the near future to consummate the Proposed Transaction, with the timing of such debt issuance dependent in large part on the time frame for obtaining the applicable regulatory approvals that remain outstanding. The Applicants are hopeful that they will have obtained all remaining approvals for the Proposed Transaction on or before April 24, 2017 and respectfully request that the Commission act with its typical expedition and authorize the Proposed Transaction consistent with that time-frame as well to the maximum extent possible.

Very truly yours,

\_\_\_\_\_  
/s/  
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Enclosure

cc: Service List - All parties

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<sup>2</sup> 2016 FCA Report at 15.

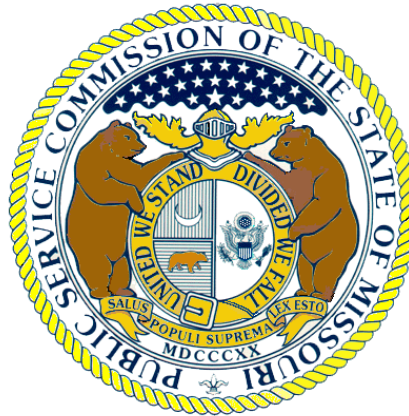
# Attachment

## Missouri Public Service Commission Report and Order

Dated: February 22, 2017

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office  
in Jefferson City on the 22<sup>nd</sup>  
day of February, 2017.



Midwest Energy Consumers Group, )  
 )  
Complainant, )  
v. )  
 )  
Great Plains Energy Incorporated, )  
 )  
Respondent. )

File No. EC-2017-0107

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## **REPORT AND ORDER**

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**Issue Date: February 22**

**Effective Date: March 4, 2017**

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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Midwest Energy Consumers Group,	)	
	)	
Complainant,	)	
v.	)	File No. EC-2017-0107
	)	
Great Plains Energy Incorporated,	)	
	)	
Respondent.	)	

**REPORT AND ORDER**

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**SENIOR REGULATORY LAW JUDGE: Kim S. Burton**

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Midwest Energy Consumers Group,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. EC-2017-0107
	)	
Great Plains Energy Incorporated	)	
	)	
Respondent.	)	

**REPORT AND ORDER**

Issue Date: February 22, 2017

Effective Date: March 4, 2017

**PROCEDURAL HISTORY**

On October 11, 2016, the Midwest Energy Consumers Group (“MECG”) filed a complaint with the Missouri Public Service Commission (the “Commission”) against Great Plains Energy Incorporated alleging that the holding company is violating the Commission’s *Order Approving Stipulation and Agreement and Closing Case*, in Case No. EM-2001-464. The Commission issued a *Notice of Contested Case and Order Directing Filing*. Great Plains Energy Incorporated submitted an answer and a motion to dismiss. The Consumers Council of Missouri filed an uncontested application to intervene, which was granted by the Commission on November 9, 2016. On December 21, 2016, the Commission conducted oral arguments on Great Plains Energy Incorporated’s motion to dismiss. The Midwest Energy Consumers Group filed its



*Second Amended Complaint* (hereinafter, the “Complaint”) on December 28, 2016.<sup>1</sup> On January 4, 2017, the Commission issued its *Order Denying Motion to Dismiss and Scheduling Evidentiary Hearing*, which directed Great Plains Energy Incorporated to file an answer to the Complaint and set a February 1 evidentiary hearing date.<sup>2</sup> Great Plains filed its *Answer to Second Amended Complaint and Affirmative Defenses of Great Plains Energy Incorporated*.<sup>3</sup>

On January 18, 2017, MCEG, Great Plains Energy Incorporated, the Staff of the Missouri Public Service Commission (“the Commission’s Staff”), and Consumers Council of Missouri submitted a *Joint Stipulation of Facts and List of Issues, Request to Take Official Notice, Motion to Cancel Hearing and Oral Argument and to Establish Briefing Schedule, and Motion for Expedited Treatment* (the “Joint Motion”).<sup>4</sup> In the Joint Motion, the signatories stated that based on stipulated facts, they did not intend to call any witnesses or conduct any cross-examination. The four signatories indicated that the Commission could determine the legal questions in the Complaint based on the stipulated facts and matters identified by the parties for official notice by the Commission. In the Joint Motion, the parties also waived their right under Section 386.390, RSMo 2000, to an evidentiary hearing and requested expedited treatment.

Since the Office of the Public Counsel is automatically a party in any action before the Commission,<sup>5</sup> an order was issued setting a deadline for the Public Counsel to submit a response to the Joint Motion. The Commission also set a deadline for

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<sup>1</sup> EFIS Item No. 26.

<sup>2</sup> EFIS Item No. 27.

<sup>3</sup> EFIS Item No. 28, Answer to Second Amended Complaint and Affirmative Defenses of Great Plains Energy Incorporated.

<sup>4</sup> EFIS Item No. 29.

<sup>5</sup> 4 CSR 240-2.010(10).

parties to file objections to the admission of the documents identified for official notice in the Joint Motion as exhibits in the record.

On January 20, 2017, the Office of the Public Counsel filed a response stating that it did not object to the request to cancel the hearing set for February 1, 2017. No objections to the admission of identified documents as exhibits were received. The Commission canceled the previously scheduled hearing set for February 1, 2017,<sup>6</sup> admitted exhibits into the record, and set a briefing schedule for the parties.<sup>7</sup> Great Plains Energy Incorporated, MEGG, and the Commission's Staff filed their initial briefs on January 31, 2017. That same day, Spire, Inc. filed its *Petition of Spire, Inc. for Leave to File Amicus Curiae Brief*.<sup>8</sup> MEGG and the Commission's Staff filed reply briefs on February 6, 2017.<sup>9</sup> The Commission issued its *Order Granting Petition for Leave to File Amicus Curiae Brief* on February 8, 2017.<sup>10</sup>

The case was submitted on stipulated facts and briefs.

## **FINDINGS OF FACT**

1. Kansas City Power & Light Company ("KCPL") is a vertically integrated public utility that generates, transmits, and sells electrical energy to residential customers in Missouri.<sup>11</sup>

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<sup>6</sup> EFIS Item No. 33, Order Canceling Hearing.

<sup>7</sup> EFIS Item No. 34, Order Admitting Exhibits and Setting Briefing Schedule.

<sup>8</sup> EFIS Item No. 44.

<sup>9</sup> EFIS Items No. 47 and 48.

<sup>10</sup> EFIS Item No. 50.

<sup>11</sup> Exhibit 2, pg. 5.

2. In 2001, KCPL filed an application with the Commission seeking approval to reorganize into a holding company structure, with Great Plains Energy, Incorporated (“GPE”) becoming the new holding company, and KCPL existing as its subsidiary.<sup>12</sup>

3. The Commission conducted two on-the-record hearings on KCPL’s uncontested application.<sup>13</sup> During the July 5, 2001 hearing, representatives for KCPL and GPE testified regarding KCPL’s proposed reorganization.<sup>14</sup> Commissioners also questioned attorneys for the parties about the terms of the *First Amended Stipulation and Agreement* (the “2001 Agreement”), a settlement agreement reached by the Commission’s Staff, the Office of the Public Counsel (“OPC”), GPE, KCPL and Great Plains Power, Incorporated.<sup>15</sup>

4. The 2001 Agreement included a section captioned “Prospective Merger Conditions” (hereinafter, “Section 7”), which stated the following:

GPE agrees that it will not, directly or indirectly, acquire or merge with a public utility or the affiliate of a public utility, where such affiliate has a controlling interest in a public utility unless GPE has requested prior approval for such transaction from the Commission and the Commission has found that no detriment to the public would result from the transaction. In addition, GPE agrees that it will not allow itself to be acquired by a public utility, or the affiliate of a public utility, where such affiliate has a controlling interest in a public utility, unless GPE has requested prior approval for such a transaction from the Commission and the Commission has found that no detriment to the public would result from the transaction.<sup>16</sup>

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<sup>12</sup> Case No. EM-2001-464.

<sup>13</sup> Exhibits 3 and 4.

<sup>14</sup> Exhibit 3.

<sup>15</sup> Exhibit 1. Other parties to the case did not joint in signing the 2001 Agreement, but did not object to its approval either.

<sup>16</sup> Exhibit 1.

5. During the July 5, 2001 hearing, the following interaction occurred between Commissioner Connie Murray, James Fischer, Counsel for KCPL and GPE, and Ruth O'Neill, Counsel for OPC:

*Commissioner Murray:* All right. My last question is somewhat related, I suppose. It's Section 7, prospective merger conditions where GPE agrees, and I would like to know if the parties believe that that gives the Commission jurisdiction over an unregulated holding company that it would otherwise not have?

*Mr. Fischer:* Your Honor, from the Company's perspective, I would say it's inconsistent, in my opinion, with your holdings on other holding company mergers of parents. However, again, as a negotiated item, in order to get a stipulation between the Staff, the Public Counsel and the Company, we have agreed to this provision.

...

*Commissioner Murray:* Before you respond, Ms. O'Neill, I just have a quick follow-up for Mr. Fischer. Who has the authority to bind GPE?

*Mr. Fischer:* Your Honor, I failed to also enter my appearance on behalf of GPE. I'm speaking on behalf of the Great Plains Energy Company as well.

*Commissioner Murray:* Thank you. Go ahead, Ms. O'Neill.

*Ms. O'Neill:* Yes. We recognize that the Commission has taken certain positions regarding jurisdiction on some other cases. However, we do believe that the Commission does have the ability to exercise jurisdiction over matters relating to public utilities....We believe it is appropriate, however, to include this term within this agreement. We believe that GPE, who is a signatory to this agreement, can agree to be bound on those matters which are significantly related to Commission jurisdiction and oversight to not oppose our request for jurisdiction and not impede our ability to challenge any claim that there isn't jurisdiction.<sup>17</sup>

6. In its July 31, 2001 *Order Approving Stipulation and Agreement and Closing File*, the Commission approved KCPL's application to reorganize and establish GPE as a publicly traded holding company, with KCPL becoming a wholly-owned

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<sup>17</sup> Exhibit 3, pg. 33, ln. 14 - pg. 35, ln. 6.

subsidiary of GPE.<sup>18</sup> The Commission also approved the 2001 Agreement<sup>19</sup> and directed KCPL and GPE to comply with its terms. The *Order Approving Stipulation and Agreement and Closing File* was not appealed.<sup>20</sup>

7. Presently, GPE is a Missouri corporation and the parent holding company for the stock of Missouri-based public utilities KCPL and KCP&L Greater Missouri Operations Company (“GMO”).<sup>21</sup>

8. On May 29, 2016, GPE entered into an *Agreement and Plan of Merger*, whereby GPE will acquire all of the capital stock of Westar Energy, Inc. (“Westar”) in a transaction valued at approximately \$12.2 billion, which is expected to close in the Spring of 2017.<sup>22</sup>

9. Westar is a Kansas corporation headquartered in Topeka, Kansas. Westar is authorized to conduct business by the Kansas Corporation Commission as an electric public utility in the State of Kansas.<sup>23</sup> Westar is not a Missouri-based public utility, nor is it regulated by the Missouri Public Service Commission.<sup>24</sup>

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<sup>18</sup> Exhibit 2, Order Approving Stipulation and Agreement and Closing File in Case No. EM-2001-464.

<sup>19</sup> Exhibit 1.

<sup>20</sup> Case No. EM-2001-464.

<sup>21</sup> EFIS Item No. 28, Answer to Second Amended Complaint and Affirmative Defenses of Great Plains Energy Incorporated, pg 2.

<sup>22</sup> EFIS Item No.29; Joint Stipulation of Facts and List of Issues, Request to Take Office Notice, Motion to Cancel Hearing and Oral Argument and to Establish Briefing Schedule, and Motion for Expedited Treatment. ¶1. *See also*, EFIS Item No. 15; Motion to Dismiss of Great Plains Energy Incorporated and Suggestions in Support. Statement of Facts, pg. 3.

<sup>23</sup> EFIS Item No. 28, Answer to Second Amended Complaint and Affirmative Defenses of Great Plains Energy Incorporated, pg 2.

<sup>24</sup> EFIS Item No. 29; Joint Stipulation of Facts and List of Issues, Request to Take Office Notice, Motion to Cancel Hearing and Oral Argument and to Establish Briefing Schedule, and Motion for Expedited Treatment. ¶ 2 and 3. Although Westar is not a public utility regulated by this Commission, it does own 100% of the stock of Westar Generating, Inc., which in turn owns an undivided 40% share of the State Line Combined Cycle Generating Facility located within the State of Missouri near Joplin. This Commission granted Westar Generating, Inc., a Certificate of Convenience and Necessity for the State Line Combined Cycle Generating Facility. However, Westar Generating, Inc. does not sell electricity to or provide any service to a member of the public in Missouri. *See also*, EFIS Item No. 28, Answer to Second Amended Complaint and Affirmative Defenses of Great Plains Energy Incorporated, pg 1.

10. On May 31, 2016, GPE's President and Chief Executive Officer Terry Bassham, notified the Commission and OPC via email of GPE's *Agreement and Plan of Merger*. Mr. Bassham informed the Commission that GPE did not believe the proposed merger with Westar was subject to the Commission's approval since it would occur at the parent corporation/holding company level by entities that are not electrical corporations in Missouri subject to the Commission's jurisdiction.<sup>25</sup>

11. Midwest Energy Consumers Group ("MECG") is an incorporated entity that represents large commercial and industrial power customers.<sup>26</sup> MECG filed a Complaint alleging GPE's failure to seek the Commission's approval of the Westar merger is a violation of the terms of the 2001 Agreement.<sup>27</sup>

12. As of the time of this order, GPE has not sought the Commission's approval to acquire Westar.<sup>28</sup>

### **CONCLUSIONS OF LAW**

Based in Topeka, Kansas, Westar is a public utility that provides electricity to customers in the State of Kansas. The parties agree that while Westar is a Kansas-based public utility, subject to the oversight of the Kansas Corporation Commission,<sup>29</sup> Westar is not regulated by this Commission. MECG's Complaint asserts that under the terms of the 2001 Agreement, GPE is required to obtain the Commission's approval

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<sup>25</sup> EFIS Item No. 29; Joint Stipulation of Facts and List of Issues, Request to Take Office Notice, Motion to Cancel Hearing and Oral Argument and to Establish Briefing Schedule, and Motion for Expedited Treatment, ¶9.

<sup>26</sup> EFIS Item No. 26.

<sup>27</sup> The Complaint was later amended to the Second Amended Complaint on December 28, 2016, which will be referred to as the "Complaint" throughout this order. EFIS Item No. 26.

<sup>28</sup> See EFIS Item No.29;Joint Stipulation of Facts and List of Issues, Request to Take Office Notice, Motion to Cancel Hearing and Oral Argument and to Establish Briefing Schedule, and Motion for Expedited Treatment, ¶10.

<sup>29</sup> The Kansas Corporation Commission is the state agency tasked with regulating public utilities in the State of Kansas.

before it can acquire Westar (the “Westar Merger”). GPE, on the other hand, maintains that MECG’s position would improperly expand the Commission’s jurisdiction to include the acquisition of non-Missouri regulated utilities by Missouri-based holding companies. This, GPE contends, would grant the Commission a power never contemplated by Missouri law. For the reasons set forth below, the Commission disagrees with GPE’s position.

### ***Commission’s Jurisdiction to Consider Complaint***

At its most basic level, this case is a complaint alleging failure to comply with a prior Commission order. The Commission is an agency created by the legislature.<sup>30</sup> It possesses only those powers expressly granted or necessarily implied by statute.<sup>31</sup> Section 386.390.1, RSMo,<sup>32</sup> authorizes a complaint to be made by any person, corporation, or commercial association that sets forth any act done or omitted to be done by a corporation, person, or public utility, in violation of any law or order of the Commission.<sup>33</sup> MECG is invoking the Commission’s jurisdiction under this general complaint statute to determine if a violation of a previously issued Commission order occurred.

MECG argues that GPE violated the Commission’s order directing GPE to comply with the terms of the 2001 Agreement.<sup>34</sup> More specifically, MECG argues that GPE violated and continues to violate the conditions set in Section 7 by failing to file an

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<sup>30</sup> See Section 386.010, Public Service Commission Law.

<sup>31</sup> *State ex rel. & to Use of Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044, 1046 (Mo. banc 1943).

<sup>32</sup> All statutory references are to the 2000 Missouri Revised Statutes, as cumulatively supplemented.

<sup>33</sup> Section 386.390.1, RSMo. All statutory references are to the 2000 Missouri Revised Statutes, as cumulatively supplemented.

<sup>34</sup> Exhibit 2. July 31, 2001 Order Approving Stipulation and Agreement and Closing File in Case No. EM-2001-464

application for the Commission's approval of the Westar Merger. By statute, the Commission is authorized to hear MECG's Complaint.

For this reason, the Commission will determine if, as asserted by the Complaint, GPE violated the Commission's directive to comply with the terms of the 2001 Agreement by failing to file an application for Commission-approval of the Westar Merger. As the complainant, MECG bears the burden of proof.<sup>35</sup>

### ***Commission's Authority to Approve KCPL's Reorganization***

Before determining what obligations exist under the terms of the 2001 Agreement, we must first consider the Commission's authority to order GPE's compliance. GPE correctly states that the Commission's jurisdiction cannot exceed what is statutorily authorized and that subject matter jurisdiction cannot be conferred by consent or agreement of the parties.<sup>36</sup> Simply put, the inclusion of a condition in an agreement does not in and of itself create within the Commission enforcement authority.<sup>37</sup>

Absent statutory authority to place conditions on GPE's potential merger actions, GPE's prior consent to Section 7 would be unenforceable by the Commission.<sup>38</sup> However, as MECG correctly points out, the Commission has the requisite authority to enforce Section 7 through its ability to set conditions on the reorganization of KCPL in 2001.

It is undisputed that KCPL was (and remains) an electrical corporation regulated as a public utility. In 2001, when KCPL wanted to become the subsidiary of a newly

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<sup>35</sup> *State ex rel. GS Technologies Operating Co., v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo.App. 2003).

<sup>36</sup> *State Tax Com'n v. Administrative Hearing Com'n*, 641 S.W.2d 69 (Mo. 1982).

<sup>37</sup> *Livingston Manor, Inc. v. Department of Social Services*, 809 S.W.2d 153, 156 (Mo.App. W.D. 1991).

<sup>38</sup> *Tetzner v. Department of Social Services*, 446 S.W.3d 689, 692 (Mo.App. W.D. 2014).



formed holding company, it was statutorily required to first obtain the Commission's consent. Section 393.250, RSMo, states as follows:

1. Reorganizations of...electrical corporations...shall be subject to the supervision and control of the commission, and no such reorganization shall be had without the authorization of the commission.
- ...
3. Any reorganization agreement before it becomes effective shall be amended so that the amount of capitalization shall conform to the amount authorized by the Commission. **The Commission may by its order impose such condition or conditions as it may deem reasonable and necessary.** (Emphasis added.)

The Commission is tasked with acting in the public interest.<sup>39</sup> The Commission's ability to impose "reasonable and necessary" conditions on the reorganization of an electrical corporation was the Legislature's way of ensuring the Commission could accomplish that task. Reorganizing the corporate structure of a public utility can impact the debt structure and cost of capital for the resulting companies well past the closing of the transaction. Review of proposed public utility reorganizations by the Commission is needed to minimize the potential risks to both present and future ratepayers. GPE does not challenge the Commission's ability to set "reasonable and necessary" conditions. GPE does, however, argue that the Commission's authority under Section 393.250 can never extend to an electrical corporation located outside of Missouri. GPE's argument confuses the Commission's authority over KCPL – the electrical corporation at issue in the 2001 reorganization case – with authority over Westar. Ultimately, the Commission's ability to enforce the terms of the 2001 Agreement does not depend on the location of

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<sup>39</sup> *State ex rel. Gulf Transport Co. v. Public Service Com'n*, 658 S.W.2d 448, 456 (Mo.App. 1983).

GPE's acquisition, but rather, whether the conditions included in Section 7 were "reasonable and necessary" under Section 393.250.3.

When KCPL sought Commission approval to adjust its corporate structure, it was statutorily obligated to seek approval for the type of merger currently contemplated by GPE.<sup>40</sup> Setting a requirement to obtain Commission approval on prospective mergers was both a reasonable and necessary way of ensuring that KCPL – through its future iterations – would not evade the level of Commission scrutiny mandated by Section 393.190, RSMo. It was a reasonable and necessary way to protect the ratepaying public from harmful acquisitions at the holding company level.<sup>41</sup>

The Commission cannot enforce, construe or annul contracts,<sup>42</sup> nor can it declare or enforce principles of law or equity.<sup>43</sup> However, the "Commission is entitled to interpret its own orders and to ascribe to them a proper meaning and, in so doing, the Commission does not act judicially but as a fact-finding agency."<sup>44</sup> Section 7 was a Section 393.250.3 condition agreed to by the parties and fixed by the Commission before approval was granted for KCPL's reorganization in 2001. Therefore, the Commission is not exceeding its authority by enforcing the reasonable and necessary conditions of Section 7.

### ***Principles of Contract Construction Apply to the 2001 Agreement***

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<sup>40</sup> Section 393.190, RSMo, requires an electrical corporation to secure the Commission's authority before it can directly or indirectly merge or consolidate with any other corporation, person or public utility.

<sup>41</sup> Under Section 386.510, RSMo 2000, parties at the time the July 31, 2001 Order Approving Stipulation and Agreement and Closing File in Case No. EM-2001-464 was issued were able to request a rehearing before appealing the order. However, no parties requested a rehearing or appealed that Commission order.

<sup>42</sup> *Wilshire Const. Co. v. Union Elec. Co.*, 463 S.W.2d 903, 905 (Mo. 1971).

<sup>43</sup> *State ex rel. Cass County v. Pub. Serv. Comm'n*, 259 S.W.3d 544, 547 (Mo. App. 2008).

<sup>44</sup> *State ex rel. Beaufort Transfer Co. v. Public Service Commission of Missouri*, 610 S.W.2d 96, 100 (Mo. App. 1980).

In the 2001 Agreement, GPE agreed in Section 7 that it would not directly or indirectly acquire or merge with a public utility or the affiliate of a public utility unless it had requested prior approval for the transaction from the Commission. Since the Commission has the statutory authority to enforce the 2001 Agreement, the Commission must determine if the Westar Merger is subject to the conditions set in Section 7. It is undisputed that GPE has yet to file an application for Commission-approval of the Westar Merger.

The parties disagree on the meaning of the term “public utility” within Section 7. MEEG asserts that, as used in the agreement, “public utility” is not limited to entities located within Missouri. Therefore, Westar is considered a public utility for which GPE must seek Commission approval before acquiring. GPE contends that, as used in the 2001 Agreement, the term “public utility” can only mean a public utility based in Missouri, since by statute, the Commission’s authority only applies to a public utility within the state.

GPE relies on the definitions used in the Public Service Commission Law, specifically, Section 386.020. GPE contends that even though the term “public utility” is not defined in the 2001 Agreement, the only reference to any state law in the agreement is to Missouri law. This, according to GPE, means that “public utility” can only be interpreted as it is meant in Missouri statutes. Specifically, the Commission, as a creature of statute, only has jurisdiction over “the manufacture, sale, or distribution of...electricity for light, heat and power, *within the state*, and to persons or corporations owning, leasing, operating, or controlling the same....” (Emphasis added).<sup>45</sup> However,

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<sup>45</sup> Section 386.250(1), RSMo.

settlement agreements are not akin to rules or regulations, which routinely rely on statutes to define terms or phrases.<sup>46</sup> Unless an agreement expressly defines the meaning of a term, the Commission will use the principles of contract law to interpret the agreement's meaning.<sup>47</sup>

Under principles of contract construction, the Commission first examines the plain language of the agreement to determine whether it is clear or if an ambiguity exists. When contract language is clear, we discern intent from the document alone.<sup>48</sup> The 2001 Agreement does not state that as used in the agreement, terms would have the same meaning as they do under Missouri law. GPE's argument that the statutory definition of "public utility" should apply ignores the cardinal rule for interpreting an agreement – to ascertain and give effect to the parties' intentions.<sup>49</sup> This is accomplished by giving words their plain, ordinary, and usual meaning.<sup>50</sup> That is, the meaning that a person of average intelligence, knowledge, and experience would deem reasonable.<sup>51</sup>

Webster's Third New International Dictionary defines "public utility" as "a business organization deemed by law to be vested with public interest usually because of monopoly privileges and so subject to public regulation such as fixing of rates, standards of service and provision of facilities."<sup>52</sup> The term "public utility" does not

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<sup>46</sup> *Union Elec. Co. v. Dir. Of Revenue*, 425 S.W.3d 118 (Mo.banc 2014) Stating that terms in rules and regulations of a state agency are invalid if they are beyond the scope of authority conferred upon the agency, or if they attempt to expand or modify statutes.

<sup>47</sup> *Withers v. City of Lake St. Louis*, 318 S.W.3d 256, 261(Mo.App. E.D. 2010).

<sup>48</sup> *J.E. Hathman, Inc. v. Sigma Alpha Epsilon Club*, 491 S.W.2d 261, 264 (Mo. banc 1973).

<sup>49</sup> *Park Lane Medical Center of Kansas City, Inc. v. Blue Cross/Blue Shield of Kansas City*, 809 S.W.2d 721 (Mo.App.W.D. 1991).

<sup>50</sup> *Chochorowski v. Home Depot U.S.A.*, 404 S.W.3d 220, 226 (Mo. banc 2013).

<sup>51</sup> *Farmland Industries, Inc. v. Republic Insurance Company*, 941 S.W.2d 505, 508 (Mo. banc 1997).

<sup>52</sup> WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1836 (1986).

distinguish entities based on locale. Westar is a public utility under the laws of the State of Kansas. Consequently, it is reasonable to conclude that, by its plain language, the term “public utility” clearly and unambiguously encompasses all public utilities, including those in the State of Kansas. However, were the Commission to conclude an ambiguity exists, GPE’s argument would still fail.

Unless the context of an agreement makes clear that a technical or special meaning was intended or the words have a special meaning in the parties’ trade or business, the Commission interprets the words used as having their common and ordinary meaning.<sup>53</sup> GPE may argue that the term “public utility” *did* have a technical or special meaning to the parties who drafted the 2001 Agreement, since the parties were aware of the statutory restriction placed on the Commission’s jurisdiction as being over the sale or distribution of electricity within the state, and to persons or corporations owning, leasing, operating, or controlling the same. However, GPE’s argument would fail for two reasons. First, it is not supported by the stated intentions of the parties at the time the agreement was entered. Second, it would render the Section 7 condition at issue meaningless.

When interpreting the 2001 Agreement, the Commission will consider what the parties were attempting to accomplish.<sup>54</sup> GPE argues that at the time the agreement was created the parties intended for the Section 7 condition to only apply to Missouri public utilities. However, this contradicts the statements made at the on-the-record hearing before the Commission. In the reorganization case, counsel for KCPL and GPE acknowledged that the Commission would maintain jurisdiction over prospective

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<sup>53</sup> *State ex rel. Vincent v. Schneider*, 194 S.W.3d 853, 859-60 (Mo. banc 2006).

<sup>54</sup> *Glass v. Mancuso*, 444 S.W.2d 467 (Mo. 1969).

mergers involving the holding company and a public utility.<sup>55</sup> Attorneys for Staff and the Office of the Public Counsel agreed with that pronouncement. Normally, unsworn statements by counsel are not evidence of the facts asserted, unless the facts are conceded to be true by other parties.<sup>56</sup> Counsel for OPC and Staff did not disagree on the meaning of Section 7. As counsel for KCPL and GPE admitted, “as a negotiated item, in order to get a stipulation between the Staff, the Public Counsel and the Company, we have agreed to this provision.”<sup>57</sup>

In circumstances such as these, where the parties are disputing the terms of a settlement agreement, the statements by counsel for KCPL and GPE regarding the meaning of Section 7 and why it was included in the 2001 Agreement establishes the intent of the parties when drafting the agreement. Therefore, it weakens the credibility of GPE’s current claims that the term “public utility” was never meant to apply to entities outside of Missouri, because at the time of the agreement, GPE’s attorney acknowledged it was a condition negotiated by the parties for settlement purposes.

Furthermore, Section 393.190.1 already requires a regulated electrical corporation obtain the Commission’s approval before selling, transferring, or merging its system with any other corporation, person or public utility.<sup>58</sup> This statute grants the Commission authority to review the merger of any Missouri regulated electrical

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<sup>55</sup> Exhibit 3, pg. 33, ln. 14 - pg. 35, ln. 6.

<sup>56</sup> *State ex rel. Dixon v. Darnold*, 939 S.W.2d 66, 69 (Mo.App. S.D. 1997).

<sup>57</sup> Staff’s brief also makes a credible equitable estoppel argument, based on the reliance of the parties in the 2001 KCPL reorganization case on the statements of KCPL, GPE and their representatives. There are three elements to equitable estoppel: an admission, statement, or act inconsistent to claim afterwards asserted; action by other party in reliance upon such admission, statement or act; and injury to that other party as result of allowing first party to contradict admission, statement, or act. *Pinnell v. Jacobs*. 873 S.W.2d 925, 927 (Mo.App. E.D. 1994).

<sup>58</sup> Section 393.190.2 also requires Commission approval before an electrical corporation directly or indirectly acquires the stock or bond of other corporations engaged in the same or similar business. The statutory requirement to obtain Commission approval also applies to a gas corporation, water corporation, and sewer corporation.

corporation with GPE. GPE's interpretation of Section 7 - that it only applies to Missouri-based public utilities - would merely result in a duplication of the Commission review for a merger transaction under Section 393.190. It is unreasonable to assume the parties that negotiated Section 7 only intended for GPE to replicate what is already statutorily required, Commission approval for the merger of GPE and a Missouri-based public utility.<sup>59</sup> The terms of the 2001 Agreement should be construed to avoid a result that renders terms meaningless.<sup>60</sup> For this reason, GPE's arguments are not persuasive.

*Prior Commission Decisions Concerning Public Utility Holding Companies*

GPE points out that, in the past, the Commission has consistently found that it does not have jurisdiction over transactions at the holding company level. Even if true, it has no import in this case. The manner in which the Commission has in the past or may in the future handle holding company merger cases is not relevant to the specific facts before us.

Moreover, the examples referenced by GPE in its *Initial Brief* are not comparable to the facts presented here. GPE cites cases where the Commission stated that nothing in the statutes conferred jurisdiction over the merger of two non-regulated parent corporations.<sup>61</sup> The current case is distinguishable from those examples because this dispute involves the Commission's authority to enforce the terms of a prior Commission order and a settlement agreement in a reorganization case where Section 393.250 required Commission approval. For reasons already discussed, the Commission does have statutory authority to enforce its prior orders and the 2001 Agreement.

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<sup>59</sup> Section 393.190, RSMo.

<sup>60</sup> *Dunn Indus. Group v. City of Sugar Creek*, 112 S.W.3d 421, 428 (Mo. banc 2003).

<sup>61</sup> See Initial Brief of Great Plains Energy Incorporated, pg. 10.

GPE is the holding company for two Missouri public utilities, KCPL and GMO. An acquisition of the magnitude of the Westar Merger may have far-reaching financial ramifications on current and future customers of both KCPL and GMO. The merger scenario at issue is the type of transaction anticipated by Section 7 for Commission review.

### ***Public Policy***

GPE's position is troublesome from a public policy perspective. At the time of the 2001 Agreement, the Commission and the parties relied on KCPL's and GPE's assurances that Section 7 authorized the Commission's oversight over the future holding company. The Commission ordered the parties to comply with the terms of the agreement. Were the Commission to agree with GPE's analysis, it would render the terms of a negotiated stipulation and agreement meaningless and unenforceable; a result that should be avoided. For public policy reasons, all sides have a vested interest in maintaining trust in the settlement process. Parties must be confident that when they enter into a settlement agreement, each party can be relied upon to comply with the terms included, and that the Commission will indeed enforce all conditions. Should trust in the settlement process falter, the ultimate victims will be the ratepayers who will be forced to pay for the resulting lengthy litigation.

### **Decision**

In making this decision, the Commission has considered the positions and arguments of all of the parties. Applying law to the facts in reaching its conclusion, the Commission finds that based on competent and substantial evidence, MECG met its burden of proof. GPE violated the terms of the 2001 Agreement and the Commission



order approving the 2001 Agreement by failing to seek Commission approval for the Westar Merger.

GPE did submit a joint application for a variance from the Commission's affiliated transactions rule.<sup>62</sup> However, that filing is not sufficient to meet the public detriment review required by Section 7. The public detriment standard is higher than the "for good-cause" showing required before the granting of a variance from a Commission rule. Moreover, in the variance case, GPE and its subsidiaries KCPL and GMO request the regulatory restrictions on transactions with Westar be waived *after* Westar becomes an affiliate. This would not permit the Commission to evaluate the potential public detriment before the merger is authorized. It would only allow the Commission to grant relief after the Westar Merger is a *fait accompli*.

The Commission will direct GPE to comply with the terms of Section 7 of the 2001 Agreement and file an application for prior approval of the Westar Merger, requesting the Commission's determination that the Westar Merger is not detrimental to the public interest.

The purpose of this decision is not to impede GPE's potential merger, which is expected to occur in the Spring of 2017.<sup>63</sup> The parties requested an expeditious determination on the Complaint.<sup>64</sup> For this reason, the Commission will allow this order to become effective in less than thirty days. This will allow time for GPE to make the necessary filing, and after proper notice is given, a hearing can be held promptly.

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<sup>62</sup> File No. EE-2017-0113; In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company for a Variance from the Commission's Affiliate Transactions Rule, 4 CSR 240-20.015.

<sup>63</sup> EFIS Item No. 7; Motion to Dismiss of Great Plains Energy Incorporated and Suggestions in Support, Statement of Facts.

<sup>64</sup> EFIS Item No. 15; Proposed Procedural Schedule.

## THE COMMISSION ORDERS THAT:

1. The Commission finds that GPE is in violation of the Commission's July 31, 2001 *Order Approving Stipulation and Agreement and Closing File*, issued in Case No. EM-2001-464.
2. No later than March 4, 2017, GPE shall file an application for the Commission's approval of the *Agreement and Plan of Merger* and a determination on whether the Westar Merger is detrimental to the public interest
3. This order shall go into effect on March 4, 2017.

### BY THE COMMISSION



*Morris L. Woodruff*

Morris L. Woodruff  
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and  
Coleman, CC., concur.

Burton, Senior Regulatory Law Judge.

# Attachment:

SPP Market Monitoring Unit  
Frequently Constrained Areas – 2016 Study

Dated: December 2016

# Frequently Constrained Areas – 2016 Study

December 2016

SPP Market Monitoring Unit



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## Disclaimer

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The data and analysis in this report are provided for informational purposes only and shall not be considered or relied upon as market advice or market settlement data. All analysis and opinions contained in this report are solely those of the SPP Market Monitoring Unit (MMU), the independent market monitor for Southwest Power Pool, Inc. (SPP). The MMU and SPP make no representations or warranties of any kind, express or implied, with respect to the accuracy or adequacy of the information contained herein. The MMU and SPP shall have no liability to recipients of this information or third parties for the consequences that may arise from errors or discrepancies in this information, for recipients' or third parties' reliance upon such information, or for any claim, loss, or damage of any kind or nature whatsoever arising out of or in connection with:

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# 1. Executive Summary

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## 1.1. Introduction

Frequently Constrained Areas are areas of the Integrated Marketplace footprint that experience high levels of congestion and are associated with a dominant or pivotal supplier. Attachment AF, Section 3.1.1 of the SPP Open Access Transmission Tariff defines Frequently Constrained Areas as electrical areas with one or more binding transmission constraints or Reserve Zone constraints that are expected to be binding for at least five-hundred (500) hours during a given twelve (12)-month period and within which one or more suppliers are pivotal. Prior to the start of the Integrated Marketplace, Potomac Economics Ltd., under contract with the SPP Market Monitor, recommended the designation of three Frequently Constrained Areas: (1) the Kansas City area, (2) the Northwest Kansas area, and (3) the Texas Panhandle area. A later study performed by the SPP Market Monitor found that transmission upgrades and expansion in 2013 and 2014 had significantly impacted congestion patterns and resolved some of the concerns with pivotal suppliers. In January 2015, the SPP Market Monitor reported that the Kansas City and Northwest Kansas areas no longer met the criteria to be designated as Frequently Constrained Areas. A recommendation to maintain the Texas Panhandle as a Frequently Constrained Area and to remove the designations for the Kansas City and Northwest Kansas areas was approved by the SPP Board of Directors in January 2015. The continued addition of wind resources in the western region of SPP prompted the addition of the Woodward, OK Frequently Constrained Area in January 2016 and, as seen in the Analysis and Results section, was the most binding constraint for this study. The historical FCAs along with results from this study are in Figure 1-1 below.

**Figure 1-1 Historical FCAs**

FCA	2013 Report	2014 Report	2015 Report	2016 Report
Kansas City	Yes	---	---	---
NW Kansas	Yes	---	---	---
Texas Panhandle	Yes	Yes	Yes	Yes
Woodward	---	---	Yes	Yes



The SPP Market Monitor, as required by Attachment AF, Section 3.1.1.3, has again reexamined the Frequently Constrained Area designations to determine if the current designations still meet the criteria and if the designation of any new areas is warranted. The contents of this report include an executive summary of the major findings and recommendations in Section 1, a description of the study process in Section 2, and a detailed description of the analysis in Section 3. Appendix A consists of the recommended changes to Addendum 1 of Attachment AF. Appendix B is a list of constraints with corresponding binding and pivotal supplier hours.

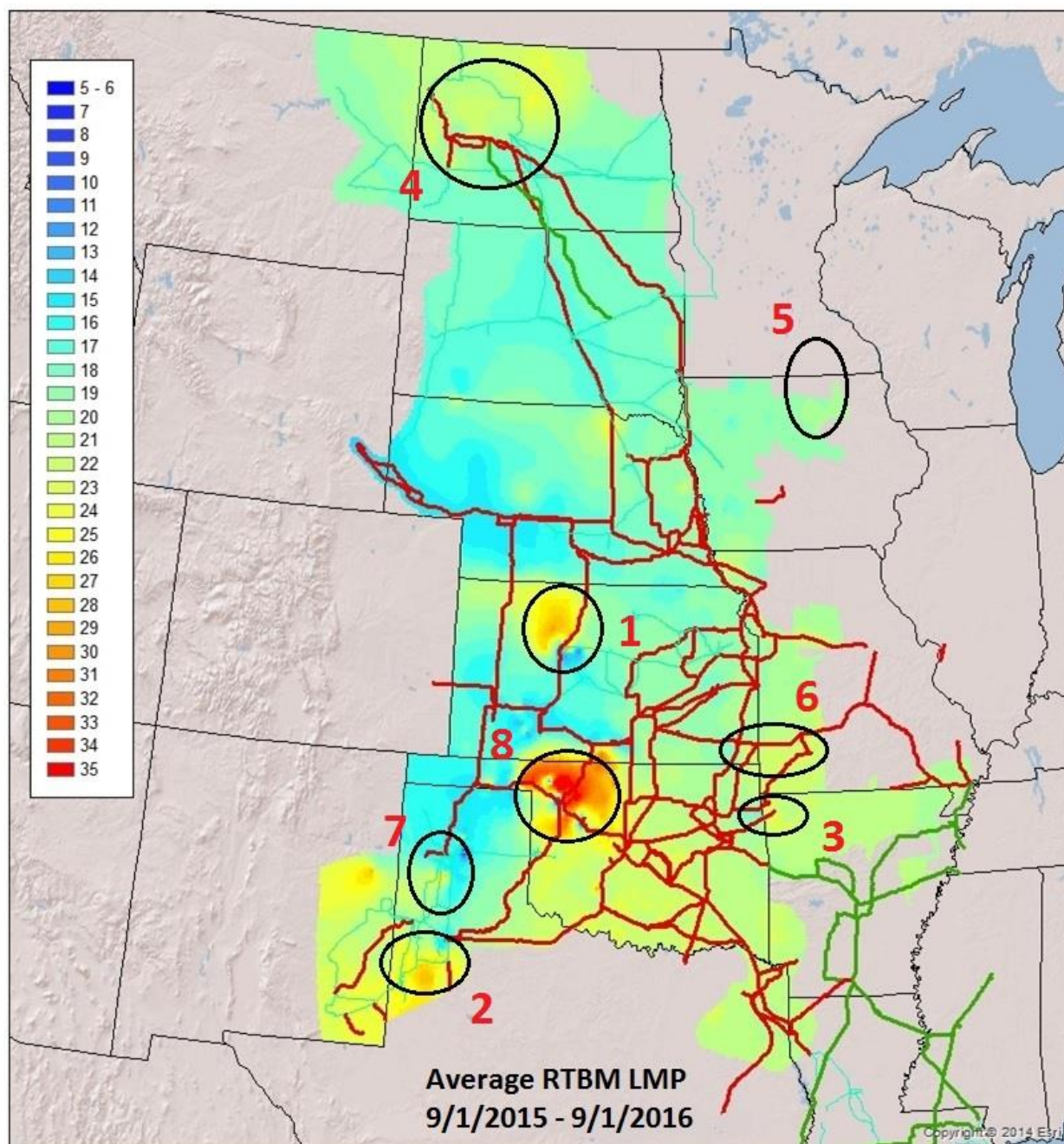
## 1.2. Results

Eight areas are identified as candidates for the Frequently Constrained Area (FCA) designation. Three of the eight areas, Texas Panhandle, Lubbock, and Woodward, are the same three areas studied in the previous FCA study.

**Figure 1-2 Frequently Constrained Area Candidate Designations**

Map Reference #	Geographical Area	FCA Candidate Name
1	Hays, KS	Hays, KS
2	Lubbock, TX	Lubbock
3	Northwest Arkansas	NW Arkansas
4	Northern North Dakota	Northern ND
5	Prairie Island, Minnesota (MISO Market-to-Market)	M2M – Prairie Island
6	Southeast Kansas – Southwest Missouri	SE KS – SW MO
7	Texas Panhandle	Texas Panhandle
8	Woodward, OK	Woodward

**Figure 1-3 FCA Candidate Areas**



The impact analysis (Section 2.2), where the number of hours for which the price impact in the FCA candidate exceeds the \$25/MWh threshold are counted, indicates that the Texas Panhandle and Woodward areas continue to warrant designation as FCAs. The Hays, KS area also exceeded the \$25/MWh threshold but upgrades to the monitored element during this study changed the congestion pattern compelling the SPP Market Monitor to forego adding this area at

this time. The other five FCA candidates are well below the 500 hour threshold and do not warrant designation.

The Woodward area has been a very highly congested area since November 2014, just 10 months after the start of the Integrated Marketplace. The limiting element for the WDWFPLTATNOW constraint (Woodward to FPL Switch 138kV for the loss of Tatonga – Northwest 345kV), is located near the intersection of several 345 kV transmission lines that were energized in 2014. This, and continued addition of wind generation, has propelled this to the most congested area in SPP.

**Figure 1-4 Impact Analysis Results**

FCA Candidate	Binding Constraint Hours	Pivotal Supplier Hours \$25 Impact Threshold
Woodward	3,520	1405
Texas Panhandle	4,645	597
Hays, KS	1,225	547
Lubbock	1,577	148
NW Arkansas	292	147
SE KS – SW MO	324	116
North N. Dakota	1,423	96
M2M–Prairie Island	547	6

This marks the fourth year in a row that the Texas Panhandle area has had significant pivotal supplier hours. This year's total of 597 hours is slightly higher than the 536 hours in the 2015 study which was the lowest observed of all FCA studies for this area. The 2015 and 2016 studies captured the impacts of the 2012 through 2014 transmission expansion. The 2015 study observed low natural gas prices and this continued trend is also a cause for the lower number of pivotal supplier hours in the Texas Panhandle than in previous studies.

### 1.3. Recommendation

The results of the analysis indicate that the Woodward, OK and Texas Panhandle areas should remain designated as Frequently Constrained Areas. The binding hours and pivotal supplier results show that congestion and market power issues are still present. The expectation

of the Market Monitor is that both areas will be vulnerable to the exercise of market power during the next twelve month period. The Hays, KS area will not be added at this time due to upgrades to the monitored element of the primary constraint, however, the Market Monitor has the ability to reanalyze the impacts of this or any changes to congestion patterns at any time. Table 1 in Appendix A is a list of the defining constraints for each FCA and Table 2 in Appendix A contains a list of FCA resources. The lists in Tables 1 and 2 are used to update Addendum 1 to Attachment AF in the SPP Open Access Transmission Tariff.

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## 2. Methodology

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### 2.1. Data and Study Period

The study period runs from September 1, 2015 through August 31, 2016. Real-time Balancing Market (RTBM) congestion and dispatch data, and resource parameter offers for online resources are used in the analysis. The Integrated System became part of the SPP Integrated Marketplace on October 1, 2015 meaning this year's study included 11 months of data for this area. Much of the congestion in this area was realized during the first 5 months (October 2015 – February 2016) and has not appeared as consistently since that time.

### 2.2. Study Process

The study consists of the following six step process.

- 1. Binding Hours Computation:** The number of binding hours is computed for each modeled transmission constraint. A constraint is counted as binding in a five minute interval if the loading on the constraint is within the greater of five megawatts (5 MW) or 2% of the effective constraint limit.
- 2. Pivotal Supplier Analysis:** The number of pivotal supplier hours is computed for each modeled transmission constraint. A constraint is counted as having a pivotal supplier during a five minute interval if the supplier can cause a constraint to exceed the effective constraint limit by decreasing generation on resources that provide congestion relief and by increasing generation on resources that contribute to congestion. The re-dispatch of the potential pivotal supplier's resources is governed by the submitted ramp rates, and the economic minimum and maximum capabilities. A thirty minute re-dispatch period is considered. The ability of the market to react to the actions of the potential pivotal supplier is accounted for by allowing a similar re-dispatch of all resources not owned or controlled by the potential pivotal supplier.
- 3. Selection of FCA candidates:** Candidates for designation as an FCA are chosen based on the binding hours and pivotal supplier analyses. Constraints that are in the same electrical proximity and have the same pivotal suppliers are grouped together; if the aggregate number of binding and pivotal supplier hours is significant, then the area is

selected as a FCA candidate. A primary constraint for the FCA candidate is generally selected as the constraint with the highest number of binding hours.

- 4. Identify the FCA candidate resources:** A resource is a FCA candidate resource if its resource-to-load-distribution-factor (RLDF) relative to the FCA candidate primary constraint is less than or equal to the FCA candidate RLDF cut-off. To determine the RLDF cut-off the relief capability of the largest pivotal supplier relative to the primary constraint is computed. The RLDF cut-off is then set at the value corresponding to the ninetieth percentile of the relief capability. In other words, ninety percent (90%) of the largest pivotal supplier's relief capability has an RLDF less than or equal to the FCA candidate RLDF cut-off. In cases where the RLDF value corresponding to the ninetieth percentile is less than -3%, the RLDF cut-off is set to -3% to prevent the application of mitigation to resources with a very small impact on the primary constraint.
- 5. Identify the FCA candidate secondary constraints:** A constraint is eligible to be defined as a secondary constraint for the FCA candidate if the FCA candidate resource group contributes at least seventy percent (70%) of the total relief capability on the constraint. Additional considerations for defining a constraint as a secondary constraint consist of (i) electrical proximity to the candidate resource group identified in step 4, (ii) an expectation that the constraint is not a short-term or temporary constraint, and (iii) an expectation that the constraint will experience congestion in the upcoming year.
- 6. Impact Analysis:** An impact analysis is employed to determine the number of hours for which the FCA candidate resource group has significant impacts on prices in the FCA candidate. For each five minute interval in the study period, the resource price impacts on each defining constraint are calculated by multiplying the shadow price and the candidate resource's corresponding RLDF. The resource price impacts are then summed over the FCA candidate defining constraints to obtain a five minute price impact for each candidate resource. This calculation is similar to finding the contribution from the FCA candidate defining constraints to the candidate resource's marginal congestion component of the LMP.

Any interval for which a candidate resource's price impact exceeds the impact test threshold is counted as an interval that is susceptible to the exercise of market power by a pivotal supplier. The market impact test threshold used in the Integrated Marketplace

mitigation system has been \$25/MWh since March 1, 2015. The impact analysis in this study was computed using threshold levels ranging from \$5/MWh to \$25/MWh in order to test the sensitivity of the results to the various impact threshold levels.

As stated in Section 3.2 of SPP Tariff, Attachment AF, an area must expect to have 500 hours with pivotal supplier impacts to be designated as a Frequently Constrained Area. The importance of employing a threshold value such as \$25/MWh is to account for the times when there is low cost relief capability in the FCA. This low cost relief prohibits the pivotal supplier from accruing significant benefits by pursuing a withholding strategy in the FCA.

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## 3. Analysis and Results

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### 3.1. FCA Candidates

The initial phase of the study identified eight candidates for the Frequently Constrained Area designation; the identified areas are;

- (1) Hays, KS
- (2) Lubbock
- (3) NW Arkansas
- (4) Northern ND
- (5) M2M – Prairie Island
- (6) SE KS – SW MO
- (7) Texas Panhandle
- (8) Woodward

These eight areas experienced significant congestion during the study period, and each area has one or more pivotal suppliers. The identification of candidate areas and associated primary constraints is based on the number of hours the constraints are binding and the number of hours for which the constraints have a pivotal supplier.



**Figure 3-1 Top Binding Constraints**

Constraint Name	Monitored Element	Binding Constraint Hours	Pivotal Supplier Hours	Geographical Area
WDWFPLTATNOW	Woodward to FPL Switch, 138 kV	2919	1434	Woodward, OK
TEMP56_21085	Tuco to Lubbock, 115kV	2748	2743	Texas
STAINDTUCCAR	Stanton to Indiana, 115kV	1460	1449	Texas
OSGCANBUSDEA	Osage Switch to Canyon East, 115 kV	1352	1351	Texas
TEMP50_20937	Wolfforth to Terry Co., 115 kV	1226	1223	Texas
SHAHAYPOSKNO	South Hays to Chetolah, 115 kV	1225	252	Hays, KS
WATXFRWATXFR	Watford 230/115 kV transformer	1067	873	Northern ND
TMP144_21263	Charlie Creek to Rough Rider, 115kV	750	630	Northern ND
WODFPLWODXFR	Woodward to FPL Switch, 138 kV	721	369	Woodward, OK
PR_ISLNROCH	Prairie Island to North Rochester, 345 kV	547	128	M2M – Minnesota
TMP133_21794	Harrington to Rolling Hills, 230kV	370	234	Texas
TEMP49_21150	Rugby (WAUE to OTP), 115kV	355	254	Northern ND
SILSPRTONFLI	West Siloam to Siloam City, 161kV	328	283	NW Arkansas
NEORIVNEOBLC	Neosho to Riverton, 161kV	324	287	SE Kansas – SW Missouri

Number one on the top binding constraints list is the Woodward – FPL Switch 138kV for the loss of Tatonga – Northwest 345kV (WDFPLTATNOW) constraint. Another constraint in the Woodward, OK area is the Woodward – FPL Switch 138kV for the loss of Woodward 345/138kV transformer (WODFPLWODXFR) and is the ninth most binding on this list. The Osage Switch – Canyon East 115kV for the loss of Bushland – Deaf Smith 230kV (OSGCANBUSDEA) constraint is located in the Texas Panhandle and had been the most frequent binding constraint in previous studies. It was identified in the two prior FCA studies as the primary constraint for the Texas Panhandle FCA but is now fourth on this list and is a secondary constraint for the Texas Panhandle FCA. The Tuco – Lubbock 115kV for the loss of Jones – Tuco 230kV (TEMP56\_21085) now appears as the most constrained element in the Texas Panhandle. Another constraint in the Texas Panhandle area is Stanton – Indiana 115kV for the loss of Tuco – Carlisle 230kV (STAINDTUCCAR). This and the TEMP56\_21085 constraints appeared more often than OSGCANBUSDEA and are further south due to the Woodward – Border – Tuco 345kV transmission line addition providing a bypass for some of the flow around the typical Texas Panhandle area.

Congestion in the Kansas City and Western Kansas areas did not appear as in previous FCA studies. This study does not explore benefits or impacts due to factors such as transmission expansion or Market-to-Market (M2M), however congestion in the Kansas City area has decreased over the years and could be a result of these. The congestion in Western Kansas typically created north-south price splits along the Nebraska - Kansas border but the closest congestion to this area is now around Hays, KS and is more confined to this limited area.

The Texas Panhandle continues to be one of the most congested areas in the SPP footprint with the limited North-South transmission capability and abundant wind capacity in the western part of the footprint. The OSGCANBUSDEA constraint continues to experience congestion but some has shifted south around Tuco and Lubbock, TX due to transmission additions. The Lubbock area first appeared as a FCA candidate in the previous study and once again had enough congestion with pivotal supplier hours to warrant evaluating again for possible local market power concerns. Even though four of the top five constraints on this list are between the Texas Panhandle and Lubbock, TX areas, the Woodward, OK is now the most frequently congested area. This area was added in the previous year's study and is at an intersection of

several 345kV lines that provide a path for wind exports in the west to population centers to the east.

The Integrated System joined the SPP Integrated Marketplace on October 1, 2015 and experienced significant congestion in the northern half of North Dakota during the first five months but has not been as prevalent since. The three other new candidate areas are identified as Prairie Island, Minnesota; Northwest Arkansas; and Southeast Kansas – Southwest Missouri. These 3 areas were the least congested of all FCA candidates and were not expected to pass the impact analysis because of the magnitude of binding and pivotal supplier hours compared to other FCA candidates but were included to discover more details about the congestion in these areas.

Figure 3-2 shows the primary constraint and the resource-to-load distribution factor (RLDF) cut-off for each FCA candidate. The primary constraint for each candidate area is typically the constraint with the most binding hours and the RLDF cut-off is used to identify the candidate resources associated with the FCA candidate. A threshold cap of -3.0% is applied to prevent mitigation to a large number of low impact resources. This cap is consistent with prior studies and represents the lowest magnitude RLDF cut-off that has been applied since the inclusion of the FCA methodology in the SPP Tariff. The Raw RLDF value in Figure 3-2 represents the calculated cut-off using the established methodology for the areas where the -3.0% cap is applied. The WDFPLTATNOW constraint remains the primary constraint for the Woodward FCA candidate. The Texas Panhandle had previously used OSGCANBUSDEA as the primary constraint but TEMP56\_21085 experienced more binding hours during the study period. OSGCANBUSDEA still appears as a secondary constraint in this area. Sundown – Amoco 230kV for the loss of Tolk – Yoakum 230kV (SUNAMOTOLYOA) appeared in the previous year as the primary constraint for the Lubbock FCA candidate but TEMP50\_20937 experienced more congestion in this area.

**Figure 3-2 Primary Constraints and RLDF Cut-Offs**

FCA Candidate	Primary Constraint	RLDF Cut-Off	Raw RLDF
Hays, KS	SHAHAYPOSKNO	-3.0%	-1.5%
Lubbock	TEMP50_20937	-4.2%	---
M2M–Prairie Island	PR_ISLNROCH	-3.0%	-1.7%
North N. Dakota	TMP144_21263	-13.6%	---
NW Arkansas	SILSPRTONFLI	-3.0%	-1.5%
SE KS – SW MO	NEORIVNEOBLC	-11.4%	---
Texas Panhandle	TEMP56_21085	-4.0%	---
Woodward	WDWFPLTATNOW	-3.0%	-1.8%

The RLDF cut-offs in Figure 3-2 are used to identify the candidate resources associated with the FCA candidates. Any resource with an RLDF that is less than the RLDF cut-off is a FCA candidate resource. For example, the candidate resource group for the Woodward FCA consists of all resources that have an RLDF corresponding to the WDWFLPTATNOW constraint that is less than or equal to -3.0%. Figure 3-3 shows the number of resources included in each FCA candidate and the corresponding capacity.

**Figure 3-3 Candidate Resource Summary**

FCA Candidate	Number of Resources	Total Capacity (MW)
Woodward	26	1,965
Texas Panhandle	42	5,259
Hays, KS	21	613
Lubbock	30	4,054
NW Arkansas	31	2,235
SE KS – SW MO	12	1,040
North N. Dakota	8	373
M2M–Prairie Island	12	176

The next step in the process is to identify the secondary constraints for each FCA candidate. The secondary constraints for each FCA candidate are shown in Figure 3-4. The identification of

secondary constraints is necessary because congestion in tightly constrained areas generally impacts a group of constraints. Operators may choose to activate a constraint in close proximity to the designated primary constraint instead of activating the primary constraint. Without the designation of the secondary constraints the market power mitigation logic will fail to recognize that the FCA is binding and may not adequately protect against market power abuse. For a constraint to be defined as a secondary constraint it must be determined that the FCA candidate resource group makes up more than seventy percent (70%) of the total relief capability on the constraint. For example, if the total relief capability on constraint XYZ is 1,000 megawatts and the resource candidate group corresponding to the Texas Panhandle area contributes 725 relief megawatts, then the 70% threshold is exceeded and constraint XYZ may be included as a secondary constraint for the Texas Panhandle Area.

Additional considerations for including a constraint as a secondary constraint include (i) electrical proximity to the candidate resource group, (ii) the expectation that the constraint is not a short-term or temporary constraint, and (iii) the potential for the constraint to experience significant congestion in the future. Four of the eight FCA candidates produced secondary constraints. The Woodward area yielded one secondary constraint as did the Northern North Dakota area. The Texas Panhandle yielded three secondary constraints as well as the Lubbock area.

**Figure 3-4 FCA Candidate Defining Constraints**

FCA CANDIDATE	Type	Constraint	Monitored Element
Lubbock	Primary	TEMP50_20937	Wolfforth to Terry Co., 115 kV
Lubbock	Secondary	CARLPDLUBWOL	Carlisle to Doud, 115 kV
Lubbock	Secondary	SUNAMOTOLYOA	Sundown to Amoco, 230 kV
Lubbock	Secondary	TEMP72_20647	Wolfforth to Terry Co., 115 kV
North N. Dakota	Primary	TMP144_21263	Charlie Creek to Rough Rider, 115 kV
North N. Dakota	Secondary	WATXFRWATXFR	Watford 230/115 kV transformer
Texas Panhandle	Primary	TEMP56_21085	Tuco to Lubbock, 115kV
Texas Panhandle	Secondary	OSGCANBUSDEA	Osage Switch to Canyon East, 115 kV
Texas Panhandle	Secondary	STAINDTUCCAR	Stanton to Indiana, 115 kV
Texas Panhandle	Secondary	TEMP86_21405	Kress to Hale Co., 115 kV
Woodward	Primary	WDWFPLTATNOW	Woodward to FPL Switch, 138 kV
Woodward	Secondary	WODFPLWODXFR	Woodward to FPL Switch, 138 kV

The Woodward area did not yield any secondary constraints in last year's FCA study but the Woodward – FPL Switch 138kV for the loss of Woodward 138/69 kV transformer (WODFPLWODXFR) was identified by the 70% test and was a top ten congested constraint for this year's analysis. This and the primary constraint for the Woodward area have the same monitored element but a different contingent element. The SUNAMOTOLYOA constraint was the primary constraint for the Lubbock FCA candidate but is a secondary constraint for the current study.

### **3.2. Impact Analysis**

The final step is to determine the number of hours each FCA candidate was both binding and susceptible to the exercise of market power. This is done by applying a price impact test; the price impact is calculated by multiplying the constraint shadow price and the candidate resource's RLDF relative to the defining constraints for each FCA. The price impacts were

computed for each five minute interval in the study period. If the price impact on a single candidate resource exceeds the price impact threshold, then the FCA candidate is susceptible to the exercise of market power. The results of this final test are displayed in Figure 3-5. The results indicate that three of the FCA candidates--Woodward, Texas Panhandle, and Hays, KS--meet the 500 hour criteria for designation as a FCA. The remaining five candidates fall well short of the 500 hour threshold.

**Figure 3-5 Impact Analysis Results**

<b>FCA Candidate</b>	<b>Binding Hours</b>	<b>Pivotal Supplier Hours \$25 Impact Threshold</b>
Woodward	3,520	1,405
Texas Panhandle	4,645	597
Hays, KS	1,225	547
Lubbock	1,577	148
NW Arkansas	292	147
SE KS – SW MO	324	116
North N. Dakota	1423	96
M2M–Prairie Island	547	6

The Woodward FCA candidate area exceeds the 500 hour threshold by a substantial margin, meeting the criteria for designation as an FCA. The limiting element for this FCA is the Woodward to FPL Switch (138 kV) transmission line. The line is located near the intersection of several 345 kV lines that were part of the transmission expansion completed in 2014. The primary constraint for this area, WDWFPLTATNOW<sup>1</sup>, was created in November 2014 and has consistently appeared in monthly and quarterly reports as the most congested area since that time. The Texas Panhandle appeared in the first FCA study in 2013 and congestion in this area predates the EIS market. This area continues to exceed the 500 hour threshold, also meeting the designation as an FCA. This is the first year for the Hays, KS area to appear as an FCA candidate and also exceeds the 500 hour threshold. However, during the time of the study, the monitored element for the primary constraint was upgraded resulting in congestion appearing on other

<sup>1</sup> Woodward to FPL Switch (138 kV) for the loss of Tatonga to Northwest (345 kV); originally created as the temporary constraint TEMP95\_20633 on 11/11/2014 and promoted to permanent status on 1/6/2015.

facilities. Until persistent congestion is realized as a result of this upgrade, the Market Monitor will not add this area as an FCA but has the ability to re-analyze at any time.

Figure 3-6 shows the binding constraint and pivotal hours for common FCA candidates between the 2015 and 2016 studies. Previous studies included data from transmission expansion from 2012 to 2014 which depicted a reduction in congestion in the Texas Panhandle area. The comparison with the 2015 study shows that the pivotal hours in the Texas Panhandle area are consistent over the past two studies and that local market power potential remains a concern. The Woodward area first appeared in the 2015 study and now is the most congested area in the SPP footprint as expected. Even with the -3.0% cut-off threshold applied for candidate resources in the Woodward area, the impact analysis exceeds the \$25 threshold more than any area. The Lubbock area first appeared in the 2015 study and the impact analysis shows consistent results which are well below the 500 hour level.

**Figure 3-6 Impact Analysis Comparison with 2015 FCA Study**

FCA Candidate	2015 FCA Study		2016 FCA Study	
	Binding Hours	Pivotal Supplier Hours \$25 Impact Threshold	Binding Hours	Pivotal Supplier Hours \$25 Impact Threshold
Woodward	1,704	743	3,520	1,405
Texas Panhandle	4,182	536	4,645	597
Lubbock	1,036	133	1,577	148

The results of the sensitivity analysis using varying impact thresholds are presented in Figure 3-7. There is no change in the results at the \$15/MWh threshold level; the five FCA candidates with less than 500 pivotal supplier hours at the \$25 level are also well below the 500 hour level at the \$15 threshold level. At the \$5/MWh threshold there is a different result with the Lubbock candidate area now exceeding the 500 hour level.



**Figure 3-7 Impact Threshold Sensitivity Analysis**

<b>FCA Candidate</b>	<b>Pivotal Supplier Hours \$5 Impact Threshold</b>	<b>Pivotal Supplier Hours \$15 Impact Threshold</b>	<b>Pivotal Supplier Hours \$25 Impact Threshold</b>
Woodward	2821	2201	1405
Texas Panhandle	2384	1065	597
Hays, KS	723	602	547
Lubbock	609	242	148
NW Arkansas	220	188	147
SE KS – SW MO	169	134	116
North N. Dakota	419	153	96
M2M–Prairie Island	68	12	6

## Appendix A. FCA Constraints and Resources

Table 1 – Defining Constraints for the Frequently Constrained Areas	
Constraint Name	Frequently Constrained Area
OSGCANBUSDEA	TEXAS PANHANDLE
STAINDTUCCAR	TEXAS PANHANDLE
TEMP56_21085 (Tuco to Lubbock)	TEXAS PANHANDLE
TEMP86_21405 (Kress to Hale Co.)	TEXAS PANHANDLE
WDWFPLTATNOW	WOODWARD
WODFPLWODXFR	WOODWARD

Table 2 – Resources in Frequently Constrained Areas	
PNODE Name	Frequently Constrained Area
SPSCAPROCKUNWINDFARM	TEXAS PANHANDLE
SPSCARLSBADUN5	TEXAS PANHANDLE
SPSCHAVESUNCHAVES_SOLAR	TEXAS PANHANDLE
SPSCHAVESUNROSWELL_SOLAR	TEXAS PANHANDLE
SPSCIRRUSUNCIRRUS_WIND	TEXAS PANHANDLE
SPSCROSBY2UNPLSNTHILLWND	TEXAS PANHANDLE
SPSCROSSRDSUNMILO_WIND	TEXAS PANHANDLE
SPSCROSSRDSUNROSVELTWND	TEXAS PANHANDLE
SPSCUNNSUBUN1	TEXAS PANHANDLE
SPSCUNNSUBUN2	TEXAS PANHANDLE
SPSCUNNSUBUN3	TEXAS PANHANDLE
SPSCUNNSUBUN4	TEXAS PANHANDLE
SPSDOLLARHIUNSUNE_SPS1	TEXAS PANHANDLE
SPSHENDRIC2UNRALLS_WIND	TEXAS PANHANDLE
SPSHOBBSPLT1	TEXAS PANHANDLE
SPSHOBBSPLT2	TEXAS PANHANDLE
SPSHOPI_SUBUNSUNE_SPS5	TEXAS PANHANDLE
SPSJONESSUBUN1	TEXAS PANHANDLE
SPSJONESSUBUN2	TEXAS PANHANDLE
SPSJONESSUBUN3	TEXAS PANHANDLE
SPSJONESSUBUN4	TEXAS PANHANDLE
SPSLEA_ROADUNSUNE_SPS3	TEXAS PANHANDLE
SPSLOVINGTOPLT1	TEXAS PANHANDLE
SPSLOVINGTOUNWILDCATWIND	TEXAS PANHANDLE
SPSLP-BRND2UNBRANDON1	TEXAS PANHANDLE
SPSLP-COOP2UNLUBBOCK_WIND	TEXAS PANHANDLE
SPSLP-HOLL2UNCOOKE_GT2	TEXAS PANHANDLE

SPSLP-HOLL2UNCOOKE_GT3	TEXAS PANHANDLE
SPSLP-MACK2UNMASSENG1	TEXAS PANHANDLE
SPSMADDOXSUUN1	TEXAS PANHANDLE
SPSMADDOXSUUN2	TEXAS PANHANDLE
SPSMONUMENTUNSUNE_SPS4	TEXAS PANHANDLE
SPSMSTNGPLT1	TEXAS PANHANDLE
SPSMSTNGUN4	TEXAS PANHANDLE
SPSMSTNGUN5	TEXAS PANHANDLE
SPSMSTNGUN6_GSEC	TEXAS PANHANDLE
SPSPLXSUBUN4	TEXAS PANHANDLE
SPSQUAYCNTYUNQUAYCOUNTY1	TEXAS PANHANDLE
SPSS_JALUNSUNE_SPS2	TEXAS PANHANDLE
SPSSAN_JUANUNWINDFARM	TEXAS PANHANDLE
SPSTOLKSUBUN1	TEXAS PANHANDLE
SPSTOLKSUBUN2	TEXAS PANHANDLE
CSWSDEMP SRD GUNDEMPSEY_WIND	WOODWARD
CSWSELK_TAPUNELKCTY_WIND	WOODWARD
CSWSHOBART_JUNROCKYRDG_WIND	WOODWARD
CSWSROARKUNELKCTY2_WIND	WOODWARD
CSWSWFRDGUNUN1_WFRDG	WOODWARD
OKGEBRECKNR4UNBRECK_WIND	WOODWARD
OKGECHSHLMV7UNCHISHOLM2_WIND	WOODWARD
OKGEDEWEY1UNTALOGA_WIND	WOODWARD
OKGEFPL_WINDUNUN1_FPL_OMPA	WOODWARD
OKGEFPL_WINDUNUN1_FPL_WIND	WOODWARD
OKGENARDINUNCOWBOY_WIND	WOODWARD
OKGEOMKAWUN2	WOODWARD
OKGEOMKINGFUNOMPA_KNGFISHER	WOODWARD
OKGEOMPONCAUNOMPONCA1_3	WOODWARD
OKGEOMPONCAUNOMPONCA2	WOODWARD
OKGEOMPONCAUNOMPONCA4	WOODWARD
WFECANADARKOPLT1	WOODWARD
WFECBUFBEAR2UNWINDFARM	WOODWARD
WFECGOTEBOUNLITTL_ELK_WIND	WOODWARD
WFECMOORLN1UNMOORELAND_1	WOODWARD
WFECMOORLN1UNMOORELAND_2	WOODWARD
WFECMOORLN1UNMOORELAND_3	WOODWARD
WFECOMLVRNEUNOMPA_LAVERNE	WOODWARD
WFECOMMANGMUNOMPA_MANGUM	WOODWARD
WFECREDHILLSUNWINDFARM	WOODWARD
WFECSLP_BEARUNWINDFARM	WOODWARD

## Appendix B. Binding Constraint and Pivotal Supplier Data

Constraint Name	Monitored Element	Binding Hours	Pivotal Supplier Hours
WDWFPLTATNOW	WDWRD1 - FPLSWTCH 138 kV	2919	1434
TEMP56_21085	TUCO - LUBBOCKE 115 kV	2748	2743
STAINDTUCCAR <sup>2</sup>	STANTON - INDIANA 115 kV	1460	1449
OSGCANBUSDEA	OSG_SWPS - CANYON_E 115 kV	1352	1351
TEMP50_20937	WOLFFORT - TERRY_CO 115 kV	1226	1223
SHAHAYPOSKNO	VINETAP3 - NHAYS 115 kV	1225	252
TEMP18_21404	MARTIN - HUTCH 115 kV	1011	0
WATXFRWATXFR <sup>3</sup>	WATFORD 230/1 kV	1067	873
TMP129_21713	LARAMIE 345/23.4 kV	920	0
TMP144_21263	CHARCK - RGHDRD 115 kV	750	630
WODFPLWODXFR	WDWRD1 - FPLSWTCH 138 kV	721	369
TMP169_21734	HAYBUTTE - LCGASPLT 115 kV	646	0
PR_ISLNROCH <sup>4</sup>	PR_ISLD - NROCH 345 kV	547	128
PMA_DOLET_PP	DOLET_PP	416	0
TMP133_21794	HARRSUB - RLNGHILS 230 kV	370	234
TEMP49_21150	RUGBY230 - RUGBY 115 kV	355	254
TMP120_21426	CARLISLE 230/115 kV	339	335
SILSPRTONFLI <sup>5</sup>	SILOAM - SILSPRNG 161 kV	328	283
NEORIVNEOBLC	NSES - RAM452 161 kV	324	287
SHAHAYKNOXFR	VINETAP3 - NHAYS 115 kV	318	113
TEMP48_20597	SETAB1 - SCOTCTY 115 kV	298	232
TMP179_21578	DOLET_PP - DOLET 24 kV	256	0
TMP203_21931	CIMARRON 345/138 kV	256	256
TEMP13_21818	PANTEX_S - HIGHL_TP 115 kV	252	0
TEMP23_21218	EAU_CLA - ARPIN 345 kV	228	161
TEMP14_20279	BUSHLAND - DEAFSMIT 230 kV	216	215
CARLPDLUBWOL	CARLISLE - DOUD 115 kV	203	203
TMP161_21545	GOTHNBG - COZAD 115 kV	197	0
HOBCARHOBALT	HOBART_J - CRNGIE_S 138 kV	188	23
TMP198_21927	ONETA 345/138 kV	186	169
TEMP99_21082	DENVER_C - SAN_AND1 115 kV	184	151
TMP204_21785	MARSHAL3 - SMIT 115 kV	183	0
TMP234_21795	ARENDS - FOSTRACB 69 kV	181	12

<sup>2</sup> STAINDTUCCAR; originally created as the temporary constraint TMP145\_21718 on 3/22/2016 and promoted to permanent status on 7/1/2016.

<sup>3</sup> WATXFRWATXFR; originally created as the temporary constraint TMP169\_21252 on 10/1/2015 and promoted to permanent status on 4/1/2016.

<sup>4</sup> PR\_ISLNROCH; MISO Market-to-Market constraint.

<sup>5</sup> SILSPRTONFLI; originally created as the temporary constraint TEMP24\_20438 on 7/22/2014 and promoted to permanent status on 4/1/2016.

TMP108_21422	NSES 161/138 kV	180	162
TEMP65_21162	ARCAD7 - OMLARCA 138 kV	179	169
SUNAMOTOLYOA	SUNDOWN2 - AMOCO_SW 230 kV	178	129
ARCKAMARCNOR	ARCAD7 - JONES_KA 138 kV	169	92
TMP187_20891	MCCLAI - 134PENTP 138 kV	162	0
TEMP82_20951	NASHUA 345/1 kV	162	76
TMP186_21583	WDRNG1 345/138 kV	151	59
TMP168_21247	KNOLL1 - REDLIN 115 kV	113	0
TMP215_21787	CIMARRON - DRAPR1 345 kV	111	67
FRASPECOLMEA	FTRANDL - SPENCE1 115 kV	105	97
TEMP38_21746	KNOLL1 - REDLIN 115kV	103	88
TMP193_21919	VERD_TAP - AMC_TAP 138 kV	102	43
ELKXFRSWEWHE	ELK-CITY 230/138 kV	94	75
TEMP86_21405	KRESS - HALE CO 115kV	91	88
TMP246_21945	BEULAH - HALIDYWP 115 kV	91	19
TMP226_21682	CIMARRON 345/138 kV	89	78
TEMP74_20773	MILANTP - CLEARWT4 138 kV	78	33
TMP247_21947	LUBBOCKS - LUBBOCKE 115 kV	77	73
TEMP46_21084	LAWH 230/115 kV	74	0
TEMP98_21113	SHEFFLD1 161/69 kV	73	0
TMP173_21361	ELK-CITY - CLINT_J 138 kV	72	71
TEMP63_21164	CIMARRON - DRAPR1 345 kV	70	29
TMP170_20876	KELL - TECH 161 kV	69	31
LUBXFMJONHOL	LP-SOUT2 230/69 kV	69	68
TEMP52_20619	MOORLN1 - GLMTN 138 kV	68	0
IATSTRSTJHAW	IATAN - STRA 345 kV	64	15
SARMINELDMOL	SAREPT - MINDE3 115 kV	63	0
SMOSUMMULCIR	WR_SMKHL - SUMM 230 kV	59	16
TEMP13_21262	MCHENRY 230/1 kV	59	0
TEMP13_21262	MCHENRY 230/1 kV	56	0
TMP101_20769	SNAKECK - ALIANCE 115 kV	54	54
TMP146_21459	CARLISLE - MURPHY 115 kV	52	29
TEMP58_21391	WR_SMKHL - SUMM 230 kV	52	38
TMP185_21334	SAILES - TXPSEX 115 kV	51	45
REDMINAXTPOS	REDWLO1 - MINGO1 345 kV	50	9
TEMP90_21398	B_SPRGS - BLUECK 115 kV	49	37
TMP192_21680	WR_SMKHL - SUMM 230 kV	49	22
FOXROUTNOBLAK	FOX_LK - RUTLAND 161 kV	48	29
HARPOTHARPOT	HARRSUB - POTTER_S 230 kV	48	37
TMP225_21946	CLBRTSNE - WILISTN 115 kV	48	47
ANOPLHANOMAB	ARK_NU - PLS_HL 500 kV	47	33
TEMP79_21771	NOWST1 345/1 kV	47	0
TEMP53_20942	134PENTP - WESTMOR4 138 kV	45	33
TEMP94_21410	SHAYS - MULGRE2 230 kV	45	34
TMP201_22011	MCHENRY 230/1 kV	44	30
NASXFRNASHAW	NASHUA 345/1 kV	44	12

TMP178_21910	PLXSUB - BAI_CO_R 115 kV	43	5
MINXFRMINSET	MINGO1 345/1 kV	43	3
TMP139_21456	PANTEX_S - HIGHL_TP 115 kV	41	6
GG5	6 ELEMENTS (G_GENT1)	56	13
RINXFRDOLSW5	RINGOL 138/115 kV	54	0
MABWRIWH_KEO	MABELV - WRIGHT_E 500 kV	53	36
IATSTRNASHAW	IATAN - STRA 345 kV	52	2
SUBTEKFTCRAU	SUB1226 - TEKAMHO 161 kV	52	47
REDWILLMINGO	REDWLO1 - MINGO1 345 kV	52	38
TMP137_21357	CARTHAGE - LAR3821 161 kV	51	46
JECAUBHOYJEC	JEFF - AUBU 230 kV	51	51
TEMP57_20945	ASB3491 - CJ366 161 kV	49	44
TMP183_22014	CRSW 138/69 kV	48	8
KNONHAPOSSHA	KNOLL1 - NHAYS 115 kV	47	8
TEMP88_21344	CARLISLE 230/115 kV	46	46
TEMP89_21853	ELSIETP - PAXTON 115 kV	46	38
TAHH59MUSFTS	TAHLQH5 - HWY59 161 kV	44	30
HAWXFRHAWXFR	HAWTHORN 345/161 kV	43	33
TEMP72_20647	WOLFFORT - TERRY_CO 115 kV	42	42
TMP158_21888	WICH 345/138 kV	41	28

### **CERTIFICATE OF SERVICE**

I hereby certify that I have on this day caused to be served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 3<sup>rd</sup> day of March, 2017.

/s/ Seth T. Lucia  
Seth T. Lucia