

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

In the Matter of Great Plains Energy Inc.'s     )  
Acquisition of Westar Energy, Inc. and        )  
Related Matters                                    )

Case No. EM-2016-0324

**GREAT PLAINS ENERGY INCORPORATED'S REPLY  
TO STAFF'S RESPONSE TO VERIFIED MOTION FOR RECONSIDERATION**

Great Plains Energy Incorporated ("GPE" or "Company") respectfully states the following to the Missouri Public Service Commission ("Commission" or "PSC") in Reply to Staff's June 13, 2016 Response to GPE's Motion for Reconsideration ("Response"):

**I. Purpose of GPE's Reply**

1. GPE files this Reply to address a number of erroneous and unclear statements in Staff's Response regarding: (a) the nature of the jurisdictional question on which GPE has requested a Commission ruling no later than July 1, 2016; (b) the key financial terms of the proposed acquisition of Westar Energy, Inc. ("Westar") by GPE ("Transaction"); and (c) the expected filing date for the application seeking Kansas Corporation Commission ("KCC") approval of the Transaction.

**II. Jurisdictional Question on Which GPE Seeks Commission Ruling by July 1, 2016**

2. On pages 3-5 of its Response, Staff opposes GPE's Motion for Reconsideration, citing "the complex legal question of jurisdiction in this case" (page 4, paragraph 6), "[t]he issue of jurisdiction over the proposed transaction, to prohibit it or to impose conditions upon it" (page 4, paragraph 7), and "the question of jurisdiction to remedy any likely detriments to the interests of Missouri ratepayers" (page 4, paragraph 8). This meandering Staff discussion fails to focus on the very specific jurisdictional question on which GPE seeks a Commission order by July 1.

3. Staff complains that “were the Commission to announce that it lacked jurisdiction” on certain matters, Staff “would necessarily tailor its inquiry to the areas” where the Commission determined its lawful jurisdiction to exist. See Response, ¶ 9 at p. 5. Such a tailoring would simply confine Staff’s inquiry to the topics appropriate to the 2001 GPE Stipulation. This would be consistent with the Commission’s June 8, 2016 Order that granted Staff’s Motion to Open an Investigation, as well as with the lawful exercise of the PSC’s jurisdictional authority under Missouri law.

4. GPE’s Motion for Reconsideration requests that the Commission issue its order by July 1 on the legal question regarding the Commission’s jurisdictional authority under Section 393.190 and the 2001 Stipulation to approve the Transaction. This very specific legal question is separate and apart from the question of any action that the Commission could take to protect the customers of GPE’s Missouri public utilities under the 2001 Stipulation. Because this is purely a legal question, Staff’s investigation has no bearing on it.

5. GPE asserts that the Commission lacks jurisdictional authority to approve the Transaction, while both Staff and the Office of the Public Counsel (“OPC”) have taken a position to the contrary. This issue is clearly in dispute, has been fully briefed, and is ready to be decided. The Commission’s resolution of this issue by July 1 will eliminate the uncertainty currently surrounding the Transaction regarding the necessity of Commission approval under Section 393.190 and the 2001 Stipulation. Failure by the Commission to resolve this issue in a timely fashion will prolong the current state of uncertainty, and impede the ability of GPE and Westar to finance and close the Transaction.

### **III. Key Financial Terms of the Transaction**

6. In Paragraph 10 of its Response, Staff states that after the Transaction “GPE will have debt of \$16.4 Billion.” This assertion is wrong because Staff has erroneously assumed that 100% of the purchase price to be paid by GPE will be financed with debt when, in fact, GPE will finance approximately 50% of the purchase price with equity.

7. GPE’s consolidated debt currently outstanding is approximately \$4.2 billion. The total equity purchase price of \$8.6 billion to be paid by GPE is \$60.00 per share, 85% of which (\$7.3 billion) will be paid in cash (at \$51.00 per share of Westar stock) and 15% of which (\$1.3 billion) will be paid in GPE stock. In addition there is a collar mechanism that adjusts number of shares issued to provide a fixed value within a 7.5% trading band for GPE stock. See Attachment 1 (a slide from presentation recently made by GPE to investors).

8. Permanent financing by GPE of the Transaction is expected to consist of approximately 50% equity and 50% debt, which is composed of:

- \$1.3 billion of equity to the seller;
- \$750 million of mandatory convertible preferred equity from the Ontario Municipal Employees Retirement System;
- \$2.35 billion of equity comprised of GPE common and mandatory convertible preferred stock to the public market; and
- \$4.4 billion of new GPE debt.

9. GPE will assume \$3.6 billion in Westar debt, which will reside with Westar as a GPE utility subsidiary post-Transaction. The cost of this debt is currently being recovered through rates paid by Westar’s customers. Contrary to Staff’s assertion that “GPE will have debt of \$16.4 Billion” as a result of the Transaction, GPE’s consolidated debt post-Transaction will be

approximately \$12.2 billion (consisting of \$4.2 billion of currently outstanding GPE debt, \$4.4 billion of new GPE debt to be incurred as a result of the Transaction and \$3.6 billion of existing Westar debt).

**IV. Expected Date of Filing for Transaction Approval with the KCC**

10. In Paragraph 5 at page 3 of its Response, Staff alleges that “GPE cannot or will not submit its application to the Kansas Corporation Commission until the question of Missouri’s jurisdiction is resolved ....” This is an erroneous statement by Staff as GPE and Westar expect to file an application with the KCC for approval of the Transaction on July 1, 2016. See GPE’s Verified Motion for Reconsideration at p. 4, n. 1. GPE expects this filing to be made with the KCC regardless of whether this Commission issues an order on the legal question of its jurisdictional authority to approve the Transaction by July 1, 2016.

11. In paragraph 5 of its Response, Staff also asserts that:

...utility companies seeking regulatory approval generally file applications concurrently with every regulatory body that could possibly have any authority over the proposed transaction. Those agencies that determine that they do not, in fact, have sufficient contacts with the transaction in question then simply issue orders noting their lack of jurisdiction [emphasis added][footnote omitted].

12. Actually, that is not the case. Five of the transactions cited by GPE in its June 7, 2016 Reply to Public Counsel’s Response and Staff’s Response were not initiated by any utility company. To the contrary, the question of the Commission’s jurisdictional authority was raised by Staff or OPC, in much the same fashion as this proceeding. The Commission declined to exercise jurisdiction in each case, three of which asserted Section 393.190 authority. See Order Closing Case, In re Proposed Acquisition of Cilcorp, Inc. by Ameren Corp., No. EO-2002-1082 (2002) (declining § 393.190 jurisdiction); Order Closing Case, In re Proposed Acquisition of Mo.-Am. Water Co. and Am. Water Works Co. by the German Corp. RWE AG, No. WO-2002-

206 (2001) (declining § 393.190 jurisdiction); Report & Order, In re Merger of American Water Works Co. with Nat'l Enterprises Inc. and the Indirect Acquisition by American Water Works Co. of St. Louis Water Co., No. WM-99-224 (1999) (declining §393.190 jurisdiction); Order Denying Motion to Reconsider Order Closing Case, In re Proposed Merger between GTE Corp. and Bell Atlantic, No. TM-99-261 (1999); Report & Order, In re Merger of SBC Commun. Inc. and Ameritech Corp., No. TM-96-76 (1998). The Commission reached this same conclusion in the 2005 AT&T/SBC Communications merger where OPC unsuccessfully urged Commission to exercise approval jurisdiction. See Order Closing Case, In re Proposed Acquisition of AT&T Corp. by SBC Commun., Inc., No. TM-2005-0355 (2005).

13. GPE simply requests that the Commission follow the same process here as it did in these holding company merger and acquisition cases over the past 20 years.

WHEREFORE, Great Plains Energy Incorporated requests that its Verified Motion for Reconsideration be granted, and that the Commission issue its order on the legal question of its jurisdictional authority to approve GPE's acquisition of Westar Energy, Inc. no later than July 1, 2016.

Respectfully submitted,

/s/ Robert J. Hack

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served upon the below named parties by email or U.S. mail, postage prepaid, this 15<sup>th</sup> day of June 2016.

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**OUR  
FUTURE  
FOCUS**

# **GREAT PLAINS ENERGY INVESTOR PRESENTATION**

June 2016



## KEY FINANCIAL TERMS



<b>Purchase Price</b>	<ul style="list-style-type: none"> <li>• \$60.00 per share</li> <li>• Total equity purchase price of \$8.6 billion; enterprise value of \$12.2 billion</li> </ul>
<b>Consideration</b>	<ul style="list-style-type: none"> <li>• 85% Cash (\$7.3 billion) / 15% Stock (\$1.3 billion) <ul style="list-style-type: none"> <li>— \$51.00 per share cash consideration</li> <li>— 0.2903 Great Plains Energy shares per Westar Energy share (based on May 27, 2016 close)</li> <li>— Collar mechanism that adjusts number shares issued to provide fixed value within a 7.5% trading band for Great Plains Energy stock<sup>1</sup></li> </ul> </li> </ul>
<b>Financing Details<sup>2</sup></b>	<ul style="list-style-type: none"> <li>• Permanent financing of approximately 50% equity and 50% debt, which is composed of: <ul style="list-style-type: none"> <li>— \$1.3 billion of equity to the seller</li> <li>— \$750 million of mandatory convertible preferred equity from OMERS</li> <li>— \$2.35 billion of equity comprised of Great Plains Energy common and mandatory convertible to the public market</li> <li>— \$4.4 billion of new Great Plains Energy debt</li> </ul> </li> <li>• Committed to retaining strong investment grade balance sheet</li> </ul>

1. Number of shares of Great Plains Energy stock to be based on an Exchange Ratio equal to the quotient obtained by dividing \$9.00 by the 20-day volume-weighted average price of Great Plains stock at closing, subject to a 7.5% collar mechanism such that the minimum number of Great Plains Energy shares issued per Westar Energy share will be 0.2709 and maximum will be 0.3148, based on the May 26, 2016 closing price of \$30.91.

2. Financing amounts are approximate, based on current expectations.