

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

In the Matter of Great Plains Energy Inc.'s)	Case No. EM-2016-0324
Acquisition of Westar Energy, Inc. and)	
Related Matters)	

**GREAT PLAINS ENERGY INCORPORATED'S
VERIFIED OPPOSITION TO STAFF'S MOTION TO OPEN INVESTIGATION
AND REQUEST FOR ORDER DECLINING JURISDICTION**

Great Plains Energy Incorporated ("GPE" or "Company") states the following in opposition to Staff's Motion to Open an Investigation ("Motion"), and requests that the Commission decline jurisdiction regarding the Company's acquisition of Westar Energy, Inc. as expeditiously as possible.

GPE states the following in support of its positions.

1. On May 31, 2016 GPE announced that it had reached a definitive agreement for the Company to acquire Westar Energy, Inc. ("Westar") in a transaction valued at approximately \$12.2 billion. Upon closing, Westar will become a wholly-owned subsidiary of GPE. Westar is an electric utility that does business entirely within the State of Kansas.

2. Contrary to Staff's Motion, and as explained in detail in Section II hereof, there is no legal basis for the Commission to exercise jurisdiction over this transaction on the basis of the July 31, 2001 First Amended Stipulation and Agreement ("GPE Stipulation"). Staff's interpretation would expand the Commission's jurisdiction to non-Missouri regulated public utilities, and grant the Commission extraterritorial powers never contemplated by Missouri law. Accordingly, the Commission should decline jurisdiction over a transaction involving not a single Missouri public utility.

3. As discussed in Section III, such a decision would be consistent with the Commission's declining to open a proceeding regarding the 2014 acquisition by The Laclede Group of Alagasco, an Alabama local natural gas distribution company.

4. Declining jurisdiction in this matter would also be consistent with longstanding Commission precedent reaching back almost 20 years, where it did not exercise jurisdiction over holding companies that owned Missouri public utilities when they sought to acquire non-Missouri public utility holding companies or non-Missouri public utilities. This is explained in detail in Section IV.

I. The Transaction.

5. GPE is a Missouri corporation and the holding company for the stock of Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO"), both regulated public utilities in Missouri. GPE was established on October 1, 2001, and its stock is traded on the New York Stock Exchange as "GXP." GPE is a public utility holding company regulated under the Public Utility Holding Company Act of 2005, which was enacted as part of the Energy Policy Act of 2005. Although GPE is a Missouri corporation, it is not an "electrical corporation" or a "public utility" under Missouri law. See Section 386.020(15) and (43).¹ GPE does not own "electric plant," as defined in Section 386.020(14), and does not offer electric service to the public as a public utility.

6. Westar is a Kansas corporation with its headquarters in Topeka, Kansas. It is authorized by the Kansas Corporation Commission ("KCC") to conduct business as a public utility and holds a Certificate of Convenience and Authority from the KCC to engage in the

¹ All citations are to the Missouri Revised Statutes (2000), as amended, unless otherwise noted.

business of an electric public utility in the State of Kansas. Westar is not a Missouri public utility subject to the jurisdiction of this Commission.

7. On May 29, 2016, GPE entered into an Agreement and Plan of Merger, pursuant to which Merger Sub (100% of the outstanding equity interests of which will be owned by GPE) will be merged with and into Westar, with Westar emerging as the surviving corporation. Immediately following the merger, Merger Sub will cease to exist, and GPE will acquire all of the capital stock of Westar (“Transaction”).

8. The aggregate purchase price of the Transaction is \$12.2 billion dollars, including a total equity value of approximately \$8.6 billion, and the assumption of \$3.6 billion of existing Westar debt. Westar’s shareholders will receive \$60.00 per share of total consideration for each share of Westar common stock, consisting of \$51.00 in cash and \$9.00 in GPE common stock, subject to a 7.5 percent collar based upon the GPE common stock price at the time of the closing of the transaction with the exchange ratio for the stock consideration ranging between 0.2709 to 0.3148 shares of GPE common stock for each Westar share of common stock. The consideration mix for the acquisition of Westar’s common stock is 85 percent cash and 15 percent GPE common stock. All GPE financing in connection with the Transaction will occur at the holding company level. No KCP&L or GMO debt will be used to finance the Transaction.

9. The closing of the Transaction is subject to customary conditions, including the receipt of certain approvals by the common shareholders of GPE and Westar, and the receipt of certain state and federal regulatory and governmental approvals, including the approval of the KCC, the Federal Energy Regulatory Commission, and the Nuclear Regulatory Commission. The Transaction is subject to the notification, clearance and reporting requirements of the Hart-Scott-Rodino Act. Closing is expected to occur in the Spring of 2017.

10. At the closing of the Transaction, Westar will become a wholly-owned subsidiary of GPE and will cease to be a publicly-held corporation.

II. The 2001 First Amended Stipulation and Agreement is Inapplicable.

11. On July 9, 2001, GPE filed the First Amended Stipulation and Agreement (“GPE Stipulation”) with the Commission. See In re Application of Kansas City Power & Light Co. for an Order Authorizing its Plan to Reorganize Itself into a Holding Company Structure, Case No. EM-2001-464. The GPE Stipulation was approved by the Commission. Id., Order Approving Stipulation & Agreement and Closing Case (July 31, 2001). As a result, a holding company structure for GPE was created under the terms of the GPE Stipulation, which contained the following provision related to prospective acquisitions by GPE:

Section II(7): Prospective Merger Conditions

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 a transaction from the Commission and the Commission has found that no detriment to the public would result from the transaction. ... [emphasis added].

12. Contrary to Staff’s suggestion in Paragraph 4 of its Motion, Section II(7) of the GPE Stipulation does not and cannot confer jurisdiction on the Commission to review the Transaction. This provision applies to a “public utility” as defined under Missouri law. Since Westar is neither a “public utility,” an “electrical corporation,” nor an affiliate of a “public utility” under Missouri law, Section II(7) of the GPE Stipulation is irrelevant to the Transaction.

13. Section 386.250(1) states that the jurisdiction, supervision, powers and duties of the Commission extends to “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].”

14. Section 386.020(43) defines “public utility” as follows:

(43) "Public utility" includes every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heat or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter [emphasis added].

15. Section 386.020(15) defines “electrical corporation” as follows:

(15) "Electrical corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others ... [emphasis added].

16. Section 386.020(14) defines “electric plant” as follows:

(14) "Electric plant" includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power;

17. In the GPE Stipulation, Great Plains Energy Incorporated agreed that it would not acquire or merge with a “public utility” or “the affiliate of a public utility” without the approval of the Commission. In State ex rel. M.O. Danciger & Co. v. PSC, 205 S.W.36, 40 (Mo. 1918), the Missouri Supreme Court held that an electrical corporation is not subject to regulation by the Commission unless it is offering electricity “for public use.” In the absence of offering electricity as a public service in Missouri, an entity is not “a public utility, within the meaning of the Public Service Commission Act.” Id. In this case, Westar is not a “public utility” or an

“affiliate of a public utility” under Missouri law. Therefore, Section II(7) of the GPE Stipulation has no relevance to GPE’s acquisition of Westar.

III. Staff’s Assertion of Jurisdiction would be Contrary to The Laclede Group’s Recent Acquisition of a Non-Missouri Public Utility, where the Commission did Not Assert Jurisdiction.

18. In 2014 The Laclede Group acquired all of the stock of Alabama Gas Corporation (“Alagasco”) from its parent company, Energen Corporation. See Order, In re Application for Approval to Transfer Ownership of 100% of Common Stock of Alabama Gas Corp. from Energen Corp. to The Laclede Group, Inc., Docket 32180, 2014 Ala. PUC LEXIS 314 (Ala. P.S.C., July 24, 2014). No investigatory docket was opened to consider the Commission’s jurisdiction over The Laclede Group’s acquisition of an Alabama public utility.

19. Yet, The Laclede Group is subject to a stipulation strikingly similar to the GPE Stipulation, which this Commission approved two weeks after it approved the GPE Stipulation. See Order Approving Stipulation & Agreement and Approving Plan to Restructure, In re Application of Laclede Gas Co. for Order Authorizing its Plan to Restructure Itself into a Holding Company, No. GM-2001-342 (Aug. 15, 2001) (“In re Laclede Group”).

20. The Laclede Group stipulation provided that “it will not, directly or indirectly acquire or merge with ... a public utility or the affiliate of a public utility, where the affiliate has a controlling interest in a public utility ... without first requesting and, if considered by the Commission, obtaining prior approval from the Commission and a finding that the transaction is not detrimental to the public” See ¶ V(1), Unanimous Stipulation and Agreement, In re Laclede Group (July 9, 2001).

21. Although it is a public utility under Alabama law, Alagasco is not a public utility under Missouri law. Consequently, it is not surprising that there is no reported request by Staff

for the Commission to investigate The Laclede Group's 2014 acquisition of Alagasco. The Commission should adopt a similar position with regard to the Transaction in this case, in accordance with Missouri law.

IV. Declining Jurisdiction is Consistent with Long-Standing Commission Precedent.

22. Although the Commission exercises jurisdiction over public utilities, it does not exercise jurisdiction over corporations that hold the stock of public utilities. "The Commission has consistently found that the Commission does not have jurisdiction over transactions at the holding company level, and it will adhere to that position here." In re Proposed Merger of Verizon Communications, Inc. and MCI, Inc., No. TM-2005-0370 (May 3, 2005).

23. The Commission took a similar position when SBC Communications acquired Ameritech in 1998. After granting oral argument concerning comments that the PSC had planned to send to the Federal Communications Commission on the SBC/Ameritech merger, the PSC found that "there is nothing in the statutes that confers jurisdiction to examine a merger of two non-regulated parent corporations even though they may own Missouri-regulated telecommunications companies." In re Merger of SBC Communications, Inc. and Ameritech Corp., Report and Order, 7 Mo. P.S.C.3d 528, 532 (Oct. 8, 1998).

24. In a similar case dealing with Ameren Corporation's acquisition in 2002 of Cilcorp, Inc., a holding company that owned Central Illinois Light Company, an Illinois public utility, the Commission declined to exercise jurisdiction over the transaction, and declined Staff's invitation to review joint dispatch issues. See Order Closing Case, In re Proposed Acquisition of Cilcorp, Inc. by Ameren Corp., No. EO-2002-1082 (June 13, 2002).

25. The Commission's order regarding the American Water Works acquisition of the ultimate parent of St. Louis County Water Co. is in line with these decisions. See Report &

Order, In re Merger of American Water Works Co. with Nat'l Enterprises, Inc., No. WM-99-224, 1999 Mo. PSC LEXIS 183 (1999). “The Commission determines that there is nothing in the statutes that confers jurisdiction to examine a merger of two non-regulated parent corporations even though they may own Missouri-regulated utility companies. The Commission’s past approach to mergers of this type has been the proper one, and will be followed here.” Id. at *6.

26. The case is even stronger here, where Westar does not own any Missouri-regulated public utility companies.

V. An Investigation is Not Necessary to Determine the Impact of the Transaction upon KCP&L and GMO Operations.

27. Contrary to Staff’s arguments in Paragraph 5-9 of its Motion, there is no need to open an investigation into the impact of the Transaction upon the operations of KCP&L and GMO, given that GPE will abide by all of the commitments that it made in the 2001 Stipulation.

28. Staff recites several of the representations that GPE made in the Stipulation, and GPE here states unequivocally that it will honor all of the commitments set forth in Section II(6) of the Stipulation related to “Financial Conditions.” That includes Sections II(6)(b),(c), (d), (f), (g), (h), (i), (j), and (k), which were specifically cited by Staff in its Motion.

29. Whether GPE, KCP&L or GMO has complied with these agreements is within the Commission’s authority to investigate. However, the mere announcement of the Transaction does not provide a factual basis for such an investigation, which would be entirely premature at this time.

30. Staff notes in Paragraph 8 of its Motion that GPE has stated that it expects savings to be generated by the Transaction that will benefit both customers and shareholders. In support

of that statement, GPE stated that its acquisition of Aquila, Inc. is evidence of its ability to deliver such benefits. Regrettably, in Paragraph 9 Staff claims that the savings derived from the acquisition of Aquila were accomplished “chiefly through the termination of almost all of the employees of Aquila, Inc.” There are absolutely no facts to support that irresponsible and inflammatory allegation.

31. Although employee reductions through attrition and termination play a role in the savings produced in any acquisition, when GPE acquired Aquila, there were approximately 2,200 Aquila employees at the time of closing. As the acquisition was carried out, 105 Aquila employees were provided severance packages at closing; 1,091 Aquila employees received jobs with Black Hills Corporation, a partner to the transaction that acquired Aquila’s non-Missouri utility assets at the time of the GPE closing; 920 Aquila employees became KCP&L employees at closing; and 86 Aquila employees received transitional employment contracts with either KCP&L or Black Hills at closing. As a result, less than 5% of Aquila’s total workforce received severance packages at the close of the transaction, a far cry from Staff’s misrepresentations.

32. In Paragraph 7 of its Motion, Staff notes its “mindfulness” in attempting to draw a parallel between the Transaction and the financial condition of Aquila prior to the sale of its various assets, including the final acquisition of its remaining assets by GPE and Black Hills in 2008. The record is clear that Aquila’s financial issues arose from its significant expansion into unregulated energy markets and the aftermath of the collapse of Enron. In sharp contrast to Aquila, Westar is on solid financial footing and engages primarily in regulated operations. Staff’s comments provide no legitimate basis for the Commission to open an investigation into this Transaction.

VI. Conclusion.

33. As the questions raised by Staff's Motion are entirely legal in nature, and there are no material facts in dispute, the Commission should conclude that it has no jurisdiction over the Transaction by virtue of the 2001 GPE Stipulation or that it need not exercise jurisdiction at this time, which would be consistent with longstanding Commission precedent. There is no legal basis to open an investigation into a transaction over which the Commission either lacks or declines jurisdiction. Staff's Motion should be denied.

34. Because regulatory certainty is essential regarding significant financial undertakings like the Transaction, and because it is important for the approval process of such undertakings to occur in a timely fashion, GPE requests that the Commission rule on this matter in the next 30 days.

WHEREFORE, Great Plains Energy Incorporated requests that Staff's Motion to Open an Investigation be denied, and that the Commission decline to exercise jurisdiction regarding the Company's acquisition of Westar Energy, Inc. as expeditiously as possible.

Respectfully submitted,

/s/ Robert J. Hack

Robert J. Hack, MBN 36496
Roger W. Steiner, MBN 39586
Kansas City Power & Light Company
1200 Main Street
Kansas City, MO 64105
Phone: (816) 556-2791
rob.hack@kcpl.com
roger.steiner@kcpl.com

Karl Zobrist, MBN 28325
Joshua Harden, MBN 57941
Dentons US LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
Phone: (816) 460-2400
Fax: (816) 531-7545
karl.zobrist@dentons.com
joshua.harden@dentons.com

James M. Fischer, MBN 27543
Larry W. Dority, MBN 25617
Fischer & Dority, P.C.
101 Madison Street, Suite 400
Jefferson City, MO 65101
Phone: (573) 636-6758
Fax: (573) 636-0383
jfischerpc@aol.com

Attorneys for Great Plains Energy Incorporated

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 2nd day of June 2016.

Kevin A. Thompson
Chief Staff Counsel
P.O. Box 360
Jefferson City, MO 65102
kevin.thompson@psc.mo.gov

Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

/s/ Robert J. Hack

Attorney for Great Plains Energy Incorporated

VERIFICATION

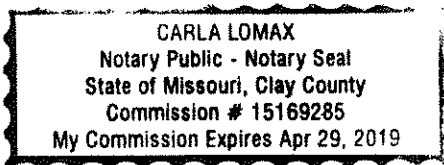
STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

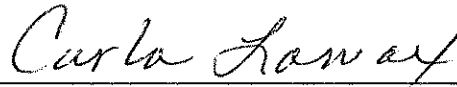
Darrin R. Ives, being first duly sworn, on his oath and in his capacity as Vice President—Regulatory Affairs of Kansas City Power & Light Company, states that he is authorized to execute the foregoing on behalf of Great Plains Energy Incorporated, has knowledge of the matters stated herein, and that said matters are true and correct to the best of his knowledge and belief.



Darrin R. Ives

Subscribed and sworn to before me this 2nd day of June 2016.





Notary Public

My Commission Expires April 29, 2019