

**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)	<u>File No. EM-2017-0226, et al.</u>
Westar Energy, Inc.)	

MOTION TO ADOPT PROPOSED PROCEDURAL SCHEDULE

COMES NOW Great Plains Energy Incorporated (“GPE”), Kansas City Power & Light Company (“KCP&L”) and KCP&L Greater Missouri Operations Company (“GMO”) (collectively “Joint Applicants”), pursuant to the Regulatory Law Judge’s directive issued March 2, 2017 during the Procedural Conference convened in this matter, and for their Motion to Adopt Proposed Procedural Schedule, respectfully state as follows:

BACKGROUND

1. As the Commission is well aware, these consolidated cases involve the pending Transaction in which GPE (the holding company for KCP&L and GMO) will acquire 100% of the stock of Westar Energy, Inc. On December 6, 2016 in File No. EE-2017-0113, the Commission issued its previous *Order Adopting Procedural Schedule*, noting that the parties had filed competing proposed schedules (one proposal filed by Staff and the Joint Applicants; the other filed by a group of intervenors), and acknowledging that “Both proposed schedules recognize that the Joint Applicants want a final Commission order to be effective by April 24, 2017 and propose that the Commission comply with that request.” The Commission established a procedural schedule which, *inter alia*, scheduled Supplemental Direct, Rebuttal and Surrebuttal Testimony filing dates, a Hearing on March 15-17, 2017, and Post-Hearing Briefs filed by all parties on March 30, 2017.

2. Concurrent with their filing on October 12, 2016 initiating File No. EE-2017-0113, GPE, KCP&L and GMO filed the Direct Testimony of seven witnesses in support of their application for a limited variance from the Commission's affiliate transaction rule and the good cause for granting same, including the retail customer and public interest benefits that will accrue from the Transaction, as well as the regulatory commitments made by GPE, KCP&L and GMO. Indeed, to provide assurances to the Commission as well as KCP&L and GMO's Missouri customers that the Transaction will not be detrimental to the public interest, GPE, KCP&L and GMO made numerous commitments to hold customers harmless from the Transaction (which were set forth in Appendix C to the Application for Variance). See Application for Limited Variance, p. 6, para. 10 and pp. 7-8, para. 12; Ives Direct, pp. 5-6, 15-16. Also on October 12, 2016, the Joint Applicants and the Staff of the Commission ("Staff") filed their Stipulation and Agreement ("Staff S&A") in File No. EE-2017-0113, requesting that the Commission approve the Staff S&A as a comprehensive settlement of all issues relevant to the application filed therein. Subsequently, on October 26, 2016, the Office of the Public Counsel ("Public Counsel") and the Joint Applicants filed an additional Stipulation and Agreement ("OPC S&A") that incorporates and expands upon the Staff S&A.

3. The Direct Testimony of Natelle Dietrich submitted on behalf of the Staff in File No. EE-2017-0113, on December 9, 2016, supports the Staff S&A, and outlines some of the key provisions of the Staff S&A that mitigate possible detriments:

The Agreement contains financing conditions that remain in effect until such time as the Commission may order otherwise in a general rate case or other relevant proceeding. For instance, there are parameters related to the Corporate Credit Rating, the capital structure of KCP&L and GMO, the cost of capital and the goodwill arising from the transaction. The Agreement includes ratemaking/accounting conditions associated with goodwill, the acquisition premium and transaction and transition costs. There are provisions related to affiliate transactions and the cost allocation manual. There are also conditions

related to maintaining or exceeding customer service and operational levels currently provided to Missouri retail customers. Several principles are included related to the integration process to ensure the availability of adequate resources, including but not limited to personnel, equipment and systems to enable a smooth transition, including a requirement to keep rates lower than they would have been absent the GPE acquisition of Westar. The Agreement includes deadlines for meeting with Staff to apprise it of the status of implementation, organizational changes and consolidation of processes affecting the customer experience. Finally, the Agreement contains a provision whereby GPE agrees to uphold the conditions agreed to by KCP&L and GMO. In Staff's opinion, these conditions and concessions serve to mitigate the possible detriments identified in *Staff's Report*. (Direct Testimony of Natelle Dietrich, pp. 3-4, File No. EE-2017-0113).

Indeed, as noted in Staff's Response to MECCG filed March 2, 2017 in this matter (in which it attaches and files the *Staff Investigation Report* referenced by Ms. Dietrich, as well as Staff's Report on the investigation performed by the Staff of the Kansas Corporation Commission), Staff states: "Staff is satisfied that it has already identified the significant possible detriments and has already presented those to the Commission in its *Investigation Report* filed originally in Case No. EM-2016-0324 and, as stated previously, now filed in this docket. Staff does not intend to undertake any further investigation in this docket but will likely file surrebuttal testimony." (Staff's Response, page 2).

4. In addition, as referenced above, the OPC S&A incorporates by reference the provisions of the Staff S&A and addresses the following additional areas: (1) Employment in the State of Missouri; (2) Independent Third Party Management Audit of Affiliate Transactions and Corporate Allocations; and (3) Corporate Social Responsibility. The specifics of these additional areas are addressed in the Direct Testimony of Geoff Marke, submitted on behalf of Public Counsel, and the Supplemental Direct Testimony of Darrin Ives, submitted on behalf of GPE, KCP&L and GMO, both filed on December 9, 2016, in File No. EE-2017-0113.

5. It is important to note that by its *Order Granting Applications to Intervene* issued on November 17, 2016 in File No. EE-2017-0113, the Commission granted the applications to

intervene of the following entities: MEEG; Laborers' International Union of North America; Consumers Council of Missouri; City of Independence; Sierra Club; International Brotherhood of Electrical Workers, Local Unions No. 412, 1464 and 1613; Brightergy, LLC; Earth Island Institute d/b/a Renew Missouri; and Missouri Industrial Energy Consumers. In addition, on December 21, 2016 the Commission issued its *Order Granting Application to Intervene Out Of Time*, granting the Application to Intervene Out of Time by the Missouri Joint Municipal Electric Utility Commission.

6. Notably, only two of the parties to File No. EE-2017-0113 filed Rebuttal Testimony in accordance with the existing procedural schedule on February 14, 2017, and both witnesses focused their testimony on the proposed Transaction, including the pending Stipulations and Agreements referenced above. "Based upon its testimony filed in this case, as well as the provisions contained in the settlements already executed with Staff and the Office of the Public Counsel, it is apparent that this docket concerns issues that parties may have with the GPE/Westar Transaction." (Rebuttal Testimony of Michael P. Gorman on behalf of the Midwest Energy Consumers' Group, page 3). (See also, Rebuttal Testimony of City of Independence, Missouri Witness Joseph A. Herz, page 2). Both Messrs. Gorman and Herz also assert in their Rebuttal Testimony that the applicable standard is that the acquisition of Westar by GPE is not detrimental to the public interest. (Gorman Rebuttal, p. 3; Herz Rebuttal, p. 5).

7. As directed by the Commission in its Report and Order issued February 22, 2017 in File No. EC-2017-0107, GPE filed its Application for Approval of Transaction on February 23, 2017, designated Commission File No. EM-2017-0226. Concurrent with its Application, GPE filed its motion requesting consolidation (with File No. EE-2017-0113) and motion for expedited treatment requesting that a Commission order on its Application for Approval of

Transaction and Application for Limited Variance go into effect no later than April 24, 2017.¹ In addition, GPE requested that the Commission expeditiously schedule a procedural conference in the consolidated cases to allow the parties to discuss the existing procedural schedule and any necessary modifications thereto. GPE noted that the Commission has continued to express its intentions and commitment to address these issues in an expedited manner. The following day, February 24, 2017, the Commission issued its *Order Directing Notice, Setting Deadlines, and Scheduling Procedural Conference* in File No. EM-2017-0226.

8. On February 27, 2017, the Staff filed its Notice of No Objections in this matter, wherein it “advises the Commission, GPE, and all stakeholders and intervenors, including the Office of the Public Counsel, that it has no objection to any of the three requests detailed in Paragraph 1, above.” Those GPE requests being: (1) waiver of the 60-day notice requirement imposed by Rule 4 CSR 240-4.020(2)(B); (2) consolidation of this case with pending case EE-2017-0113; and (3) expedited treatment, such that if a hearing is held, it is held so that a final order in this matter may be effective not later than April 24, 2017. (Staff’s Notice, page 1).

9. On March 1, 2017, the Commission issued its *Order Granting Motion to Consolidate* the above-referenced File Nos. EM-2017-0226 and EE-2017-0113, with File No. EM-2017-0226 being the lead case. Further, the Commission ordered that the “Commission’s Data Center shall add all parties in File No. EE-2017-0113 to File No. EM-2017-0226.” (Ordered Paragraph 2).²

¹ This is the date by which the KCC is required to issue its order in Docket No. 16-KCPE-593-ACQ under the provisions of K.S.A. 66-131(c).

² Prior to the Commission’s March 1 Order granting consolidation, some of the existing parties to File No. EE-2017-0113 filed applications to intervene in File No. EM-2017-0226 pursuant to the Commission’s February 24th Order Directing Notice, Setting Deadlines, and Scheduling Procedural Conference. Also, two additional entities have filed to intervene: Kansas Electric Power Cooperative, Inc., and the United States Department of Energy and the Federal Executive Agencies. Joint Applicants will be responding to those intervention applications under separate pleadings.

10. In accordance with its February 24th Order, the Commission convened a Procedural Conference on March 2, 2017. During said conference, Regulatory Law Judge Burton announced that the current scheduled hearing dates (as established in File No. EE-2017-0113) of March 15-17 were not workable and the Commission was suspending the previously established procedural schedule. However, the Judge further suggested that the parties consider submitting a proposed procedural schedule containing hearing dates of April 5-7, 2017. Regrettably, some of the intervenors objected to the proposed dates, suggesting that hearings be delayed and, rather, that hearings be scheduled the first week of May, 2017. Judge Burton concluded the conference by requesting that the parties submit two alternative schedules for the Commission's consideration on March 3, 2017.

JOINT APPLICANTS' PROPOSED PROCEDURAL SCHEDULE

11. As explained in GPE's Motion for Expedited Treatment, "Commission action by the desired date (granting the requested relief in these consolidated matters with an effective date no later than April 24, 2017) will permit the Transaction to close in late April 2017 as has been contemplated since late June 2016 enabling the creation of Transaction savings that will ultimately benefit KCP&L and GMO customers through rates that are lower than without the Transaction, and there will be no negative effect on customers or the general public." Indeed, the Staff of the Commission has continued to advocate the approval of the pending Staff S&A and OPC S&A as the appropriate resolution regarding the subject Transaction. "Staff continues to recommend that the Commission approve the Stipulations and Agreements ("S&As") that have been submitted between GPE/KCPL/GMO and Staff and GPE/KCPL/GMO and OPC as those S&As incorporate commitments the Missouri utilities have made relative to the proposed

acquisition which are designed to protect the interests of Missouri ratepayers and the State.” (Staff Report, Case No. EE-2017-0113, January 18, 2017, pages 3 and 71).

12. That said, given the Commission’s stated desire to accommodate early April hearing dates, Joint Applicants respectfully move that the Commission adopt the following proposed procedural schedule to bring this matter to resolution:

<u>Event:</u>	<u>Date:</u>
Additional Intervenor Rebuttal GPE/KCP&L/GMO, Staff and OPC Surrebuttal	March 17
Last Day to Request Discovery	March 27
List of Issues	March 29
Position Statements	March 29
Last Day to File Motion to Compel	March 30
Hearings	April 3
Simultaneous Briefs	April 5-7
	April 17

Other certain procedural and discovery provisions that the Commission incorporated into its previous “Order Adopting Procedural Schedule” should be adopted, save deadlines for discovery requests and motions to compel which are set forth above.

13. It should be noted that in proposing the foregoing procedural schedule, GPE, KCP&L and GMO recognize that the Commission will be unable to issue its order in this consolidated proceeding with an effective date of April 24, 2017. In doing so, GPE, KCP&L and GMO are making a significant concession in an effort to facilitate the process desired by the Commission but it is apparent that other parties will seek to extend the timeline even further. GPE, KCP&L and GMO assert that extending the timeline beyond the procedural schedule proposed herein would be contrary to the indications the Commission has consistently provided that whatever process was followed in Missouri, it would not serve to delay the Transaction.

14. GPE, KCP&L and GMO are authorized to state that the Staff does not object to the above proposed schedule.

WHEREFORE, Joint Applicants respectfully request that the Commission adopt their proposed procedural schedule in this matter as specifically set forth herein, and for such other and further relief as appropriate.

Respectfully submitted,

/s/ Robert J. Hack

Robert J. Hack, MBN 36496
Roger W. Steiner, MBN 39586
Kansas City Power & Light Company
1200 Main Street, 19th Floor
Kansas City, MO 64105
Telephone: (816) 556-2314
Facsimile: (816) 556-2110
E-Mail: Rob.Hack@kcpl.com
E-Mail: Roger.Steiner@kcpl.com

Karl Zobrist, MBN 28325
Joshua Harden, MBN 57941
Dentons US LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
Telephone: (816)460-2400
Facsimile: (816)531-7545
E-Mail: karl.zobrist@dentons.com
Email: 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
Telephone: (573) 636-6758
Facsimile: (573) 636-0383
E-Mail: jfischerpc@aol.com
E-Mail: lldority@sprintmail.com

Attorneys for Great Plains Energy
Incorporated, Kansas City Power & Light
Company and KCP&L Greater Missouri
Operations Company

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 3rd day of March, 2017.

/s/ Robert J. Hack

Robert J. Hack