

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

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

**STATEMENT CONCERNING THE EARLIEST DATE FOR DECISION ON
APPLICATION BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION
IN DOCKET NO. EC16-146
OF KANSAS ELECTRIC POWER COOPERATIVE, INC.**

Pursuant to the “Order Setting Deadline For Filing Statements On FERC Docket No. EC16-14,” issued March 2, 2017,¹ Kansas Electric Power Cooperative, Inc. (“KEPCo”) submits this statement concerning the earliest likely date for a decision by the Federal Energy Regulatory Commission (“FERC”) in Docket No. EC16-146-000 on the application for authorization for Great Plains Energy Inc. (“GPE”) to acquire Westar Energy, Inc. (“Westar”).²

I. BACKGROUND

On July 11, 2016, GPE and Westar filed an application with FERC pursuant to Section 203 of the Federal Power Act, 16 U.S.C. § 824b (2015), and the regulations promulgated thereunder, requesting authorization for GPE to acquire Westar in the transaction currently before this Commission. Section 203(a)(5) of the Federal Power act provides:

The Commission shall, by rule, adopt procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions, under this section. Such rules shall identify classes of transactions, or specify criteria for transactions, that normally meet the standards established in paragraph (4). The Commission shall provide expedited review for such transactions. The Commission shall grant or deny any other application for approval of a transaction not later than 180 days after the application is filed. If the Commission does not act within 180 days, such application shall be deemed

¹ *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.*, Order Setting Deadline For Filing Statements On FERC Docket No. EC16-14, issued March 2, 2017 (“March 2 Order”).

² KEPCo filed a motion to intervene in this proceeding on March 1, 2017, which is pending Commission action.

granted unless the Commission finds, based on good cause, that further consideration is required to determine whether the proposed transaction meets the standards of paragraph (4) and issues an order tolling the time for acting on the application for not more than 180 days, at the end of which additional period the Commission shall grant or deny the application.

On October 7, 2016, the Director, Division of Electric Power Regulation – West, acting pursuant to the authority delegated under 18 C.F.R. § 375.307(a)(1)(v)(2016), issued a letter finding the application deficient and requiring the submission of additional information before the application could be deemed complete. Pursuant to 18 C.F.R. § 33.11(a), the 180 day clock for reaching a decision on a Section 203 application does not begin until there is a completed application. Therefore, the 180 day decision period did not commence until GPE and Westar filed their responses to the October 7, 2016 deficiency letter with FERC, which occurred on November 7, 2016. FERC will have until May 6, 2017, to act on the application unless FERC staff issues another deficiency letter or tolls the time for acting on the application and gives the Commission another 180 days in which to evaluate and act on the application.

FERC normally operates with five commissioners, but requires at least three for a quorum by which it can take formal action. On February 3, 2017, Commissioner Norman Bay resigned, reducing FERC to two remaining commissioners. FERC is therefore unable to render a decision on the GPE/Westar application without the appointment and confirmation of at least one more FERC Commissioner.

II. EXPECTATION OF A DATE FOR FERC DECISION

KEPCo does not believe it is possible to predict with any precision when FERC will acquire a quorum and when it will issue a decision on the pending GPE/Westar application. KEPCo therefore agrees with the statements made by GPE and Westar to the Securities and Exchange Commission and investing public in their most recent annual reports (Form 10-Ks):

GPE:³

FERC Commissioner Norman Bay's resignation, effective February 3, 2017, left FERC with two sitting commissioners and the inability to convene a quorum. Without a quorum, FERC cannot issue certain orders on contested cases, including Great Plains Energy's and Westar's merger application. If a replacement commissioner is not appointed and confirmed in a timely fashion, the closing of the merger could be delayed until such time that a replacement commissioner is approved by the Senate.

Westar:⁴

On July 11, 2016, we and Great Plains filed a joint application with the FERC requesting approval of the merger. Approval of the merger application requires action by the FERC commissioners because it is a contested application. The Federal Power Act requires a quorum of three or more commissioners to act on a contested application. Following the resignation of the FERC Chairman effective February 3, 2017, the FERC commission is comprised only of two commissioners and is therefore unable to act on the application. A new commissioner must be appointed by the President of the United States, with the advice and consent of the United States Senate, before FERC will be able to act on the application. If the FERC commissioners do not issue an order on the application within 180 days after the application was deemed complete because of the lack of a quorum, approval of the application may be deemed granted by operation of law, unless an order is issued extending the time for review. The FERC staff has authority to issue an order extending the period for review of the application. Under these circumstances, we do not believe it is likely that the FERC staff will allow approval of our application to be deemed granted. We are unable to predict when FERC will regain a quorum or how the change in commissioners will impact the review of the application.

³ Great Plains Energy Incorporated Form 10-K, for fiscal year ended December 31, 2016, filed February 23, 2017, at 13.

⁴ Westar Energy, Inc. Form 10-K, for the fiscal year ended December 31, 2016, filed February 22, 2017, at 20.


Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'WR', is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been served electronically this 6th day of March, 2017, to all parties on the Commission's service list in this case.



William G. Riggins