

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

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

**MOTION TO INTERVENE AND ANSWER IN OPPOSITION  
TO GPE MOTION FOR EXPEDITED CONSIDERATION  
OF KANSAS ELECTRIC POWER COOPERATIVE, INC.**

Pursuant to 4 CSR 240-2.075 of this Commission’s Rules of Practice and Procedure and the Order Directing Notice, Setting Deadlines, and Scheduling Procedural Conference, issued on February 24, 2017,<sup>1</sup> the Kansas Electric Power Cooperative, Inc. (“KEPCo”): (1) moves to intervene as a party to this proceeding concerning the Application for Approval of Transaction, and request for related relief, filed by Great Plains Energy Incorporated (“GPE”) on February 23, 2017;<sup>2</sup> and (2) answers GPE’s motion for expedited consideration.<sup>3</sup> GPE seeks approval to acquire 100 percent of the stock of Westar Energy, Inc. (“Westar”) in accordance with the terms of the Agreement and Plan of Merger (“Merger Agreement”) attached to the GPE Application as Appendix A at a total purchase price of \$12.2 billion.

**I. MOTION TO INTERVENE**

**A. Communications and Service on KEPCo**

Service in this proceeding should be made upon, and communications should be directed to, the following:

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<sup>1</sup> *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, Order Directing Notice, Setting Deadlines, and Scheduling Procedural Conference, issued February 24, 2017, at p. 2 (“February 24 Order”)

<sup>2</sup> *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, Application for Approval of Transaction; Motion To Consolidate Proceedings and Schedule Procedural Conference; and Motion for Expedited Treatment, filed February 23, 2017 (“GPE Application”).

<sup>3</sup> GPE Application at P 27.

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## **B. Background**

The background of this proceeding is set forth in detail in the GPE Application and February 24 Order and will not be repeated in its entirety here. In relevant part, on May 29, 2016, GPE entered into the Merger Agreement with Westar to acquire 100% of the stock of Westar for the aggregate value of \$12.2 billion dollars, comprising consideration of approximately \$8.6 billion to be paid by GPE for 100% of the shares of Westar stock, and the assumption of \$3.6 billion of existing Westar debt as of the date the Transaction was announced.

Westar is the largest Kansas electric utility and with its utility subsidiary, Kansas Gas and Electric Company, generates, transports, distributes and sells electric service to the public in Kansas and is subject to the jurisdiction, supervision and control of the KCC under Chapter 66 of the Kansas Statutes Annotated. Under the proposed Transaction Westar will become a direct, wholly owned subsidiary of Great Plains Energy, and subsidiaries of Westar will become indirect, either wholly owned or partially owned, subsidiaries of Great Plains Energy, consistent with Westar's ownership interest in each entity prior to consummation of the transaction.

As explained in detail below, KEPCo's financial well-being is inextricably tied to that of Westar and to a lesser, but critically important extent, to that of KCP&L.

## **C. KEPCo's interest**

KEPCo is a non-profit generation and transmission cooperative with its principal place of business in Topeka, Kansas. KEPCo has 19 rural electric cooperative member systems which

together distribute electric power to more than 300,000 rural Kansans.<sup>4</sup> KEPCo is responsible for supplying the full power and energy requirements at the designated delivery points of its members.

KEPCo's interests in this matter can be summarized as follows:

- KEPCo is a joint owner with KCP&L, KCP&L Greater Missouri Operations Company ("GMO") and the Missouri Joint Municipal Electric Utility Commission of the Iatan 2 Generating Plant, an 850 MW super-critical, coal-fired power plant located in Platte County, Missouri;
- KEPCo is a joint owner with KCP&L and Westar of the 1,166 MW rated Wolf Creek Generating Station ("Wolf Creek");
- KEPCo is party to a long-term partial requirements contract with Westar under which KEPCo purchases from Westar approximately 40% of its wholesale capacity and energy requirements at rates determined pursuant to a cost-based formula rate that reflects Westar's actual cost of providing service to KEPCo; and
- KEPCo is a transmission-dependent utility, purchasing transmission service, principally over the transmission systems of KCP&L and Westar, under the SPP Open Access Transmission Tariff ("OATT").

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<sup>4</sup> KEPCo's 19 distribution cooperative member systems are: Ark Valley Electric Cooperative Association, Inc. (Hutchison, Kansas); Bluestem Electric Cooperative, Inc. (Wamego, Kansas); Brown-Atchison Electric Cooperative Association, Inc. (Horton, Kansas); Butler Rural Electric Cooperative Association, Inc. (El Dorado, Kansas); Caney Valley Electric Cooperative Association, Inc. (Cedar Vale, Kansas); CMS Electric Cooperative, Inc. (Meade, Kansas); DS&O Electric Cooperative, Inc. (Solomon, Kansas); Flint Hills Rural Electric Cooperative Association, Inc. (Council Grove, Kansas); Heartland Rural Electric Cooperative, Inc. (Girard, Kansas); LJEC, Inc. (McLouth, Kansas); Lyon-Coffey Electric Cooperative, Inc. (Burlington, Kansas); Ninnescah Rural Electric Cooperative Association, Inc. (Pratt, Kansas); Prairie Land Electric Cooperative, Inc. (Norton, Kansas); Radiant Electric Cooperative, Inc. (Fredonia, Kansas); Rolling Hills Electric Cooperative, Inc. (Mankato, Kansas); Sedgwick County Electric Cooperative Association, Inc. (Cheney, Kansas); Sumner-Cowley Electric Cooperative Association, Inc. (Wellington, Kansas); Twin Valley Electric Cooperative, Inc. (Altamont, Kansas); and Victory Electric Cooperative Association, Inc. (Dodge City, Kansas).

A financially weakened post-acquisition Westar tied to a financially weakened post-acquisition GPE has the clear potential to increase the cost of partial requirements service KEPCo purchases from Westar and transmission services that KEPCo purchases from SPP over the transmission facilities of KCP&L and Westar. KEPCo, as a joint owner with KCP&L and GMO of the Iatan 2 Generating Plant, as a joint owner with KCP&L and Westar of Wolf Creek, as a utility dependent upon transmission service over the transmission facilities of KCP&L and Westar, and as a long-term partial requirements customer of Westar, has a direct and substantial interest in this proceeding, which interest cannot be represented by any other party hereto. KEPCo's intervention as a party in this proceeding is therefore in the public interest.

**D. Statement of Position on the GPE Application**

KEPCo opposes the approval of the GPE Application unless it is conditioned in a manner that insulates KEPCo and other customers of post-acquisition Westar and KCP&L from the potential adverse consequences of the Transaction. Any conditioned approval of the Transaction, therefore, must include rigorous ring-fencing and other financial integrity conditions that will insulate Westar and KCP&L, and therefore their customers, from the potential adverse financial and other consequences of the extreme leverage assumed by GPE to pay for the Transaction.

**II. ANSWER TO GPE MOTION FOR EXPEDITED CONSIDERATION<sup>5</sup>**

GPE requests, *inter alia*, that the Commission grant the relief requested in the GPE Application (and in consolidated File No. EE-2017-0113) with an effective date no later than April 24, 2017. The stated reason for this request for expedition is to “permit the Transaction to close in late April 2017 as has been contemplated since late June 2016.” KEPCo does not oppose the prompt and efficient review of this Transaction, but the request that the GPE

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<sup>5</sup> The Commission set March 2, 2017 as the date for objections to GPE's motion for expedited treatment. February 24 Order at p. 2, ordering paragraph 4.

Application and consolidated File No. EE-2017-0113 be heard and decided in less than two full months from the filing of the GPE Application is unreasonable and will not permit a full and searching examination of the implications of the proposed Transaction.

GPE has not established good cause for the extraordinary expedited treatment that it seeks. The mere fact that the parties to the Transaction have contemplated that it would close in late April 2017 is irrelevant. As this Commission knows full well, the deadlines established by private parties to these kinds of complicated transactions are often missed, particularly where, as here, the transaction is subject to the approval of two state and one federal regulatory agencies. There are any number of things that could occur to delay the closing. Indeed, one unforeseen development that may do so is the absence of a FERC quorum. As this Commission is no doubt aware, FERC has operated without a quorum since the resignation of former Chairman Norman Bay effective February 3, 2017.<sup>6</sup> As such, that agency cannot deliberate or take substantive action on most matters before it, including the GPE/Westar joint application for approval of the Transaction currently pending before FERC. 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, however, has authority to issue an order extending the period for review of the application. Under these unusual circumstances, it seems highly unlikely that the FERC staff will allow approval of the GPE/Westar application to be deemed granted. It seems much more likely that Staff will extend the time for an additional

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<sup>6</sup> <https://www.ferc.gov/media/headlines/2017/2017-1/01-26-17.pdf>.

180 days beyond the current deadline in May 2017. No one can predict when FERC will regain a quorum or how the change in commissioners will impact the review of the application.

GPE has not identified any prejudice or harm that would befall it or the public if this Commission were to establish a schedule that would permit the Commission, Staff and all parties the time to explore fully the implications of this acquisition on GPE, KCP&L, and GMO.

This Commission's investigation of the GPE Application will no doubt benefit from the extensive record that has already been developed before the KCC which is currently being briefed to that Commission. But, there must be adequate time to develop the evidence required to evaluate the implications of the Transaction in light of this Commission's merger standards and to explore public interest benefits that GPE claims will flow from this acquisition. For example, GPE asserts that it "expects that the Transaction will result in significant savings and economies of scale . . . ." <sup>7</sup> The record before the KCC calls into serious question whether anything approaching the savings projected by GPE can actually be achieved. GPE will no doubt dispute KEPCo's characterization of the record in the KCC case. KEPCo's point, however, is that this Commission needs to see the evidence itself and to make its own decision on this and other critical issues presented by the GPE Application.

### **III. CONCLUSION**

For the foregoing reasons, KEPCo requests that the Commission: (1) grant KEPCo's motion to intervene and permit it to intervene as a party to this proceeding with all of the rights appurtenant to that status; and (2) deny GPE's request for expedited treatment; and (3) establish a procedural schedule consistent with the magnitude and importance of the Transaction.

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<sup>7</sup> GPE Application at P 16.

Respectfully submitted,




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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 1st day of March, 2017, to all parties on the Commission's service list in this case.

  
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William G. Riggins