

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

In the Matter of the Application of Great     )  
Plains Energy Incorporated for Approval     )     File No. EM-2018-0012  
of its Merger with Westar Energy, Inc.     )

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**RENEW MISSOURI'S REPLY BRIEF**

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In the Matter of the Application of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc. )  
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**RENEW MISSOURI’S REPLY BRIEF**

COMES NOW Renew Missouri Advocates d/b/a Renew Missouri (“Renew Missouri”) and presents its reply brief to the Missouri Public Service Commission (“Commission”) as follows:

**Introduction**

1. All parties agree that, before the Commission issues an order approving this merger, the Joint Applicants must demonstrate the merger is not detrimental to the public interest (*See* Commission Rule 4 CSR 240-3.115; Case No. EM-2001-464, *Order Approving Stipulation and Agreement and Closing Case*; Case No. EC-2017-0107, *Report and Order* at p. 22). This is a rigorous standard to meet. “The public detriment standard is higher than the “for good-cause” showing required before the granting of a variance from a Commission rule.” (Case No. EC-2017-0107, *Report and Order*, p. 20). Rather than simply identifying benefits, the Commission must guard against possible detriments.

2. In their initial brief, the Joint Applicants<sup>1</sup> suggest the Commission should approve this merger because it will create a bigger company that has agreed to certain “meaningful commitments and conditions to protect customers against harm and preserve the Commission’s oversight.” (*See* Applicant Br. p. 45). Thus, in addition to identifying potential benefits, Joint Applicants recognize additional conditions are necessary to address possible detriments to the

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<sup>1</sup> Great Plains Energy Incorporated (“Great Plains Energy” or “GPE”), Kansas City Power & Light Company (“KCPL”), KCP&L Greater Missouri Operations Company (“GMO”), and Westar Energy, Inc. (together with its Kansas Gas and Electric Company – “KGE”– subsidiary “Westar”) (all parties collectively referred to herein as “Joint Applicants”).

public interest. Certainly, those other conditions are appropriate. However, the Commission must also address the relevant and critical issues related to clean energy development and resource utilization raised by Renew Missouri. Those issues include: clean energy development and utilization, the retirement of older fossil-fuel generation, efficient use of energy, grid modernization, and customer opportunities for investing in and benefitting from distributed energy resources, including distributed generation, green power, energy efficiency, energy management and energy storage.

3. Rather than making any meaningful commitments regarding clean energy development or resource utilization, the Joint Applicants demur and insist conditions in those areas are unnecessary and should be addressed at another time in different case. Further, Joint Applicant's warn the Commission to ignore Renew Missouri's positions lest it encourage other people to intervene and participate in future cases to pursue their "particular self-interests" (App. Br. p. 25). Each point is refuted below.

**Clean energy development and resource utilization policies are relevant and critical to the public interest**

4. The clean energy and resource utilization policies addressed through the conditions proposed by Renew Missouri are relevant and critical issues to consider when evaluating the public interest. On this contention, Renew Missouri's position aligns with the Missouri General Assembly, the Court of Appeals, recent Commission orders, and the testimony filed by at least two other parties to this case. *See* Section 393.1040 RSMo stating "[i]n addition to the renewable energy objectives set forth ... it is also the policy of this state to encourage electrical corporations to develop and administer energy efficiency initiatives that reduce the annual growth in energy consumption and the need to build additional electric generation capacity." Also, note *In the Matter of Application of KCP&L Greater Missouri Operations Company*, 515 S.W.3d 754, 765

(Mo. App. W.D. 2016) affirming “Missouri’s demonstrated public policy of conserving natural resources and pursuing renewable energy sources” Finally, Renew Missouri emphasizes Case No. EA-2016-0208, *Report and Order* finding customers “have a strong interest in the development of economical renewable energy sources to provide safe, reliable, and affordable service while improving the environment and reducing the amount of carbon dioxide released into the atmosphere”.

5. As the electric utility industry continues to become more dynamic and responsive to customers’ preferences and needs, these clean energy and resource utilization issues impacting the “public interest” will continue to expand post-merger. Conditions in this case can help ensure the Joint Applicants remain prepared to meet these challenges. For example, commercial and industrial customers are increasingly demanding access to renewable generation (Ex. 401, p. 3). On behalf of MECG, Mr. Steve Chriss filed testimony discussing the access to renewable energy programs customers, such as Wal-Mart for which Mr. Chriss is employed, desire (Ex. 401 pp. 6-8). Residential customers, too, demand choice in how their energy is generated. Furthermore, shareholders are also beginning to demand investments in renewable energy (Tr. Vol. 2, p. 111).

6. The Legislature, our state appellate court, Commission, and other parties to this case recognize that clean energy development and resource utilization impact the public interest. Rather than accepting the Joint Applicant’s narrow and self-serving view of the public interest, or their suggestion that these issues relate only to the interest of Renew Missouri, the Commission must examine these issues when making its public interest determination in this case.

**Conditions regarding clean energy development and resource utilization are necessary to protect the public interest**

7. The merger conditions ultimately imposed upon the Joint Applicants will stand out as written and specific obligations among a sea of tasks and initiatives that will be associated with

successfully transitioning the companies under the merger (Ex. 450, p. 11). As explained previously, every witness offering testimony recommended some kind of conditional approval.

8. The Joint Applicants' initial brief presents argument favoring and opposing specific conditions proposed by the various parties. Applicants proffer that the merger will facilitate benefits in the areas related to clean energy development and resource utilization but they made no firm commitments in their testimony or initial brief. In contrast, Mr. Rábago identified areas where a combined company should be able to do better, and tailored conditions that will keep the company on track. He also identified areas where conditions could prevent positive harm by suggesting a moratorium on rate design detrimental to the adoption of distributed energy resources.

9. In expressing opposition to Renew Missouri's conditions, the Joint Applicants repeatedly argue these conditions are unnecessary because the Joint Applicants have a prior history of pursuing renewable energy (App. Br. p. 25). In making these arguments, Joint Applicants continue to misunderstand the purpose of the conditions. These are items that will stand out as written and specific obligations among a sea of tasks and initiatives (and including other conditions in Missouri and in Kansas) that will be associated with successfully transitioning the companies under the merger.

10. Absent additional conditions, the proposed merger may have a detrimental impact on the progress of clean energy development and utilization, the retirement of older fossil-fuel generation, efficient use of energy, grid modernization, and customer opportunities for investing in and benefitting from distributed energy resources, such resources would include distributed generation, green power, energy efficiency, energy management, energy storage, and other technologies and services (Ex. 450). However, with appropriate conditions, the Commission can ensure those areas remain a priority for the companies during the transition period.

11. Mr. Rábago, a former Texas Commissioner as well as former utility executive, testified to the risk of detriment to the public:

My experience is that merger integration is difficult, it is consuming of energy, of time, of resources, I [don't] mean electrical energy, just personal organizational energy. And if - - unless the company, unless the merged entity is committed to doing better, at best they'll maintain the status quo. And there's a significant risk that they'll backslide because just all the stuff that has to be done and all the changes and all the learnings and the hiccups that goes with realizing the benefits of these changed procurement approaches and all these other things that get in the way or at least become the priority.

(Tr. Vol. 3, p. 387). Given the complex undertaking represented by the merger transition and integration, if renewable energy development and resource utilization does not receive a high priority of effort by the merged companies, both the Missouri and Kansas markets could lag behind the rest of the country by several years. Continued progress is therefore essential to ensure that the merger does not result in a detriment to the public interest (Ex. 450, p. 21).

**The Commission must address the clean energy and resource utilization policies addressed through the Renew Missouri's conditions when examining the public interest**

12. In their initial brief, Joint Applicants continue to allege that Renew Missouri is asking the Commission to evaluate this case under a standard other than "not detrimental to the public interest." (App. Br. p. 25). This is not true. Renew Missouri has simply pointed out that the other parties have not addressed the relevant and critical issues related to resource development and utilization and offered conditions to address those areas.

13. The Commission has described its approach to determining the public interest as a balancing process (Case No. EA-2016-0208, Report and Order, p. 19)(citing *In the Matter of Sho-*

*Me Power Electric Cooperative's Conversion from a Chapter 351 Corporation to a Chapter 394 Rural Electric Cooperative*, Case No. EO-93-0259, Report and Order, 1993 WL 719871 (Mo. P.S.C.)). “In making such a determination, the total interests of the public served must be assessed.” (*Id.*).

14. In its balancing process in merger cases, the Commission *must* address relevant and critical issues whether or not those issues may be addressed in subsequent or alternative cases (*State ex rel. AG Processing, Inc., v. Public Service Comm'n*, 120. S.W.3d 732, 736 (Mo banc 2003) holding “[t]he fact that the ... issue could be addressed in a subsequent ratemaking case did not relieve the PSC of the duty of deciding it as a relevant and critical issue when ruling on the proposed merger.”). Thus even if some of these issues can be addressed in other cases they must be considered in this merger case too.

15. In this case, the Commission should adopt and order the conditions included in the following bullet pointed items:

- A firm date-certain commitment to close the Westar coal- and gas-fired power plants slated for early retirement, and an additional commitment to review the Applicants’ existing generation fleet for more retirement opportunities.
- A firm date-certain commitment to construct additional renewable energy generation.
- A commitment to initiate a comprehensive, transparent, parallel integrated resource planning process for the combined companies, in both Missouri and Kansas, and to make provisions for stakeholders to submit a reasonable number of alternative development scenarios for evaluation in the planning effort. A comprehensive integrated resource planning process could demonstrate that increased deployment of renewable energy generation, beyond the Applicants’ current commitments, could further support the early retirement of coal- and gas-fired generators and its associated avoided costs.
- A commitment to expand energy efficiency program efforts and customer energy efficiency education, and to develop a plan to cost-effectively achieve efficiency improvement across the combined service territories.
- A commitment to offer green power programs to customers in all classes.



- A commitment to develop pilot projects for shared or community generation projects.
- A commitment to develop and implement a demonstration program for grid connected energy storage.
- A commitment to develop and seek regulatory approvals for implementation of a grid modernization plan, and to provide funding for a Value of Solar study to be managed by the Commission staff.
- A commitment to refrain from implementing any new tariffs or rate designs adversely impacting development and adoption of distributed energy resources, including distributed generation for the next 5 years following approval of the Application.

16. Because of the complexity of integration and uncertainty of the benefits to be realized, attaching these conditions balances the possible detriments against the possible benefits that may result from the merger and establishes a reasonable foundation for an order finding that the proposed merger satisfies the Missouri Merger Standard.

### **Conclusion**

17. To gain Commission approval, the Joint Applicants must demonstrate there will be no detriment to the public interest. Despite presenting many other conditions to protect various issues impacting the public interest, the Joint Applicants have not offered any firm commitments regarding clean energy development and resource utilization for the Commission to consider. Therefore, in order to balance the possible detriments against the possible benefits that may result from the merger in these critical areas, the Commission should attach the conditions identified by Renew Missouri to its final order.

WHEREFORE, Renew Missouri respectfully files its *Reply Brief*.

Respectfully Submitted,  
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 13<sup>th</sup> day of April 2018:

**/s/ Tim Opitz**

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