BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

MECG RESPONSE TO JOINT APPLICANTS'
PROPOSED PROCEDURAL SCHEDULE

COMES NOW the Midwest Energy Consumer's Group ("MECG"), and for its Response to the Joint Applicants' Proposed Procedural Schedule, respectfully states as follows:

1. On March 3, 2017, the Joint Applicants submitted their proposed procedural schedule in this case ("Joint Applicants' Schedule"). As this pleading indicates, that schedule is incredibly expeditious and will effectively limit the ability of stakeholders, including the Commission, to meaningfully participate in this process. As reflected in this pleading, the Commission should reject the Joint Applicants' unworkable schedule in favor of the still expedited procedural schedule requested by the other stakeholders in this proceeding (the "Alternative Schedule").

2. In its review of the proposed procedural schedules, the Commission should compare against the schedules of other recent merger reviews. Specifically, the reviews conducted in: (1) the Algonquin merger with Empire (EM-2016-0213); (2) the Great Plains merger with Aquila (EM-2007-0374); and (3) the Kansas review of the Great Plains merger with Westar (16-KCPE-593-ACQ) are all informative. These schedules, which provided for meaningful input show two things. First, the Joint Applicants' schedule is expedited to the point of precluding any effective participation by other parties. Second, the Alternative Schedule is already incredibly expedited in an effort to accommodate the Joint Applicants' concerns.

	Jt. Applicants' Schedule	Alternative Schedule	Empire Schedule	Aquila Schedule	Kansas Schedule
Filing Date	Day 1	Day 1	Day 1	Day 1	Day 1
Rebuttal	Day 22	Day 39	Day 126	Day 191	Day 171
Hearings	Day 41	Day 68	Day 166	Day 243	Day 216

As can be seen, the Joint Applicants' schedule reduces the time for other parties to file rebuttal testimony by 83%, 88% and 87% as compared to the Empire, Aquila and Kansas schedules respectively. Clearly, by only allowing for 22 days for parties to prepare and file rebuttal testimony, the Joint Applicants' have continued to further their goal of eliminating all meaningful review in Missouri.

The expedited nature of the Joint Applicants' schedule is further reflected in the fact that it only allows 9 days for the Commission to review testimony prior to starting hearings. This period was 24, 21, 21 days in the Empire, Aquila and Kansas schedules respectively. As such, the Joint Applicants' schedule not only inhibits the other stakeholders from providing a meaningful review, it also precludes the Commission from properly preparing and participating in hearings. Of course, this further inhibits any meaningful review in Missouri.

3. Joint Applicants sole rationale for its proposed schedule is a desire to meet its arbitrary closing date. As an initial matter, it should be pointed out that any proposed closing date is completely arbitrary at this time. The proposed April date is <u>not</u> contained in the Merger Agreement.[1] Rather, this is merely the statutory date by which the Kansas Commission is required to complete its 275 day merger review and issue an order. Thus, while the Joint Applicants are willing to accommodate the entire 275 day statutory review for the Kansas Commission, they seek to reduce Missouri's review to only about 2 months. MECG suggests

[1] Indeed, as reflected in the attached provisions from the Merger Agreement, there is no definitive closing date stated in the Merger Agreement. Rather, the closing is simply to be done 3 days after all approvals have been received. Moreover, while the Merger Agreement provides for a May 31, 2017 termination date, that date may be extended for six months by either party. As such, the May 31, 2017 date is a very soft date. Under any circumstances, the Alternative Schedule will not threaten the closing of this transaction.

that the Joint Applicants should show a similar amount of deference and respect for Missouri regulation as it obviously does for Kansas regulation.

4. While the sole driver for the Joint Applicants' proposed schedule is its desire to meet an arbitrary closing date, the Commission should realize that the Joint Applicants' inability to meet this date is entirely the result of the Joint Applicants' well documented efforts to prevent any Missouri review of the transaction. The Joint Applicants' repeatedly stonewalled all efforts[2] by Missouri stakeholders to review this transaction despite the obvious clarity of the Joint Applicants' previous settlement commitments. In fact, this docket only came about after the Joint Applicants required MECG to file a Complaint and the Commission to issue an order requiring the Joint Applicants to file this case.[3] Had the Joint Applicants immediately abided by their previous commitments and filed for Commission approval at the same time that it filed for approval in Kansas (June 28, 2016), then this proceeding would likely be completed. Instead, the filing of the Missouri case was delayed eight months while the Joint Applicants engaged in their campaign of delay and obfuscation. Having lost on its gamble to prevent and / or delay Missouri review, the Joint Applicants now propose that other stakeholders should bear the entire burden of this misguided gamble. Clearly, the Joint Applicants gambled and lost. Other stakeholders, including the Commission, should not be forced to suffer for the Joint Applicants' misguided campaign to deny Missouri jurisdiction over this transaction.

5. In order to help make its extremely expedited procedural schedule more palatable, the Joint Applicants have suggested that the parties have had their direct testimony since October

[2] As mentioned, *infra*, the Joint Applicants initially took the unprecedented step of opposing the application to intervene of all parties in Case No. EE-2017-0113. The Joint Applicants then attempted to hinder any meaningful review by repeatedly claiming that Case No. EE-2017-0113, and the testimony filed in support of that application, was limited exclusively to the affiliate transaction waiver. Now, the Joint Applicants claim, after other parties relied on their representations, that the testimony did support a merger review. Furthermore, the Joint Applicants have now opposed the applications of additional parties in the merger case.

[3] See Case No. EC-2017-0107.

12, 2016. Joint Applicants make this suggestion by pointing to their testimony in the affiliate transaction waiver docket (EE-2017-0113). The Joint Applicants suggestion is misplaced for two reasons. ***First***, other parties' rebuttal testimony is not limited solely to the direct testimony provided by the Joint Applicants. Rather other parties' opportunity for rebuttal testimony is more broad and is limited solely by the "not detrimental to the public interest standard." For this reason, the date on which the Joint Applicants filed their direct testimony is largely irrelevant. The real consideration is that parties be provided sufficient time to conduct discovery and develop their positions in light of the "not detrimental" merger standard.

Second, in its effort to limit any meaningful review of the Westar acquisition, the Joint Applicants repeatedly informed the Commission and other stakeholders that EE-2017-0113 was not a merger review. Rather, the Joint Applicants insisted that it was narrowly tailored as simply a request for a variance from the affiliate transactions rule.

> [T]his is not a merger approval proceeding relating to electrical corporations. There is no request for the Commission to take action under Section 393.190 with regard to a merger or an acquisition. Rather, this proceeding concerns the Affiliate Transactions Rule, 4 CSR 240-20.015 ("Rule"), and the conditions that the Joint Applicants and Staff agreed to as part of the Application's request for a variance under the Rule.[4]

Based upon this assertion, numerous parties obviously refrained from conducting discovery and filing rebuttal testimony. Now, when it is convenient, the Joint Applicants back away from their previous statements and inform the various stakeholders that they should have been preparing to file rebuttal testimony in that case because it was actually a merger review. Such an approach epitomizes the Joint Applicants approach to this entire review procedure – it's all a shell game designed to confuse other parties as to the purpose of the various dockets, the applicable standard to be applied and the appropriate time to file testimony. Furthermore, such an approach

[4] See, Response of Joint Applicants to Objection of Midwest Energy Consumers' Group, Case No. EE-2017-0113, filed October 28, 2016.

exemplifies the fact that the Joint Applicants, unlike other Missouri utilities, take a dim view of the other stakeholders to the regulatory process. These stakeholders are simply a necessary evil that must be conquered towards the overarching goal of maximizing shareholder return.

6. Finally, the Commission should be aware that the adoption of the Joint Applicants' proposed schedule may not allow the merger to close any earlier. As such, that schedule would only serve the purpose of limiting any meaningful merger review. Specifically, as has been documented in other pleadings, the Great Plains / Westar merger must be approved by the Federal Energy Regulatory Commission. On February 3, 2017, one of the FERC commissioners resigned and the Commission now lacks the necessary quorum to act on GPE's application to acquire Westar. While this situation may change at any time, any future commissioner must be appointed and then confirmed. Given such process, the establishment of a quorum will not occur immediately.

In the meantime, it is possible, absent some further action under a delegation of authority to the FERC Staff, that the GPE application may be approved simply by operation of law. That said, the earliest that the FERC approval could occur under such a scenario would be May 6, 2017. Indeed, the uncertainty at FERC, and the fact that the lack of a quorum could delay its pending merger application, has been specifically recognized by both GPE and Westar in recent SEC filings.

> GPE: 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.[5]

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

> Westar: 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***.[6]

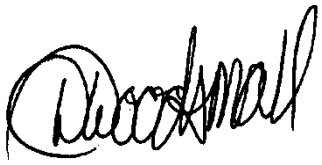
Given that the proposed closing date is the only reason for the Joint Applicants' unnecessarily expedited procedural schedule, and recognizing that such a closing will likely be postponed due to the Joint Applicants' failure to obtain FERC approval of the transaction, it is unnecessary to adopt the Joint Applicants' unworkable schedule.

7. Ultimately, the Commission should recognize that the stakeholders to this proceeding have not attempted to delay this proceeding. Instead, these parties have taken numerous steps of accommodating an expedited proceeding. Specifically, the Alternative Schedule seeks to reduce the 130-190 days typically provided for the preparation and filing of rebuttal testimony to a mere 39 days. Anything shorter would hinder these parties' ability to prepare such testimony, limit the Commission's review and subject Missouri ratepayers to the risk of detriments associated with this transaction.

[6] Westar Energy, Inc. Form 10-K, for the fiscal year ended December 31, 2016, filed February 22, 2017, at page 20 (emphasis added).

WHEREFORE, MECG respectfully requests that the Commission reject the Joint Applicants' proposed procedural schedule and, instead, adopt the Alternative Schedule submitted on March 6, 2017.

Respectfully submitted,



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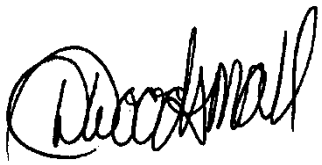
ATTORNEY FOR THE MIDWEST ENERGY CONSUMERS' GROUP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



David L. Woodsmall

Dated: March 7, 2017

Execution Version

AGREEMENT AND PLAN OF MERGER

by and among

WESTAR ENERGY, INC.,

GREAT PLAINS ENERGY INCORPORATED

and

MERGER SUB, as defined herein

Dated as of May 29, 2016

SECTION 1.04 The Closing. Unless this Agreement has been terminated in accordance with Section 8.01, the consummation of the Merger (the "Closing") shall take place at the offices of Baker Botts L.L.P., 30 Rockefeller Plaza, New York, New York 10112 at 10:00 a.m. New York City time on a date to be mutually agreed to by the Parties, which date shall be no later than the third Business Day after the satisfaction or waiver of the conditions to the Closing set forth in Article VII (except for those conditions to the Closing that by their terms are to be satisfied at the Closing but subject to the satisfaction or waiver of such conditions), unless another time, date or place is mutually agreed to in writing by the Parties. The date on which the Closing occurs is referred to herein as the "Closing Date."

SECTION 1.05 Effects of the Merger. The Merger shall have the effects specified herein and in the applicable provisions of the KGCC, including Article 67 thereof. Without limiting the foregoing, from and after the Effective Time, the Surviving Corporation shall possess all of the properties, rights, privileges, powers and franchises of the Company and Merger Sub, and all of the claims, obligations, liabilities, debts and duties of the Company and Merger Sub shall become the claims, obligations, liabilities, debts and duties of the Surviving Corporation.

SECTION 1.06 Organizational Documents. As of the Effective Time, the articles of incorporation of the Surviving Corporation shall be amended and restated to be the same as the articles of incorporation of Merger Sub, as in effect immediately prior to the Effective Time, until thereafter amended as provided therein and in accordance with applicable Law, except that the name of the Surviving Corporation shall be "Westar Energy, Inc.". As of the Effective Time, the bylaws of the Surviving Corporation shall be amended and restated to be the same as the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, until thereafter amended as provided therein and in accordance with applicable Law, except that the name of the Surviving Corporation shall be "Westar Energy, Inc.".

SECTION 1.07 Surviving Corporation Directors and Officers. As of the Effective Time, (i) the directors of Merger Sub as of immediately prior to the Effective Time shall be the directors of the Surviving Corporation and (ii) the officers of the Company as of immediately prior to the Effective Time shall be the officers of the Surviving Corporation, in each case until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the articles of incorporation and bylaws of the Surviving Corporation.

SECTION 1.08 Plan of Merger. This Article I and Article II and, solely to the extent necessary under the KGCC, the other provisions of this Agreement shall constitute a "plan of merger" for purposes of the KGCC.

ARTICLE II

EFFECT ON CAPITAL STOCK; EXCHANGE OF CERTIFICATES AND BOOK-ENTRY SHARES

SECTION 2.01 Effect of Merger on Capital Stock.

ARTICLE VIII

TERMINATION, AMENDMENT AND WAIVER

SECTION 8.01 Termination Rights.

(a) Termination by Mutual Consent. The Company and Parent shall have the right to terminate this Agreement at any time prior to the Effective Time, whether before or after receipt of the Company Shareholder Approval or Parent Shareholder Approval, by mutual written consent.

(b) Termination by Either the Company or Parent. Each of the Company and Parent shall have the right to terminate this Agreement, at any time prior to the Effective Time, whether before or after the receipt of the Company Shareholder Approval or Parent Shareholder Approval, if:

(i) the Closing shall not have occurred by 5:00 p.m. New York City time on May 31, 2017 (the "End Date"); provided that if, prior to the End Date, all of the conditions to the Closing set forth in Article VII have been satisfied or waived, as applicable, or shall then be capable of being satisfied (except for any conditions set forth in Section 7.01(b), Section 7.01(c), Section 7.03(e) and those conditions that by their nature are to be satisfied at the Closing), either the Company or Parent may, prior to 5:00 p.m. New York City time on the End Date, extend the End Date to a date that is six (6) months after the End Date (and if so extended, such later date being the End Date); provided, further, that neither the Company nor Parent may terminate this Agreement or extend the End Date pursuant to this Section 8.01(b)(i) if it (or, in the case of Parent, Merger Sub) is in breach of any of its covenants or agreements and such breach has caused or resulted in either (1) the failure to satisfy the conditions to its obligations to consummate the Merger set forth in Article VII prior to the End Date or (2) the failure of the Closing to have occurred prior to the End Date;

(ii) the condition set forth in Section 7.01(c) is not satisfied and the Legal Restraint giving rise to such nonsatisfaction has become final and nonappealable; provided, however, that the right to terminate this Agreement under this Section 8.01(b)(ii) shall not be available to any Party if such failure to satisfy the condition set forth in Section 7.01(c) is the result of a failure of such Party to comply with its obligations pursuant to Section 6.03;

(iii) the Company Shareholder Approval is not obtained at the Company Shareholders Meeting duly convened (unless such Company Shareholders Meeting has been adjourned, in which case at the final adjournment thereof); or

(iv) the Parent Shareholder Approval is not obtained at the Parent Shareholders Meeting duly convened (unless such Parent Shareholders Meeting has been adjourned, in which case at the final adjournment thereof).