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 Merger with Westar Energy, Inc.	))))	File No. EM-2018-0012

REPLY BRIEF OF APPLICANTS GREAT PLAINS ENERGY INCORPORATED, KANSAS CITY POWER & LIGHT COMPANY, KCP&L GREATER MISSOURI OPERATIONS COMPANY AND WESTAR ENERGY, INC.

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Great Plains Energy Incorporated ("Great Plains Energy" or "GPE"), Kansas City Power & Light Company ("KCP&L"), KCP&L Greater Missouri Operations Company ("GMO"), and Westar Energy, Inc. ("Westar[1]") (collectively referred to as "Applicants") state the following as their Reply Brief:

Even a cursory review of the initial briefs shows that there is no good reason for the Commission not to approve the July 9, 2017 Amended and Restated Agreement and Plan of Merger ("Amended Merger Agreement" or "Merger"). This Amended Merger Agreement replaced the 2016 agreement between Great Plains Energy and Westar whereby GPE would acquire 100% of Westar's stock, pay an acquisition premium, incur significant debt, and become the parent company of Westar ("Initial Transaction"). See Ex. 3, Bryant Direct at 4-5.

Given the extensive conditions and commitments agreed to by Applicants in the Stipulation and Agreement filed on January 12, 2018 ("January Stipulation)[2], and the Stipulation and Agreement filed on March 8, 2018 ("March Stipulation")[3] (collectively, the January Stipulation and the March Stipulation are referred to herein as the "Stipulations"), the Commission should approve the Merger and the Stipulations as soon as practicable. Applicants would prefer that, in any event, the Commission issue its approval with an effective date no later than May 29, 2018[4], so that the Merger can be closed in a timely fashion on June 1, 2018, avoiding the additional

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[1] Kansas Gas and Electric Company ("KGE") is a wholly-owned subsidiary of Westar. For purposes of this brief, the term "Westar" includes KGE.

[2] The Signatories to the January Stipulation were Applicants, Staff, Brightergy LLC ("Brightergy") and Missouri Joint Municipal Electric Utility Commission ("MJMEUC").

[3] The Signatories to the March Stipulation were Applicants, the Office of the Public Counsel ("OPC"), Midwest Energy Consumers Group ("MECG"), Staff, Brightergy and MJMEUC. Pursuant to paragraph 8 of the March Stipulation, the Signatories to the March Stipulation agreed to the terms of the January Stipulation except where the March Stipulation modified the January Stipulation.

[4] Applicants have also requested that the order in the Merger proceeding before the Kansas Corporation Commission be issued in time to permit closing on June 1, 2018.

administrative and accounting complexity of two partial-month "stub" periods associated with a closing on any day other than the first of the month.

INTRODUCTION

Not one party to this proceeding opposes the Merger.

Of the four parties who did not join Applicants' request that the Merger be approved under the terms of the Stipulations, two do not oppose the Merger. The remaining two parties simply request more conditions that either benefit a private commercial interest or advance a narrow policy agenda that aligns with their sole organizational mission.

The absence of substantive opposition to the Merger demonstrates that Applicants, Staff, OPC, MECG, MJMEUC, and Brightergy worked diligently to craft a comprehensive set of conditions and commitments that ensures the Merger is not detrimental to the public interest.[5] In a recently filed pleading, the City of Independence has advised that based upon its discussions with Applicants, it supports Commission approval of the Merger pursuant to the Stipulations. See Statement of the City of Independence at 2 (Apr. 10, 2018).

Neither the Missouri Department of Economic Development's Division of Energy ("DE") nor the Federal Executive Agencies oppose Commission approval of the Merger under the terms of the Stipulations. See Division of Energy Initial Brief at 1, 4; Federal Executive Agencies Initial Brief at 2.

Two parties recommend that the Commission approve the Merger if additional conditions are imposed. Renew Missouri proposed nine additional conditions, which it characterized as "not so absurd as to be worthy of dismissal."[6] This statement by Renew Missouri is tantamount to an

[5] The non-Applicant parties who filed initial briefs confirmed their support for the Merger under the terms of the two Stipulations. See Staff Initial Brief at 3, 29-30; OPC Initial Brief at 2, 8; MECG Initial Brief at 1; MJMEUC Initial Brief at 3-4.
[6] Renew Missouri Brief, ¶ 17 at 6.

admission that its conditions could be characterized as "absurd" and by itself should be enough to end consideration of its proposed conditions. Regardless, Renew Missouri's proposed conditions are not necessary given Applicants' extensive history of pursuing renewable and energy efficiency projects, and are not required to meet the "not detrimental to the public interest" test that the Commission must apply in this proceeding. See Ex. 5, Crawford Surrebuttal at 3-11 (KCP&L and GMO); 12-17 (Westar); Tr. 85-86 (T. Bassham), 97-100 (M. Ruelle), 136-39 (J. Reed).

Indeed, when pressed by Chairman Hall, Renew Missouri's witness stated "I generally agree" that the Merger "is a good thing" and that "even without having locked in these possibilities [the nine additional conditions], the Merger does present the likelihood that all of these will occur, making it good for Missouri." See Tr. 386.

The reasons why Renew Missouri's conditions should not be mandated by the Commission are set forth in detail in Section II(B), below.

Kansas Electric Power Cooperative, Inc. ("KEPCo") was the other party to propose additional conditions, yet it offered no witnesses and no evidence to support its argument. Applicants respond to the KEPCo proposal in Section II(C).

ARGUMENT

I. SHOULD THE COMMISSION FIND THAT GPE'S MERGER WITH WESTAR IS NOT DETRIMENTAL TO THE PUBLIC INTEREST AND APPROVE THE MERGER?

Applicants' Position: Yes. Applicants have met their burden of establishing that there is no detriment to the public interest if the Commission approves the Merger, subject to the conditions and commitments identified in Section II. The evidence supports a finding by the Commission that the benefits of the Merger outweigh any potential detriments, particularly given conditions and commitments identified in Section II which mitigate any potential risks that the Merger would diminish the provision of safe and adequate service or would tend to make retail rates paid by Missouri customers less just or less reasonable.

A. The Legal Standard.

There should be no confusion regarding the legal standard that governs the Commission's decision in this case. For over 80 years, the appellate courts of Missouri have stated that the "Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest." State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980), *citing* State ex rel. City of St. Louis v. PSC, 73 S.W.2d 393, 400 (Mo. en banc 1934). See State ex rel. Ag. Processing, Inc. v. PSC, 120 S.W.3d 732, 736 (Mo. en banc 2003).

Over the past 20 years, the Commission has interpreted these cases "to require a direct and present public detriment" that would show why the transaction should be disapproved. In re Kansas City Power & Light Co., Report & Order at 11, No. EM-2001-464 (2001). It has stated that "unless there is compelling evidence on the record showing that a public detriment is likely to occur," permission to allow a proposed merger or reorganization should not be denied. Id. at 10.

In more recent years, the Commission has determined that a cost-benefit analysis must be conducted "in which all of the benefits and detriments in evidence are considered." In re Union Elec. Co., Report & Order at 78, No. EO-2004-0108 (2005). It has found that the "presence of detriments … is not conclusive to the Commission's ultimate decision because detriments can be offset by attendant benefits." Id. The Commission reiterated those principles when it approved GPE's acquisition of Aquila ten years ago. In re Great Plains Energy Inc., Report & Order at 228-32, No. EM-2007-0374 (2008). Among the factors that the Commission considers when evaluating a transaction such as this Merger are the applicants' history of service difficulties, their general financial health, an ability to carry out the proposed transaction, and their ability to operate their assets safely and efficiently. See In re Kansas City Power & Light Co., Report & Order at 11, No. EM-2001-464, Report & Order (2001). Other considerations would be whether the

transaction tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable. In re Union Electric Co., Report & Order at 79, No. EO-2004-0108 (2005). The Commission has observed that even if a proposed transaction "is not the least cost alternative or will cause rates to increase is not detrimental to the public interest where the transaction will confer a benefit of equal or greater value or remedy a deficiency that threatens the safety or adequacy of the service." Id.

In this proceeding, neither Renew Missouri nor KEPCo presented evidence proving that the Merger as conditioned by the Stipulations would cause any detriment to the public interest much less that any alleged detriments outweigh the benefits. They simply asked for more conditions or commitments to satisfy their particular interests.

In an effort to obscure the legal standard which requires benefits to outweigh detriments, Renew Missouri erroneously states on the first page of its brief: "To gain Commission approval, the Joint Applicants must demonstrate there will be no detriment to the public interest." See Renew Missouri Brief, ¶ 2. This clear misstatement of Missouri law, for which no authority is cited, appears to be based on a misreading of Commission and Missouri appellate cases that did not involve approval of a merger or an acquisition under Section 393.190, but rather applications for a certificate of convenience and necessity ("CCN") under Section 393.170.[7]

The legal discussion in most of Renew Missouri's Brief, as well as the rebuttal testimony of its witness, relies upon applications for a CCN. See Renew Missouri Brief at ¶¶ 7-10 at pp. 3-4; Ex. 450, Rábago Rebuttal at 7, 13.[8] In those cases the question was not whether the transaction

[7] All statutory citations are to the Missouri Revised Statutes (2016), as amended.
[8] Renew Missouri's witness also relies on a Maryland decision where Section 6-105(g)(3) of that state's public utility law requires that a merger be "consistent with the public interest, convenience and necessity, including benefits and no harm to ratepayers." See In re Merger of Exelon Corp. and Pepco Holdings, Inc., Order No. 86990 at 29, Case No. 9361 (Md. P.S.C. 2015) (emphasis added). The Maryland Commission must consider a wide range of at least 12

is not detrimental to the public interest, but whether a project or a utility service was "necessary or convenient for the public service." See § 393.170.3. The factors typically applied by the Commission in determining whether a CCN should be granted relate to issues not under consideration here, such as the need for the proposed service, whether the applicant is qualified to provide the service, and whether the proposal is economically feasible. In re Tartan Energy Co., Report & Order, 1994 WL 762882 at *6-*13, No. GA-94-127 (1994). See State ex rel. Intercon Gas, Inc. v. PSC, 848 S.W.2d 593, 597 (Mo. App. W.D. 1993) ("Intercon Gas"). The Commission is occasionally required in CCN cases to evaluate competing proposals by public and non-public utilities and, when appropriate, order that improvements be made. Intercon Gas, 848 S.W.2d at 597, 599; State ex rel. Gulf Transport Co. v. PSC, 658 S.W.2nd 448, 456 (Mo. App. W.D. 1983).

No such analysis is required here. Rather, the task of the Commission is to weigh all the benefits and the potential detriments of the Merger. Only if "the Applicants fail in their burden to demonstrate that the transaction is not detrimental to the public interest, and detriment is determined by performing a balancing test," can the merger or acquisition be denied. In re Great Plains Energy Inc., Report & Order at 232, *aff'd*, State ex rel. Praxair, Inc. v. PSC, 344 S.W.3d 178 (Mo. en banc 2011).

B. The Merger Will Produce Significant Benefits that Outweigh Any Potential Detriments.

In a lengthy analysis of whether the Merger is not detrimental to the public interest, Staff cited the lack of an acquisition premium, favorable reviews by Standard & Poor's and Moody's Investor Services, and "affirmative financial benefits" in the form of up-front bill credits of $75

discrete issues, including "jurisdictional and choice of law issues" when analyzing a merger. Id. at 29-30, citing § 6-105(g)(2), Md. Pub. Util. Art. This is far different than Missouri's test where the "Commission may not withhold its approval … unless it can be shown that such disposition is detrimental to the public interest." State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980).

million ($29 million to Missouri retail electric customers) that will be realized in the first five years. See Staff Initial Brief at 8-11. Staff concluded that "in light of the negotiated conditions" contained in the Stipulations, the Merger "will confer significant affirmative monetary and other benefits" upon customers and the general public that "are not potential and theoretical, but are certain." Id. at 49.

OPC agrees, noting that "OPC joined the March 8 Stipulation" and "supports Commission approval of the Merger as conditioned" by the January and March Stipulations. See Public Counsel Brief at 2. Accord MECG Initial Brief at 1.

MJMEUC similarly concurs, stating that it "supports this merger because it provides reliability and cost containment which is not only 'not detrimental to the public interest,' but actually benefits and furthers the interests" of its members, as well as "all Missourians." See MJMEUC Initial Brief at 3.

These sentiments are consistent with Applicants' analysis which shows that the Merger will generate total company net cost savings of $28 million in 2018, which will grow to a projected $160 million per year from 2022 and beyond. See Ex. 4, Busser Direct at 3. Merger savings of $555 million (net of costs to achieve) will be realized in the first five years of the Merger for 2018 through 2022. Id. at 3, 10.

II. SHOULD THE COMMISSION CONDITION ITS APPROVAL OF GPE'S MERGER WITH WESTAR AND IF SO, HOW?

Applicants' Position: Yes. The Commission should approve the Merger subject to the terms, conditions and commitments set forth in the January Stipulation between the Applicants, Staff, and other parties, and in the March Stipulation between the Applicants, Public Counsel, MECG, as well as Staff and other parties.

A. The Stipulations.

After an extensive review of the key commitments, conditions, and terms agreed to in the January Stipulation, as modified and supplemented by the March Stipulation, "Staff has

determined that the transaction will not be detrimental to the public interest in Missouri and should therefore be approved." See Staff Initial Brief at 31. In a detailed analysis of the Stipulations, Staff found that there are no likely financial detriments, no likely operational or resource detriments, no service quality detriments, and no affiliate transaction detriments. Id. at 11-28.

Staff concluded that it "has not discerned any detriments in the proposed merger" and "recommends that the Commission approve the merger, subject to the conditions set out in the two [January and March] Stipulations and Agreement." Id. at 29-30. MJMEUC, MECG, and City of Independence concur. See MJMEUC Initial Brief at 3-4; MECG Initial Brief at 1-2; Statement of the City of Independence at 2.

OPC agrees as well, and declares that it "endorses the Commission's adoption of the terms of both" the January and March Stipulations "without reservation." See OPC Initial Brief at 5. It emphasizes that it "supports … these Stipulations and is not recommending additional conditions." Id.

Later, on page 8 of its initial brief, OPC "suggests" that the Commission "review any potential effects of the KCC Settlement prior to approval of the Stipulations to assure nothing in the KCC agreement is potentially detrimental to Missouri customers", apparently relying on responses by its witness Dr. Marke to questions from KEPCo's counsel regarding whether the Commission should wait to make its decision until after the KCC issues its order. See OPC Initial Brief at 6. But Dr. Marke testified that he reviewed the KCC settlement agreement before the evidentiary hearing and had identified no negative impacts on Missouri customers. Tr. 313.

Staff Director Natelle Dietrich testified, any concerns by any party regarding the decision of the KCC could be raised "in a future case, perhaps in the pending [KCP&L and GMO] rate cases." See Tr. 271-72. Ms. Dietrich noted that "Staff could bring a complaint to the Commission

should there be a need" to do so. See Tr. 292. Ms. Dietrich examined the Settlement Agreement submitted to the KCC, found nothing that would be a detriment to Missouri ratepayers if approved in Kansas, and concluded that the KCC settlement "alleviate[d] any potential concerns" of Staff so that there was no reason for this Commission to await a decision by the Kansas Commission. See Tr. 272-73. She concluded that the Kansas Settlement Agreement did not shift risks to Missouri ratepayers that would cause the Merger to be detrimental to the public interest, and that the Merger should be approved consistent with the January and March Stipulations. See Tr. 300.

Therefore, given OPC's full support of the Stipulations, Applicants believe that all parties to the March Stipulation, including OPC, are bound by its concluding paragraph: "The Signatories further recommend that the Commission approve this Stipulation and Agreement … as soon as reasonably practicable but in any event with an effective date no later than June 5, 2018." See March Stipulation at 10 (emphasis added).

B. The Nine Conditions Proposed by Renew Missouri Should not be Imposed by the Commission in this Merger Proceeding.

Although Renew Missouri acknowledges that the "not detrimental to the public interest" standard utilized by the Commission in merger proceedings involves a "balancing" test (Renew Missouri Brief, ¶¶ 14-15 at 5), it never performs such a balancing test in either its brief or its testimony. Renew Missouri fails to discuss the many benefits customers will enjoy as a direct result of the Merger, including up-front bill credits, Merger savings reflected in rates in the future, and the provision of electric services from a financially stronger, combined enterprise. As a result, Renew Missouri has not attempted to prove that any potential detriments outweigh the benefits of the Merger, as required by the "not detrimental to the public interest" standard. Instead, it only focuses on the alleged potential for the Merger to distract management from Renew Missouri's specific and special interests.

It is clear from the record that the benefits of the Merger far outweigh any potential detriments. There is no dispute that the Merger will create a larger, stronger electric utility that is better positioned to meet its customers' needs, has a positive effect on the environment, and achieves competitive financial returns. See Ex. 2, Bassham Direct at 8; Ex. 9, Ives Direct at 22-23. In addition to providing the Missouri-jurisdictional share of $75 million in upfront bill credits to Missouri retail electric customers, pledges to employees, and financial commitments to communities (Ex. 2, Bassham Direct at 14-16), the Merger will enable the combined company to vault into a top 5 position of wind generation capacity among all U.S. investor-owned utilities. See Tr. 85, 129-130 (Bassham); Ex. 15. The Merger is also expected to allow Westar to retire by the end of 2018 five aging fossil-fueled generating units, totaling 781 MW of capacity, which had originally been scheduled to close between 2023 and 2028. See Ex. 5, Crawford Surrebuttal at 13-14.

Renew Missouri does not dispute the fact that Applicants have identified expected net Merger savings of more than $550 million in the first five years following the Merger. Detailed integration plans reflect total company net cost savings of $28 million in 2018 growing to $160 million per year from 2022 and beyond. These substantial savings will be reflected in customers' rates in the normal ratemaking process, and will be achieved with no involuntary severance of employees. See Ex. 4, Busser Direct at 44. Although pursuing the Merger has required substantial transaction costs, Applicants have agreed not to seek recovery of such costs in rates. See Ex. 9, Ives Direct at 11. Moreover, shareholders, not customers, will shoulder all transition costs necessary to achieve these savings in excess of $50 million on a total company basis.[9] As a result,

[9] Under the March Stipulation, the Signatories shall support in KCP&L and GMO's 2018 rate cases the deferral of Merger transition costs of $7,209,208 for GMO and $9,725,592 for KCP&L's Missouri operations. See March Stipulation, ¶ 9 at 4.

Applicants expect that shareholders will absorb more than $20 million in transition costs. See Ex.4, Busser Direct at 44.

Staff and OPC, who are required by statute to represent the broad public interest,[10] favor the approval of the Merger as conditioned by the Stipulations. They have also offered supporting testimony at the evidentiary hearing indicating that, after the balancing of the benefits and detriments, the Merger is not detrimental to the public interest.

Staff Director Natelle Dietrich stated that the signatory parties have placed consumer protections in place to prevent any potential of detriment, including key protections regarding credit rating downgrades, no involuntary severance of employees, access to records, and requirements to meet with Staff on a variety of issues, including system reliability and consumer call centers. See Tr. 270, 286-87, 298-300. She also summarized the benefits provided to customers in the March Stipulation relating to limits on the recovery of transition costs, the Commission's authority to approve a future merger or acquisition regarding the new holding company, and the allocation of Missouri customers' share of the $75 million in bill credits. See Tr. 287-90.

Dr. Geoff Marke, OPC's Chief Economist, similarly confirmed that because the March Stipulation entered into by OPC, MECG, and other parties contained provisions that would help ensure favorable treatment for Missouri ratepayers (Tr. 315-17), OPC supports Commission approval of the Merger and a determination that the Merger of GPE and Westar meets Missouri's "not detrimental to the public interest" standard. See March Stipulation at 10.

[10] See §§ 386.071, 386.240, 386.710; Tr. 379. See State ex rel. Chicago, Rock Island & Pac. R.R. v. PSC, 312 S.W.2d 791, 796 (Mo. en banc 1958) (The Commission "has a staff of technical and professional experts to aid it in the accomplishment of its statutory powers").

Unlike Staff and OPC (the latter of which is specifically required to "represent and protect the interests of the public in any proceeding before or appeal from the public service commission"[11]), Renew Missouri is more narrowly focused on its own special interests as "a non-profit organization focused on renewable energy and energy efficiency." See Renew Missouri Brief at 7. It has no statutory responsibility to represent or protect the broader public interest. Indeed, Renew Missouri is seeking to leverage the opportunity provided by this merger proceeding to pursue policy objectives that serve its specific and special interests — and not interests necessary to satisfy the "not detrimental to the public interest" standard and not interests appropriate to this Merger. See Ex. 7, Greenwood Surrebuttal at 10-11. For the reasons stated in Applicants' Initial Brief and herein, Renew Missouri's proposed conditions must be rejected.

Notwithstanding the fact that Renew Missouri's witness Karl Rábago recognized that it is important to know the costs, benefits, and who will pay for wind, solar and other green projects before they are approved (Tr. 374-75), Renew Missouri nevertheless proposes broad conditions to mandate clean energy, renewable energy and other green initiatives without any consideration of the specific costs, benefits or risks associated with its recommendations. In fact, there is no evidence in the record of the costs, benefits or risks associated with the nine conditions proposed by Renew Missouri in this proceeding.

Perhaps more importantly, Renew Missouri has not shown that the Merger has caused Applicants to abandon, delay, or even reduce their emphasis on clean energy and renewable energy projects. For example, Mr. Rábago testified that he had seen no evidence that the proposed Merger would result in a cancellation or delay in Applicants' plans to (1) retire some of Westar's coal- and gas-fired generating units; (2) construct or purchase additional renewable resources; (3) promote

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[11] § 386.710(1)-(2).

additional energy efficiency programs; or (4) continue existing grid connected storage projects. See Tr. 407-10.

The record reflects that Applicants are firmly committed to pursuing clean energy and renewable energy when it is cost-effective and in the best interests of their customers. Both KCP&L and GMO have filed an IRP Annual Update Preferred Plan in June 2017 for years 2017 through 2036 which notes changes to the 2015 IRP. The KCP&L report forecasts the addition of the following generation: (1) 7 MW of solar additions in-service by 2028; (2) 180 MW of additional wind by 2018; and (3) the increase of demand side management from 30 MW in 2017 to 492 MW by 2027. See Ex. 5, Crawford Surrebuttal at 6.

Similarly, GMO's IRP Annual Update Preferred Plan forecasts: (1) 5 MW of solar additions in-service by 2028; (2) 120 MW of additional wind by 2018; and (3) the increase of demand side management from 60 MW in 2017 to 328 MW in 2027. Id. During the hearings, Applicants' witness Burton Crawford also confirmed that GPE has recently announced the addition of 444 MW of wind capacity to become operational during 2019. See Tr. 254. For both KCP&L and GMO, all new generation planned over the twenty-year horizon is renewable energy only. See Ex. 5, Crawford Surrebuttal at 6.

Applicants have already completed the integration planning work for the Merger (Ex. 4, Busser Direct at 3-38), but Renew Missouri did not point to a scintilla of evidence of reduced emphasis by Applicants on clean energy, renewable energy, or other green initiatives. Instead, Renew Missouri candidly acknowledged: "The Joint Applicants are proud of their past progress in clean energy development and that is a good thing." See Renew Missouri Brief, ¶ 2 at 1 (emphasis added). Renew Missouri also affirmed that "KCPL and GMO have made progress in these [clean,

renewable and green] areas, and based on their past procurement and construction, the combined company will be a top five utility in terms of wind capacity." Id., ¶ 18 at 6.

Renew Missouri candidly admitted: "Since the merger case was filed, both KCPL and GMO filed rate cases in Missouri wherein the company has proposed a version of green power programs." Id., ¶ 34 at 14. The pending KCP&L and GMO rate cases are the appropriate forums for considering KCP&L and GMO's green power tariffs—not this merger proceeding.

Since the Merger was announced, KCP&L and GMO have continued to promote their respective energy efficiency programs authorized by the Missouri Energy Efficiency Investment Act ("MEEIA"). Both KCP&L and GMO embraced MEEIA and are currently in a second 3-year cycle of Demand-Side Management Programs. KCP&L and GMO are continuing their commitment to energy efficiency with the development of MEEIA Cycle 3 programs to be in effect beginning in 2019. See Ex. 5, Crawford Surrebuttal at 9.

With regard to its proposed condition to require a commitment to develop pilot projects for shared or community generation projects, Renew Missouri conceded that "… the Joint Applicants have proposals in their pending rate cases that could arguably satisfy this condition." See Renew Brief, ¶ 35 at 15.

Unfortunately, Renew Missouri has cast unjustified aspersions on Applicants' commitment to small, rooftop solar facilities by noting that GMO had filed a Notice of Intended Case Filing to obtain a CCN for a solar facility that was not pursued by GMO to completion. See Renew Missouri Brief, ¶ 34 at 14-15; In re Application of KCP&L Greater Missouri Operations Company for a Certificate of Convenience and Necessity to Construct Rooftop Solar Generation Facilities, No. EA-2016-0044 (Aug. 25, 2015). However, after the Notice of Intended Case Filing was filed (and before an application was ever filed) both Staff and OPC raised substantial opposition to GMO's

successful effort to obtain a CCN for its Greenwood Solar Facility in Case No. EA-2015-0256.[12] Although the Commission granted GMO's request for a CCN over the opposition of Staff and OPC, GMO nevertheless expended additional funds to defend the PSC decision in an appeal to the Missouri Court of Appeals brought by OPC. Such opposition in that case was a disincentive for GMO to immediately pursue the construction of other solar facilities which is why the application for a rooftop solar CCN was not filed.[13]

A more accurate indicator showing Applicants' strong commitment to cost-effective rooftop solar facilities when Staff and OPC do not assert upfront opposition to the issuance of a CCN is found in an earlier proceeding. See In re Application of Kansas City Power & Light Company for a Certificate of Convenience and Necessity to Construct Smart Grid Project, No. EA-2011-0368 ("Smart Grid CCN Application"). On May 6, 2011, KCP&L applied to the Commission for a CCN granting it authority to construct and operate multiple small rooftop solar facilities located in the Smart Grid Demonstration Area within the Green Impact Zone in Kansas City. On June 10, 2011, the Commission granted KCP&L a blanket certificate to construct rooftop solar facilities in the Smart Grid Demonstration Area, stating: "Additional Commission approval is not required after KCPL determines precisely on which buildings to install those small solar facilities. However, the Commission will direct KCPL to file a list of the specific locations at which small solar production facilities have been installed after that information is available." See Order Granting Certificate of Convenience and Necessity at 4-5, Smart Grid CCN Application

[12] See Report & Order, In re Application of KCP&L Greater Mo. Operations Co. for a Certif. of Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain and Otherwise Control and Manage Solar Generation Facilities, No. EA-2015-0256 (Mar. 2, 2016) ("Solar CCN Order"), *aff'd*, State ex rel. Office of the Public Counsel v. PSC, 515 S.W.3d 754, 758-64 (Mo. App. W.D. 2016); Tr. 371-74.

[13] Renew Missouri's Brief at pages 3-4 cited to another case being considered by the Commission at this time in which OPC actively opposed Ameren Missouri's request to offer a solar pilot program. See Report & Order, In re Union Elec. Co. for a Certif. of Convenience and Necessity Authorizing it to Offer a Pilot Distributed Solar Program, No. EA-2016-0208 (Dec. 21, 2016).

(June 10, 2011). Pursuant to that order, KCP&L subsequently identified six rooftop solar projects that had been installed (totaling 65 kW) and one project of 10 kW that was in the final planning stage. See **Ex. A**, Kansas City Power & Light Co. Update On Solar Installation Projects, Id. (Aug. 26, 2013). These rooftop solar projects, in addition to the 100 kW project at Paseo High School, were completed and make up the 0.17 MW of solar assets contained in Table 1 of the Surrebuttal Testimony of Burton Crawford (Ex. 5).

Simply put, there is no competent and substantial evidence that demonstrates that the Merger will have any detrimental impact on: (1) the accelerated retirement of identified Westar coal- and gas-fired generating units; (2) construction of additional wind generation units; (3) an Integrated Resource Plan for the combined company; (4) KCP&L's and GMO's energy efficiency programs; (5) KCP&L's and GMO's proposed Green Power tariff proposals pending in the 2018 rate cases; (6) the combined company's evaluation of community or shared generation facilities; (7) the combined company's efforts to understand grid-connected storage; (8) the combined company's grid-modernization plans; or (9) future consideration by the Commission of tariffs related to distributed generation.

KCP&L, GMO, and Westar have a long-term, clearly demonstrated track record of advancing clean energy. Such actions will continue after the Merger has been completed. The size, scale, and financial strength and flexibility of the new combined company should enable KCP&L, GMO, and Westar to pursue even more renewable energy than they would be able to on a standalone basis. See Tr. 90-94, 113-14 (T. Bassham); 97-99, 118-20 (M. Ruelle). The combined wind portfolio of these three utilities will be one of the largest in the United States, with renewable energy accounting for approximately 30% of their retail sales. See Ex. 5, Crawford

Surrebuttal at 19; Tr. 129-30 & Ex. 15 (combined company will be top 5 in U.S. wind generation among investor-owned utilities).

Applicants' long history of pursuing renewable and clean energy demonstrates they have embraced and will continue to embrace renewable and clean energy. Applicants own or have contracted for over 3,600 MW of renewable supply to serve their customers, exceeding both the Kansas RES standard and the Missouri RES requirements. In addition, Applicants plan to retire more than 1,600 MW of fossil-fuel generation by the end of 2019 and are actively pursuing other clean energy initiatives regarding energy efficiency and green power rates. The commitments proposed by Renew Missouri are unnecessary and, as discussed by Mr. Greenwood, this is not the proper forum to consider them. See Ex. 7, Greenwood Surrebuttal at 12; Ex. 5, Crawford Surrebuttal at 20.

Finally, the Commission should not attempt to dictate the manner in which Applicants provide safe and adequate service to their customers by mandating the use of specific technologies, as requested by Renew Missouri. Certainly, any order attempting to dictate the retirement of fossil-fuel power plants, construction of new renewable generation, the offering of new and expanded energy efficiency programs or new green power programs, the development of shared or community generation projects, or the implementation of a grid modernization program would improperly cross the line into the management of the public utility. State ex rel. PSC v. Bonacker, 906 S.W.2d 896, 899-900 (Mo. App. S.D. 1995); State ex rel. Harline v. PSC, 343 S.W.2d 177, 181 (Mo. App. K.C. 1960).[14]

[14] In Harline the Missouri Court of Appeals explained this important principle: "The utility's ownership of its business and property includes the right of control and management, subject, necessarily to state regulation through the Public Service Commission. The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its affairs and conduct its

C. KEPCo's Two Conditions Are Not Needed and Should Be Rejected.

KEPCo recommended that two additional conditions be imposed upon the Applicants, but does not oppose the Merger.[15] It presented no witnesses and offered no evidence. See Tr. 56-58.

In response to Chairman Hall's questions, KEPCo's counsel stated: "KEPCo is a wholesale purchaser of energy from Westar, and our concern is that the cost will increase." Id. at 57. The Chairman then asked: "But you're not providing any evidence in this case to support that concern?" KEPCo responded: "No, sir." Id.

KEPCo's first requested condition relates to five financing conditions that were originally proposed by Applicants in the Initial Transaction. During the negotiations that led to the January Stipulation, Staff analyzed whether these conditions were necessary given the "merger of equals" structure of the revised Merger. Staff concluded that these five conditions could be and were "[o]mitted due to the nature of the revised merger transaction."[16]

As discussed at length in Applicants' Initial Brief at pages 3-4, the Amended Merger Agreement between GPE and Westar is a stock-for-stock merger of equals where neither GPE nor Westar will pay or receive a premium with respect to the other. See Ex. 2, Bassham Direct at 8. There will be no transaction debt and no exchange of cash. Id. Westar and GPE will merge through the formation of a new holding company and the exchange of stock by the shareholders of both Westar and GPE. Id. at 8-9.

The Merger is designed to permit a tax-free exchange of shares. The exchange ratio reflects the agreed-upon ownership split between Westar and GPE with the result that neither Westar nor

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business as it may choose, as long as it performs its legal duty, complies with lawful regulation and does no harm to the public welfare." 343 S.W.2d at 181-82, *citing* State ex rel. Southwestern Bell Tel. Co. v. PSC, 262 U.S. 276 (1923); State ex. City of St. Joseph v. PSC, 30 S.W.2d 8 (Mo. en banc 1930).

[15] KEPCo states that the "Commission should approve the Merger upon imposition" of these conditions. See KEPCo Initial Brief at 4.

[16] Staff Brief at 31, 34-35.

GPE will receive or pay a premium with respect to the other. Following completion of the Merger, Westar's present shareholders will own approximately 52.5% and GPE's present shareholders will own approximately 47.5% of the new holding company. Id. The Merger is a true merger of equals ("MOE") whose financial commitments "far exceed those which are typically offered in utility MOEs or largely stock-based mergers of utilities with adjacent service territories." See Ex. 11, Reed Direct at 33.

Applicant witness John J. Reed of Concentric Energy Advisors, who has testified in numerous utility transactions over the past 20 years, concluded that the Merger "removes the potential detriment inherent in the Initial Transaction by avoiding the control premium and the creation of new debt." Id. at 2, 35. With the additional up-front bill credits and "rigorous analysis around the quantification and timing of Merger savings," he concluded that the "public interest scales have moved definitely in favor of this amended Merger." Id. at 35.

Consequently, Commitments 10-12 and 14 on financial integrity, capital structure, and separation issues were unnecessary, in light of the existing Commitments 13, 16, and 17 regarding separation of assets, credit rating downgrade, and the cost of capital.[17]

After the January and March Stipulations were agreed to, Mr. Reed reaffirmed his opinion, testifying that "none of the additional commitments or conditions proposed by the intervenor witnesses are necessary in order for the Merger to meet the Commission's not detrimental to the public interest standard." See Ex. 12, Reed Surrebuttal at 11.

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[17] Commitment 15, which was also eliminated at Staff's request, noted that Moody's had upgraded GPE's credit rating to Baa2 with a stable outlook, and that Standard & Poor's had opined that the Merger was credit positive, affirmed its ratings, and revised its outlook to positive. Under the Merger, KCP&L, GMO, and Westar will continue to be separate operating utilities under a new holding company. See Ex. 2, Bassham Direct at 8, 11-12. This revised structure recognizes the importance of strong credit metrics and separate issuer credit ratings. See Ex. 3, Bryant Direct at 13-17; Ex. 9, Ives Direct at 26.

KEPCo also recommended that mandates be imposed that require an integrated resource plan ("IRP") for KCP&L, GMO, and Westar, and prior Commission approval before any of the utilities retire a generating unit. See KEPCo Initial Brief at 3-4. The identified KCP&L and GMO plant retirements are not Merger-related[18] and, as the Commission is aware, were fully studied and supported through the IRP process. Further, KEPCo ignores the commitment that Applicants presented in both surrebuttal testimony and at the evidentiary hearing to include Westar in the 2019 IRP annual update that KCP&L and GMO will file with the Commission pursuant to 4 CSR 240-22.080(3). See Ex. 5, Crawford Surrebuttal at 20; Ex. 10, Ives Surrebuttal at 4, 28; Tr. 185 (Ives), 245-48 (Crawford). Moreover, as discussed earlier, plant retirements are a management decision[19] subject to prudence review and possible disallowance during general rate proceedings.

With regard to the retirement of generating capacity, KEPCo has provided no evidence of a capacity shortage or other concern to support its assertion that the lack of such a condition is required to determine the Merger is not detrimental to the public interest. KEPCo also fails to explain how this Commission would be able to exercise jurisdiction over generating units owned by Westar in Kansas which are subject to the authority of the KCC and not this Commission.

III. SHOULD THE COMMISSION GRANT THE LIMITED REQUEST FOR VARIANCE OF THE AFFILIATE TRANSACTIONS RULES REQUESTED BY APPLICANTS?

Applicants' Position: Yes. The Commission should grant the limited request for variance of the Affiliate Transactions Rules because the evidence establishes good cause that the variance is needed to enable the attainment of post-Merger savings that will benefit customers of Holdco's regulated public utility companies in Missouri and Kansas, and that the Merger will not be detrimental to the public interest, given the level of Merger-related savings and the conditions, commitments and terms agreed to by the Applicants, Staff, Public Counsel, MECG and other parties, as stated in Section II.

[18] Ex. 4, Busser Direct at 23.
[19] See footnote 14.

No party has objected to the Commission granting a variance of the Affiliate Transactions Rules under 4 CSR 240-20.015 and 4 CSR 240-80.015[20] with regard to the regulated operations of KCP&L, GMO, and Westar.

The four parties who joined Applicants in the Stipulations and who filed post-hearing briefs agree that good cause exists for the Commission to grant a variance that will allow these transactions to occur at cost and that it should be granted. See Staff Initial Brief at 43-47; OPC Initial Brief at 6; MJMEUC Initial Brief at 3; MECG Initial Brief at 1.

Neither KEPCo nor DE take a position on the issue. See KEPCo Brief at 5; DE Brief at 4. Renew Missouri does not oppose the granting of the variance. See Renew Missouri Brief at 17.

OPC and Renew Missouri note Chairman Hall's inquiry regarding the nature of the variance and any limitations on a party's ability to question an affiliate transaction. See OPC Initial Brief at 6-7; Renew Missouri Brief at 17.

Applicants clarified in their Initial Brief that the variance is only intended to apply to the regulated operations of KCP&L, GMO, and Westar, and that it would not apply to transactions with other entities such as Transource Energy LLC, a GPE affiliate, or to Prairie Wind LLC, a Westar subsidiary. See Applicants' Initial Brief at 41. Moreover, the January Stipulation in Paragraph 25 provides that nothing in Applicants' request for a variance (or other provisions of the Stipulation) limits the ability of any party to propose a disallowance or the imputation of a particular expense or other ratemaking treatment, and does not limit the authority of the Commission to issue an order in this regard in future KCP&L or GMO rate proceedings. Id.

[20] GMO is a regulated steam utility subject to the Affiliate Transactions Rule at 4 CSR 240-80.015, as noted in Conditions 26-28 of Exhibit A to the January Stipulation.

IV. HOW SHOULD THE BILL CREDITS PROPOSED BY APPLICANTS BE ALLOCATED BETWEEN AND WITHIN THE VARIOUS KCP&L AND GMO RATE CLASSES?

Applicants' Position: The bill credits should be allocated consistent with the methodology provided in the March Stipulation.

No party has objected to Paragraph 15 of the March Stipulation, which sets forth the methodology to allocate the Missouri portion of the $75 million in upfront bill credits to KCP&L and GMO customers, both between the rate classes of each category of customers, as well as within each respective rate class.

The four parties who joined Applicants in the Stipulations and who filed post-hearing briefs agree that this method of allocation should be adopted. See Staff Initial Brief at 47-48; OPC Initial Brief at 7; MJMEUC Initial Brief at 4; MECG Initial Brief at 2.

KEPCo, DE, and Renew Missouri do not take a position on the issue. See KEPCo Brief at 5; DE Brief at 4; Renew Missouri Brief at 18.

This methodology should be approved by the Commission.

CONCLUSION

The evidence establishes that the Merger, as conditioned by the Stipulations, will not be detrimental to the public interest and, in fact, will promote the public interest. If approved as contemplated by the Stipulations,[21] the Merger of these successful and adjacent utilities will provide significant up-front bill credits and future savings to customers, tangible assurances to employees, and support for the communities that KCP&L, GMO and Westar serve. The Stipulations also provide meaningful commitments and conditions to protect customers against

[21] As discussed above in Section II(C), Applicants have also agreed to include Westar with KCP&L and GMO in a combined analysis as part of the 2019 IRP annual update to be submitted by KCP&L and GMO. See Ex. 5, Crawford Surrebuttal at 20; Tr. 185 (Ives), 245-48 (Crawford).

harm and preserve the Commission's oversight. See Ex. 9, Ives Direct at 4, 23-31. Staff, OPC, MECG, and MJMEUC all agree.

The Merger will create a larger, financially stronger, regional Fortune 500 company with its headquarters in Kansas City, Missouri. See Ex. 2, Bassham Direct at 12, 18. Given the adjacent service territories of KCP&L, GMO, and Westar, there are significant opportunities for efficiencies and cost savings, particularly given the working relationship that these utilities have developed through their joint ownership of major assets. Id. at 17-18. The combined company will be a Midwestern utility that is better positioned to meet the needs and expectations of customers who will see future rate increases at lower levels and with less frequency than would occur without the Merger. See Ex. 9, Ives Direct at 5-8.

This Merger presents a unique opportunity to benefit customers, employees, communities, investors, and the environment. With regard to renewable energy, Applicants have committed "to work with our customers [and] our commissions to develop programs that we can provide them in the future, absolutely." See Tr. 92 (Bassham). They have demonstrated confidence in their ability to produce these and other benefits by "providing credits to our customers in advance of our ability to get the savings …." "[W]e wouldn't do that if we weren't confident in the savings" to be achieved by the Merger. See Tr. 96 (Ruelle).

Given the unprecedented effort by the Applicants, Staff, OPC, MECG and others to forge the comprehensive set of commitments, conditions, and terms reflected in the Stipulations, Applicants respectfully request the Commission recognize the value of this transaction and approve the Merger by issuing its order with an effective date no later than May 29, 2018.

Respectfully submitted,

/s/Robert J. Hack

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served upon all counsel of record on this 13th day of April 2018, by either e-mail or U.S. Mail, postage prepaid.

/s/ Robert J. Hack

Robert J. Hack

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Kansas City Power & Light Company for Permission and Approval and a Certificate of Public Convenience and Necessity Authorizing It to Acquire, Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage Electrical Production and Related Facilities in the Smart Grid Project Area of Jackson County, Missouri	)))))))))	Case No. EA-2011-0368

KANSAS CITY POWER & LIGHT COMPANY
UPDATE ON SOLAR INSTALLATION PROJECTS

COMES NOW Kansas City Power & Light Company ("KCP&L" or "Company") and states:

1. The Company is providing the Commission with an update on the Solar Installation Projects which received a certificate of public convenience and necessity for solar projects located within the Smart Grid Project Area in Kansas City, Missouri on June 15, 2011.

2. KCP&L has completed the following installations to the Smart Grid Project:

- UMKC Student Union, 5100 Cherry Street, KCMO 64110 – 5 kW
- UMKC Flarsheim Hall, 5110 Rockhill Rd, KCMO 64110 – 5 kW
- Blue Hills Community Center, 5009 Prospect, KCMO 64130 – 10 kW
- Midwest Research Institute, 425 Volker Boulevard, KCMO 64110 – 10 kW
- KCP&L Midtown/SmartGrid battery site, 4724 Tracy Ave, KCMO 64110 – 5kW
- KCP&L Crosstown Substation, 1801 Cherry, KCMO 64105 – 30 kW

3. KCP&L is planning the following installations to the Smart Grid Project:

- Kansas City Missouri Swope Building, 4900 Swope Parkway, KCMO 64130 – 10kW

Respectfully submitted,

*/s/ Roger W. Steiner*________________

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ATTORNEY FOR KANSAS CITY POWER & LIGHT COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record on this 26th day of August, 2013.

*/s/ Roger W. Steiner*________________

Roger W. Steiner