

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

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

**ANSWER TO OBJECTION OF GREAT PLAINS ENERGY INCORPORATED TO
MOTION TO INTERVENE OF KANSAS ELECTRIC POWER COOPERATIVE, INC.**

Pursuant to the direction of the Regulatory Law Judge at the prehearing conference in this proceeding on March 2, 2017, the Kansas Electric Power Cooperative, Inc. (“KEPCo”) files this answer to the objection of Great Plains Energy Incorporated (“GPE”)¹ to KEPCo’s motion to intervene filed by GPE on March 3, 2017. KEPCo’s Motion to Intervene in this proceeding was filed on March 1, 2017.² For the reasons stated below, GPE’s Objection should be denied.³

I. Answer to GPE Objection

The Commission’s authority to grant intervention in the matters before it is broad and discretionary.⁴ The Commission’s administrative rule governing intervention, Commission Rule 4 CSR 240-2.075(3), states, in relevant part, that:

¹ *In the Matter of the Application of Great Plains Energy Incorporated for Approval of its Acquisition of Westar Energy, Inc.*, File No. EM-2017-0226, *et al.*, Objection of Great Plains Energy Incorporated to Motion to Intervene of Kansas Electric Power Cooperative, Inc., and Response to Answer in Opposition to GPE’s Motion for Expedited Consideration, filed March 3, 2017 (“GPE Objection”).

² *In the Matter of the Application of Great Plains Energy Incorporated for Approval of its Acquisition of Westar Energy, Inc.*, File No. EM-2017-0226, *et al.*, Motion To Intervene And Answer In Opposition To GPE Motion For Expedited Consideration of Kansas Electric Power Cooperative, Inc., filed March 1, 2017 (“KEPCo Motion to Intervene”).

³ Although GPE notes that its objection is also “in response to KEPCo’s Answer in Opposition to GPE Motion for Expedited Consideration,” (GPE Objection at 1), the Objection appears focused primarily on KEPCo’s intervention. In any event, the facts and arguments presented in KEPCo’s Motion to Intervene fully respond to GPE’s arguments for expedition and, with exception of the clarification provided in Section II, below, KEPCo presents no further arguments on that motion except as they may pertain to GPE’s objection to KEPCo’s intervention in this matter.

⁴ *State ex rel. Brink’s Inc. v. Pub. Serv. Commission*, 535 S.W.2d 582, 584 (Mo. Ct. App. 1976); *In the Matter of The Empire District Electric Company, Liberty Utilities (Central) Co. and Liberty Sub Corp. Concerning an Agreement and Plan of Merger and Certain Related Transactions*, File No. EM-2016-0213, Order Regarding Application to Intervene, issued April 27, 2016 at 1-2 (“Empire District Order”).

The commission may grant a motion to intervene or add new member(s) if—

- (A) The proposed intervenor or new member(s) has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or
- (B) Granting the proposed intervention would serve the public interest.

KEPCo's intervention in this matter meets those standards.

GPE contends that KEPCo has no interest in this proceeding because this proceeding is focused on whether GPE's acquisition of Westar is detrimental to the public interest in Missouri (GPE Objection at P 2), but that contention is incorrect. First, the fact that an entity does not serve customers in Missouri does not mean that it has no interest in in this Commission's proceedings. For example, the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") was granted intervention in the Kansas Corporation Commission ("KCC") case concerning this proposed transaction, primarily on the basis of its co-ownership of the Iatan 2 Generating Plant with KEPCo, KCP&L, KCP&L Greater Missouri Operations Company ("GMO").⁵ Second, as explained in KEPCo's Motion to Intervene (at 3), KEPCo's financial well-being is inextricably tied to that of KCP&L and Westar through: (1) KEPCo's co-ownership of Iatan 2 with KCP&L, GMO and MJMEUC, and KEPCo's co-ownership of the Wolf Creek Generating Station with KCP&L and Westar; (2) KEPCo's long-term partial requirements cost-based power contract with Westar; and (3) KEPCo's dependence upon the transmission facilities of both companies, at rates based upon those companies' respective costs, for delivery of KEPCo resources to its members.

⁵ *In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company and Westar Energy, Inc. for approval of the Acquisition of Westar Energy, Inc. by Great Plains Energy Incorporated*, Docket No. 16-KCPE-593-ACQ, Order Granting Limited Intervention to Missouri Joint Municipal Electric Utility Commission, issued November 29, 2017, at P 8.

The City of Independence, Missouri, was also granted intervention by the KCC. *In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company and Westar Energy, Inc. for approval of the Acquisition of Westar Energy, Inc. by Great Plains Energy Incorporated*, Docket No. 16-KCPE-593-ACQ, Order Granting Intervention to Kansas Municipal Energy Agency, City of Independence, MO, and Kansas Municipal Utilities, issued September 15, 2016 at P 6.

Indeed, it is the uniquely close business relationship of KEPCo with KCP&L and Westar which gives KEPCo an interest in this matter unlike those of the general public. The long-term financial health and viability of KCP&L and Westar are critical to virtually all aspects of KEPCo's business – its investment as a generation co-owner, its wholesale power purchases with which to serve its members, and its ability to deliver the output of its generation and power purchases to its members at reasonable transmission rates. In this respect, KEPCo has “has an interest which is different from that of the general public and which may be adversely affected by a final order” arising from this case.

GPE's argument (GPE Objection at P 2) that KEPCo's co-ownership of Iatan 2 and Wolf Creek fail to establish an interest that may be adversely affected by a final order because “[n]o decision by this Commission in this proceeding can change such ownership interests” misses the point. A decision by this Commission that, for example, would approve the acquisition without adequate ring-fencing and other financial protections could leave KEPCo with co-owners that are materially weakened financially. Similarly, any degradation in the financial health of post-acquisition GPE and KCP&L and Westar will inevitably mean higher power purchase and transmission costs, *e.g.*, higher required rates of return on equity. The justness and reasonableness of the transmission rates that KEPCo pays is indisputably a FERC issue, but that is not the issue before this Commission or that KEPCo intends to raise. Rather, it is the financial implications of the highly leveraged transaction and the risks posed by the transaction to KEPCo's business future that KEPCo seeks to protect.⁶

Finally, as KEPCo made clear in its Motion to Intervene, KEPCo has been perhaps the leading advocate before the KCC for rigorous ring-fencing and other financial integrity measures

⁶ GPE has told, and no doubt will continue to tell, this Commission that financial harm cannot be visited on customers of KCP&L and Westar as a result of this proposed acquisition; KEPCo disagrees. Such assertions must be tested in an evidentiary hearing and established by competent evidence before credited.

to be imposed as part of any order by that agency to approve the acquisition. KEPCo has an overriding interest in the comprehensiveness and efficacy of the ring-fencing provisions that this Commission may impose if it approves this acquisition. KEPCo has an equally compelling interest in seeking, to the extent possible, to ensure that any conditions imposed by the Commission are consistent with the conditions that may be imposed by the KCC.

II. Clarification of KEPCo Opposition to GPE's Request for Expedited Consideration

GPE takes issue with KEPCo's request that this Commission afford enough time for a full and searching examination of the implications of the proposed Transaction, noting that KEPCo has "conducted extensive discovery and submitted voluminous testimony" in the KCC proceeding and participated in the KCC hearing, and arguing that KEPCo's request is "simply a means of delay." GPE Objection at 2-3. KEPCo's comments were predicated on the assumption that the record developed in the Kansas case would be available to reduce the time needed to develop such a record before this Commission through discovery, etc. *See* KEPCo Motion to Intervene at 6. If that assumption is correct, then obviously it would take materially less than the many months expended in the Kansas case for a full and searching inquiry before this Commission. KEPCo does not believe that 30 days is adequate under any circumstances, but it did not presume to suggest to this Commission in KEPCo's Motion to Intervene how long an alternative schedule should be.

III. Conclusion

For the reasons stated above, KEPCo requests that the relief sought by GPE's Objection be denied and that KEPCo be permitted to intervene as a party to this proceeding.


Respectfully submitted,

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

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CERTIFICATE OF SERVICE

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



William G. Riggins