BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company for a variance from 4 CSR 240-20.015.	))))	**Case No. EE-2017-0113**

RESPONSE OF MIDWEST ENERGY CONSUMERS GROUP REGARDING PROCEDURAL SCHEDULE

COMES NOW Midwest Energy Consumers Group ("MECG") and, for its Response to the *Joint Applicants' Suggestions in Support of the Proposed Procedural Schedule Filed by Staff and Joint Applicants, and in Opposition to the Proposed Procedural Schedule Filed by the Opposing Parties*, respectfully states as follows:

1. On November 29, 2016, two competing procedural scheduled were filed in this case. The schedule offered by the Joint Applicants and Staff would require other parties to file rebuttal testimony on January 16, 2017 with an evidentiary hearing to occur on February 13-15 (the "Joint Applicants' schedule").[1] In contrast, the procedural schedule offered by all other parties in this docket would provide for rebuttal filing on February 13, 2017 with an evidentiary hearing on March 15-17 (the "Customers' Schedule"). As this pleading demonstrates, the Joint Applicants' schedule is unnecessarily expedited. Recognizing that the merger agreement provides the Joint Applicants until May 31, 2017 to receive the necessary merger approvals, the Joint Applicants' schedule is designed for the simple purpose of hindering all possible scrutiny

[1] It is not surprising that Staff would agree to the expedited procedural schedule advanced by the Joint Applicants. Prior to filing this case, the Joint Applicants met with Staff "behind closed doors" to resolve Staff's concerns with the Westar acquisition. Noticeably, Staff did not inform any other parties, or invite others to participate in those secret negotiations. Staff notes that it accepted the minimal conditions contained in the Non-Unanimous Stipulation in this case because it recognized potential jurisdictional concerns. Recognizing that Staff has resolved its minimal concerns with the Joint Applicants, Staff is no longer concerned with whether the procedural schedule in this case is equitable or provides other parties a reasonable opportunity to present their concerns. Given Staff's position in this case, MECG asserts that the Commission should not provide any additional credence to the Joint Applicants' schedule simply because Staff has joined on that pleading.

of the Great Plains / Westar merger. Finally, any urgency that the Joint Applicants now sense in regards to receiving the Commission's approval in this docket is entirely the result of the Joint Applicants' failure to timely file this docket and then wasting an entire month in opposing the interventions of all other parties. In this regard, the Commission should not reward the Joint Applicants for their recalcitrance. Instead, the Commission should approve the Customers' proposed procedural schedule.

I. THE JOINT APPLICANTS' SCHEDULE IS UNWORKABLE

2. Initially one may be struck regarding certain similarities between the two competing procedural schedules. Both schedules contemplate supplemental direct testimony from the Joint Applicants on December 9 and an order being issued on April 27, 2017. When one digs a little deeper, one immediately notices that the Joint Applicants schedule is unworkable and designed to eliminate any meaningful opposition.

3. For instance, the Joint Applicants' schedule contemplates that other parties will file rebuttal testimony on January 16, 2017. Recognizing that they apparently did not adequately support its request, the Joint Applicants request the right to file supplemental direct testimony on December 9. Thus, other parties will have only 38 days in which to hire consultants, issue discovery and prepare testimony. This short time is made even more egregious by the fact that it includes the Christmas and New Year's holidays. Given this, the Joint Applicants' schedule is unworkable.[2]

4. The Joint Applicants' schedule is made even more unworkable by the fact that it

[2] The differences between the Joint Applicants and the Customers' schedules is a result of the fact that the Commission has previously scheduled evidentiary hearings in rate cases for KCPL and Ameren as well as a certificate case for Grain Belt Express. The Joint Applicants' schedule contemplates hearings before the KCPL and Ameren hearings, while the Customers' schedule contemplates a hearing immediately following those hearings. As indicated, *infra*, had the Joint Applicants filed this case in a timely manner, the hearings in this matter could have been concluded well in advance of those rate cases.

contemplates that evidentiary hearings will be conducted the week prior to the evidentiary hearings in the KCPL rate case. It is not surprising that the Joint Applicants would attempt to use the evidentiary hearings in this matter in order to divert parties' attention away from their rate case, possibly resulting in a larger rate increase for the Joint Applicants.

5. While the Joint Applicants criticize the Customers' schedule as providing the "Commission with an inadequate amount of time to deliberate, and render a final decision,"[3] the Joint Applicants' schedule hinders the ability of all other parties to participate in this docket in the interest of providing the Commission over 45 days in which to deliberate this matter. Certainly, if the Commission can deliberate the dozens of issues in a rate case in less than a month, it can certainly resolve this matter in much less than 45 days. The Joint Applicants' concern for the ability of the Commission to deliberate this matter is a red herring. In actuality, the Joint Applicants seek to hinder any meaningful participation by all other parties. After all, if the Joint Applicants were truly concerned for the Commission's ability to deliberate and complete this case, it would not have waited 134 days to file this case.

II. THE CUSTOMER PROCEDURAL SCHEDULE DOES NOT THREATEN THE WESTAR ACQUISITION

6. In its pleading, the Joint Applicants infer that, absent approval of the Joint Applicants' schedule, the Westar acquisition may be threatened.[4] Such an inference is patently incorrect. While the Joint Applicants reference the Commission to one specific provision from the Merger Agreement,[5] they fail to reference the most relevant provision. Specifically, Section

[3] In the interest of having an order issued contemporaneous with the Kansas Corporation Commission decision, the Customer schedule anticipates an order issue date of April 24, 2017. This would give the Commission three weekly public meetings in which to deliberate and issue an order.

[4] See, page 3 ("As a result, it is critical that the Missouri Commission's order approving the Affiliate Transaction Rule variance be effective on April 24, 2017 so that the proposed transaction may close on the schedule that has been contemplated for many months.").

[5] The Joint Applicants provide, as Attachment 3, Section 1.04 of the Merger Agreement. That provision provides that closing may occur as soon as three days after receipt of all necessary approvals.

8.01 provides that the Joint Applicants have until May 31, 2017 to receive all necessary regulatory approvals.[6] Under the Customers' Procedural Schedule, the Commission would issue its order in this matter on April 27, 2017. Even assuming a 10 day effective date for that order (May 7, 2017), the Joint Applicants would still have this necessary approval approximately 24 days prior to the contemplated May 31, 2017 date for receipt of regulatory approvals. As such, the Customer Procedural Schedule does not threaten the Westar acquisition.

7. Interestingly, while the Joint Applicants infer that any delay in receipt of the Commission approval in this case will threaten the Westar acquisition, the Commission's approval in this case is not even listed as a necessary approval condition to the Westar merger. Specifically, Section 3.05(b)(4) includes numerous regulatory approvals, including the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission and the Kansas Corporation Commission, that are necessary to be received prior to the closing of the Westar merger.[7] Noticeably, the receipt of the Missouri Commission's approval in this case is <u>not</u> listed as a necessary condition to closing. As such, per the provisions of the Merger Agreement, this case cannot threaten the Westar acquisition.

III. ANY URGENCY IN THIS CASE IS A DIRECT RESULT OF THE JOINT APPLICANTS DELAY AND RECALCITRANCE

8. On May 31, 2016, Great Plains Energy announced the acquisition of Westar Energy. Consistent with the necessary approvals contemplated by that merger agreement, the Joint Applicants filed their application for Kansas Corporation Commission approval on June 28, 2016. Strangely, however, the Joint Applicants waited until October 12, 2016 to file the

[6] See, Attachment 1. In fact, while Section 8.01 contemplates that the closing will occur prior to May 31, 2017, that same section also recognizes that the May 31, 2017 date may be extended for up to six months (November 31, 2017). This same type of provision was invoked in order to provide the parties more time to obtain the necessary regulatory approvals prior to the closing of Great Plains' acquisition of Aquila in 2007.

[7] See Attachment 2.

immediate case. Thus, while the Joint Applicants were capable of drafting and filing the necessary application in Kansas in less than 28 days,[8] the Joint Applicants waited 134 days to file the application in this case. Interestingly, Joint Applicants fail to provide any explanation for their decision to wait an additional 106 days to file the immediate case. Yet, the Joint Applicants now pray that the Commission will adopt a procedural schedule that provides for rebuttal testimony in 38 days. Clearly, any urgency in the processing of this case is entirely caused by Joint Applicants' failure to file this docket in a timely fashion.

9. The Joint Applicants failure to timely file this docket is even more unforgiveable given that they expressly concede that the schedule that they propose for the acquisition "has been contemplated for many months." Given that they were contemplating this schedule for "many months", why did the Joint Applicants wait 134 days to file this docket? Clearly, there are two possible answers. First, the Joint Applicants were sloppy in seeking the necessary approvals and didn't file this docket in a timely manner. Second, the Joint Applicants waited in order to inconvenience the Missouri parties and limit their scrutiny of this transaction. Either way, the Joint Applicants' failure to move in a timely manner should not now be used as a justification to eliminate other parties' ability to effectively participate in this docket. A Commission decision rewarding the utility for its failure to act in a timely manner would set a dangerous precedent for future cases.

10. Once they finally did file this case, the Joint Applicants then wasted almost a month by opposing all of the applications to intervene filed in this case. While the Joint Applicants waited until October 12, 2016 to file their application in this matter, interested parties moved in a more expeditious fashion. The first applications to intervene were received in less

[8] Similarly, the Joint Applicants were able to timely file their application for Federal Regulatory Commission Approval on July 11, 2016, a mere 41 days after the announcement of the acquisition.

than six days (October 18, 2016). Normally, an early application to intervene would mean that the party could begin immediately to hire consultants, prepare budgets and issue discovery. In this case, however, that work was all delayed because of the Joint Applicants unprecedented opposition to all applications to intervene. Specifically, the Joint Applicants opposed intervention by municipalities, unions, customers and environmental interests. As a result of the Joint Applicants' obstinance, these parties were not granted intervention until November 17, 2016. Thus, in addition to wasting 134 days through their failure to timely file this docket, the Joint Applicants were successful in wasting another 30 days by opposing all interventions.

11. Given that the Joint Applicants have wasted almost 5 ½ months in this case, the Commission should not concede to their current claims of urgency. As mentioned, the Customer Procedural Schedule provides parties adequate time for presentation of their case while still contemplating receipt of the Commission approval over 24 days prior to the closing date contemplated in the Merger Agreement.

IV. THIS DOCKET GIVES THE COMMISSION THE OPPORTUNITY TO PROTECT MISSOURI INTERESTS

12. On September 23, 2016, the Missouri Public Service Commission filed its *Comments, Conditional Protest, and Request for Hearing and Settlement Judge Procedures of the Missouri Public Service Commission* ("Missouri Comments").[9] In those Missouri Comments, the Commission registered its concern that Missouri retail ratepayers are not being treated in a consistent manner with Kansas retail ratepayers. Specifically, the Missouri Comments note that the Joint Applicants will not seek recovery financing costs and acquisition premiums from Kansas ratepayers. The Missouri Comments then notes that "[t]his same commitment is not being extended to Missouri retail ratepayers as part of this application." The

[9] See, *Comments, Conditional Protest, and Request for Hearing and Settlement Judge Procedures of the Missouri Public Service Commission*, Case No. EC16-146, filed September 23, 2016.

Missouri Comments continues on to note that similar safeguards for Missouri retail customers are only "hypothetical." As a result, the Missouri Commission asks that "Great Plains Energy commit now to provide Missouri retail ratepayers with the same regulatory commitments proposed to the KCC for Kansas retail ratepayers."

13. MECG applauds the Commission for its attempt to protect Missouri ratepayers through its participation in this FERC docket. That said, the Commission should realize that the Missouri Commission is not limited to indirectly protecting Missouri retail ratepayers through the FERC proceeding. Rather, this docket, in conjunction with Case No. EC-2016-0106, provides the Missouri Commission with the direct authority and vehicle to ensure that Missouri retail ratepayers are not detrimentally impacted by the Westar acquisition.

14. Absent meaningful Missouri Commission scrutiny, Missouri interests will definitely take a backseat to Kansas interests. For instance, assume that the Kansas Commission, worried about the loss of jobs in Kansas as a result of this merger, requires that all of those jobs remain in Kansas. Undoubtedly, absent Missouri oversight, the Joint Applicants will make those concessions all to the detriment of Missouri interests. It is critical, as it implies in its comments before FERC, that Missouri interests be protected. This vehicle provides the Commission the opportunity to protect those interests.

15. Given the importance of this inquiry, MECG asserts that the Commission should not rush its inquiry. Instead, recognizing that the Customer Schedule contemplates a Commission order well in advance of the May 31, 2017 date contemplated for closing in the Merger Agreement, the Commission should adopt the Customer Schedule.

16. Finally, MECG wishes to alleviate any concerns that it is using this procedural schedule as an opportunity to divert the Westar acquisition. That is absolutely incorrect. The

acquisition has the potential to result in benefits to Missouri interests. That said, the significant leverage being used to finance this acquisition, the substantial acquisition premium and transaction costs used to complete this transaction as well as Great Plains' demonstrated inability to contain A&G costs raise concerns that this transaction will not result in benefits, but will result in large detriments and higher retail rates. For this reason, MECG asks that this Commission, not the Federal Energy Regulatory Commission, use this opportunity to review this acquisition and take steps to ensure Missouri interests are protected.

WHEREFORE, MECG respectfully requests that the Commission adopt the Customer Schedule.

Respectfully submitted,

_/s/ David Woodsmall_____
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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: December 6, 2016

ATTACHMENT 1

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:

May 31, 2017 Closing Date Contemplated

(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;

Possibility of 6 month extension

(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).

ATTACHMENT 2

respect to the voting of any capital stock or voting securities of, or other equity interests in, the Company.

SECTION 3.04 Authority; Execution and Delivery; Enforceability. The Company has all requisite corporate power and authority to execute and deliver this Agreement, to perform its covenants and agreements hereunder and to consummate the transactions contemplated hereby, including the Merger, subject, in the case of the Merger, to the receipt of the Company Shareholder Approval. The Company Board has adopted resolutions, at a meeting duly called at which a quorum of directors of the Company was present, (a) determining that it is in the best interests of the Company and its shareholders, and declaring it advisable, for the Company to enter into this Agreement, (b) adopting this Agreement and approving the Company's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated thereby and (c) resolving to recommend that the Company's shareholders approve this Agreement (the "Company Board Recommendation") and directing that this Agreement be submitted to the Company's shareholders for approval at a duly held meeting of such shareholders for such purpose (the "Company Shareholders Meeting"). Such resolutions have not been amended or withdrawn as of the date of this Agreement. Except for (i) the approval of this Agreement by the affirmative vote of the holders of a majority of all of the outstanding shares of Company Common Stock entitled to vote at the Company Shareholders Meeting (the "Company Shareholder Approval") and (ii) the filing of the Articles of Merger as required by the KGCC, no other vote or corporate proceedings on the part of the Company or its shareholders are necessary to authorize, adopt or approve this Agreement or to consummate the transactions contemplated hereby, including the Merger. The Company has duly executed and delivered this Agreement and, assuming the due authorization, execution and delivery by Parent and Merger Sub, this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject in all respects to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other Laws relating to or affecting creditors' rights generally and general equitable principles (whether considered in a proceeding in equity or at law) (the "Bankruptcy and Equity Exceptions").

SECTION 3.05 No Conflicts; Consents.

(a) The execution and delivery by the Company of this Agreement does not, and the performance by the Company of its covenants and agreements hereunder and the consummation of the transactions contemplated hereby, including the Merger, will not, (i) subject to obtaining the Company Shareholder Approval, conflict with, or result in any violation of any provision of, the Company Articles, the Company Bylaws or the Organizational Documents of any Company Subsidiary, (ii) subject to obtaining the Consents set forth in Section 3.05(a)(ii) of the Company Disclosure Letter (the "Company Required Consents"), conflict with, result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any material obligation or to the loss of a material benefit under, or result in the creation of a Lien upon any of the respective properties or assets of the Company or any Company Subsidiary pursuant to, any Contract to which the Company or any Company Subsidiary is a party or by which any of their respective properties or assets are bound or any Permit applicable to the business of the Company and the Company Subsidiaries or (iii) subject to obtaining the Company Shareholder

Approval and the Consents referred to in Section 3.05(b) and making the Filings referred to in Section 3.05(b), conflict with, or result in any violation of any provision of, any Judgment or Law, in each case, applicable to the Company or any Company Subsidiary or their respective properties or assets, except for, in the case of the foregoing clauses (ii) and (iii), any matter that would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect and would not prevent or materially impede, interfere with or delay the consummation of the transactions contemplated hereby, including the Merger.

(b) No consent, waiver or Permit ("Consent") of or from, or registration, declaration, notice, submission or filing ("Filing") made to or with, any Governmental Entity is required to be obtained or made by the Company, any Company Subsidiary or any other Affiliate of the Company in connection with the Company's execution and delivery of this Agreement or its performance of its covenants and agreements hereunder or the consummation of the transactions contemplated hereby, including the Merger, except for the following:

(i) (1) the filing with the Securities and Exchange Commission (the "SEC"), in preliminary and definitive form, of the Proxy Statement/Prospectus and (2) the filing with the SEC of such reports under, and such other compliance with, the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or the Securities Act of 1933, as amended (the "Securities Act"), and rules and regulations of the SEC promulgated thereunder, as may be required in connection with this Agreement or the Merger;

(ii) compliance with, Filings under and the expiration or termination of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder (the "HSR Act") and such other Consents or Filings as are required to be obtained or made under any other Antitrust Law;

(iii) the filing of the Articles of Merger with the Secretary of State of the State of Kansas and appropriate documents with the relevant authorities of the other jurisdictions in which Parent and the Company are qualified to do business;

Regulatory Approvals

(iv) (1) Filing with, and the Consent of, the Federal Energy Regulatory Commission (the "FERC") under Section 203 of the Federal Power Act (the "FPA"), (2) Filings with, and the Consent of, the U.S. Nuclear Regulatory Commission (the "NRC"), (3) Filings with, and the Consent of, the Kansas Corporation Commission (the "KCC") and (4) Filings and Consents set forth in Section 3.05(b)(iv) of the Company Disclosure Letter (the Consents and Filings set forth in Section 3.05(b)(ii) and this Section 3.05(b)(iv), collectively, the "Company Required Statutory Approvals");

(v) the Company Required Consents;

(vi) Filings and Consents as are required to be made or obtained under state or federal property transfer Laws or Environmental Laws; and

(vii) such other Filings or Consents the failure of which to make or obtain would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect and would not prevent or materially impede, interfere with or delay the consummation of the Merger.

SECTION 3.06 Company Reports; Financial Statements.

(a) The Company has furnished or filed all reports, schedules, forms, statements and other documents (including exhibits and other information incorporated therein) required to be furnished or filed by the Company with the SEC since January 1, 2014 (such documents, together will all exhibits, financial statements, including the Company Financial Statements, and schedules thereto and all information incorporated therein by reference, but excluding the Proxy Statement/Prospectus, being collectively referred to as the "Company Reports"). Each Company Report (i) at the time furnished or filed, complied in all material respects with the applicable requirements of the Exchange Act, the Securities Act or the Sarbanes-Oxley Act of 2002 (including the rules and regulations promulgated thereunder), as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such Company Report and (ii) did not at the time it was filed (or if amended or superseded by a filing or amendment prior to the date of this Agreement, then at the time of such filing or amendment) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Each of the consolidated financial statements of the Company included in the Company Reports (the "Company Financial Statements") complied at the time it was filed as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, was prepared in accordance with United States generally accepted accounting principles ("GAAP") (except, in the case of unaudited quarterly financial statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods and as of the dates involved (except as may be indicated in the notes thereto) and fairly presents in all material respects, in accordance with GAAP, the consolidated financial position of the Company and the Company's consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods shown (subject, in the case of unaudited quarterly financial statements, to normal year-end audit adjustments).

(b) Neither the Company nor any Company Subsidiary has any liability of any nature that is required by GAAP to be set forth on a consolidated balance sheet of the Company and the Company Subsidiaries, except liabilities (i) reflected or reserved against in the most recent balance sheet (including the notes thereto) of the Company and the Company Subsidiaries included in the Company Reports filed prior to the date hereof, (ii) incurred in the ordinary course of business after March 31, 2016, (iii) incurred in connection with the Merger or any other transaction or agreement contemplated by this