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.	))))	**Case No. EM-2018-0012**

STAFF'S INITIAL BRIEF

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Initial Brief,* states as follows:

Introduction:

Staff recommends that the Commission to grant the *Joint Application* of Great Plains Energy Incorporated ("GPE") and Westar Energy, Inc., together with GPE's subsidiaries, Kansas City Power & Light Company ("KCPL") and KCP&L Greater Missouri Operations Company ("GMO"), for authority for GPE to merge with Westar, conditioned as further described below, and to grant the variance requested by the Joint Applicants from the Commission's affiliate transaction rule for electric utilities, also subject to the conditions further described below, because Staff has determined that, with the requested conditions, the transaction is not detrimental to the public interest and should therefore be approved.[1]

GPE, its subsidiaries KCPL and GMO, together with Westar, filed their *Joint Application* on August 31, 2017, in compliance with the Commission's determination on February 22, 2017,[2] that authority must be obtained from this

[1] In the absence of the indicated conditions, it is Staff's view that the transaction would be detrimental to the public interest in Missouri.

[2] ***Missouri Energy Consumers Group v. Great Plains Energy Incorporated,*** Case No. EC-2017-0107 (***Report & Order,*** issued Feb. 22, 2017).

Commission for GPE to merge with or acquire Westar because of an agreement that GPE made, and which the Commission approved, in Case No. EM-2001-464.[3]

The Initial Application:

GPE initially entered into an agreement to acquire Westar on May 29, 2016, and took the position that no approval by this Commission was necessary. Following an investigation by the Commission Staff,[4] the complaint referred to above was filed by the Missouri Energy Consumers Group ("MECG") on October 11, 2016.[5] Upon the Commission's determination that its approval was required, GPE filed for approval of its proposed acquisition on February 23, 2017.[6] That case was heard by the Commission on April 5 and 6, 2017; however, prior to the Commission's decision, GPE moved to dismiss its *Application* on July 14, 2017, following denial of its concurrent application by the Kansas Corporation Commission on April 19, 2017.[7]

The Revised Application:

On July 10, 2017, GPE announced that a revised merger agreement had been reached with Westar.[8] Accordingly, GPE filed its *Motion to Dismiss*

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[3] ***In the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing its Plan to Reorganize Itself Into a Holding Company Structure,*** Case No. EM-2001-464 (***Order Approving Stipulation and Agreement and Closing Case,*** issued Jul. 31, 2001).

[4] ***In the Matter of Great Plains Energy, Inc.'s Acquisition of Westar Energy, Inc., and Related Matters,*** Case No. EM-2016-0324 (***Staff's Investigation Report,*** issued July 25, 2016).

[5] ***Missouri Energy Consumers Group v. Great Plains Energy Incorporated,*** Case No. EC-2017-0107 (***Complaint,*** filed October 11, 2016).

[6] ***In the Matter of the Application of Great Plains Energy, Incorporated, for Approval of its Acquisition of Westar Energy, Inc.,*** Case No. EM-2017-0226 (***Application for Approval of Transaction; Motion to Consolidate Proceedings and Schedule Procedural Conference; and Motion for Expedited Treatment,*** filed February 23, 2017).

[7] ***In the Matter of the Application of Great Plains Energy, Incorporated, for Approval of its Acquisition of Westar Energy, Inc.,*** Case Nos. EM-2017-0226 and EE-2017-0113 (***Great Plains Energy Incorporated's Motion to Dismiss,*** filed July 14, 2017).

[8] *Id.,* ¶ 7.

Case Nos. EM-2017-0226 and EE-2017-0113, which the Commission granted on July 26, 2017. The *Joint Application* followed on August 31, 2017.

The Commission heard this matter on March 12 and 14, 2018. The Commission heard the testimony of 14 witnesses and received 26 exhibits. Additionally, the Commission took official notice of the two *Stipulations and Agreements* that were filed in this case on January 12, 2018, and on March 8, 2018, respectively; as well as the *Stipulation and Agreement* filed in Case No. EE-2017-0113 on October 26, 2017, and the *Reports and Orders* issued in Case Nos. EA-2015-0256, EA-2016-0208, EC-2017-0107, EO-2015-0240, and EO-2015-0241.

Argument:

I. Should the Commission find that GPE's merger with Westar is not detrimental to the public interest, and approve the merger?

Staff's Position:

It is Staff's position that the acquisition will not be detrimental to the public interest if the Commission adopts the conditions set out in the in the two stipulations and agreements, the first one filed on January 12, 2018, the second one filed on March 8, 2018. With those conditions, Staff has determined that the transaction will not be detrimental to the public interest in Missouri and should therefore be approved.

Two *Stipulations and Agreements,* the first filed on January 12, 2018, by the Joint Applicants, Staff, Brightergy, LLC, and the Missouri Joint Municipal Electric Utility Commission ("MJMEUC"), and the second filed on March 8, 2018, by the Joint Applicants, the Office of the Public Counsel, MECG, and the signatories to the first *Stipulation and Agreement,* embody the negotiated conditions that have resolved the

concerns of those parties. The Division of Energy of the Missouri Department of Economic Development, while not a signatory, has no objection to the approval of the merger.

Only two parties have objected, Renew Missouri and Kansas Electric Power Cooperative ("KEPCo"),[9] and the points they raise are without merit.

What is the Legal Standard for Approving a Merger Application?

A public utility must obtain prior authorization from the Commission to sell, assign, lease, or transfer utility assets,[10] to merge or consolidate,[11] to raise capital by issuing stock, notes, or bonds, or by mortgaging property,[12] and to acquire the stock of another utility.[13] Section 393.190.1, RSMo, provides:

> No . . . electrical corporation . . . shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void. * * *

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[9] Counsel for KEPCo stated that the objection was a formality intended to preserve their position in Kansas.

[10] *See* Rule 4 CSR 240-3.110, electric utilities; Rule 4 CSR 240-3.210, gas utilities; Rule 4 CSR 240-3.310, sewer utilities; 4 CSR 240-3.405, steam heat utilities; 4 CSR 240-3.605, water utilities.

[11] *See* Rule 4 CSR 240-3.115, electric utilities; Rule 4 CSR 240-3.215, gas utilities; Rule 4 CSR 240-3.315, sewer utilities; 4 CSR 240-3.410, steam heat utilities; 4 CSR 240-3.610, water utilities.

[12] *See* §§ 393.180, 393.200, 393.210, and 393.220, RSMo.; *and see* Rule 4 CSR 240-3.120, electric utilities; Rule 4 CSR 240-3.220, gas utilities; Rule 4 CSR 240-3.320, sewer utilities; 4 CSR 240-3.415, steam heat utilities; 4 CSR 240-3.615, water utilities.

[13] *See* § 393.190.2, RSMo.; and see Rule 4 CSR 240-3.125, electric utilities; Rule 4 CSR 240-3.225, gas utilities; Rule 4 CSR 240-3.325, sewer utilities; 4 CSR 240-3.420, steam heat utilities; 4 CSR 240-3.620, water utilities.

The lead case states:

> Before a utility can sell assets that are necessary or useful in the performance of its duties to the public it must obtain approval of the Commission. § 393.190, RSMo. (1969). The obvious purpose of this provision is to ensure the continuation of adequate service to the public served by the utility. 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.[14]

That case relied, in turn, on an older Missouri Supreme Court case stating:

> The owners of this stock should have something to say as to whether they can sell it or not. To deny them that right would be to deny to them an incident important to ownership of property. A property owner should be allowed to sell his property unless it would be detrimental to the public.
>
> The state of Maryland has an identical statute with ours, and the Supreme Court of that state . . . said: "To prevent injury to the public, in the clashing of private interest with the public good in the operation of public utilities, is one of the most important functions of Public Service Commissions. It is not their province to insist that the public shall be benefited, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public detriment. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public.' "[15]

The governing legal standard, therefore, is that a proposed merger must be approved unless it is likely to be detrimental to the public interest.

Given that the purpose of § 393.190.1, RSMo., is to ensure the continuation of adequate service to the public, the Commission typically considers such factors as the applicant's experience in the utility industry; the applicant's history of service difficulties, if any; the applicant's general financial health and ability to absorb the proposed transaction; and the applicant's ability to operate the assets safely and efficiently.[16]

[14] ***State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz,*** 596 S.W.2d 466, 468 (Mo. App., E.D. 1980).

[15] ***State ex rel. City of St. Louis v. P.S.C.,*** 335 Mo. 448, 459-460, 73 S.W.2d 393, 400 (Mo. banc 1934).

[16] *See e.g.* ***In the Matter of the Joint Application of Missouri Gas Energy, et al.,*** Case No. GM-94-252 (***Report and Order,*** issued October 12, 1994), 3 Mo. P.S.C.3rd 216, 220.

The Commission has sometimes said that denial of such an application requires compelling evidence on the record that a public detriment is likely to occur[17] and has also said that the mere risk of harm to the ratepayers is a detriment to the public interest.[18]

The Commission has since determined that the standard is to be weighed using a cost-benefit analysis:

> What is required is a cost-benefit analysis in which all of the benefits and detriments in evidence are considered. . . . Approval should be based upon a finding of no net detriment. * * * In considering whether or not the proposed transaction is likely to be detrimental to the public interest, the Commission notes that its duty is to ensure that UE provides safe and adequate service to its customers at just and reasonable rates. A detriment, then, is any direct or indirect effect of the transaction that tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable. The presence of detriments, thus defined, is not conclusive to the Commission's ultimate decision because detriments can be offset by attendant benefits. The mere fact that 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.[19]

Additionally, "what constitutes the 'public interest'" is "a matter of policy to be determined by the Commission."[20] In any proceeding on such an application,

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[17] *See, e.g.,* ***In the Matter of KCP&L,*** Case No. EM-2001-464 (***Order Approving Stipulation & Agreement and Closing Case,*** issued Aug. 2, 2001).

[18] ***In the Matter of Aquila, Inc.,*** Case No. EF-2003-0465 (***Report & Order,*** issued Feb. 24, 2004) pp. 6-7.

[19] ***In the Matter of Union Electric Company, d/b/a AmerenUE,*** 13 MoPSC3d 266, 293 (2005); *and see* ***In the Matter of Great Plains Energy, Inc., Kansas City Power & Light Company and Aquila, Inc.,*** 17 Mo.P.S.C.3d 338, 541 (2008), "the Commission may not withhold its approval of the proposed transaction unless 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 where attendant benefits are weighed against direct or indirect effects of the transaction that would diminish the provision of safe or adequate of service or that would tend to make rates less just or less reasonable."

[20] 17 Mo.P.S.C.3d at 543.

the applicant necessarily bears the burden of proof.[21]

Do the Likely Benefits of the Proposed Merger Outweigh the Likely Detriments?

1. The Original Transaction

Staff described the possible detriments posed by the acquisition of Westar by GPE that was proposed initially in its *Investigation Report,* filed on July 25, 2016, in Case No. EM-2016-0324.[22] They included financial detriments,[23] resource and operational detriments,[24] service quality detriments,[25] and affiliate transaction detriments.[26] Of these, the possible financial detriments were both most significant and most likely to occur due to the very heavy leverage required by the transaction.[27] While it is impossible to guarantee that a transaction will not have any detrimental impact, Staff nonetheless recommended that the initial proposed acquisition be approved subject to the imposition of an array of conditions designed to avoid or ameliorate the likely detriments.

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[21] *Id.*

[22] *Staff's Investigation Report,* Case No. EM-2016-0324, *passim.*

[23] *Id.,* pp. 30-35.

[24] *Id.,* pp. 35-37.

[25] *Id.,* pp. 38-51.

[26] *Id.,* pp. 51-55.

[27] According to a news release issued at the time the original transaction was announced, the value of the consideration GPE had agreed to pay for Westar was expected to be approximately $8.6 billion (85% cash and 15% stock) and included the assumption by GPE of approximately $3.6 billion in existing Westar debt. To fund the acquisition, GPE relied upon approximately $8.0 billion of committed debt financing from Goldman Sachs Bank USA and Goldman Sachs Lending Partners LLC as well as a $750 million mandatorily preferred convertible equity commitment from the Ontario Municipal Employees Retirement System ("OMERS"), to be funded at the closing of the proposed transaction. The news release reported that GPE planned to issue long-term financing consisting of a combination of equity, equity-linked securities and debt prior to closing of the proposed transaction, and that GPE expected this financing mix would allow it to maintain its investment grade credit ratings.

2. The Revised Transaction

The "merger of equals" transaction now submitted for Commission approval is very different from the original proposed acquisition, such that the regulatory and financial concerns that existed regarding the initial transaction are no longer an issue.[28] The proposed merger is a stock-for-stock, tax-free, "merger of equals" and will result in no acquisition premium, no transaction debt, and no exchange of cash.[29] GPE's shareholders will receive 0.5981 shares in the newly-formed Company in exchange for each existing share of GPE's stock, currently trading at about $31 per share.[30] Westar shareholders will receive one share in the Company in exchange for each share of Westar, which is currently trading at about $51 per share.[31] The exchange ratio was the result of arms'-length negotiations, informed by GPE's and Westar's respective advisors' analyses of the value of each company's common stock undisturbed by the initial transaction.[32] The debt financing incurred by GPE for the initial transaction has been unwound and at the time of the merger and as a condition of the Amended Merger Agreement, GPE will have $1.25 billion or more remaining cash on its balance sheet.[33] This cash largely represents proceeds from the issuance of common equity in contemplation of the Initial Transaction.[34] Any costs associated with financing contemplated to complete the initial transaction are considered to be transaction costs.[35]

[28] Bryant Direct, pp. 8-9.

[29] Ruelle Direct, p. 3; Bryant Direct, pp. 6, 7; Somma Direct, p. 4.

[30] Bryant Direct, pp. 6, 18.

[31] Bryant Direct, pp. 6, 18.

[32] *Id.*

[33] Bryant Direct, p. 8.

[34] *Id.*

[35] *Id.*

The Joint Applicants have committed that they will not seek recovery of transaction costs through retail rates.[36]

The following chart presents a side-by-side comparison of details of the two transactions:[37]

TERM OF TRANSACTION	INITIAL TRANSACTION	REVISED MERGER
Purchase Price	$60 per Westar share	Merger will be effectuated by an exchange of stock
Acquisition Premium	$4.9 billion	None[2]
Debt Issuance Related to Transaction	$4.3 billion	None
Rate Recovery of Acquisition Premium/Goodwill	Reserved the right to seek recovery of goodwill in certain circumstances	There will be no control premium paid and an absolute commitment not to seek recovery in rates of the goodwill recorded in connection with the Merger
GPE/Holdco Post-Closing Capital Structure	GPE: 41% equity/59% long-term debt	Initially 59%, with plans to reduce equity to rebalance to ~50% long-term debt/~50% equity
KCP&L Post-Closing Capital Structure	Balanced	Balanced
GMO Post-Closing Capital Structure	Balanced	Balanced
Westar Post-Closing Capital Structure	Balanced	Balanced

[36] *Id.*

[37] Greenwood Direct, Table 1.

GPE/Holdco Post-Closing Credit Rating	GPE: S&P – BBB+, negative outlook; Moody's – Baa3	Holdco: S&P – BBB+, positive outlook; Moody's – upgraded rating to Baa2 (pre Initial Transaction level)
KCP&L Post-Closing Credit Rating	S&P – BBB+, negative outlook; Moody's – Baa1	S&P – BBB+, positive outlook; Moody's – Baa1
KCP&L GMO Post-Closing Credit Rating	S&P – BBB+, negative outlook; Moody's – Baa2	S&P – BBB+, positive outlook; Moody's – Baa2
Westar Post-Closing Credit Rating	S&P – BBB+, negative outlook Moody's – Baa1	S&P – BBB+, positive outlook; Moody's – Baa1
Forecasted Holdco Debt Five Years Post-Transaction	$3.8 – 4 billion	~$1.15 billion in 2019-2020 to re-balance capital structure
Upfront Retail Electric Customer Bill Credits	None	$50 million
Community Support	$3 million to Missouri community action agencies over 10 years	$3 million to Missouri community action agencies over 10 years

Merger Integration Plans	Preliminary	Completed
Estimated Net Merger Savings	Initial analysis Year 1: $15 MM Year 2: $63 MM Year 3: $149 MM Year 4: $199 MM	Completed integration plans Year 1: $28 MM Year 2: $110 MM Year 3: $144 MM Year 4: $150 MM Year 5: ~$160 MM
Employees	Use retirements, natural attrition and voluntary severance before any involuntary layoffs would be considered	No involuntary layoffs as a result of the Merger

3. <u>There are No Likely Financial Detriments</u>

The financial situation of the companies will not suffer any negative impact from the merger and will in important respects be better than before the merger.[38] In fact, Moody's Investor Services and Standard & Poor's have each concluded that the combined Company will be stronger financially than Westar or Great Plains Energy would be absent the merger.[39] These conclusions have been supported by favorable ratings actions already taken by the agencies.[40] There will be no change to the operating utilities' assets, liabilities, outstanding debt, or capital structures and no negative credit ratings actions following the closing.[41]

Although the merger will not include any acquisition premium, it will result in the booking of $1.52 billion of goodwill from an accounting perspective, which the Joint Applicants have promised not to ever seek recovery of from the ratepayers.[42] For accounting purposes, Westar has been determined to be the accounting acquirer and GPE will be the accounting acquiree.[43] Even though no cash will change hands and no control premium will be paid, Generally Accepted Accounting Principles ("GAAP") require that, as the acquiree, the difference between the underlying net book value of GPE's assets and the market value of GPE's equity at the time of the exchange be recorded as merger-related goodwill.[44] The merger-related goodwill will be recorded on,

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[38] Ruelle Direct, p. 11; Bryant Direct, pp. 4, 16-17; Greenwood Direct, p. 13.

[39] Greenwood Direct, p. 11.

[40] *Id.*

[41] Somma Direct, p. 7.

[42] Bryant Direct, p. 7; Greenwood, p. 9. The precise amount of goodwill cannot be known until the transaction is approved and is closed.

[43] *Id.*

[44] *Id.*

and will remain on, the books of the new holding company.[45] This merger-related goodwill will have no impact on the utilities, their capital structures, cost of service, or customers' rates.[46]

There will be affirmative financial benefits from the merger. In addition to up-front bill credits of $75 million ($29 million for Missouri ratepayers), the Joint Applicants have identified net merger savings of more than $550 million that will be realized in the first five years.[47] $10.3 million of merger savings are expected to be realized in the now-pending KCP&L and GMO rate cases.[48] Beginning with rate cases filed in 2022, merger savings are expected to grow to between $30 and $35 million.[49]

These merger savings will benefit customers in two primary ways: (1) lower rates in future rate proceedings, including the KCP&L and GMO rate proceedings nearly contemporaneous with the merger, than would be the case absent the merger, due to lower cost of service, and (2) delays in future rate increases, enabled by merger savings that will be available to offset other utility cost pressures and continued infrastructure investments for which the Company would otherwise need to seek rate recovery.[50] The detailed integration plans reflect total company net cost savings of 28 million in 2018 and growing to $160 million per year from 2022 and beyond.[51] These savings will be achieved with no involuntary severances of employees.[52] Additionally, although

[45] *Id.*

[46] *Id.*

[47] Somma Direct, p. 8; Busser Direct, p. 3; Ex. 16, p. 6.

[48] Ex. 16, p. 6.

[49] *Id.*

[50] Ives Direct, p. 5.

[51] Somma Direct, p. 7; Busser Direct, p. 3.

[52] Bassham Direct, p. 13; Ruelle Direct, p. 8; Busser Direct, p. 3.

consummating the merger will produce substantial transaction costs, the Joint Applicants have agreed not to seek the recovery of any of those transaction costs in rates.[53]

The KCC denied the original application because of its concerns as to the financial condition of the merged company due to the magnitude of the acquisition premium GPE had agreed to pay and the amount of debt GPE had proposed to incur.[54] The revised transaction, a "merger of equals," will be accomplished entirely through an exchange of stock with no other cash or securities changing hands, with the intent that no control premium be paid to either company and no merger-related debt will be incurred.[55] Thus, the financial concerns that killed the first transaction no longer apply. The merger will certainly provide immediate benefits to customers in the form of upfront bill credits; and it is expected to result in efficiencies and cost savings that will be reflected in the cost of service of KCP&L and GMO in their now-pending rate cases.[56]

The integration planning effort that will achieve these savings has been an enormous undertaking involving over 400 GPE and Westar employees participating in 18 teams, including the 14 "functional" teams, 2 "cross-functional" teams (Information Technology or "IT" and the People/Culture Team, which led the employee offer and hiring process), the Steering Team and the Project Management Office ("PMO").[57] The Joint Applicants have identified $627 million of gross savings that can be realized over

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[53] Bryant Direct, p. 8.

[54] Bassham Direct, p. 3; Ruelle Direct, p. 3; Bryant Direct, p. 4.

[55] Bassham Direct, p. 4.

[56] *Id.*

[57] Busser Direct, p. 9.

the first five years after the closing for 2018 through 2022; net savings are projected to be $555 million,[58] after reflecting transition costs of $72 million:[59]

Efficiency Savings by Function

	2016/17	2018	2019	2020	2021	2022	Total
Gross Savings							
Support Services		$18.3	$31.1	$35.5	$39.6	$47.0	$171.4
Generation		$13.6	$33.1	$35.2	$32.0	$33.5	$147.4
Supply Chain		$4.3	$24.3	$38.2	$39.4	$39.7	$145.9
T&D/Customer Service		$1.7	$6.1	$8.7	$9.5	$9.6	$35.5
Benchmark Staffing		$11.7	$22.4	$29.1	$31.3	$32.3	$126.7
Total		**$49.7**	**$116.9**	**$146.7**	**$151.9**	**$162.0**	**$627.0**
Transition Costs							
2016/17	($35.6)						($35.6)
2018-2022		($21.9)	($6.6)	($3.0)	($2.5)	($2.2)	($36.2)
Net Savings	($35.6)	$27.8	$110.3	$143.5	$149.4	$159.8	$555.2

Electric utilities operate today in an environment of flat or declining load growth and increasing costs that necessarily results in ever-increasing rates for customers.[60] The proposed merger is a logical next step in an industry under pressure to manage costs and keep electricity both increasingly reliable yet affordable.[61] For a number of reasons, including a good strategic and cultural fit, joint plant ownership, contiguity of the KCP&L/GMO/Westar service territories, and complementary operational strengths, the merger presents opportunities for savings, service enhancements and economic development over the long term that could not be replicated by either company

[58] Not including additional savings of $222.6 million from retiring six old and inefficient coal-fired generation plants. Busser, Direct, p. 23.

[59] Busser Direct, Table 1. Transition costs are costs incurred to enable or ensure that savings are achieved and the integration process is effective. The Joint Applicants incurred or expect to incur 1 $35.6 million of transition costs in 2016 and 2017, which includes costs related to planning and designing the integration as well as voluntary severance programs offered by each company. *Id.,* p. 11.

[60] Bassham Direct, p. 5; Ruelle Direct, p. 5.

[61] Bassham Direct, p. 18.

individually or in a transaction with any other entity.[62] Merger savings are projected to be about $28 million in the first year alone.[63] It is the geographic contiguity of GPE and Westar, in particular, that will enable many opportunities for synergies, efficiencies and cost savings.[64]

The merger, if approved, will benefit customers in two ways: first, through $75 million in upfront bill credits; second, increased economies of scale and increased efficiencies that will reduce the operating companies' cost of service in a way that will be directly reflected in rates.[65] For example, the closing of elderly, coal-fired generating plants will result in savings.[66] These savings will grow over time, reducing the size and frequency of future rate cases.[67] As a larger and financially-stronger company, the post-merger entity will have access to capital on more favorable terms.[68] Its financial metrics will be about the same as GPE's are now:[69]

	Great Plains Energy (Actual / Projected)			**Pro-Forma Combined Company (Projected)**				
	2015 Actual	**2016 Actual**	**2017 Projected**	**2018**	**2019**	**2020**	**2021**	**2022**
FFO /Debt	16.4%	18.9%	17.8%	19.4%	18.4%	19.0%	18.6%	18.4%
Debt /EBITDA	4.68	4.33	4.01	4.14	4.38	4.26	4.26	4.12

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[62] *Id.;* Ruelle Direct, p. 5.

[63] Bassham Direct, p. 15.

[64] Bassham Direct, p. 17.

[65] Bassham Direct, p. 6; *2nd Stipulation & Agreement,* ¶ 15.

[66] *Id.,* p. 6 n. 2.

[67] *Id.;* Ruelle Direct, p. 8.

[68] Bassham Direct, pp. 6-7, 8.

[69] Somma Direct, Table 1.

Based on current market values, the Company will have an equity value of approximately $14 billion, which is simply the sum of the equity market capitalization of the two companies (i.e., $6.3 billion for GPE and $7.6 billion for Westar) immediately prior to the announcement of the merger.[70] In fact, the combined Company's consolidated capital structure immediately following the closing will be approximately 59 percent equity and 41 percent long-term debt due to the equity issued by GPE in connection with the initial transaction.[71] The Company's projected capital structure immediately following the closing will be higher than industry norms for utility holding companies, and the Company will rebalance its capital structure over time by repurchasing common stock in order to achieve and maintain a more balanced capital structure typical both for utility holding companies and regulated utilities, generally.[72]

Item	GPE	Westar	Post Merger
Rate Base ($ billions)	$6.6	$6.5	$13.1
Customers	860,100	701,000	1,561,100
Owned Capacity (MW)	6,524	6,573	13,097
Transmission Miles	3,600	6,400	10,000
Distribution Miles	22,700	29,000	51,700
Bassham Direct, Table 1.			

The post-merger company's financial and credit metrics will be strong.[73] Although the restructured transaction eliminates the leverage included in the initial transaction, the Joint Applicants nonetheless proposed financial conditions designed to

[70] Bryant Direct, p. 10; Somma Direct, p. 5.

[71] Bryant Direct, p. 9.

[72] *Id.*

[73] Bassham Direct, p. 16.

protect ratepayers from any adverse financial impact.[74] The credit rating agencies and equity analysts that follow Westar and GPE have reacted favorably to the merger, in part due to the elimination of the transaction-related debt secured in anticipation of financing the initial transaction and also because the merger will result from the exchange of stock, have no control premium and requires no debt financing.[75] Standard & Poor's ("S&P") suggested an additional upgrade may come after closing.[76] In addition, S&P revised its outlook from negative to positive for Westar, KGE, GPE, KCP&L, and GMO in response to the merger announcement.[77] Moody's Investor Services upgraded GPE's credit rating from Baa3 to Baa2 in response to the merger announcement and subsequent redemption of GPE's debt issued to finance the initial transaction.[78] Moody's stated:

> With the newly proposed MOE transaction, Great Plains preserves the same strategic benefits as it would have had in the previously proposed acquisition of Westar. The combined company will benefit from an increase in the size and scale of their utility operations as well as an additional diversification in regulatory environments. Moody's views the combined company under the MOE transaction as having a stronger credit profile than it would have had if formed through a highly leveraged acquisition. The combined company will also maintain the existing credit metrics such as CFO [Cash From Operations] pre-WC [Working Capital] to debt in the high teens range. Furthermore, with no additional parent debt issued in the MOE transaction, Great Plains will preserve some financial flexibility and balance sheet capacity to absorb any potentially adversary regulatory developments or other unexpected events in the future.[79]

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[74] Ruelle Direct, pp. 9-10.

[75] Bassham Direct, p. 16.

[76] Ruelle Direct, p. 7; Bryant Direct, p. 4.

[77] Ruelle Direct, p. 7; Bryant Direct, pp. 4, 13.

[78] Ruelle Direct, p. 7; Bryant Direct, pp. 4, 14.

[79] *Moody's Investors Service,* "Ratings Action: Moody's Upgrades Great Plains Energy to Baa2 from Baa3; outlook stable," July 19, 2007, at 1, quoted by Bryant Direct, p. 14.

The credit ratings resulting from the merger announcement include a "financial safety margin" that serves to protect the ratings from unforeseen negative possibilities.[80] Solid financial metrics, a stronger balance sheet, a stronger business risk profile due to its more diverse electric utility cash flow sources, a more balanced regulatory framework, and a larger customer base than either GPE or Westar had on a stand-alone basis, will contribute to the enhanced financial strength of the combined Company.[81] On that basis, S&P concluded that "these factors should strengthen the business risk profile of the combined entity compared with GPE's stand-alone business risk profile."[82] The improved financial strength of the Company will enhance its access to capital which will benefit consumers.

4. There are No Likely Operational or Resource Detriments

After the merger, Westar will be an operating subsidiary of the new holding company, as will KCP&L and GMO.[83] The executive team will be comprised of executives from both GPE and Westar.[84] The new holding company will be headquartered in Kansas City, and Westar's existing headquarters in Topeka will continue to be an important operational headquarters.[85] Charitable giving, community involvement and low-income assistance programs will continue at existing spending levels for at least five years.[86]

[80] Bryant Direct, p. 17.

[81] *Id.*

[82] *Id.,* quoting *S&P Global Ratings,* "Great Plains Energy Inc. and Subsidiaries Outlook Revised to Positive from Negative on Amended Merger Pact," July 11, 2017, at 2-3.

[83] Bassham Direct, pp. 11-12; Ruelle Direct, p. 6; Bryant Direct, p. 6.

[84] Bassham Direct, p. 13; Ruelle Direct, p. 9.

[85] Bassham Direct, p. 12.

[86] Bassham Direct, p. 15.

No involuntary separations will occur.[87] Naturally transitioning workforce demographics, with significant natural attrition through voluntary retirements, will permit the achievement of staffing-related efficiencies through normal attrition and other voluntary means over time in a generally-balanced way across both Kansas and Missouri.[88] The number of vacant positions temporarily held open is over 500, including 189 positions open at the initial transaction announcement, 135 net positions that were opened through employees voluntarily leaving from July 2016 to April 2017, an additional 98 employees that elected to take severance as part of the KCP&L VEEP and approximately 91 positions expected to be open upon completion of the Westar voluntary severance program, amounting to 54 percent of the planned labor savings.[89]

There will be affirmative operational benefits from the merger. The Joint Applicants plan to implement approximately 85 efficiency initiatives that contain 311 individual efficiencies.[90] These efforts are expected to produce net merger savings as described above, as well as reduce the number and size of rate cases going forward, resulting in rates that are both lower and more stable then would be the case absent the merger.[91] Based on application of an economic impact model ("IMPLAN"), the combined effects of lower levels of spending as a result of operational merger savings, lower electric rates, and the up-front bill credit will produce a positive long-term impact on state and local economies, estimated at a net increase in economic activity of

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[87] Bassham Direct, p. 13; Ruelle Direct, p. 8; Greenwood Direct, pp. 15-16.

[88] Bassham Direct, pp. 13-14; Ruelle Direct, p. 11.

[89] Busser Direct, p. 17.

[90] Greenwood Direct, p. 14.

[91] *Id.,* pp. 14-15.

approximately $617 million between 2018 and 2030.[92] This beneficial impact will be spread across personal spending, industrial output, and taxes, extending to all customer classes, and to Missouri residents and businesses more broadly as the effects spread beyond the immediate utility service territories.[93]

As of the end of 2017, KCP&L and GMO either own or contract for approximately 1,898 MW of renewable energy.[94] Since 2005, KCP&L and GMO have added 1,454 MW of renewable energy to their supply mix, and GPE has contracted for an additional 444 MW expected to be in-service by mid-2019.[95] In 2017, approximately 21% of GPE's retail sales were supplied by renewable energy.[96] In Missouri, investor-owned electric utilities ("IOU's") are required to develop an Integrated Resource Plan ("IRP") every three years and update them as needed annually.[97] The fundamental objective of the IRP process at IOUs is to provide the public with energy services that are safe, reliable and efficient, at just and reasonable rates, in a manner that serves the public interest.[98] In addition, Missouri has a Renewable Energy Standard ("RES") that requires all electric utilities to generate or purchase renewable energy credits ("RECs") and solar RECs associated with renewable energy resources in sufficient quantity to meet the statutory requirements.[99] The specific requirements are:

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[92] Greenwood Direct, p. 15. The net increase reflects costs to achieve synergies and net reductions in employment that result from the merger.

[93] Greenwood Direct, p. 15.

[94] Crawford Surrebuttal, at 4.

[95] *Id.*

[96] *Id.,* at p. 5.

[97] *Id.*

[98] *Id.*

[99] *Id.*

• No less than ten percent (10%) in each calendar year 2018 through 2020; and

• No less than fifteen percent (15%) in each calendar year beginning in 2021.[100]

Both companies filed an IRP Annual Update Preferred Plan in June 2017 for years 2017 through 2036 which notes changes to the 2015 IRP.[101] 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 in 2027.[102] 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.[103] For both companies, all new generation planned over the twenty-year horizon is renewable energy only.[104] Both companies filed annual reports in April 2017 that demonstrate their RES compliance.[105] The 2017 combined generation from KCP&L's and GMO's non-solar renewable resources was approximately 4.7 million MWh.[106] Solar RES compliance for both companies comes from customer generated solar, 0.17 MW of KCP&L solar installations, and a 3 MW GMO-owned solar facility.[107] Both companies exceed the Missouri RES requirements.[108]

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[100] *Id.*

[101] *Id.,* at p. 6.

[102] *Id.*

[103] *Id.*

[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] *Id.*

[108] *Id.*

5. There are No Service Quality Detriments

The Merger will not be detrimental to issues of service quality, including reliability and customer service.[109] The merger will enable the combined organization to maintain or, over the longer term, potentially provide higher service quality.[110] KCP&L and GMO have a long history of providing sufficient and efficient service in Missouri, in large part because customers demand it, and the Joint Applicants are committed to continuing to serve customers safely, effectively, reliably, and ultimately more efficiently.[111] Customers will experience little if any change in their day-to-day interactions with their electric service provider.[112] Following the merger, the Joint Applicants will continue to operate the existing Westar contact center in Wichita, Kansas, and the existing KCP&L contact center in Raytown, Missouri.[113] The combined Company expects to maintain, and possibly improve, public safety, by combining GPE and Westar and adopting "best practices" among the utilities, the Joint Applicants expect a positive effect on safety for both the public and employees.[114]

In condition No. 34, KCP&L and GMO commit to meet or potentially exceed the customer service and operational levels currently provided to their Missouri retail customers.[115] To ensure that Staff has the information required to assess KCP&L's and GMO's quality of service, in condition No. 34, KCP&L and GMO also commit to continue

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[109] Greenwood Direct, p. 16.

[110] Akin Direct, p. 3.

[111] Greenwood Direct, p. 16.

[112] *Id.*

[113] *Id.*

[114] *Id.,* at p. 17.

[115] Akin Direct, p. 4.

to provide service quality data to Staff on a monthly basis.[116] This includes the following contact center metrics: abandoned call rate, average speed of answer, service level (percentage of calls answered within 20 seconds), and the numbers of calls offered call deferral technology.[117] It also includes the following service reliability metrics: system average interruption duration index ("SAIDI"), system average interruption frequency index ("SAIFI"), customer average interruption duration index ("CAIDI"), and customer average interruption frequency index ("CAIFI").[118]

The contact center and reliability metrics included in condition No. 34 measure the call center customer service and the electric service reliability that customers care about.[119] These are primary industry indicators for these key areas of service quality and will be measured and reported to Staff on a regular basis by KCP&L and GMO.[120] With the provision of this information, as well as the customer survey response information, Staff will be fully equipped to ensure that the Merger will not have a detrimental effect on service quality.[121]

The merger is expected to maintain, and possibly improve, the public safety.[122] By combining KCP&L, GMO, and Westar and adopting "best practices" among the utilities, the Joint Applicants expect a positive effect on safety for both the public and for employees.[123] KCP&L and GMO have a good safety record and have performed at a

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[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] Akin Direct, p. 5.

[120] *Id.*

[121] *Id.*

[122] Akin Direct, p. 6.

[123] *Id.*

high level in large construction projects, but Westar's safety record over last several years outpaces KCP&L's and GMO's.[124] Overall, the companies' concern for public and employee safety combined with the Commission's regulatory oversight authorities will ensure that safety is maintained.[125]

The merger will not lead to cost cutting for vegetation management, maintenance, system improvements, or other areas of utility operations that would negatively impact the public safety.[126] The projected savings do not include any savings related to reduction in the employment of utility linemen and women who play a key role in ensuring the safety of the electric system.[127] In addition, proposed cost reductions in vegetation management programs, which are reflected in the projected savings, do not come from reducing safety precautions, but from efficiencies in how the program is staffed, managed and executed.[128] These efficiencies do not result in fewer trees being trimmed or greater public exposure to tree-related outages or hazards.[129] Finally, both of the existing call centers will continue to operate post-merger as before, including 7x24x365 staffing for emergency calls.[130]

6. There are No Affiliate Transaction Detriments

Certain shared costs will be incurred by KCP&L, GMO and Westar, such as accounting, payroll, regulatory, accounts payable, and human resources.[131] The current

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] *Id.*

[128] *Id.*

[129] *Id.*

[130] *Id.,* at p. 7.

[131] Busser Direct, p. 42.

allocation methodology used by KCP&L and GMO to allocate shared costs among KCP&L, GMO and other Great Plains Energy business units, as documented in the cost allocation manuals ("CAMs") filed annually with the Commission, will be utilized, updated as required for the combined Company's operations and those of its subsidiaries.[132] For example, If it is determined that a particular KCP&L shared cost should be allocated based on each business unit's utility plant, then GMO and Westar will receive only a portion of that cost based on its utility plant; if by customer count, then by the number of customers, etc.[133] If it is determined that a particular Westar shared cost should be allocated based on each business unit's utility plant, then KCP&L and GMO will receive only a portion of that cost based on its utility plant; if by customer count, then by the number of customers, etc.[134] GMO shared costs will be allocated consistent with the methodologies that will be used to allocate Westar or KCP&L as described above.[135]

The Parties have agreed to conditions intended to prevent any affiliate transaction detriments:[136]

- **Condition 26:** the Joint Applicants assure the Commission of their intention to comply with the Affiliate Transaction Rule.
- **Condition 27:** information relating to affiliate transactions involving KCP&L and GMO will be treated as though in the possession of KCP&L and GMO.

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[132] *Id.*

[133] *Id.*

[134] *Id.*

[135] *Id.*

[136] *1st Stipulation & Agreement,* Ex. A, ¶¶ 26-33.

- **Condition 28:** KCP&L and GMO will not give preferential treatment to affiliates.
- **Condition 29:** the recovery of intercompany charges may be sought in the first rate cases following the merger.
- **Condition 30:** records of the operating subsidiaries and other affiliates will be available to the Staff and the Commission as needed.
- **Condition 31:** Holdco, KCP&L and GMO shall agree to an independent third party management audit report of new holding company, KCP&L and GMO corporate cost allocations and affiliate transaction protocols. A committee, which shall be comprised of an equal number of Staff, OPC and Applicant representatives, shall develop a Request for Proposal ("RFP") with input from all committee members on the scope of work, and this RFP shall be submitted to the Commission for approval within six months after the closing of the Merger. The selection of a successful bidder shall be conducted by the same committee and shall me made by unanimous vote. If the vote is not unanimous, the Commission will determine the successful bidder and scope of work. The independent third party management auditor's contract shall preserve the auditor's independence by precluding Staff, OPC, Holdco, KCP&L, and GMO representatives from directing or influencing the report's conclusions. Upon completion, the report of the audit shall be filed with the Commission.

a. The audit will examine Holdco, KCP&L, and GMO's corporate cost allocations, affiliate transaction protocols, and ensure that the existing CAM fully documents newly formed operations, or to make recommendations to revise the CAM to address newly formed operations. The audit shall be designed to assess compliance with the Commission's Affiliate Transactions Rule (4 CSR 240-20.015) as well as the appropriateness of the allocation of corporate costs among Holdco, KCP&L, GMO, and all affiliates. Holdco, KCP&L, GMO, and all (regulated and non-regulated) affiliates shall cooperate fully with the auditor by timely providing all information requested to complete the audit including, but not limited to, informal and interactive interviews followed up with formal discovery.

b. The audit report shall express an independent opinion on the degree and extent of KCP&L and GMO's compliance with the Commission's Affiliate Transactions Rule (4 CSR 240-20.015) and shall provide recommendations, if appropriate, regarding procedures and methodologies used by Holdco, KCP&L and GMO in allocating corporate costs and complying with the Commission's Affiliate Transaction Rule (4 CSR 240-20.015).

c. It is expressly acknowledged that Holdco, KCP&L and GMO shall collectively provide $500,000, funded below the line (and not recovered in rates), for purposes of funding the independent third party management audit. Any additional expense beyond $500,000, required

by the Commission, will be split 50/50 between ratepayers and shareholders.

d. Any cost in excess of $500,000 shall be deferred to Account 182.3 (other regulatory assets) and recovered through amortization, subject to the 50/50 split provided immediately above, in retail rates and cost of service in the first KCP&L and GMO general rate cases subsequent to the completion of the audit.

- **Condition 32:** customer proprietary information will not be shared without prior, informed consent.
- **Condition 33:** KCP&L and GMO agree to meet with Staff and OPC no later than sixty (60) days after the closing of the merger to provide a description of its expected impact on the allocation of costs among Holdco's utility and non-utility subsidiaries as well as a description of its expected impact on the cost allocation manuals ("CAMs") of KCP&L and GMO. No later than six (6) months after the closing of the Merger but no less than two (2) months before the filing of a general rate case for either KCP&L or GMO, whichever occurs first, KCP&L and GMO agree to file updates to their existing CAMs reflecting process and recordkeeping changes necessitated by the merger.

These conditions are comprehensive and robust and will ensure that the Joint Applicants are not able to manipulate affiliate transactions in order to cross subsidize unregulated enterprises at the expense of the ratepayers.

The Likely Benefits of the Proposed Merger do Outweigh the Likely Detriments:

According to the courts, "[t]he obvious purpose of [§393.190.1, RSMo.,] is to ensure the continuation of adequate service to the public served by the utility." Ratepayers interact with a utility in two primary ways: they receive service, for which they pay money. The amount of money they pay is controlled by the rates set by the Commission. Another interaction between ratepayers and the utility is customer service. Customer service is governed by Chapter 13 of the rules prescribed by the Commission, as supplemented by the provisions of the two *Stipulations and Agreements.*

Nothing in the proposed transaction causes Staff any concern about the continuation of safe and adequate service to the public served by the utility. As for the money that ratepayers pay for that service, the proposed transaction will result in an immediate monetary benefit to ratepayers in the form of $75 million in upfront bill credits and a longer term monetary benefit in the form of less frequent rate cases and smaller rate increases. The merger is expected to result in general economic benefits within the companies' service areas and within Missouri and Kansas generally. The existing customer service centers will remain in operation and Staff will receive monthly reports of metrics that measure the quality of customer service activity. Customer proprietary information will be protected.

Staff has not discerned any detriments in the proposed merger.[137] The "merger of equals," with no transfer of cash and no debt financing, has resolved the financial detriments that were apparent in the initial proposed transaction. For this reason,

[137] Tr. 3:270, lines 7-10.

proposed Conditions 10, 11, 12, 14, and 15 in the *1st Stipulation and Agreement* have been deleted as unnecessary. The merger poses no operational or resource detriments. Because of the Joint Applicants' contiguous service areas and long history of cooperation and co-ownership of generating units, the merger presents undeniable opportunities for increased economies of scale and operational efficiencies. The combined companies will be resource-rich, such that plans to retire superannuated coal plants can be accelerated. Service quality has been discussed already. Staff has not identified any potential service quality detriments. Affiliate transactions will be discussed below, but Staff has not discerned any affiliate transaction detriments, either. As Staff Director Natelle Dietrich testified, "We put consumer protections in place to prevent any potential of detriment."[138]

It is Staff's position that, as conditioned by the two *Stipulations and Agreements,* the proposed merger poses no detriments to the public interest and will confer affirmative benefits upon the public in general and ratepayers in particular. For this reason, Staff recommends that the Commission approve the merger, subject to the conditions set out in the two *Stipulations and Agreements.*

II. Should the Commission condition its approval of GPE's merger with Westar and, if so, how?

Staff's Position:

It is Staff's position that the merger will not be detrimental to the public interest if the Commission adopts the conditions set out in the in the two *Stipulations and Agreements*, the first one filed on January 12, 2018, the second one filed on March 8,

[138] *Id.*

2018.[139] With those conditions, Staff has determined that the transaction will not be detrimental to the public interest in Missouri and should therefore be approved.

In addition to the bill credits and cost savings already referred to, the Joint Applicants proposed a number of comprehensive conditions designed to protect ratepayers and resolve concerns.[140] Negotiations among the parties resulted in certain modifications to the conditions proposed by the Joint Applicants, as well as certain additional commitments and conditions. These are embodied in the two *Stipulations and Agreements.*[141]

The First Stipulation and Agreement:

The *1st Stipulation and Agreement* has three elements.[142] The first is Section II(A), which consists of 43 of the 48 Commitments and Conditions proposed by the Joint Applicants in the Direct Testimony of Darrin Ives.[143] Proposed Conditions 10, 11, 12, 14, and 15 have been deleted; Section III has been re-titled "Financing Conditions" (deleting the words "and Ring-Fencing"); a number of revisions have been made to Condition 31; a typographical error has been corrected in the third paragraph of Condition 34; "Staff Customer Experience Personnel" has been inserted in lieu of "Staff Consumer and Management Analysis Personnel" in Condition 35; and Conditions 9, 16.iii. and 18 have been revised slightly to ensure consistency with the

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[139] ***In the Matter of the Application of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.,*** Case No. EM-2018-0012 (***Stipulation & Agreement,*** filed January 12, 2018) (hereinafter "*1st Stipulation & Agreement*"); and ***In the Matter of the Application of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.,*** Case No. EM-2018-0012 (***Stipulation & Agreement,*** filed March 8, 2018) (hereinafter "*2nd Stipulation & Agreement*").

[140] Appendix H to the *Joint Application;* and Schedule DRI-1.

[141] *1st Stipulation & Agreement* and *2nd Stipulation & Agreement.*

[142] *1st Stipulation & Agreement,* ¶ 7.

[143] *Id.*

same conditions proposed in Kansas.[144] The 16-page schedule of the 43 Commitments and Conditions is attached as Exhibit A to the *1st Stipulation and Agreement* and is incorporated both therein and herein by reference.[145] For clarification, the Signatories also attached Exhibit B to the *1st Stipulation and Agreement,* which shows the changes to the 48 Commitments and Conditions originally proposed by the Joint Applicants.[146]

The second element of the *1st Stipulation and Agreement* is in Section II(B). It contains two conditions that were previously agreed to by GPE, KCP&L, GMO, and Staff in the 2016 Variance Application case, Case No. EE-2017-0113, but were inadvertently omitted from the 48 Commitments and Conditions originally proposed by the Joint Applicants.[147] It also contains two new conditions.[148]

The third element of the *1st Stipulation and Agreement* is found in Section II(C), and relates to the Joint Applicants' request in ¶¶ 26-29 of the *Joint Application* that the Commission grant a variance from the Affiliate Transactions Rule, pursuant to 4 CSR 240-20.015(10).[149]

The Second Stipulation and Agreement:

The *2nd Stipulation and Agreement,* filed on March 8, 2018, modifies and supplements the *1st Stipulation and Agreement.*[150] It includes seven new or modified conditions, as well as two concessions by OPC and one by MECG.[151]

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[144] *Id.*

[145] *Id.*

[146] *Id.*

[147] *1st Stipulation & Agreement,* ¶ 8.

[148] *Id.*

[149] *Id.*

[150] *2nd Stipulation & Agreement,* ¶ 8.

The Conditions:

The conditions and commitments offered by the Joint Applicants, negotiated and agreed among the parties, and embodied in the two *Stipulations and Agreements* are summarized below. Staff urges the Commission to approve the proposed merger subject to these conditions and is of the opinion that the merger, so conditioned, will not be detrimental to the public interest. Staff has numbered the conditions for consistency and ease of reference, although some are not numbered in the *Stipulations and Agreements.* In summarizing the conditions, some details have been omitted.

1. General Conditions:

1. Headquarters – of the new holding company will be located in Kansas City, Missouri, and the existing Westar headquarters in Topeka, Kansas, shall serve as the new entity's Kansas headquarters. [152]

2. Executives – Mr. Ruelle shall serve as the non-executive chairman of the board of the new holding company for three years; Mr. Bassham shall be president and CEO. [153]

3. Charitable Giving – will continue at current levels for five years. [154]

4. Low-Income Assistance Programs -- will continue at current levels for five years. [155]

[151] *Id.,* at ¶¶ 13 and 14. OPC agreed to withdraw Dr. Marke's request for "an 'equal outcome' provision" and its objection to the *1st Stipulation and Agreement.* MECG agreed to withdraw its objection to the *1st Stipulation and Agreement.*

[152] *1st Stipulation & Agreement,* Ex. A, No. 1.

[153] *1st Stipulation & Agreement,* Ex. A, No. 2.

[154] *1st Stipulation & Agreement,* Ex. A, No. 3.

[155] *1st Stipulation & Agreement,* Ex. A, No. 4.

5. Corporate Social Responsibility -- $50,000 will be donated to each of six community action agencies. [156]

2. Employee Conditions:

6. Collective Bargaining Agreements – will be honored. [157]

7. Employee Compensation and Benefits -- will continue at current levels for two years. [158]

8. Employee Headcount – no involuntary severance due to either the merger or the plant retirements. [159]

3. Financing Conditions:

9. Board of Directors – will be independent. [160]

10. Omitted due to nature of revised merger transaction. [161]

11. Omitted due to nature of revised merger transaction. [162]

12. Omitted due to nature of revised merger transaction. [163]

13. Separation of Assets – operating subsidiaries will not commingle assets and will operate as separate legal entities. Cross-subsidization of non-regulated subsidiaries will not occur. [164]

14. Omitted due to nature of revised merger transaction. [165]

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[156] *1st Stipulation & Agreement,* Ex. A, No. 5.
[157] *1st Stipulation & Agreement,* Ex. A, No. 6.
[158] *1st Stipulation & Agreement,* Ex. A, No. 7.
[159] *1st Stipulation & Agreement,* Ex. A, No. 8.
[160] *1st Stipulation & Agreement,* Ex. A, No. 9.
[161] *1st Stipulation & Agreement,* Ex. A, No. 10.
[162] *1st Stipulation & Agreement,* Ex. A, No. 11.
[163] *1st Stipulation & Agreement,* Ex. A, No. 12.
[164] *1st Stipulation & Agreement,* Ex. A, No. 13.

15. Omitted due to nature of revised merger transaction.[166]

16. Credit Rating Downgrade – notification to the Commission if a downgrade occurs; recovery plans required.[167]

17. Cost of Capital – adverse cost-of-capital effects will not occur; elevated return on equity will not be sought.[168]

4. Ratemaking, Accounting and Related Conditions:

18. Upfront Bill Credits -- $50 million shared by retail electric customers within 120 days. This condition has been replaced by the *2nd Stipulation and Agreement;* see Condition No. 57, below. The amount of the upfront bill credits has been increased to $75 million.[169]

19. Transition Costs – transition cost recovery in rates is limited to the value of the benefits realized from the merger. This condition has been modified by the *2nd Stipulation and Agreement; s*ee Condition No. 53, below. The amount of transition costs that will be recovered has been reduced.[170]

20. Goodwill -- the difference between the fair market value of GPE's assets and the exchange value of GPE's stock upon the closing of the merger. It will be maintained on the books of the new holding company and will never be recovered in rates.[171]

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[165] *1st Stipulation & Agreement,* Ex. A, No. 14.

[166] *1st Stipulation & Agreement,* Ex. A, No. 15.

[167] *1st Stipulation & Agreement,* Ex. A, No. 16.

[168] *1st Stipulation & Agreement,* Ex. A, No. 17.

[169] *1st Stipulation & Agreement,* Ex. A, No. 18.

[170] *1st Stipulation & Agreement,* Ex. A, No. 19.

[171] *1st Stipulation & Agreement,* Ex. A, No. 20.

21. Goodwill Impairment – Ratepayers will be held harmless and capital costs will not be affected by any Goodwill impairment.[172]

22. Transaction Costs – will not be recovered in rates.[173]

23. Fuel and Purchased Power Costs – will not be adversely impacted by the merger.[174]

24. Retail Rates – will not be adversely impacted by the merger.[175]

25. Future Rate Cases – in future rate case proceedings, KCP&L and GMO will support their assurances provided in this document with appropriate analysis, testimony, and necessary journal entries fully clarifying and explaining how any such determinations were made.[176]

5. Affiliate Transactions and CAM Conditions:

26. Affiliate Transaction Rule – after the merger, KCP&L and GMO will operate in compliance with the Commission's Affiliate Transaction Rule. *1st Stipulation & Agreement,* Ex. A, No. 28.[177]

27. Information on Affiliate Transactions – Holdco and its subsidiaries commit that all information related to an affiliate transaction charged to KCP&L and/or GMO will be treated in the same manner as if that information is under the control of either KCP&L or GMO.[178]

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[172] *1st Stipulation & Agreement,* Ex. A, No. 21.

[173] *1st Stipulation & Agreement,* Ex. A, No. 22.

[174] *1st Stipulation & Agreement,* Ex. A, No. 23.

[175] *1st Stipulation & Agreement,* Ex. A, No. 24.

[176] *1st Stipulation & Agreement,* Ex. A, No. 25.

[177] *1st Stipulation & Agreement,* Ex. A, No. 26.

[178] *1st Stipulation & Agreement,* Ex. A, No. 27. "Holdco" is a name used to describe the holding company survivor of the merger.

28. No Preferential Treatment of Affiliates – except as permitted by any variance granted by the Commission, neither KCP&L nor GMO will provide preferential service, information, or treatment to an affiliated entity over another party at any other time. [179]

29. Intercompany Charges – Holdco and its subsidiaries may seek recovery of intercompany charges to regulated utility affiliates in their first general rate proceedings following the closing of the merger. [180]

30. Separate Books and Records Available to Staff and Commission – assures access to records of regulated operating subsidiaries and other subsidiaries as needed. [181]

31. Independent Third Party Management Audit of Affiliate Transactions and Corporate Cost Allocations Report – the Joint Applicants agree to an independent third party management audit report of new holding company, KCP&L and GMO corporate cost allocations and affiliate transaction protocols. [182]

32. Customer Proprietary Information – will not be shared without the prior informed consent of the customer. [183]

33. Cost Allocation Manual – the CAMS of KCP&L and GMO will be updated as appropriate. [184]

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[179] *1st Stipulation & Agreement,* Ex. A, No. 28.

[180] *1st Stipulation & Agreement,* Ex. A, No. 29.

[181] *1st Stipulation & Agreement,* Ex. A, No. 30.

[182] *1st Stipulation & Agreement,* Ex. A, No. 31.

[183] *1st Stipulation & Agreement,* Ex. A, No. 32.

[184] *1st Stipulation & Agreement,* Ex. A, No. 33.

6. Quality of Service Conditions:

34. Customer Service and Operational Levels – current levels will be met or exceeded. SAIDI, SAIDI, CAIFI, and CAIDI will be provided to Staff monthly. [185]

35. Continued Meetings with Staff Regarding Customer Service – regular meetings will occur, perhaps quarterly. [186]

36. Customer Service Management Organization Charts – will be provided to Staff. [187]

7. Reporting and Access to Records Conditions:

37. Merger Integration – for a period of two years, Staff will receive regular reports on the progress of merger integration. [188]

38. Goodwill Impairment Analysis – will be provided annually to Staff for five years, and thereafter will be provided upon request. [189]

39. Accounting Changes – will be reported to the Commission if material. [190]

40. Access to Materials Provided to Ratings Analysts – available upon reasonable written notice by Staff.[191]

41. Access to Materials Regarding CAM Compliance -- available upon reasonable written notice by Staff.[192]

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[185] *1st Stipulation & Agreement,* Ex. A, No. 34.

[186] *1st Stipulation & Agreement,* Ex. A, No. 35.

[187] *1st Stipulation & Agreement,* Ex. A, No. 36.

[188] *1st Stipulation & Agreement,* Ex. A, No. 37.

[189] *1st Stipulation & Agreement,* Ex. A, No. 38.

[190] *1st Stipulation & Agreement,* Ex. A, No. 39.

[191] *1st Stipulation & Agreement,* Ex. A, No. 40.

[192] *1st Stipulation & Agreement,* Ex. A, No. 41.

42. Access to Board of Director Materials -- available upon reasonable written notice by Staff.[193]

43. Retention Period for Affiliate Transaction Records – at least six years.[194]

44. Journal Entries – reflecting the merger will be provided to Staff and the Commission.[195]

45. Employment in the State of Missouri – In their first general rate cases filed after the closing of the Merger, KCP&L and GMO (as applicable) shall provide direct testimony explaining the employment metrics related to the number of full time employees and the average turnover rate along with any material changes to those metrics since the closing of the merger. This direct testimony shall include a complete description, supported by schedules or work papers as appropriate, of the merger-related labor and all labor-related efficiency savings that KCP&L and GMO (as applicable) propose to flow through to the benefit of customers in the form of rates that are lower than they would be in the absence of the merger. This condition has been modified by the *2nd Stipulation and Agreement,* see Condition No. 58, below.[196]

46. Staff or OPC Travel Outside Missouri – will be at Company's expense if necessary to examine records.[197]

8. Other Parent Company Conditions:

47. Prior Commitments of, and Orders Applicable to, GPE, KCP&L and GMO – the Joint Applicants commit to reaffirm and honor any prior commitments made

[193] *1st Stipulation & Agreement,* Ex. A, No. 42.

[194] *1st Stipulation & Agreement,* Ex. A, No. 43.

[195] *1st Stipulation & Agreement,* Ex. A, No. 44.

[196] *1st Stipulation & Agreement,* Ex. A, No. 45.

[197] *1st Stipulation & Agreement,* Ex. A, No. 46.

by GPE, KCP&L or GMO to the Commission to comply with any previously issued Commission orders applicable to KCP&L or GMO or their previous owners except as otherwise provided for herein.[198]

48. Future Access to Capital – Holdco acknowledges that its utility subsidiaries need significant amounts of capital to invest in energy supply and delivery infrastructure (including, but not limited to, renewable energy resources and other environmental sustainability initiatives such as energy efficiency and demand response programs), that meeting these capital requirements of its utility subsidiaries will be considered a high priority by Holdco's board of directors and executive management, and that Holdco's access to capital post-transaction will permit it and its utility subsidiaries to meet their statutory obligation to provide safe and adequate service.[199]

9. Additional Conditions:

49. Financial Valuation Model to be Retained -- Staff will retain a copy of GPE's financial valuation model that was provided by GPE on a highly confidential basis in response to a Staff data request in Case No. EM-2016-0324 and will continue to protect the confidentiality of the information contained within that model.[200]

50. Load Sampling -- GPE commits to maintain or improve current load sampling and research practices of KCP&L and GMO after the merger, and that KCP&L and GMO will discuss with Staff any modifications planned to integrate Westar and KCP&L and GMO load sampling and research practices.[201]

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[198] *1st Stipulation & Agreement,* Ex. A, No. 47.

[199] *1st Stipulation & Agreement,* Ex. A, No. 48.

[200] *1st Stipulation & Agreement,* ¶ 12.

[201] *1st Stipulation & Agreement,* ¶ 13.

51. No Adjustments to Share Benefits that Increase the Cost of Service -- neither KCP&L nor GMO shall propose any adjustment to increase cost of service in current or future rate cases in order to "share" the benefits of Westar transaction synergies between ratepayers and shareholders in setting rates.[202]

52. References to Commission Rules -- references to specific Commission rules are expressly intended by the signatories to include successor rules with substantially the same content and language, however renumbered or reorganized.[203]

53. Transition Costs – the signatories shall support in KCP&L and GMO's 2018 rate cases filed on January 30, 2018, deferral of merger transition costs of $7,209,208 for GMO and $9,725,592 for KCP&L's Missouri operations. The signatories will recommend recovery in the respective 2018 rate cases through amortization of such merger transition costs over a 10-year period beginning when such costs have been included in Missouri base rates, with no carrying costs or rate base inclusion allowed for the unamortized portion of such costs at any time. The signatories agree that no other merger transition costs shall be requested for recovery from Missouri customers in the 2018 rate cases or thereafter. This agreement regarding transition cost recovery is an additional limitation to Condition 19 in Exhibit A to the *Stipulation and Agreement* filed on January 12, 2018 (*see* Condition 19, above).[204]

54. Future Mergers – the Joint Applicants acknowledge that ¶ II.7. ("Prospective Merger Conditions") of the *First Amended Stipulation and Agreement* approved by the Commission in Case No. EM-2001-464 will apply to Holdco

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[202] *1st Stipulation & Agreement,* ¶ 14.

[203] *1st Stipulation & Agreement,* ¶ 15.

[204] *2nd Stipulation & Agreement,* ¶ 9.

post-closing. Consequently, consistent with the Commission's ruling on February 22, 2017, in Case No. EC-2017-0107, Holdco will be required to comply with that provision in the future regardless of whether Holdco is named GPE.[205]

55. Name Changes – will not be implemented before the customer billing system is able to clearly designate the service provider on the customer's bill.[206]

56. Industrial Customer Meetings – will every six months from 2019 through 2023.[207]

57. Upfront Bill Credits – will be increased by $25 million to a total of $75 million. This replaces Condition 18 of the *1st Stipulation and Agreement.*[208]

58. Additional Reporting of Missouri Employment Information – In furtherance of the Joint Applicants' commitment that there will be no involuntary severance of Missouri-based employees, Applicants agree that, after Condition 37(b) of the 2018 S&A (the *1st Stipulation and* Agreement) concludes in 2020, the Joint Applicants shall provide a report to the Missouri Department of Economic Development – Division of Energy showing the Joint Applicants' year-end Missouri employment levels for each of calendar years 2021, 2022, and 2023, not later than 30 days following the end of each of these calendar years. Additionally, the Joint Applicants agree to amend Condition 45 of the 2018 S&A (the *1st Stipulation and* Agreement) to provide direct testimony at each rate case filed during the

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[205] *2nd Stipulation & Agreement,* ¶ 10.

[206] *2nd Stipulation & Agreement,* ¶ 11.

[207] *2nd Stipulation & Agreement,* ¶ 12.

[208] *2nd Stipulation & Agreement,* ¶ 15.

period 2019-2023 explaining employment metrics related to Missouri-based FTEs, turnover rate, and material changes to each since the closing of the merger.[209]

Conclusion:

The 58 conditions agreed by the Parties after extensive negotiations cover many areas of the Joint Applicants' operations and are intended to prevent the occurrence of any detriments to the public interest following the closing of the merger. Staff recommends that the Commission approve the merger subject to these conditions.

III. Should the Commission grant the limited request for variance of the affiliate transaction rule requested by Applicants?

Staff's Position:

It is Staff's position that the Commission should grant the requested variance from the Commission's Affiliate Transaction Rules in conjunction with approval of the proposed merger subject to the conditions contained in the two *Stipulations and Agreements* and summarized above. GPE was granted a similar variance upon its acquisition of Aquila, now GMO. The purpose of the variance is to permit the members of the corporate group to exchange goods and services at cost.

Discussion:

Upon the closing of the merger, KCP&L and GMO will immediately begin providing goods and services to, and receiving goods and services from, Westar.[210] These transactions may be considered "affiliate transactions" under 4 CSR 240-2.015(1)(B). As a result, the asymmetric pricing standards contained

[209] *2nd Stipulation & Agreement,* ¶ 16.

[210] Ives Direct, p. 32.

in 4 CSR 240-2.015(2) may apply, unless a variance is granted by the Commission.[211] The Commission's regulations include asymmetric pricing standards, which were designed to prevent cross-subsidization of non-regulated operations by the affiliated regulated utility.[212] Application of the standard in this case would prevent the combined Company's three regulated utility affiliates from exchanging goods and services at cost after the closing of the merger.[213] The requested variance is necessary to realize the savings post-merger that will ultimately benefit customers of the combined Company's utility subsidiaries in Missouri and Kansas.[214] The variance is reasonable, consistent with Commission precedent, and should be approved.[215]

The *1st Stipulation and Agreement* provides:

> By the Commission's approval of this Stipulation, the Signatories intend that the Commission shall grant KCP&L and GMO a variance from the provisions of the Affiliate Transactions Rules allowing all transactions between KCP&L, GMO, and Westar to occur at cost, except for wholesale power transactions which will be based on rates approved by the Federal Energy Regulatory Commission. As good cause for this variance, the Signatories agree that: (a) the variance is limited to transactions between the regulated utilities in Missouri and Kansas of Monarch Energy Holdings, Inc. ("Holdco"), to which this Stipulation applies as GPE will be merged into Holdco pursuant to the Amended Merger Agreement10; (b) the variance is necessary to enable the attainment of post-Merger savings that will ultimately benefit customers of Holdco's utility subsidiaries in Missouri and Kansas; and (c) given all of the conditions set forth in this Stipulation, the requested variance will not be detrimental to the public interest in Missouri with regard to transactions between KCP&L, GMO, and Westar. The Signatories agree that if the Commission approves the Stipulation, KCP&L and GMO will be entitled to rely upon the variance

[211] *Id.*

[212] *Id.,* p. 8.

[213] *Id.*

[214] *Id.*

[215] *Id.*

only if the Amended Merger Agreement is approved by the Commission and the Merger closes.[216]

The merger will result in significant savings and economies of scale, including efficiencies from the elimination of redundant corporate and administrative services, all of which will ultimately result in a lower cost of operations for the combined Company's utility subsidiaries in both Missouri and Kansas.[217] This will translate into utility rates for that are lower than if GPE and Westar each continue operating on a stand-alone basis.[218] Accordingly, the requested variance is needed to enable the realization of post-merger savings that will ultimately benefit customers of the combined Company's utility subsidiaries in Missouri and Kansas.[219]

The Joint Applicants have requested a variance from 4 CSR 240-20.015 for good cause to facilitate transactions between the regulated operations of KCP&L, GMO and Westar by allowing all such transactions to occur at cost except for wholesale power transactions, which will be based on rates approved by the FERC.[220] The Joint Applicants request that the variance become effective upon the closing of the merger, which is currently expected to occur in the first half of 2018.[221] A similar variance from 4 CSR 240-2.015 was granted by the Commission when GPE acquired Aquila,

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[216] *1st Stipulation & Agreement,* at ¶ 17.

[217] Ives Direct, p. 33.

[218] *Id.*

[219] *Id.*

[220] *Id.*

[221] *Id.*

now GMO, facilitating similar transactions between KCP&L and GMO.[222] In the ***Aquila Order,*** the Commission stated at pages 266-67:

> The Commission determines that substantial and competent evidence in the record as a whole supports the conclusions that: (1) the Commission's Affiliate Transactions Rule, 4 CSR 240.015 [sic], applies to KCPL and Aquila because these entities meet the Rule's definition of "affiliates"; (2) the purpose of the Commission's Affiliate Transactions Rule is to prevent cross-subsidization of regulated utility's non-regulated operations, not to prevent transactions at cost between two regulated affiliates; (3) to the extent that the Affiliate Transactions Rule is applicable to transactions between KCPL and Aquila, a variance shall be granted; and (4) more specifically, the variance shall be granted for all transactions except for wholesale power transactions, which would be based on rates approved by FERC.
>
> The Commission finds as good cause for the variance to be the need to allow the applicants the ability to attain their projected synergy savings post-merger. The Commission further concludes there is no detriment, or any direct or indirect effect of the transaction, that tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable, that is related to the granting of this variance in 4 CSR 240.015 [sic].

Therefore, the variance requested in this case is supported by precedent and good cause exists for its grant just as good cause existed for the variance granted in the ***Aquila Order.*** The requested variance is limited to transactions among Holdco's Missouri and Kansas subsidiaries and is necessary to realize the projected level of post-merger savings.[223] There are no likely detriments that will occur if the requested variance is granted and several of the agreed conditions are intended to make certain

[222] *Id.,* at p. 34; *and see* ***In re Joint Application of Great Plains Energy, Kansas City Power & Light Company, and Aquila, Inc. for Approval of the Merger of Aquila, Inc. with a Subsidiary of Great Plains Energy Incorporated,*** Case No. EM-2007-0374 (***Report & Order,*** issued July 1, 2008) at pp. 183-88, 252-65 ("***Aquila Order***").

[223] *Id.,* at p. 34.

that none occur.[224] On the other hand, there are detriments that are likely to occur if it is not granted, namely, higher costs and thus higher rates.

Conclusion:

Staff recommends that the Commission grant the requested variance because the proposed merger, with the conditions and the variance, are an integrated package intended to provide affirmative monetary and other benefits to ratepayers. If any part of the package is not approved, the projected benefits will not be realized and detriments may occur.

IV. How should the bill credits proposed by Applicants be allocated between and within the various KCP&L and GMO rate classes?

Staff's Position:

It is Staff's position that the total amount of the upfront bill credits should be allocated between and within the various rate classes as agreed in the *2nd Stipulation and Agreement.*[225] Pursuant to that agreement, the bill credits are to be allocated by the Joint Applicants, resulting in allocations of bill credits to KCP&L-MO of $14,924,840 and GMO of $14,205,828.[226] The total amount of the bill credits will be paid in one lump sum within 120 days of the closing of the merger.[227] The bill credits will be allocated among the rate classes as follows:[228]

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[224] *Id.,* at p. 35.

[225] *1st Stipulation & Agreement,* at ¶ 15.

[226] *Id.*

[227] *Id.*

[228] *Id.*

KCP&L – Missouri:		**Greater Missouri Operations:**	
Residential:	$5,116,317.62	Residential:	$6,627,570.28
Small Gen SVC:	$869,296.24	SGS:	$1,811,667.78
Med. Gen SVC:	$2,131,583.25	LGS:	$2,260,908.37
Large Gen SVC:	$3,648,156.67	LPS:	$3,298,276.57
Large Power:	$2,990,585.17	Lighting:	$195,531.49
MO Lighting:	$168,955.05	Thermal:	$10,970.24
	$14,924,894.00	TOD:	$903.27
			$14,205,828

Within rate classes, the bill credits will be allocated as follows:[229]

KCP&L – Missouri:

Residential:	Divided equally among the customer class by customer account
Small Gen SVC:	Divided equally among the customer class by customer account
Med. Gen SVC:	Divided equally among the customer class by customer account
Large Gen SVC:	Based on each customer's energy usage within the customer class
Large Power:	Based on each customer's energy usage within the customer class
MO Lighting:	Divided equally among the customer class by customer account

Greater Missouri Operations:

Residential:	Divided equally among the customer class by customer account
SGS:	Divided equally among the customer class by customer account
LGS:	Based on each customer's energy usage within the customer class
LPS:	Based on each customer's energy usage within the customer class
Lighting:	Divided equally among the customer class by customer account
Thermal:	Divided equally among the customer class by customer account
TOD:	Divided equally among the customer class by customer account

Conclusion:

Staff recommends that the Commission approve the *2nd Stipulation and Agreement,* which includes the above provision for the allocation of the upfront bill credits.

<u>Conclusion</u>:

Section 393.190.1, RSMo, requires regulated entities to obtain prior authorization from this Commission in order to merge. The courts have instructed the Commission

[229] *Id.*

that it "may not withhold its approval of the [merger] unless it can be shown that such [merger] is detrimental to the public interest."[230] The Commission has stated that the issue of a detriment is to be "determined by performing a balancing test where attendant benefits are weighed against direct or indirect effects of the transaction that would diminish the provision of safe or adequate service or that would tend to make rates less just or less reasonable."[231]

Staff's review of the proposed merger, in the light of the negotiated conditions discussed above, has revealed no likely detriments. Additionally, the merger as conditioned by the two *Stipulations and Agreements,* will confer significant affirmative monetary and other benefits upon the ratepayers and the general public. These benefits are not potential and theoretical, but are certain.

On account of all the foregoing, Staff concludes that the proposed merger will not be detrimental to the public interest if the proposed conditions, embodied in the *1st Stipulation and Agreement* and the *2nd Stipulation and Agreement,* are adopted by the Commission. Staff therefore recommends that the Commission grant the *Joint Application* of GPE and Westar for authority to merge, conditioned on the *1st Stipulation and Agreement* and the *2nd Stipulation and Agreement.* Staff further urges the Commission to approve those stipulations and to grant the variance requested by the Joint Applicants from the Commission's affiliate transaction rule for electric utilities, also subject to those conditions.

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230 ***Fee Fee Trunk Sewer,*** *supra,* 596 S.W.2d at 468.

231 ***Great Plains Energy,*** *supra,* 17 Mo.P.S.C.3d at 541.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 30th day of March, 2018, on the parties and their representatives as identified on the Service List maintained for this docket by the Commission's Data Center.

/s/ Kevin A. Thompson