

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

In the Matter of Great Plains Energy, Inc.'s)
Acquisition of Westar Energy, Inc., and)
Related Matters)

Case No. EM-2016-

STAFF'S MOTION TO OPEN AN INVESTIGATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and hereby moves the Commission to open a docket pursuant to Chapters 386 and 393, RSMo., for the investigation of the announced acquisition of Westar Energy, Inc., by Great Plains Energy, Inc., to determine whether or not the proposed transaction is likely to be detrimental to the public interest and the interests of Missouri ratepayers. In support whereof, Staff states:

The Precipitating Action

1. On May 31, 2016, Terry Bassham, CEO of Great Plains Energy, Inc. ("GPE"), advised the Commission and Staff by email that GPE and Westar Energy, Inc. ("Westar"), had entered into an agreement for GPE to acquire Westar for \$8.6 billion in cash and stock. In the email, Mr. Bassham stated:

Great Plains Energy's position is that the merger is not subject to approval by the Missouri Public Service Commission ("MPSC") as it will be effectuated at the parent corporation/holding company level by entities that are not electrical corporations in Missouri subject to MPSC jurisdiction.

2. GPE is a publicly-traded Missouri general business corporation in good standing and a public utility holding company; its principal place of business is 1200 Main Street, 30th Floor, Kansas City, Missouri 64105. GPE owns two electric utilities that are subject to regulation in Missouri by this Commission, Kansas City

Power & Light Company ("KCPL") and KCP&L Greater Missouri Operations Company ("GMO").

3. GPE was formed by a restructuring of KCPL in 2001, pursuant to which KCPL and GPE sought, and obtained, authority from this Commission to restructure as a holding company and wholly-owned operating subsidiary. The Commission approved that reorganization by order on July 31, 2001, in Case No. EM-2001-464. By the same order, the Commission also approved the *First Amended Stipulation and Agreement*, filed on July 10, 2001, and executed on behalf of KCPL and GPE by James M. Fischer, which states at Paragraph 7:

7. Prospective Merger Conditions

GPE agrees that it will not, directly or indirectly, acquire or merge with a public utility or the affiliate of a public utility, where such affiliate has a controlling interest in a public utility unless GPE has requested prior approval for such a transaction from the Commission and the Commission has found that no detriment to the public would result from the transaction. In addition, GPE agrees that it will not allow itself to be acquired by a public utility or the affiliate of a public utility, where such affiliate has a controlling interest in a public utility, unless GPE has requested prior approval for such a transaction from the Commission and the Commission has found that no detriment to the public would result from the transaction.

Possible Violation of a Commission Order

4. Staff notes that the course of action proposed in Mr. Bassham's advisory email referred to in Paragraph 1, above, appears to violate the stipulation and Commission order referred to in Paragraph 3, above. This possible violation is one matter that Staff will investigate in this docket.

Possible Detriments to the Public Interest

5. The Commission is authorized to approve utility mergers, acquisitions and restructurings upon a determination that the proposed transaction is not detrimental to the public interest. Sections 393.190.1 and 393.250, RSMo.

6. Attached to the email referred to in Paragraph 1, above, was a press release that stated:

The transaction enterprise value is expected to be approximately \$12.2 billion, inclusive of approximately \$8.6 billion in total stock and cash consideration to be received by Westar's shareholders and the assumption of approximately \$3.6 billion in Westar's debt. Great Plains Energy has secured approximately \$8.0 billion of committed debt financing from Goldman Sachs Bank USA and Goldman Sachs Lending Partners LLC in connection with the transaction for the full cash portion of the transaction consideration. Great Plains Energy has also secured a \$750 million mandatorily preferred convertible equity commitment from the Ontario Municipal Employees Retirement System (OMERS), to be funded at the closing of the transaction. Great Plains Energy plans to issue long-term financing consisting of a combination of equity, equity-linked securities and debt prior to closing of the transaction. This financing mix will allow Great Plains Energy to maintain its solid, investment grade credit ratings.

7. GPE's intention to take on a debt burden of \$8 to \$9 billion is necessarily a matter of concern to Staff because this debt may well negatively affect the Missouri ratepayers of KCPL and GMO. Staff is mindful of the negative results experienced by Aquila, Inc., which also embarked upon a course of heavily-leveraged expansion. Additionally, among the provisions of the stipulation referred to in Paragraph 3, above, is Paragraph 6, Financial Conditions, which provides in pertinent part:

* * *

b. GPE will not pledge KCPL's common stock as collateral or security for the debt of the Holding Company¹ or a subsidiary without Commission approval.

¹ Subparagraph a, not set out here, identified GPE as the Holding Company.

c. KCPL will not guarantee the notes, debentures, debt obligations or other securities of the Holding Company or any of its subsidiaries, or enter into any "make-well" agreements without prior Commission approval.

d. GPE agrees to maintain consolidated common equity of no less than 30 percent of total consolidated capitalization. GPE and KCPL agree to maintain KCPL's common equity at no less than 35 percent. Total capitalization is defined as common equity, preferred stock, long-term debt and short-term debt in excess of CWIP. Common equity is defined as par value of common stock, plus additional paid-in capital, plus retained earnings, minus treasury stock.

* * *

f. KCPL's total long-term borrowings including all instruments shall not exceed KCPL's regulated rate base.

g. KCPL shall maintain separate debt. KCPL agrees to maintain its debt at investment grade. This condition should not be construed to mean the Staff recommends or will recommend in any future application to the Commission or Commission proceeding the approval of any preferred stock issuance below investment grade.

h. GPE, KCPL and the Staff agree that the allowed return on common equity and other costs of capital will not increase as a result of the reorganization.

i. GPE and KCPL guarantee that the customers of KCPL shall be held harmless if the reorganization creating GPE, with KCPL as a subsidiary, results in a higher revenue requirement for KCPL than if the reorganization had not occurred.

j. GPE and KCPL shall provide the Staff and Public Counsel unrestricted access to all written information provided to common stock, bond, or bond rating analysts, which directly, or indirectly, pertains to KCPL or any affiliate that exercises influence or control over KCPL, or has affiliate transactions with KCPL. Such information includes, but is not limited to, reports provided to, and presentations made to, common stock analysts and bond rating analysts. For purposes of this condition, "written" information includes, but is not limited to, any written and printed material, audio and videotapes, computer disks, and electronically stored information. Nothing in this condition shall be deemed to be a waiver of GPE's or KCPL's right to seek protection of the information.

k. The Holding Company will provide the Staff and Public Counsel, upon request and with appropriate notice, all information needed to verify compliance with the conditions authorized in this proceeding and any other information relevant to the Commission's ratemaking, financing, safety, quality of service and other regulatory authority over KCPL.

In this docket, Staff will investigate whether GPE's financing plan poses a danger of detriment to the ratepayers of KCPL and GMO. Additionally, Staff will determine whether GPE is in compliance with the Financial Conditions contained in the stipulation referred to in Paragraph 3, above.

8. The press release referred to in Paragraph 6, above, also stated:

Great Plains Energy expects savings generated from combining the two companies to be consistent with recent comparable transactions, and its own recent experience. Great Plains Energy expects the acquisition will be neutral to earnings-per-share in the first full calendar year of operations and significantly accretive thereafter. The long-term earnings growth target of the combined company is expected to grow to six to eight percent—better than either company on a standalone basis.

Likewise, the advisory email referred to in Paragraph 1, above, stated in pertinent part:

In 2008 Great Plains Energy acquired Aquila, delivering significant benefits to customers over the first full five years while strengthening overall reliability and customer service. We expect our execution of this transaction to be similar and plan to be as transparent and scrupulous in delivering strong value to all of our stakeholders.

9. Staff notes that the "savings" referred to were realized chiefly through the termination of almost all of the employees of Aquila, Inc., the electric utility acquired by GPE and now operating as GMO. GPE uses the employees of KCPL to operate GMO and serve GMO's ratepayers; GMO itself has no employees. If GPE plans to extend this business model to Westar, as the statements set out in Paragraph 8, above, suggest, the result could be increased inefficiency and diminished safety for all three operating utilities. Staff will also investigate this issue in this docket.

10. Staff will also investigate any other matters that come to light in the course of this proceeding that could constitute a detriment to the public interest.

WHEREFORE, Staff prays that the Commission will open a docket pursuant to Chapters 386 and 393, RSMo., for the investigation of the announced acquisition of Westar Energy, Inc., by Great Plains Energy, Inc., to determine whether or not the proposed transaction is likely to be detrimental to the public interest and the interests of Missouri ratepayers, and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson

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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 1st day of June, 2016, on the Public Counsel and on counsel for GPE, KCPL and GMO.

/s/ Kevin A. Thompson