

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

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

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and hereby tenders its *Report* of its investigation into the proposed acquisition of Westar Energy, Inc. ("Westar"), by Great Plains Energy, Inc. ("GPE"), as directed by the Commission's *Order* of June 8, 2018.¹

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I. INTRODUCTION

A. *Summary of Staff's Findings and Recommendations:*

Staff reports that it has determined (1) that GPE has not complied with all of the conditions it willingly accepted, and which the Commission approved by order, in Case No. EM-2001-464; and (2) that the proposed transaction offers no benefits to Missouri ratepayers and many potential detriments. Staff recommends that the Commission take action (1) to sanction GPE for its failure to comply with certain of the conditions imposed in Case No. EM-2001-464; and (2) to protect Missouri ratepayers from the negative consequences of GPE's proposed course of action.

B. *How Did This Investigation Come About?*

1. Announcement of the Acquisition

On May 31, 2016, Terry Bassham, CEO of GPE, advised the Commission, Staff and the Office of the Public Counsel ("OPC") by an email, including an attached news release, that GPE and Westar had entered into an agreement for GPE to acquire Westar for approximately \$12.2 billion in cash, stock and assumed debt.² According to the information provided by Mr. Bassham, upon the closing of the transaction, Westar will become a wholly-owned subsidiary of GPE, leaving GPE with more

² See Appendix 1, Bassham email of May 31, 2016, and revised News Release. The original attached News Release was replaced latter that day by a revised version, in which solicitation language was added and the fourth bullet, describing necessary regulatory approvals, was revised.

than 1.5 million customers in Kansas and Missouri, nearly 13,000 megawatts of generation capacity, almost 10,000 miles of transmission lines, and over 51,000 miles of distribution lines.³ The news release asserted that GPE would be able to meet more than 45 percent of the combined utility's retail customer demand with emission-free energy.⁴ GPE and Westar jointly own and operate the Wolf Creek Nuclear Generating Station and the La Cygne and Jeffrey power plants.⁵ The news release also asserted that the combined company would have one of the nation's largest portfolios of wind generation among investor-owned utilities.⁶ Additionally, the news release noted that GPE operates the nation's largest utility-owned electric vehicle charging network, which can be expanded to benefit Westar's customers.⁷

The news release described the proposed transaction as follows:

Under the terms of the agreement, which was unanimously approved by the boards of directors for both companies, Westar shareholders will receive \$60.00 per share of total consideration for each share of Westar common stock, consisting of \$51.00 in cash and \$9.00 in Great Plains Energy common stock, subject to a 7.5 percent collar based upon the Great Plains Energy common stock price at the time of the closing of the transaction, with the exchange ratio for the stock consideration ranging between 0.2709 to 0.3148 shares of Great Plains Energy common stock for each Westar share of common stock, representing a consideration mix of 85 percent cash and 15 percent stock.⁸

³ Revised News Release, *supra*.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

The news release stated that the value of the above-described consideration is expected to be approximately \$8.6 billion⁹ and that GPE will also assume approximately \$3.6 billion in existing Westar debt.¹⁰

According to the news release provided by Mr. Bassham, GPE plans to finance the proposed transaction via approximately \$8.0 billion of committed debt financing from Goldman Sachs Bank USA and Goldman Sachs Lending Partners LLC for the full cash portion of the transaction consideration.¹¹ GPE 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 proposed transaction.¹² The news release reports that GPE plans 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 expects this financing mix will allow it to maintain its investment grade credit ratings.¹³

GPE reportedly expects savings generated from combining the two companies to be “consistent with recent comparable transactions and its own recent experience.”¹⁴ Upon completion of the transaction, Mr. Bassham will be chairman and chief executive officer of the combined company; Mr. Ruelle – Westar’s CEO -- will remain in his current role only until the closing of the proposed transaction.¹⁵ GPE will add one director from

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* This is a reference to GPE’s acquisition of Aquila, Inc.

¹⁵ *Id.*

the Westar Board of Directors to the GPE Board of Directors.¹⁶ GPE will maintain the operating headquarters of its Kansas service territory in downtown Topeka.¹⁷ The news release states that GPE expects the proposed transaction will be neutral to earnings-per-share in the first full calendar year of operations and “significantly accretive” thereafter.¹⁸ GPE expects the long-term earnings growth target of the combined company to grow at six to eight percent, better than either company on a stand-alone basis.¹⁹

The news release further stated:

The companies anticipate making the required regulatory filings with the Kansas Corporation Commission and other regulatory entities during June and July of 2016. In addition, Great Plains Energy and Westar will seek shareholder approvals later this year. The transaction is subject to approvals from the Federal Energy Regulatory Commission and the Nuclear Regulatory Commission. The transaction also is subject to the notification, clearance and reporting requirements under the Hart-Scott-Rodino Act by the Federal Trade Commission and the U.S. Department of Justice. The companies anticipate closing in the spring of 2017. In the coming months, the companies will work together to develop a robust integration plan.²⁰

The news release notably did not mention any intention of seeking regulatory approval from this Commission. In his email, Mr. Bassham explained:

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.²¹

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Bassham email, *supra*.

Mr. Bassham's notification of the proposed transaction to the Commission, Staff and OPC was effectively simultaneous with its public announcement.

2. Reactions to the Announcement

The announcement of the proposed transaction early on May 31, 2016, resulted in numerous reported reactions and analyses, which necessarily piqued Staff's interest and raised Staff's concerns:

- Bloomberg: "Great Plains Energy to Goldman Sachs: We want to buy our neighbor Westar Energy and to do it, we'd like to borrow \$8 billion -- almost twice as much as our own market value. Can you make that work? Goldman: Yup."²²
- KMUW: "It's not clear yet if Westar will retain its name, but Penzig [Gina Penzig, Westar spokesperson] says Great Plains Energy will keep the company's current headquarters in Topeka. She also says that when the two companies are combined, Great Plains Energy won't retain all of Westar's current staff, which totals 2,400 employees."²³
- New York Times – The Dealbook: "Under the terms of the deal, Great Plains Energy would pay \$60 a share in cash and stock for Westar, representing a 13 percent premium on Westar's closing price on Friday."²⁴
- New York Times – The Dealbook:

Great Plains Energy has charged up for a \$12.2 billion purchase of larger neighbor Westar Energy. The transaction unveiled on Tuesday has features typical of pairings

²² Bloomberg, May 31, 2016.

²³ KMUW, May 31, 2016.

²⁴ New York Times, May 31, 2016.

between regulated American electric utilities. Investors may be right, though, to worry that the buyer is overpaying.

The two companies serve neighboring territories from their respective Kansas City, Mo., and Topeka, Kan., headquarters. They already operate power plants together. So it is not surprising that Great Plains, with a market capitalization of \$4.8 billion on Friday, won the auction that had bred rumors about a Westar sale.

The \$8.6 billion that Terry Bassham, the chief executive of Great Plains, is paying for Westar's equity is about \$1 billion more than Westar's value on Friday, a 13 percent premium. Given that talk has already pushed the shares up, though, the markup is really larger. Regulated utilities are usually cautious on premiums because cost savings often only last until watchdogs push prices down and shift most of the benefit to customers.

That is also why the likes of Great Plains and Westar are often cagey about synergies. Executives did, however, compare the transaction with the former's 2008 purchase of Missouri-based Aquila. In that case, targeted synergies topped 11 percent of the combined entity's operating and maintenance expenses excluding fuel, according to a regulatory filing at the time. Using the same figure, the implied savings for Great Plains and Westar could be around \$120 million a year.

Taxed at 35 percent and capitalized on a multiple of 10, those synergies would be generously valued at less than \$800 million today, not counting the expense or time required to realize them. That is short of even the headline premium, helping to explain why Great Plains investors marked the company's shares down about 5 percent by midday.

Preserving Great Plains' credit rating, while funding 85 percent of the consideration in cash, is no picnic, either. To balance \$4.4 billion of new debt, Mr. Bassham is planning over \$3 billion of equity issuance. As a first step, he has the Ontario Municipal Employees Retirement System buying \$750 million of convertible preferred stock. With dividends running at 7.25 percent and not deductible for tax, that is expensive.²⁵

²⁵ *Id.*

- TransmissionHub: "Where Great Plains Energy currently has 72% of its holdings in Missouri and 28% in Kansas, Westar has all of its operations in Kansas. As a result, the combined company will be 60% Kansas and 40% Missouri."²⁶

- KAKE News:

KAKE News reached out to Westar to get details about how the sale will impact customers . . .

"The expectation is that it will result in smaller price increases than if we continued to run as two separate utilities," says Gina Penzig, Westar's Director of Corporate Communications

Westar customers could still see a rate increase before the sale goes through to the tune of \$10 million. Also, Great Plains purchase of Westar could put jobs on the line. Westar right now has 2,400 employees and Great Plains has about 3,000 employees.

"If you add those together you get 5,400 hundred employees and the expectation is that the combined company could require fewer employees," explains Penzig. "There are going to be some labor savings achieved."

Westar is worth more than Great Plains Energy. The deal is able to happen through an \$8 billion loan by Goldman Sachs. Great Plains is also taking on more than 3 billion in debt that belonged to Westar.²⁷

- Market Realist: "According to the press release about the Great Plains Energy (GXP) and Westar Energy (WR) deal, Westar Energy shareholders are expected to receive an equivalent of \$60 per share in the deal. This implies a 13% premium to its closing of \$52.92 on May 27.

²⁶ TransmissionHub, May 31, 2016.

²⁷ KAKE.com, June 1, 2016; updated, June 3, 2016.

Westar Energy shareholders will receive this \$60 in a combination of \$51 in cash and \$9 in Great Plains stock.”²⁸ * * * “Westar Energy (WR) and Great Plains Energy (GXP) witnessed turbulent trading sessions on May 31 after their merger was announced. Westar Energy gained nearly 6.5% and closed at \$56.33. It rose to an intraday high of \$57.24. On the other hand, Great Plains Energy fell nearly 6% and closed at \$29.18. Investors likely feel that Great Plains is paying too much for Westar Energy.”²⁹

- EnergyCentral:

[T]he financial world is taking a close look at the debt Great Plains will take on in the \$12.2 billion deal.

Moody's Investors Service announced it would review the long-term rating of GPE, prompted by GPE's announcement it would take on almost \$4 billion in Westar debt. The company is on review for downgrade. Moody's affirmed the long-term and short-term ratings of KCP&L, KCP&L-Greater Missouri Operations Co. and Westar Energy as stable outlooks.

Great Plains is paying a premium of at least 23 times Westar's expected earnings next year, making their merger one of the richest utility deals in recent history, SunTrust Robinson Humphrey Inc. and Evercore ISI told Bloomberg News. The company, which had a market value of about \$4.5 billion on Tuesday, will almost double its electricity customers by purchasing Westar, with a value of almost \$8 billion.

"It is a rich deal, and it's a fairly large acquisition given their size," Ali Agha, a managing director for equity research at SunTrust Robinson Humphrey, told Bloomberg after the companies announced the planned merger. "It's a huge

²⁸ Market Realist, June 1, 2016.

²⁹ *Id.*

premium to other transactions, and it's a huge premium to the standalone public companies."

"The challenge obviously is that Westar is a bigger company than Great Plains, so they are biting off a mouthful," Tim Winter, utility analyst with Gabelli & Co. in St. Louis, told Bloomberg. Financing will be a "manageable challenge," he said.³⁰

- Topeka Capital-Journal:

However, the acquisition may not be good news for everyone in Topeka. Terry Bassham, chairman and CEO of Great Plains, issued a statement in which he noted the "operational efficiencies" that the combination of the companies will produce. While this will probably lead to savings for customers and a more sustainable business for Westar's shareholders, it may also mean that some jobs will become redundant. This could lead to layoffs, although Bassham says "we haven't made any decisions."

According to Bassham, "Our history has been to avoid layoffs, use attrition. In our business, there is a 4 to 5 percent attrition rate." He also discussed helpful similarities between Westar and Great Plains: "My job, when it's all said and done, is to bring two cultures together. The good news is our cultures are a lot alike." Ruelle called the acquisition "the most job-friendly deal we could have imagined."³¹

- Bloomberg: "S&P reaffirmed its BBB+ rating for Great Plains, but changed its outlook to negative from stable."³² Bloomberg also stated, "[T]his is certainly a debt-laden deal, so you can see where that concern is coming from [i.e., this investigation]."³³
- The Kansas City Star reported on July 15, 2016, that a Westar shareholder has filed suit in Shawnee County, Kansas, to block the

³⁰ EnergyCentral, June 6, 2016.

³¹ Topeka Capital Journal, June 8, 2016.

³² Bloomberg, June 9, 2016.

³³ *Id.*

transaction on the grounds that GPE was not paying enough for Westar.³⁴

“Miller [the plaintiff] says Westar's stock price increased 55 percent in the year before its sale, but the \$60 stock price Great Plains paid is only a 13 percent increase in Westar's stock price. He says Great Plains will get an increasingly valuable company but will pay much less than what it is worth.”³⁵

In summary, the published reactions to the announcement of the proposed transaction raise concerns (1) that GPE is paying too much for Westar, resulting in a significant acquisition premium; (2) that GPE is taking on too much debt in order to acquire Westar, resulting in lower ratings and a higher future cost of capital for GPE, and perhaps, for KCP&L and GMO; (3) that synergy savings resulting from the transaction may be less robust than expected; (4) that an aggressive effort to harvest synergy savings from the transaction may result in significant job loss for the Missouri work force of GPE, KCPL and GMO; (5) that integration of the companies may result in decreased operational efficiency, reliability and safety; and (6) that GPE may transfer jobs and investment to Kansas given its increased presence there. Any one or combination of these factors may have a detrimental impact on the public interest viewed from a Missouri perspective.

3. Staff's Motion to Open Investigation

On June 1, 2016, Staff filed its *Motion to Open an Investigation* in response to the announcement of the proposed transaction sent the previous day by Mr. Bassham and the initial reactions to that announcement in the media. In its motion, Staff asked

³⁴ Kansas City Star, July 15, 2016.

³⁵ *Id.*

the Commission for authority to investigate the particulars of the transaction to determine whether or not GPE had violated conditions imposed by the Commission in Case No. EM-2001-464³⁶ and whether or not the proposed transaction might be detrimental to the public interest and the interests of Missouri ratepayers. Staff's motion referred to GPE's announced financing plan as a possible detriment and its announced intention to capture synergy savings similar to those realized from its acquisition of Aquila, Inc. – now GMO – as another.

4. The Commission's Order Opening This Investigation

On June 8, 2016, having considered Staff's *Motion*, as well as GPE's response and surreply in opposition, Staff's *Reply*, and OPC's *Response*,³⁷ the Commission granted Staff's *Motion*.³⁸ The Commission's *Order* authorizing this investigation is necessarily its charter and defines the scope, focus and expected product of Staff's investigation.

The Commission stated that it granted Staff's *Motion* for two reasons; first, so that Staff could gather information as contemplated by the conditions enumerated in its *Order Approving Stipulation and Agreement and Closing Case* to measure

³⁶ See Appendix 2, *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 (*First Amended Stipulation and Agreement*, filed July 9, 2001).

³⁷ The filings were: June 2, 2016: *Great Plains Energy Incorporated's Verified Opposition to Staff's Motion to Open Investigation and Request for Order Declining Jurisdiction*; June 7, 2016: *Public Counsel's Response*; June 7, 2016: *Staff's Reply to Great Plains Energy*; June 7, 2016: *Great Plains Energy Incorporated's Reply to Public Counsel's Response and Staff's Response*.

³⁸ *In the Matter of Great Plains Energy, Inc.'s Acquisition of Westar Energy, Inc., and Related Matters*, Case No. EM-2016-0324 (*Order Granting Leave to File Reply Late, Granting Staff's Motion to Open an Investigation, and Directing Filing*, issued June 8, 2016) ("*Order Opening Investigation*").

GPE's compliance with those conditions.³⁹ The Commission noted that GPE conceded that it has authority to investigate GPE's compliance.⁴⁰ Second, because the announcement of the proposed transaction had caused Standard and Poors ("S&P") to revise its credit outlook for GPE, KCPL and GMO to "negative" from "stable."⁴¹ The Commission stated:

GPE's unsupported reassurance, that a downgraded credit outlook is insignificant, is not persuasive. The Commission is aware that a reduced credit rating is likely to increase the cost of capital. And an increased cost of capital is likely to increase rates for Missouri ratepayers.⁴²

The Commission specifically did not rule on whether or not it has jurisdiction over the proposed transaction to take any action other than to investigate.⁴³ It acknowledged that it "has a duty to determine whether the transaction threatens Missouri ratepayers. If so, the Commission must also determine whether any appropriate remedy requires the Commission to have jurisdiction over the transaction."⁴⁴ The Commission directed that Staff provide a report of its investigation not later than July 25, 2016, and that the report "include a discussion of the law governing the Commission's jurisdiction over the transaction."⁴⁵

On June 10, 2016, GPE moved for reconsideration, requesting that the Commission "bifurcate" the matter and rule expeditiously (by July 1, 2016) that it lacked

³⁹ ***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 July 31, 2001).

⁴⁰ ***Order Granting Staff's Motion***, *supra*, p. 6.

⁴¹ S&P Global Ratings, Ratings Direct Research Update: Great Plains Energy, May 31, 2016.

⁴² ***Order Granting Staff's Motion***, *supra*, p. 5.

⁴³ *Id.*, at p. 6.

⁴⁴ *Id.*

⁴⁵ *Id.*

jurisdiction over the proposed transaction.⁴⁶ The Commission denied this motion on June 29, 2016, noting “In this context, the motion for reconsideration (“motion”) seeks an advisory opinion on the subject of the investigation, which the Commission has no authority to issue.”⁴⁷ The Commission stated:

Nothing requires the Commission to make the ruling that the motion seeks. The motion asks—without addressing the standard for reconsideration—for a ruling outside of any case, without the involvement of interested parties, and before even receiving Staff’s report. That request resembles nothing that GPE has shown the Commission to have done in the past, so past Commission practice does not support the motion. A procedural context in which GPE may obtain effective relief is available, but the motion seeks a mere advisory opinion, which the law forbids. The Commission will deny the motion and is not determining GPE’s jurisdictional question.⁴⁸

In this order, the Commission provided further guidance to Staff regarding this investigation. The Commission noted that by formally seeking authorization to investigate, Staff was prudent and promoted administrative transparency, efficiency, and economy.⁴⁹ By its order granting Staff’s motion, the Commission delegated its

⁴⁶ ***Great Plains Energy Incorporated’s Verified Motion for Reconsideration***, pp. 3-4. “In significant acquisitions such as this Transaction, uncertainty of process, particularly of regulatory approval, is disruptive to the financial markets and specifically to investors in GPE and Westar. Reasonably expeditious resolution of the legal question regarding the Commission’s jurisdictional authority to approve the Transaction is essential to avoid financial harm to GPE and/or Westar in terms of the ability to both finance and close the Transaction.” “Even if the Commission does issue its order on the results of Staff’s investigation by mid-August, if the Commission fails to resolve the jurisdictional issue regarding approval authority or asserts jurisdiction to approve the Transaction, GPE will have lost six weeks. This state of uncertainty for such an extended period of time would impede and adversely affect the Transaction and the goals that it seeks to achieve.” (Footnote omitted.)

⁴⁷ ***In the Matter of Great Plains Energy, Inc.’s Acquisition of Westar Energy, Inc., and Related Matters***, Case No. EM-2016-0324 (***Order Denying Motion for Reconsideration***, issued June 29, 2016).

⁴⁸ *Id.*, p. 8.

⁴⁹ *Id.*, p. 2.

investigative powers to Staff.⁵⁰ Finally, the Commission noted that this investigation is not a case, either contested or non-contested.⁵¹

C. *The Focus and Method of Staff's Investigation:*

1. Questions Presented

Based on the Commission's *Order Opening Investigation* of June 8, 2016, Staff's investigation will seek to determine:

1. Whether or not GPE is in compliance with the conditions imposed in the Commission's *Order* of July 31, 2001, in Case No. EM-2001-464?⁵²
2. Whether or not the proposed transaction threatens a detriment to the public interest or the interests of Missouri ratepayers?⁵³
3. If either or both of Questions 1 and 2 are answered in the affirmative, what remedies are available to the Commission?⁵⁴
4. Additionally, and as an integral component of Question 3, Staff will present a legal memorandum with respect to the Commission's jurisdiction.

2. Methodology

Using the authority delegated by the Commission in its *Order Opening Investigation*, particularly that at § 393.140(9), RSMo.,⁵⁵ and Commission

⁵⁰ *Id.*, p. 3. See n. 4: "These include the Commission's power to inquire of personnel and examine documents of any electrical corporation. Section 393.140(8) and (9), RSMo 2000. Section 393.140(5), (9), and (10), RSMo 2000."

⁵¹ *Id.*, p. 2. The Commission explained that, for that reason, it had denied an attempt to intervene.

⁵² *Order Opening Investigation*, pp. 5-6.

⁵³ *Id.*, p. 6.

⁵⁴ *Id.*, pp. 5 and 6.

⁵⁵ "Have power to compel, by subpoena duces tecum, the production of any accounts, books, contracts, records, documents, memoranda and papers. In lieu of requiring production of originals by subpoena duces tecum the commission or any commissioner may require sworn copies of any such books, records, contracts, documents and papers, or parts thereof, to be filed with it. The commission

Rule 4 CSR 240-2.090,⁵⁶ Staff drafted and served on GPE and Westar a series of Data Requests (“DRs”) designed to gather pertinent information concerning the proposed transaction and its likely effects. To facilitate the use of DRs to obtain information in time to meet the Commission’s deadline of July 25, 2016, Staff moved on June 9, 2016, for an order reducing the allowed interval which to respond to DRs.⁵⁷ The Commission granted this *Motion* on June 10, setting the interval for objection to five (5) days and the interval for answering to eight (8) days.⁵⁸ There were no objections to Staff’s *Motion* or to any of Staff’s DRs by either GPE or Westar.⁵⁹ Staff tendered some 42 DRs to GPE and 30 to Westar.

The companies generally provided timely responses to Staff’s DRs and made special arrangements to facilitate Staff’s convenient access of sensitive Board of Directors materials. Westar, waiving its normal rule requiring on-site review, provided these items electronically. GPE, while unwilling to provide requested Board of Directors materials electronically, did make arrangements for Staff to review these items at the

may require of all such corporations or persons specific answers to questions upon which the commission may need information, and may also require such corporations or persons to file periodic reports in the form, covering the period and filed at the time prescribed by the commission. If such corporation or person shall fail to make specific answer to any question or shall fail to make a periodic report when required by the commission as herein provided within the time and in the form prescribed by the commission for the making and filing of any such report or answer, such corporation or person shall forfeit to the state the sum of one hundred dollars for each and every day it shall continue to be in default with respect to such report or answer. Such forfeiture shall be recovered in an action brought by the commission in the name of the state of Missouri. The amount recovered in any such action shall be paid to the public school fund of the state.”

⁵⁶ This rule provides for discovery in Commission proceedings, particularly, at (2), by Data Request.

⁵⁷ ***Staff’s Motion to Shorten Time to Respond and Object to Data Requests and Motion for Expedited Treatment.***

⁵⁸ ***In the Matter of Great Plains Energy, Inc.’s Acquisition of Westar Energy, Inc., and Related Matters***, Case No. EM-2016-0324 (***Order Modifying Intervals for Data Requests***, issued June 10, 2016).

⁵⁹ Westar did note, as part of each response, that it did not thereby concede in any way that the Commission has jurisdiction over it.

office of local counsel in Jefferson City, thereby saving Staff significant travel time.⁶⁰ Staff reviewed these materials on July 18, 2016, at the office of the Fischer & Dority law firm.

In addition to information obtained via DRs, GPE made three voluntary submissions of pertinent material via EFIS, including the *Joint Application* and supporting appendices and testimony filed with the Kansas Corporation Commission on July 1, 2016, and the *Joint Application* and supporting exhibits filed with the FERC on July 11, 2016.⁶¹

Staff subjected the information it gathered to multi-modal expert analysis and developed a consensus opinion on each of the questions presented for investigation. By “multi-modal expert analysis,” Staff means the collaboration of experts from multiple disciplines. As directed by the Commission, Staff has embodied its findings, conclusions and recommendations in a report. Also as directed by the Commission, this investigation report includes a legal analysis of the Commission’s jurisdiction in this matter.

II. FACTS

A. Undisputed Facts:

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 and its registered agent is CSC-Lawyers Incorporating Service, 221 Bolivar Street, Jefferson City,

⁶⁰ Staff appreciates the courtesy.

⁶¹ See Appendix 3, GPE’s Submissions.

Missouri 65101.⁶² Among other subsidiaries, GPE owns and controls 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”).⁶³ GPE is a public utility holding company regulated under the Public Utility Holding Company Act of 2005, which was enacted as part of the Energy Policy Act of 2005.⁶⁴

KCPL is a Missouri general business corporation in good standing, incorporated on July 29, 1922, as Kansas City Power & Light Company; its principal place of business is located at 1200 Main Street, 30th Floor, Kansas City, Missouri 64105 and its registered agent is National Registered Agents, Inc., 120 South Central Avenue, Clayton, Missouri 63105.⁶⁵ GMO is a Delaware general business corporation in good standing, incorporated on March 27, 1987, as KCP&L Greater Missouri Operations Company, its principal place of business is located at 1200 Main Street, 30th Floor, Kansas City, Missouri 64105 and its registered agent is National Registered Agents, Inc., 120 South Central Avenue, Clayton, Missouri 63105.⁶⁶ KCPL and GMO are both in the business of using electrical plant⁶⁷ that they own, control and operate to produce

⁶² GPE/KCPL consolidated Form 10-K for the fiscal year ending December 31, 2015; Records of the Missouri Secretary of State, retrieved June 9, 2016.

⁶³ GPE/KCPL 10-K *supra*.

⁶⁴ ***In the Matter of Great Plains Energy Inc.’s Acquisition of Westar Energy, Inc. and Related Matters***, Case No. EM-2016-0324 (***Great Plains Energy Incorporated’s Verified Opposition to Staff’s Motion to Open Investigation and Request for Order Declining Jurisdiction***, filed June 2, 2016), p. 2.

⁶⁵ *Id.*; Missouri Secretary of State records, *supra*.

⁶⁶ *Id.*

⁶⁷ Section 386.020(14), RSMo.: “‘Electrical plant’ includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power[.]”

and distribute electrical power to the public at retail for light, heat and power. Both KCPL and GMO, consequently, are electrical corporations and public utilities within the intendments of the Public Service Commission Law.⁶⁸

KCPL and GMO both operate under the service mark “KCP&L” and provide retail electric service to approximately 846,000 customers in 36 Missouri counties and 11 Kansas counties in and around metropolitan Kansas City, Missouri.⁶⁹ KCPL and GMO have 6,600 MW of generating capacity in service.⁷⁰ KCPL and GMO’s total electric revenues were 100% of Great Plains Energy’s revenues over the last three years, accounting for approximately 105%, 100% and 103% of Great Plains Energy’s net income in 2015, 2014 and 2013, respectively.⁷¹

Westar is a publicly-traded Kansas general business corporation in good standing, incorporated in 1924,⁷² its principal place of business is located at 818 South Kansas Avenue, Topeka, Kansas 66612 and its registered agent is CT Corporation System, 120 South Central Avenue, Clayton, Missouri 63105.⁷³ Westar is duly authorized to do business in Missouri.⁷⁴ Westar is the largest electric company in Kansas, serving 700,000 customers in the eastern third of the state.⁷⁵ Westar has generating capacity of 6,297 MW in service and purchases

⁶⁸ Section 386.020, (15) and (43), RSMo.

⁶⁹ GPE website, Corporate Overview, retrieved June 9, 2016. Missouri and Kansas jurisdictional retail revenues averaged approximately 71% and 29%, respectively, of GPE’s electric utility’s total retail revenues over the last three years. GPE/KCPL 10-K *supra*.

⁷⁰ GPE website, Corporate Overview, retrieved June 9, 2016.

⁷¹ GPE/KCPL 10-K *supra*.

⁷² Westar Energy, Inc., Form 10-K for the fiscal year ending December 31, 2015.

⁷³ *Id.*; Records of the Missouri Secretary of State, retrieved June 9, 2016.

⁷⁴ Records of the Missouri Secretary of State, retrieved June 9, 2016.

⁷⁵ Westar 10-K, *supra*; Wikipedia, *q.v.*, retrieved June 9, 2016.

another 920 MW via long-term renewable contracts for a total of 7,187 MW.⁷⁶ Westar owns more than 6,300 miles of transmission lines and about 28,100 miles of distribution lines.⁷⁷

KCP&L and GMO are members of the Southwest Power Pool, Inc. (“SPP”). The SPP is a Regional Transmission Organization (“RTO”) mandated by FERC to ensure reliable supply of power, adequate transmission infrastructure and competitive wholesale prices of electricity. Westar is also a member of the SPP and has transferred the functional control of its transmission system, including the approval of transmission service, to the SPP.⁷⁸ The SPP coordinates the operation of Westar’s transmission system within an interconnected transmission system that covers all or portions of 14 states.⁷⁹

On May 29, 2016, GPE entered into an *Agreement and Plan of Merger*, pursuant to which Merger Sub (100% of the outstanding equity interests of which will be owned by GPE) will be merged with and into Westar, with Westar emerging as the surviving corporation.⁸⁰ Immediately following the merger, Merger Sub will cease to exist, and GPE will acquire all of the capital stock of Westar (the “Proposed Transaction”).⁸¹

The aggregate purchase price of the Proposed Transaction is \$12.2 billion dollars, including a total equity value of approximately \$8.6 billion, and the assumption

⁷⁶ Westar 10-K, *supra*.

⁷⁷ Wikipedia, *supra*.

⁷⁸ Westar 10-K, *supra*.

⁷⁹ *Id.*

⁸⁰ ***In the Matter of Great Plains Energy Inc.’s Acquisition of Westar Energy, Inc. and Related Matters***, Case No. EM-2016-0324 (***Great Plains Energy Incorporated’s Verified Opposition to Staff’s Motion to Open Investigation and Request for Order Declining Jurisdiction***, filed June 2, 2016), p. 3.

⁸¹ *Id.*

of \$3.6 billion of existing Westar debt.⁸² Westar's shareholders will receive \$60.00 per share of total consideration for each share of Westar common stock, consisting of \$51.00 in cash and \$9.00 in GPE common stock, subject to a 7.5 percent collar based upon the GPE common stock price at the time of the closing of the transaction with the exchange ratio for the stock consideration ranging between 0.2709 to 0.3148 shares of GPE common stock for each Westar share of common stock.⁸³ The consideration mix for the acquisition of Westar's common stock is 85 percent cash and 15 percent GPE common stock.⁸⁴ All GPE financing in connection with the Proposed Transaction will occur at the holding company level and no KCPL or GMO debt will be used to finance the Proposed Transaction.⁸⁵

GPE states that the closing of the Proposed Transaction is subject to customary conditions, including the receipt of certain approvals by the common shareholders of GPE and Westar, and the receipt of certain state and federal regulatory and governmental approvals, including the approval of the Kansas Corporation Commission ("KCC"), the Federal Energy Regulatory Commission, and the Nuclear Regulatory Commission.⁸⁶ GPE also states that the Proposed Transaction is subject to the notification, clearance and reporting requirements of the Hart-Scott-Rodino Act.⁸⁷ Closing is expected to occur in the Spring of 2017 and, as of the closing of the

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

Proposed Transaction, Westar will become a wholly owned subsidiary of GPE and will cease to be a publicly-held corporation.⁸⁸

B. *Compliance with the Conditions Imposed in Case No. EM-2001-464:*

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 9, 2001, and executed on behalf of KCPL and GPE by James M. Fischer, which sets out and applies a number of conditions to the reorganization.⁸⁹

1. Compliance with Paragraph 6, Financial Conditions:

As part of Staff's investigation into the proposed transaction, Staff has reviewed each of the financial conditions GPE and KCPL agreed to in Case No. EM-2001-464, and reviewed information provided by GPE or KCPL as well as other sources to determine if the companies have complied with these conditions. Staff will address each condition individually.

Condition 6.a: GPE ("Holding Company") and its subsidiaries will not conduct any material business activities that are not part of the "electric industry or natural gas industry business" or are not reasonably related to business activities derived from changes in the electric industry or natural gas industry as a result of competition, without Commission approval. With regard to expansion of KCPL's current operations in

⁸⁸ *Id.*, pp. 3-4.

⁸⁹ See Appendix 2.

the telecommunications and information businesses, activities will be limited to those considered reasonably related to current operations.

Staff's Response: GPE and KCPL are in compliance with this condition. Westar Energy is considered to be a pure-play regulated utility so GPE's proposed acquisition of Westar Energy would not violate this condition.

Condition 6.b GPE will not pledge KCPL's common stock as collateral or security for the debt of the Holding Company or a subsidiary without Commission approval.

Staff's Response: Staff is not aware of any situation in which GPE or any of its other subsidiaries have issued debt and pledged KCPL's common stock as collateral or security. GPE has not indicated it will violate this agreement.

Condition 6.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.

Staff's Response: Staff is not aware of any violation of this agreement. KCPL has not indicated it will violate this agreement.

Condition 6.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.

Staff's Response: As of March 31, 2016, GPE had a consolidated common equity balance of 46% and KCPL had a consolidated common equity balance of 47%.

In the Kansas Docket, 16-KCPE-593-ACQ, GPE and KCPL witness Kevin Bryant testified that GPE's consolidated common equity ratio is expected to be approximately 41% after completion of the permanent financing issued to fund the transaction. As KCPL is not issuing any capital for purposes of the proposed transaction, its common equity ratio would not be directly impacted by the transaction financing.

Condition 6.e Reports -- KCPL shall submit quarterly to the Financial Analysis Department of the Missouri Public Service Commission certain key financial ratios as defined by Standard and Poor's Credit Rating Service, as follows:

- (1) Pre-tax interest coverage;
- (2) After-tax coverage of interest and preferred dividends;
- (3) Funds flow interest coverage;
- (4) Funds from operations to total debt;
- (5) Total debt to total capital (including preferred); and
- (6) Total common equity to total capital.

Staff's Response: Financial Analysis Staff does not have records showing these reports have been submitted in recent years. Technically, therefore, KCPL is not in compliance with this condition. However, because KCPL has rating agency coverage by S&P and Moody's and GPE has rating agency coverage as well as equity analyst coverage, Staff can evaluate this information to monitor GPE's and KCPL's financial ratios. Additionally, Staff has access to GPE's and KCPL's financial statements through the Commission's subscription to SNL. If Staff has any concerns about the information it analyzes or needs further explanation, it can contact and request such information from KCPL and/or GPE.

Condition 6.f KCPL's total long-term borrowings including all instruments shall not exceed KCPL's regulated rate base.

Staff's Response: As of KCPL's most recently concluded Missouri and Kansas rate cases, it had a total rate base of approximately \$4.765 billion. KCPL's total long-term debt outstanding was approximately \$2.5 billion as of March 31, 2016. Because KCPL will not be issuing long-term debt for purposes of the transaction, it will not be in violation of this condition.

Condition 6.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.

Staff's Response: KCPL has maintained separate debt from that of GPE and GMO and this debt has been rated investment grade. However, Staff has identified its concerns in past rate cases about the financing activities of GPE and GMO affecting KCPL's separate financial interest. For example, in KCPL's 2012 rate case, Case No. ER-2012-0174, Staff described how GMO was assigned short-term tenor debt that caused it to have a lower embedded cost of debt than KCPL. This decision was made in the best interest of GPE and not KCPL. Staff also took issue with the high-cost equity units GPE had to issue to preserve its credit quality subsequent to the GMO acquisition and during the financial crisis and recession. KCPL and GMO requested full recovery of the cost of these equity units in Case Nos. ER-2010-0355 and ER-2010-0356. Consequently, even if KCPL maintains separate debt and this debt is still at least investment grade, this does not mean higher capital costs will not be incurred by KCPL and now GMO as a result of the leverage introduced by the

transaction. Based on Staff's review of rating agency feedback regarding GPE's proposed acquisition of Westar Energy, KCPL is expected to maintain its investment grade credit rating even with the increased leverage from the proposed transaction.

Condition 6.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.

Staff's Response: Staff agrees that KCPL's cost of capital did not change by the mere formation of Great Plains Energy. However, Staff filed testimony in KCPL's and GMO's 2012 rate cases that demonstrated how GPE's financial support for GMO did cause KCPL to have a higher cost of debt due to shorter tenor debt being assigned to GMO and none being assigned to KCPL. The Commission did not adopt Staff's position. The complexities and motivation to financially manage GPE and its subsidiaries for GPE's shareholders best interest rather than KCPL and GMO individually, will cause Staff to continue to have this concern.

Condition 6.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.

Staff's Response: Staff agrees that the mere formation of GPE as a holding company has not resulted in a higher revenue requirement for KCPL, but Staff does not agree that GPE's subsequent financial management has not resulted in a higher revenue requirement for KCPL, at least as it relates to the allowed debt return. Staff's concerns will be heightened if GPE executes the proposed Westar transaction.

Condition 6.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.

Staff's Response: GPE and KCPL have complied with this condition. Staff does not believe that GPE's proposed acquisition of Westar Energy will cause either company to not comply, but the transaction will create many additional affiliates which in Staff's opinion will require GPE and KCPL to provide unrestricted access to the same information concerning Westar and its companies.

Condition 6.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.

Staff's Response: Staff believes GPE has been compliant with this condition and expects that GPE will continue to be compliant with this condition.

--David Murray, Manager, Financial Analysis Unit.

2. Compliance with Paragraph 7, Prospective Merger Conditions:

Among the conditions set out in the *First Amended Stipulation and Agreement* is the following at Paragraph 7:⁹⁰

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.

GPE has, Mr. Bassham announced and its subsequent *Submissions* demonstrate, entered into a “definitive agreement” with Westar to acquire the latter.⁹¹ GPE has not sought approval for this course of action from this Commission and has incorrectly insisted that such approval is not necessary or required. The language GPE agreed to in its *First Amended Stipulation and Agreement*⁹² requires GPE to request Commission approval prior to acquiring or merging with a public utility. As GPE has announced its intention to acquire Westar – a public utility – without seeking Commission approval, Staff necessarily concludes that GPE has violated Paragraph 7

⁹⁰ A copy of the *First Amended Stipulation and Agreement* is attached here as Appendix 2.

⁹¹ ***In the Matter of Great Plains Energy Inc.’s Acquisition of Westar Energy, Inc. and Related Matters***, Case No. EM-2016-0324 (***Great Plains Energy Incorporated’s Verified Opposition to Staff’s Motion to Open Investigation and Request for Order Declining Jurisdiction***, filed June 2, 2016), p. 1:

⁹² ***In the Matter of Great Plains Energy Inc.’s Acquisition of Westar Energy, Inc. and Related Matters***, Case No. EM-2016-0324 (***Great Plains Energy Incorporated’s Verified Opposition to Staff’s Motion to Open Investigation and Request for Order Declining Jurisdiction***, filed June 2, 2016), p. 3: “On May 29, 2016, GPE entered into an Agreement and Plan of Merger, pursuant to which Merger Sub (100% of the outstanding equity interests of which will be owned by GPE) will be merged with and into Westar, with Westar emerging as the surviving corporation. Immediately following the merger, Merger Sub will cease to exist, and GPE will acquire all of the capital stock of Westar (“Transaction”).”

of the *First Amended Stipulation and Agreement* and thus the Commission's order of July 31, 2001, in Case No. EM-2001-464.

--Kevin A. Thompson, Chief Staff Counsel.

C. Detriments to the Public Interest:

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.

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.

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.

1. Financial Detriments

Intent of Conditions from Case No. EM-2001-464:

It is important for the Commission to understand Staff's objective for the conditions that were imposed in Case No. EM-2001-464. Staff understood that the creation of GPE was probably for the purposes of pursuing other business investments that may impact KCPL's costs, including but not limited to its cost of capital, whether directly or indirectly. Staff's proposed conditions were intended to produce a stand-alone S&P credit rating for KCPL that was a function of KCPL's business and financial risks. If this had occurred, this would have alleviated Staff's concern about GPE's other business and financial risks potentially causing an increased cost of capital to KCPL. However, S&P has never recognized these conditions as being significant enough to allow for a consideration of KCPL's stand-alone risk for purposes of assigning KCPL a rating. S&P has consistently stated the following in its ratings assessment of KCPL and also GMO: "There are no meaningful insulation measures in place that protect KCP&L from its parent and, therefore, KCP&L's issuer credit rating is in line with GPE's group credit profile of 'BBB+'." This is significant due to the fact that S&P believes KCPL has a stand-alone risk profile consistent with an 'A-' credit rating, but nonetheless assigns it a 'BBB+' credit rating due to its affiliation with GPE and GMO.

Given the above, the issuance of debt at GPE will have at least an indirect impact on KCPL and now GMO because the proposed transaction to acquire Westar Energy will result in increased financial risk for GPE on a consolidated basis, which will directly impact S&P's ratings of KCPL and GMO. Although S&P has affirmed

GPE's credit ratings, and therefore all of GPE's companies, it has revised its outlook to "negative" from "stable," which simply means that if GPE's ratings were to change, it would likely be a downgrade. S&P's announcement of a "negative outlook" is not as severe of a reaction as a "CreditWatch negative." This type of designation is often issued when a merger or acquisition is announced and the rating is under active review. It is more likely than not that at the conclusion of the review the rating will be downgraded.

GPE provided Staff with financial information showing the *pro forma* impact of the proposed acquisition on GPE's consolidated financial metrics. GPE and KCPL also discussed the projected financial impact in its testimony in the Kansas docket. According to GPE and KCPL witness, Kevin Bryant, GPE's funds from operations to debt (FFO/Debt) ratio will be in the range of 13% to 14%, which is much more aggressive than its historical average of approximately 16% to 17%. However, S&P projects the FFO/Debt ratio to improve to above 14% after 2018. It appears that S&P is giving significant weight to its expectation that GPE will be able to improve its FFO/debt ratio fairly quickly.

On May 31, 2016, Moody's placed GPE on review for a possible downgrade to Baa3 (equivalent to an S&P rating of 'BBB-'). Moody's specifically mentions its concern about the impact of the \$4.4 billion of holding company debt, which will cause holding company debt to go from 2% of total consolidated debt to approximately 35% of consolidated debt. Moody's indicates that it sees "the additional leverage and new capital structure complexity reducing financial flexibility across the entire corporate family." This is noteworthy considering the fact that Moody's usually gives more

stand-alone consideration to operating utility subsidiaries when assigning credit ratings than does S&P. Although Moody's currently plans to assign a two-notch rating differential to KCPL (Baa1) and one notch differential to GMO (Baa2) if GPE is downgraded to (Baa3), Staff is not sure how Moody's would rate the subsidiaries if GPE is downgraded to below investment grade. Although this is not the current expectation, Staff recalls that GPE's acquisition of GMO occurred prior to the financial crisis and recession in 2008 and 2009. At that time, GPE's reduced financial flexibility caused it to issue equity units at a fairly high cost in order to avoid being downgraded to junk status. The cost of these equity units was 13.59%. Because Staff believes these higher costs were incurred due to GPE's reduced financial flexibility subsequent to the GMO acquisition and GPE requested full recovery of these higher capital costs in Case Nos. ER-2010-0355 and ER-2010-0356, Staff does not believe that company "commitment" conditions to not pass along higher capital costs on to ratepayers have been effective.

Potential Impact on Ratemaking Capital Structures and Cost of Capital

In past rate cases, KCPL and GMO had recommended the use of GPE's consolidated capital structure for ratemaking purposes for both companies. Staff had done so as well due to the fact that S&P assigned KCPL and GMO a credit rating based on the GPE consolidated capital structure and consolidated business risk. Staff considered this appropriate because it matched the cost of the capital with the risk underlying the capital structure. For example, if KCPL had a 60% equity ratio (more consistent with an A-rated regulated utility), but it was assigned a BBB credit rating because of its affiliation with a more leveraged GPE consolidated capital structure, KCPL would be paying debt costs consistent with a BBB capital structure

rather than its per books value capital structure of 60% equity. Consequently, if KCPL's allowed ROR were based on a 60% equity ratio, its ratepayers would be charged for an equity-rich capital structure without the benefit of lower debt costs consistent with an A-rated capital structure. Consequently, using GPE's consolidated capital structure allowed for a matching of costs with the cost drivers, which includes leverage issued at GPE.

As evidenced by the testimony of Kevin S. Bryant, KCPL's and GMO's capital structure witness, in the pending rate cases before the Commission, the companies are now recommending subsidiary-specific capital structures. Staff will not debate this issue in this report, but Staff will point out that GPE's proposed acquisition of Westar may cause this change to be even more costly to Missouri ratepayers if debt investors do not recognize KCPL's and GMO's lower risk capital structures when determining their required return on debt. Although Westar is also a pure-play regulated utility with a similar risk profile to that of KCPL and GMO, GPE proposes to issue \$4.4 billion of debt at the holding company level, which will cause GPE's consolidated common equity ratio to be around 40% rather than the approximate 50% shown on KCPL's and GMO's books. GPE, KCPL and GMO have \$1.77 billion of debt maturing in approximately the next 5 years. Because GPE had issued debt on behalf of GMO, Staff would expect that this GPE debt would be refinanced with debt issued at the subsidiary level, but Staff has not confirmed this. Because this \$1.77 billion of debt will be refinanced under a weaker GPE consolidated capital structure and S&P assigns KCPL and GMO credit ratings based on this weaker consolidated capital structure, then the cost of this subsidiary-specific debt will be higher than if GPE had a consolidated capital structure

similar to its subsidiaries. Again, because GPE, KCPL and GMO have not shown a willingness to adjust their ratemaking capital costs down because of the increased financial risk they incur to make acquisitions, Staff believes the higher cost of debt that is a function of the more leveraged capital structure will be applied to a less risky capital structure, causing Missouri ratepayers to pay higher capital costs than they would normally pay if KCPL and GMO were truly viewed by investors as a stand-alone entity.

Summary

Absent rating-agency-recognized ring-fencing of GPE's Missouri subsidiaries, which Staff believes can only be ensured if the company collaborates with rating agencies through its own initiatives, Staff does not know how to provide the Commission assurance that KCPL and GMO ratepayers will not pay higher capital costs as a result of the proposed transaction and possibly suffer impaired ability to raise reasonably-priced capital due to unforeseen events. Staff's experience from monitoring the activities of companies, such as Ameren Corporation's abandonment of its non-regulated generation subsidiary, is that the holding company will protect itself and its affiliates from a financially-troubled subsidiary, but rarely vice versa. Experience from Staff's efforts in Case No. EM-2001-464 has proven that proposing a list of untested conditions did not accomplish stand-alone ratings for KCPL. Therefore, Staff recommends GPE, which is operated by KCPL, pursue such efforts and provide evidence that such efforts have been accepted by S&P as being sufficient to allow for KCPL and GMO to be assigned a rating consistent with their stand-alone risk profiles.

Disclaimer

Staff has not been able to address all aspects of capital attraction and capital costs for this report. For example, Staff has not explored the details of KCPL's and GMO's credit facilities, which allow for sharing with GPE. Staff does not know how the costs of these credit facilities and the cost of commercial paper backed by these credit facilities would be impacted by the proposed transaction. This Commission should note that past Commission decisions did not necessarily accept Staff's arguments that KCPL's ratepayers paid higher-than-necessary capital costs due to its affiliation with GPE and GMO.

--David Murray, Manager, Financial Analysis Unit.

2. Resource and Operational Detriments:

GPE's press release of May 31, 2016, 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, Mr. Bassham's accompanying email 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.

Staff notes that GPE does not have the necessary resources and personnel to provide managerial services and oversight to Westar Energy as it has no employees. All employees reside with KCPL, a regulated utility that does the majority of its business in Missouri.

After the July 14, 2008, acquisition of Aquila's Missouri electric properties by GPE, KCPL entered into an agreement with GMO dated October 10, 2008, (herein referred to as the "*Joint Operating Agreement*") to provide operational, planning and oversight services, including tax services, to GMO. All former Aquila employees retained by GPE were transferred to KCPL at that time. The result is that GMO does not have any employees and any work that is performed on behalf of GMO is performed by KCPL employees.

Since GMO has no employees, KCPL is identified as GMO's Designated Agent and Operator. Section 1.2 of the *Joint Operating Agreement* states:

Section 1.2 KCP&L Designated Agent and Operator. KCP&L GMO hereby designates KCP&L as its agent and operator of its business and properties. KCP&L shall be responsible for and shall perform, through its employees, agents, and contractors, all such actions and functions (including, without limitation, the entry into contracts for the benefit of or as agent for KCP&L GMO) as may be required or appropriate for the proper design, planning, construction, acquisition, disposition, operation, engineering, maintenance and management of KCP&L GMO's business and properties in accordance with the terms of this Agreement (the "Services"). KCP&L GMO hereby delegates to KCP&L, and KCP&L hereby accepts responsibility and authority for the duties set forth in this Agreement.

The *Joint Operating Agreement* identifies how KCPL is to treat GMO in making operational decisions. Section 1.8 of the *Joint Operating Agreement* between KCPL and GMO states:

Section 1.8 Parity of Services and Internal KCP&L Operations. KCP&L will at all times use its commercially reasonable efforts to provide the Services in scope, quality and schedule equivalent to those it provides to its own internal operations. In providing the Services, KCP&L will seek to maximize the aggregate synergies to both companies, and shall not take any action that would unduly prefer either party over the other party.

In December 2008, all employees of GPE were transferred to KCPL. The result is that GPE does not have any employees and any work that is performed on behalf of GPE is performed by KCPL employees. KCPL has maintained operational and functional control of all GPE entities, including GMO, since that time. Accordingly, KCPL personnel manage and provide all operational services and resources to GPE, KCPL and GMO.

All GPE officers are also officers for KCPL and GMO. All officers of KCPL are also officers of GMO. All of the members of the Board of Directors of GPE are also Board members of KCPL and GMO, with the exception of one director.

This discussion illustrates that the impact of the Westar transaction on allocation of KCPL payroll to KCPL's and GMO's Missouri customers should be of a material nature. If the Westar transaction is structured in a similar fashion to the prior Aquila transaction in the assignment of all current Westar employees to the KCPL entity, then the allocation of KCPL payroll and payroll-related costs to the Missouri jurisdiction in future rate cases will be made much more complex due to the new responsibility of KCPL employees for Westar matters, with an unknown impact on the Missouri cost of service for KCPL and GMO. KCPL's employees are already fully occupied in operating KCPL, GMO and GPE. Staff fears that tasking these employees with, first, the acquisition and integration of Westar and, second, the operation of Westar, would necessarily result in a loss of operational efficiency and the subsidization of GPE's acquisition by Missouri ratepayers.

--Mark Oligschlaeger, Manager, Auditing Department.

3. Service Quality Detriments

Introduction and General Description

Regulated utilities perform many processes and practices including billing, credit and collections, meter reading, payment remittance, call center operations, service or work order processes and service connection, disconnection and reconnection, which all affect and help define service quality. Service reliability and outage prevention are also critical components of service quality. It is the Staff's opinion that regulated utilities should perform these activities with effective and efficient internal control to promote acceptable levels of service for their customers. Customers pay for the entire cost of the service they receive, including the staffing, technology, management, training, buildings, infrastructure, vehicles, equipment and other costs and they are entitled to quality service.

The Commission has specific rules that govern a variety of service quality processes including: service disconnection and reconnection processes, payment plans during cold weather, customer billing and payments, deposits, meter reading including estimated reads, denial of service, customer complaint processes, utility accessibility by its customers, rules regarding registered customers and others.

Service quality performance measurements or metrics are established and used by utilities to determine and monitor the service they are providing to their customers. These measurements are critical in that they serve multiple purposes including demonstrating past and current performance as well as both trends of improvement and decline. Such metrics are used in resource analysis, such as staffing and equipment

needs, and provide some assurance to utilities, utility customers, shareholders and utility commissions that a certain level of customer service is being provided.

Some aspects of service quality, however, do not lend themselves to specific metrics or indicators. Examples include the consistent application of credit and collection practices, detection of billing errors, the effective training of customer service representatives to ensure the relaying of accurate and consistent information as well as courteous treatment of customers by company employees performing service calls.

Why Is Service Quality at Risk During Utility Merger or Sale Transactions?

There are a number of factors that place regulated utility service quality at risk during merger or sale cases. Transitions may place additional pressure on the utilities being combined due to the merging of different processes, practices, systems, procedures, cultures, organizational structures, and workforces. Transitions may require that previous focus be shared with determining how to combine two separate systems into one, often with additional pressures of expected efficiencies or synergies and cost savings. New or different ways of operating, while determined to be desirable, may disrupt or disturb stability, security of systems, operations or staffs. In addition, natural human resistance to change should not be discounted. “When uncertainty or ambiguity about the future accompanies change, individuals and even groups will take action based on their perception of how the change will affect them.”⁹³

Among the greatest factors that place regulated utility service quality at risk during merger or sale cases are the financial constraint concerns and the desire or need to reduce costs. Mergers and sales can result in strong incentives to reduce costs in

⁹³ AMA Management Handbook, John J. Hampton, Editor Copyright 1994, p. 9-70.

order to realize savings driven by the need to compensate for high acquisition premiums and the assumption of new debt to fulfill synergy commitments and expectations and others commitments. Such cost-cutting incentives may cause the deferral of system maintenance and facility upgrades and may also result in the termination of well-trained and experienced workforces whose development, training and expertise has been paid for by ratepayers. Cost reductions may also result in the outsourcing of functions previously performed in-house that if not managed and controlled effectively can result in reductions in service. Cost-cutting can further result in the deferral of filling positions created by normal attrition. Ensuring that mergers are not detrimental to the public interest should include consideration and evaluation of such factors.

Cost-reductions that have negatively impacted service quality have occurred and been documented at more than one Missouri utility. Such documentation can be reviewed in the context of Case Nos. GR-98-140 (a Missouri Gas Energy Company (“MGE”) rate case), GO-95-177 (which resulted in 37 recommendations to MGE for service quality improvements after its purchase by Southern Union Company led to significant cost and ultimately service quality reductions) and cases: GC-97-33 and GC-97-497, Staff and the Office of the Public Counsel (“OPC”) complaints filed against MGE, respectively.

In Case No. ER-2004-0034 (an Aquila, Inc., rate case), Staff addressed declining call center performance at Aquila, Inc., which occurred after Aquila’s decision to use temporary workers to staff its Raytown call center. In part, Aquila indicated it had utilized temporary staffing as a means to reduce costs. Aquila subsequently returned to recruiting, selecting and hiring its own call center and staffing at higher levels.

While the merger or sale experience of one Missouri utility does not necessarily predict a similar experience for future mergers within the state, it is important to recognize the stress that mergers and acquisitions can place on regulated utility operations. Further, even though KCPL and Westar operate utilities in service territories that are contiguous to each other, they are different companies with different workforces with different managements, serving different customer bases through different systems, processes and procedures.

What Information does the Staff Possess Regarding KCPL's and GMO's Present State of Service Quality?

The Staff has considerable information about KCPL and GMO's service quality that it has obtained through a variety of means over many years. Staff has obtained service quality information concerning: formal case work including rate, merger, investigation, and complaint cases; comprehensive customer service reviews conducted of Aquila, Inc., (now GMO, conducted in 2005 and which included 52 recommendations for company improvement) and of KCPL (conducted in 1999); service quality reporting of both companies which encompasses the companies' call center performance (including their use of call deferral technology), meter reading including estimated reads, reliability metrics including SAIDI, CAIDI, SAIFI and MAIFI;⁹⁴ customer complaint and comment data as well as operational information obtained through regular quarterly service quality meetings with the companies. Such quarterly service quality meetings were ordered by the Commission in Case No. EM-2007-0374 (*In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company,*

⁹⁴ SAIDI (System Average Interruption Index), CAIDI (Customer Average Interruption Index), SAIFI (System Average Interruption Frequency Index) and MAIFI (Momentary Average Interruption Index).

and Aquila, Inc., for Approval of the Merger of Aquila, Inc., with a Subsidiary of Great Plains Energy Incorporated and for Other Related Relief).

While the Staff receives metrics in certain key service quality areas, such metrics cannot provide complete assurance that customers are receiving an adequate level of service as some aspects of service do not lend themselves to indicators. Some examples of these include the consistent application of credit and collection processes, effective and accurate handling of inquiries and the courteous treatment of customers. The metric information the Staff currently receives from the companies has indicated performance that the Staff considers to be within an acceptable range for those specific service indicators.

What Analysis did Staff Conduct in the Context of the Present Investigatory Docket Regarding Risks to Missouri Customer Service Quality in the GPE Acquisition of Westar and What were its Conclusions?

Because GPE, KCPL and GMO did not file an acquisition application in Missouri, there is no application with commitments to Missouri customers to review and inquire upon. There also is no KCPL or GMO management testimony filed in Missouri to review regarding service quality safeguards GPE, KCPL and GMO will employ to ensure the acquisition will not be detrimental to the Missouri public interest.

Staff has reviewed the filings GPE made with the KCC as well as the testimony of KCPL employees and Great Plains Energy officers and testimony filed by Westar executives. It has also reviewed the *Joint Application* of GPE, KCPL and Westar Energy, Inc., for approval of the acquisition.

Staff also sent a number of data requests to GPE to inquire about actions and analysis performed to date to determine that there will be no detrimental impact upon

KCPL and GMO Missouri customers regarding service quality including, but not limited to, the specific areas or processes such as: call center operations, service order processes, meter reading, credit and collections, service connection and disconnection processes, payment remittance and others. Staff inquired about planned operational changes during and post-acquisition of Westar Energy in any and all service quality areas that include outsourcing and/or terminating current KCPL employee headcounts⁹⁵ (Attachment 1). Staff focused on KCPL employee headcounts as GMO has no employees (functions for GMO are performed by KCPL employees). Similarly, GPE has no employees but utilizes KCPL staffing.

Great Plains Energy response to the above inquiry was two-fold:

1) . . . KCP&L has only performed the due diligence phase of the Westar transaction and as part of that due diligence phase has evaluated service related data (provided as part of our response to DR 21). Transition planning and next steps are yet to be developed.

2) However, based on the results of the Aquila integration, KCP&L believes that we have a credible track record and proof of our ability and willingness to effectively integrate companies without negatively impacting our quality of service. We will pursue a similar approach with the Westar integration and expect no significant negative customer impacts.

GPE in effect is saying in its response to Data Request 17: (1) We do not know our next steps and (2) our merger with Aquila provides sufficient demonstration as to how we will perform in our merger with Westar. While Staff understands that KCPL does not have all details of the merger completed, such unknown critical operational plans are cause for concern regarding Missouri regulated operations. KCPL's present lack of plans and its failure to seek Missouri regulatory evaluation and approval, including review and evaluation of merger milestones and activities, is of significant

⁹⁵ Data Request No. 17 in Case No. EM-2016-0324.

concern for Missouri regulated customers. Missouri regulators have an obligation to Missouri ratepayers to know specifically how Missouri operations fit into the merger plan that may have a direct impact on the service received; to engage in productive dialogue with GPE, KCPL and GMO regarding its post-merger intentions and commitments; and to monitor the continued provision of service to Missouri customers such that it is not detrimental to the public interest.

Much is yet to be determined regarding the merger with Westar. GPE's response to Data Request 18 (Attachment 2) which requested merger documents from GPE resulted in this highly confidential response:

** _____

_____**

Further, GPE's acquisition of Aquila, Inc., cannot be relied upon as a sufficient indicator as to how a merger with a company presently operating outside the jurisdiction of this Commission will unfold. Aquila, Inc., was another Missouri-regulated company when purchased by GPE. Many things are very different about these two mergers but regardless, no two mergers and their outcomes are the same. This is supported by numerous factors such as, but not limited to, different and evolving managements including executives and board members, different utilities with differing missions, differing operations, differing values, differing staffs, differing infrastructures, differing level of expenses, etc.

Lessons from the Aquila, Inc., Experience

Historical lessons about the Aquila, Inc., experience should not be forgotten. Financial pressure, regardless of its source, can lead to similar and/or identical detrimental customer service results. Aquila, by its management decisions to enter into what ultimately became failed unregulated businesses, placed significant financial pressure on the surviving Missouri-regulated utility. Much was documented about Aquila in Missouri, and the Commission and the Staff at that time had concerns about the high cost of debt Aquila, Inc., was paying due to its declined credit position. While the Commission had control over the rates Aquila charged its Missouri-regulated customers, it had no involvement in the managerial cost-cutting decisions Aquila made which directly resulted in regulated utility staffing reductions and outsourcing directed by Aquila management: such cost-cutting prompted some of the service declines the Staff had observed.

Service decline observations particularly with regard to the Aquila's call center operations were made in the *Missouri Public Service Commission's Staff Report on Aquila, Inc.* dated December 2002. The Commission directed Staff to review and report on the evolving financial position at Aquila and the implications that position had on Aquila's regulated operations in Missouri. The review resulted in a report provided to the Commission but there was no official filing and therefore no case number. This report will be filed under a separate pleading for the information of the Commission.

Other documentation of financial concerns which resulted in service declines were presented in Case No. EF-2003-0465 (an application by Aquila, Inc. for Authority to Assign, Transfer, Mortgage or Encumber its Franchise, Works or System). An informal Customer Service Staff report entitled *Review of Aquila, Inc. Customer Service*

Processes and Operations provided to the Commission in October 2005 included over 50 recommendations for service quality improvement. Further, a focused management audit, filed in Case No. EO-2006-0356, highlighted the impacts financial difficulty may have on company operations and critical decision-making. Both of these reports will be filed with the Commission under separate pleadings.

Staff pursued a number of approaches to address the Aquila service quality declines including (1) the pursuit of monthly reporting versus quarterly reporting with the addition of certain metrics, (2) the pursuit of improved call center performance targets, and (3) regular meetings with the Company to address and monitor performance more closely. Aquila resisted monthly service quality reporting in Case No. ER-2004-0034, *Aquila Networks – MPS and Aquila Networks L-P general rate increase case* (Brett C. Carter Rebuttal Testimony) but subsequently agreed to the additional reporting.

Ultimately, much improved in Aquila's regulated operations (before the purchase of Aquila by GPE which became effective July 11, 2008) as significant work had ensued by Aquila, Inc., at the prompting of the Commission, Staff and others in attempts to preserve and improve the service received by Aquila's Missouri customers.

While call or contact center metrics are not the only metrics that matter in service, call centers are none-the-less critical as they are the primary manner in which customers engage with their utility. Customers require contact with their utilities regarding a wide range of issues including: reporting emergencies and service outages; beginning, discontinuing, transferring or restoring service; inquiring about their bills, usage, to make payment agreements; and others. During extreme weather conditions

experienced during the hot summer months and cold winters, call centers may actually be a “lifeline” for some customers who are subject to service disconnections for non-payment. As utilities have closed local business offices that once accommodated walk-in traffic and provided customers with a utility presence in their community, the role of the call center has become increasingly important.

In review of Aquila’s call center performance reporting in Staff’s possession, Aquila had, what Staff believes, is by far the best prolonged performance of call center metrics of any Missouri utility in Aquila’s immediate two year history prior to its acquisition by GPE and transition to KCPL’s call center system (July 2006 through June 2008). Aquila’s abandoned call rate (“ACR”) was ** ____ ** or below (in many cases significantly so) 22 out of 24 months prior to being acquired by GPE. Average Speed of Answer (“ASA”), which has a direct correlation to ACR, demonstrated similar exceptional performance with 21 out of 24 months having calls answered well within ** __ ** seconds (Attachment 3).

Upon acquisition by GPE, Aquila’s transition to KCPL’s call center system resulted in a temporary but immediate sharp decline in performance to ** ____ ** ACR and ** ____ ** seconds ASA. While declines in performance are not unanticipated during such major system transitions, utilities frequently describe their planned transitions as being “seamless” or without incident. More often than not, in Staff’s experience, the transition of large and critical systems, such as billing, customer information, call center systems, meter reading, and others result in some transition performance declines.

While the subsequent Aquila, Inc., service quality with regard to call center performance permanently declined when merged with KCPL, in Staff's opinion, KCPL's performance has been consistently and solidly acceptable and reasonable including its controlled and minimal usage of call deferral technology (to date). Call deferral technology through products such as "Virtual Hold" and "Call Back In-Queue" must be factored into the performance numbers of ASA and ACR as they artificially "lower" or improve the appearance of such call center metrics in Staff's opinion. KCPL has to date moderately used such technology which ultimately is used to inform customers that the call center is too busy at that time to respond to customer requests to speak to a representative and customers may either hold for an extended period of time or receive a return call from the call center. When service is in threat of disconnection or other crises occur, not being able to speak to a utility representative in an expedient manner becomes a critical service matter.

What are the Concerns Regarding Cost-Cutting Which Results in (1) Employee Reductions and (2) Outsourcing of Work Presently Performed In-House?

Employee reductions among Missouri regulated utilities have had negative impacts upon operations. Aquila's management decisions to both reduce call center staffing and use outsourcing resulted in diminished service quality to Missouri customers. While outsourcing specific operational functions may not lead to poorer service, outsourcing that is not managed effectively by regulated utilities and which has resulted in less qualified and less trained workers and resulted in high-turnover, etc., can and has certainly led to service quality reductions. Aquila experienced these problems through the outsourcing experience that occurred in its call center but it is not the only utility that has demonstrated such problems.

MGE after its purchase by Southern Union Company addressed previously, provides significant evidence of the impact employee reductions can have on operations. While this section will not recount all of the service quality failures MGE experienced after making significant employee reductions, two articles appearing in the Kansas City Star during that time frame (Attachments 4 and 5) indicate the serious service quality failures experienced at that time. Further, it should be noted that one system or process deficiency often can and does impact other systems and processes such as the case with inaccurate meter reading leading to inaccurate customer billing leading to increased call volume that cannot be effectively handled by the utility.

The value of low turnover is clearly addressed by Mr. Brett Carter, Vice President of Central Services at what was Aquila, Inc. Mr. Carter provided the following on page 7 of his surrebuttal testimony in Case No. EF-2003-0465 regarding call center staffing (which is consistent with information indicated by other utilities):

. . . Establishing a class of candidates takes several weeks and the training following the hiring takes months. Once a Call Center CSA is hired and trained, their level of productivity increases to what we define as maximum capability over two years . . .”

In four years, Aquila, Inc., had used five outsourced agencies to help staff its call center due to a variety of reasons including unqualified labor pools of those agencies and high turnover. Other utilities have expressed the “time and experience” need in various critical positions. Further, high turnover may not readily present itself in the form of metrics, but call quality can rapidly deteriorate as untrained representatives understandably lack sufficient knowledge of company tariffs, Commission rules, individual company customer information system processes, software, etc.

Staff continues to work informally with utilities who have either outsourced functions that Staff believes resulted in a service quality detriment or who had discontinued the use of outsourced functions once they were included in customer rates, resulting in cost-cutting that negatively impacted call center performance. These matters are addressed by Staff in a variety of on-going ways. When the Staff believes its concerns warrant Commission intervention, it has filed complaints against utilities with the Commission, requests for investigatory dockets and introduced concerns in other formal processes such as rate cases.

Why may the Westar Purchase by GPE Impact the Quality of Service of Missouri Customers?

Significant proposed merger savings have been addressed in testimony filed with the KCC including \$65 million during the first full year after closing and \$200 million in the third full year after closing.⁹⁶ Such savings may come from many sources and may or may not be realized, but undoubtedly include employee headcounts. Testimony filed by Mr. Terry Bassham in Kansas concerning the merger indicates that he anticipates headcount savings resulting from the elimination of “overlapping administrative, management and support positions” . . . and “if natural attrition is not sufficient, GPE may consider targeted voluntary staffing reduction programs where it makes sense.” But further in his testimony he states, “some level of involuntary severance may occur as this is typically unavoidable in transactions of this nature.”⁹⁷

⁹⁶ Direct Testimony of Terry Bassham on Behalf of Great Plains Energy Incorporated and Kansas City Power & Light Company in the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City & Light Company, and Westar Energy, Inc. For Approval of the Acquisition of Westar Energy, Inc. By Great Plains Energy Incorporated, p. 10.

⁹⁷ Direct Testimony of Terry Bassham On Behalf of Great Plains Energy Incorporated and Kansas City Power & Light Company In the Matter of the Joint Application of Great Plains Energy Incorporated,

Missouri has strong interest in these sorts of wholesale changes that could arise from the purchase of Westar by GPE, including staffing reductions along with organizational and operational changes that the merger is bound to cause. Therefore, the Commission needs “a place at the table” when an acquisition such as this is under consideration.

--Lisa Kremer, Manager, Consumer & Management Analysis Unit.

4. Affiliate Transaction Detriments

Most of the large utilities regulated by the Commission are owned by holding companies that also own subsidiaries engaged in unregulated businesses. This situation creates a danger that the holding company will seek to maximize the profits of its unregulated enterprise by shifting its costs to the regulated business, thereby subsidizing it at the ratepayers' expense. While any such cross-subsidization attempt is objectionable on general ratemaking principles,⁹⁸ the Commission has also promulgated rules governing affiliated transactions in the electric, gas, steam heat and refrigeration industries.⁹⁹

The Missouri Supreme Court stated that the Commission's rules are:

a reaction to the emergence of a profit-producing scheme among public utilities termed “cross-subsidization,” in which utilities abandon their traditional monopoly structure and expand into non-regulated areas. This expansion gives utilities the opportunity and incentive to shift their non-regulated costs to their regulated operations with the effect of unnecessarily increasing the rates charged to the utilities' customers. See

Kansas City Power & Light Company, and Westar Energy, Inc. For Approval Of the Acquisition of Westar Energy, Inc. by Great Plains Energy Incorporated, p. 8.

⁹⁸ Because the expenses in question were not incurred in the course of providing regulated utility services to the ratepayers, it follows that the ratepayers are not responsible for paying them.

⁹⁹ See Rules 4 CSR 240-20.015 (electric utilities), 4 CSR 240-40.015 (gas utilities), 4 CSR 240-40.016 (gas utility marketing affiliate transactions), 4 CSR 240-40.017 (gas utility HVAC affiliate transactions), and 4 CSR 240-80.015 (steam heat and refrigeration utilities).

United States v. Western Elec. Co., 592 F.Supp. 846, 853 (D.D.C.1984) (“As long as a [public utility] is engaged in both monopoly and competitive activities, it will have the incentive as well as the ability to ‘milk’ the rate-of-return regulated monopoly affiliate to subsidize its competitive ventures....”). To counter this trend, the new rules—and in particular, the asymmetrical pricing standards—prohibit utilities from providing an advantage to their affiliates to the detriment of rate-paying customers. In addition, to police compliance, the rules require the utilities to ensure that they and their affiliates maintain records of certain transactions.¹⁰⁰

The centerpiece of the Commission’s affiliate transaction rule is the “asymmetrical pricing standards” designed to prevent improper subsidization of unregulated activities by ratepayers:

A regulated electrical corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated electrical corporation shall be deemed to provide a financial advantage to an affiliated entity if—

1. It compensates an affiliated entity for goods or services above the lesser of—

A. The fair market price; or

B. The fully distributed cost to the regulated electrical corporation to provide the goods or services for itself; or

2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of—

A. The fair market price; or

B. The fully distributed cost to the regulated electrical corporation.¹⁰¹

The “fully distributed cost,” in turn, is defined as:

a methodology that examines all costs of an enterprise in relation to all the goods and services that are produced. [Fully distributed cost] requires recognition of all costs incurred directly or indirectly used to produce a good or service. Costs are assigned either through a direct or allocated approach. Costs that cannot be directly assigned or indirectly allocated

¹⁰⁰ ***State ex rel. Atmos Energy Corp. v. PSC***, 103 S.W.3d 753, 763-764 (Mo. banc 2003).

¹⁰¹ Rule 4 CSR 240-20.015(2)(A).

(e.g., general and administrative) must also be included in the [fully distributed cost] calculation through a general allocation.¹⁰²

The asymmetrical pricing standards have been characterized as “in essence, a simple prohibition to all utilities against providing a financial advantage to their affiliates[.]”¹⁰³ Their purpose is to “prevent regulated utilities from subsidizing their non-regulated operations ... and provide the public the assurance that their rates are not adversely impacted by the utilities' nonregulated activities.’ A presumption that costs of transactions between affiliates were prudent is inconsistent with these rules.”¹⁰⁴

On July 1, 2016, GPE and KCPL, together with Westar Energy, Inc., and Kansas Gas and Electric Company (collectively “Westar”), filed a *Joint Application* with the KCC requesting KCC approval of GPE’s acquisition of Westar. In the *Joint Application*, on page 14, paragraph V.29.h. the Joint Applicants state:

For each of its utility subsidiaries, Great Plains Energy will provide an updated cost allocation manual to the Commission explaining the basis of allocation factors used to assign costs to each utility.

In the May 29, 2016, *Agreement and Plan of Merger* of GPE and Westar, on page B-1, paragraph 1.c., GPE (“Parent”) states:¹⁰⁵

Allocation of costs among affiliates – Parent agrees that each of its utility subsidiaries will provide an updated cost allocation manual to the Kansas Corporation Commission explaining the basis of allocation factors used to assign costs to each utility, and will further agree that the Kansas

¹⁰² Rule 4 CSR 240-20.015(1)(F).

¹⁰³ ***State ex rel. Atmos Energy Corp. v. PSC***, 103 S.W.3d 753, 763 (Mo. banc 2003).

¹⁰⁴ ***Office of Public Counsel***, *supra*, 2013 WL 3894953, at 6.

¹⁰⁵ The Staff notes that GPE states in the second paragraph on page B-1 of the GPE and Westar *Agreement and Plan of Merger*.

Although the Merger is not subject to an approval proceeding in Missouri, Parent would expect to make similar commitments and agreements for the benefit of the Missouri customers of its utility subsidiaries in the context of future rate case proceedings of its utility subsidiaries before the Missouri Public Service Commission.

Corporation Commission may examine accounting records of its affiliates to determine the reasonableness of such allocation factors and cost assignments.

GPE and Westar have filed in Kansas the direct testimony of Steven P. Busser, GPE, Vice President - Risk Management and Controller. He is also GPE's integration leader for the acquisition of Westar. On page 13 of his direct testimony, lines 16-20, he states:

Certain of these shared costs will be incurred by KCP&L, such as accounting, payroll, regulatory, accounts payable, and human resources. The current allocation methodology used by KCP&L to allocate shared costs among KCP&L and other Great Plains Energy business units, as documented in the Great Plains Energy Cost Allocation Manual filed annually with the Commission, will be utilized. That is, KCP&L's allocation of its shared costs will be expanded to include Westar in the allocation.

Currently, KCPL employees operate GPE and all of its affiliates. In the case in which GPE acquired Aquila, Inc.¹⁰⁶ KCPL and Aquila obtained a limited variance to the Commission's affiliate transactions rule, 4 CSR 240-20.015 (2)(A), 1 and 2, to provide information, assets, goods, or services at cost to, and receive information, assets, goods, or services at cost from GMO, and not consider fair market price in those transactions. KCPL and GMO do not have a similar variance for affiliate transactions with Westar, nor have KCPL or GMO requested such a variance from this Commission. Without the variance request, there is nothing pending before the Commission notifying the Commission of this matter respecting these entities, and there is no identification of the "good cause" or "the best interests of the ratepayers" that is needed to support such a variance request.

Without this variance, the affiliate transactions rules require KCPL and GMO to provide information, assets, goods, or services to Westar at the *greater* of fair market

¹⁰⁶ ***Re Great Plains Energy, Inc., Kansas City Power & Light Co., and Aquila, Inc.***, 17 Mo.P.S.C.3d 338, 564-67, 582 (2008).

price or KCPL's or GMO's fully distributed costs. Further, the affiliate transaction rules require KCPL and GMO to pay for information, assets, goods, or services from Westar at the *lower* of fair market price or KCPL's or GMO's fully distributed costs. These requirements were established by the affiliate transactions rule so that, for example, KCPL and GMO's transactions with an affiliate, such as Westar, would not provide a financial advantage to the affiliate at the expense of the regulated company's ratepayers. Commission Rule 4 CSR 240-20.015(2)(D) requires KCPL and GMO to not participate in any affiliate transaction which is not compliant with the affiliate transactions rule, except as provided in subsection (10) of the rule addressing variances. Neither KCPL nor GMO has satisfied any of the requirements in 4 CSR 240-20.015(10) necessary to obtain a variance of the affiliate transactions rules respecting Westar.

--Robert Schallenberg, Manager, Operational Analysis Department.

III. MEMORANDUM OF LAW

As directed by the Commission, Staff includes this *Memorandum of Law* on the issue of the Commission's jurisdiction.

A. What is Jurisdiction?

Jurisdiction is the authority of a court or administrative tribunal to hear and determine a particular case.¹⁰⁷ In general, courts have broad jurisdiction under the Missouri Constitution to hear and resolve any controversies brought to them.¹⁰⁸

¹⁰⁷ J. Devine, *Missouri Civil Pleading and Practice*, § 9-1 (The Harrison Co., 1986).

¹⁰⁸ Mo. Const., Art. V, § 14(a): "The circuit courts shall have original jurisdiction over all cases and matters, civil and criminal."

Administrative agencies, by contrast, have only limited jurisdiction to resolve matters within the scope of the specific authority conferred on them by statute.¹⁰⁹ In Missouri, the issue of jurisdiction is considered to include the tribunal's authority to grant the requested relief.¹¹⁰ Therefore, an administrative agency may lack jurisdiction because it is powerless to grant the requested relief although the subject matter of the dispute is within its delegated authority.

B. The Jurisdiction of the Public Service Commission:

The PSC is an executive branch administrative agency of the State of Missouri.¹¹¹ Like all administrative agencies, this Commission “is purely a creature of statute” and its “powers are limited to those conferred by the [Missouri] statutes, either expressly, or by clear implication as necessary to carry out the powers specifically granted.”¹¹² While the Commission properly exercises “quasi-judicial powers” that are “incidental and necessary to the proper discharge” of its administrative functions, its adjudicative authority is limited.¹¹³ “Agency adjudicative power extends only to the ascertainment of facts and the application of existing law thereto in order to resolve issues within the

¹⁰⁹ ***Bd. of Educ. of City of St. Louis v. State***, 47 S.W.3d 366, 370 (Mo. banc 2001): “Administrative agencies possess only those powers conferred or necessarily implied by statute. The scope of power and duties for public agencies is narrowly limited to those essential to accomplish the principal purpose for which the agency was created.”

¹¹⁰ *Id.*

¹¹¹ Mo. Const., Art. IV, § 12: “Unless discontinued all present or future boards, bureaus, commissions and other agencies of the state exercising administrative or executive authority shall be assigned by law or by the governor as provided by law to the office of administration or to one of the fifteen administrative departments to which their respective powers and duties are germane.”

¹¹² ***State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission***, 585 S.W.2d 41, 47 (Mo. banc 1979) (“*UCCM*”); ***State ex rel. City of West Plains v. Public Service Commission***, 310 S.W.2d 925, 928 (Mo. banc 1958).

¹¹³ ***State Tax Commission v. Administrative Hearing Commission***, 641 S.W.2d 69, 75 (Mo. 1982), quoting ***Liechty v. Kansas City Bridge Co.***, 162 S.W.2d 275, 279 (Mo. 1942).

given area of agency expertise.”¹¹⁴ The Commission is charged by statute with the implementation and enforcement of the Public Service Commission Law, particularly chapters 386 and 393, relating to public utilities that provide electric, gas, sewer, steam, and water services to the public.¹¹⁵

Over the years, the courts have compiled a catalog of the things the Commission may not do: it may not award money damages¹¹⁶ or grant refunds;¹¹⁷ it may not construe or enforce contracts;¹¹⁸ it may not declare or enforce any principle of law or equity;¹¹⁹ it may not manage a public utility¹²⁰ or compel it to exercise any property right;¹²¹ it may not limit the liability of a public utility for negligence resulting in damage to

¹¹⁴ ***State Tax Commission***, *supra*.

¹¹⁵ Chapter 386, RSMo, creates the PSC and describes its organization, general powers and the procedures to be used by the PSC. Other statutory chapters grant additional powers to the Commission and define its responsibilities with respect to specific industries: telecommunications, Chapter 392, RSMo; gas, electric, water, steam heating, and sewer companies, Chapter 393, RSMo; rural electric cooperatives, Chapter 394, RSMo; and manufactured housing, Chapter 700, RSMo. Chapters 387 through 391, RSMo, also part of the Public Service Commission Law, relate to transportation. Until July 1, 1985, the Commission’s jurisdiction included regulation of railroads and motor carriers (i.e., trucks). However, as a consequence of the national deregulation of the transportation industry, the Missouri General Assembly that year transferred the Commission’s powers regarding transportation to the newly-created Division of Transportation, later the Division of Motor Carrier and Railroad Safety, of the Missouri Department of Economic Development. In 2002, the Division of Motor Carrier and Railroad Safety was abolished and its residual duties were transferred to the Missouri Department of Highways and Transportation. Thus, the State Highways and Transportation Commission now exercises what little remains of the authority over railroads and motor carriers once vested in the PSC.

¹¹⁶ ***American Petroleum Exchange v. Public Service Commission***, 172 S.W.2d 952, 955 (Mo. 1943).

¹¹⁷ ***State ex rel. Laundry, Inc. v. Pub. Serv. Comm’n***, 327 Mo. 93, 112, 34 S.W.2d 37, 46 (1931); ***State ex rel. City of Joplin v. Pub. Serv. Comm’n of State of Mo.***, 186 S.W.3d 290, 299 (Mo. App., W.D. 2005).

¹¹⁸ ***Kansas City Power & Light Co. v. Midland Realty Co.***, 338 Mo. 1141, 1149, 93 S.W.2d 954, 959 (1936).

¹¹⁹ ***State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission***, 585 S.W.2d 41, 47 (Mo. banc 1979).

¹²⁰ ***State of Missouri ex rel. Southwestern Bell Tel. Co. v. Pub. Serv. Comm’n of Missouri***, 262 U.S. 276, 289, 43 S.Ct. 544, 547, 67 L.Ed. 981, ____ (1923).

¹²¹ ***State ex rel. Kansas City v. Public Service Commission of Missouri***, 301 Mo. 179, 192, 257 S.W. 462, 463 (Mo. banc 1923).

persons or property.¹²² The principal duties of the Commission are to set just and reasonable rates for utility services rendered¹²³ and generally to supervise the activities of the state's monopolistic public utilities;¹²⁴ but even within this area its authority is constrained. The Commission may not revoke a Certificate of Public Convenience and Necessity ("CCN") that it has granted.¹²⁵ The Commission cannot act as a receiver, however desirable that may be in any particular case.¹²⁶ The Missouri Supreme Court has held that the Commission has "plenary power to coerce a public utility corporation into a safe and adequate service."¹²⁷

The Commission's authority is best understood in the light of its purpose. In 1925, the Missouri Supreme Court stated as follows with respect to the Commission's duty and authority to set just and reasonable rates:¹²⁸

The enactment of the Public Service Act marked a new era in the history of public utilities. Its purpose is to require the general public not only to pay rates which will keep public utility plants in proper repair for effective public service, but further to insure to the investors a reasonable return upon funds invested. The police power of the state demands as

¹²² **Public Service Comm'n of State v. Missouri Gas Energy**, 388 S.W.3d 221, 230-231 (Mo. App., W.D. 2012).

¹²³ **State ex rel. City of Harrisonville v. Pub. Serv. Comm'n of Missouri**, 291 Mo. 432, 236 S.W. 852 (1922); **City of Fulton v. Pub. Serv. Comm'n**, 275 Mo. 67, 204 S.W. 386 (1918), *error dis'd*, 251 U.S. 546, 40 S.Ct. 342, 64 L.Ed. 408; **City of St. Louis v. Pub. Serv. Comm'n of Missouri**, 276 Mo. 509, 207 S.W. 799 (1919); **Kansas City v. Pub. Serv. Comm'n of Missouri**, 276 Mo. 539, 210 S.W. 381 (1919), *error dis'd*, 250 U.S. 652, 40 S.Ct. 54, 63 L.Ed. 1190; **Lightfoot v. City of Springfield**, 361 Mo. 659, 236 S.W.2d 348 (1951): "The Commission is vested with the state's police power to set "just and reasonable" rates for public utility services, subject to judicial review of the question of reasonableness."

¹²⁴ Section 386.250, RSMo.

¹²⁵ **State ex rel. City of Sikeston v. Pub. Serv. Comm'n of Missouri**, 336 Mo. 985, 997-98, 82 S.W.2d 105, 109-10 (1935).

¹²⁶ **State ex rel. Public Service Commission v. Bonacker**, 906 S.W.2d 896, 900 (Mo. App., S.D. 1995).

¹²⁷ **State ex rel. Missouri Southern R. Co. v. Public Service Commission**, 259 Mo. 704, ___, 168 S.W. 1156, 1163 (banc 1914).

¹²⁸ **State ex rel. Washington University et al. v. Public Service Commission et al.**, 308 Mo. 328, 344-45, 272 S.W. 971, 973 (*en banc*).

much. We can never have efficient service, unless there is a reasonable guaranty of fair returns for capital invested. * * * These instrumentalities are a part of the very life blood of the state, and of its people, and a fair administration of the act is mandatory. When we say "fair," we mean fair to the public, and fair to the investors.

Another purpose of the Public Service Commission Law is to ensure that all consumers are treated fairly: "[t]he purpose of providing public utility regulation was to secure equality in service and in rates for all who needed or desired these services and who were similarly situated."¹²⁹ Still another purpose is to restrain competition between utilities, which is considered to be undesirable due to the large, duplicative costs involved: "Let it be conceded that the act establishing the Public Service Commission, defining its powers and prescribing its duties, is indicative of a policy designed, in every proper case, to substitute regulated monopoly for destructive competition."¹³⁰ However, the primary purpose of the Commission is to protect the public from exploitation by monopolistic utilities: "[T]he dominant thought and purpose of the policy is the protection of the public while the protection given the utility is merely incidental."¹³¹

GPE has asserted that the Commission has no jurisdiction over it because it is a holding company and does not itself produce, transport or sell electric power to the public.¹³² As has been explained at some length, the Commission is a creature of

¹²⁹ **May Department Stores Co. v. Union Electric Light & Power Co.**, 341 Mo. 299, 317, 107 S.W.2d 41, 49 (1937). Fairness does not mean, however, that every customer pays the same rate: "Of course, this required classification for rates and service on the basis of location, amount used, and other reasonable considerations[.]" *Id.*

¹³⁰ **State ex rel. Electric Co. of Missouri v. Atkinson**, 275 Mo. 325, ___, 204 S.W. 897, 899 (1918).

¹³¹ **State ex rel. Crown Coach Co. v. Public Service Com'n**, 238 Mo.App. 287, ___, 179 S.W.2d 123, 126 (1944).

¹³² **Great Plains Energy Incorporated's Verified Opposition to Staff's Motion to Open Investigation and Request for Order Declining Jurisdiction**, p. 7: "Although the Commission exercises jurisdiction over public utilities, it does not exercise jurisdiction over corporations that hold the stock of public utilities. "The Commission has consistently found that the Commission does not have jurisdiction over transactions at the holding company level, and it will adhere to that position here," *quoting In re*

statute and its jurisdiction in any situation must be found by reference to the plain language of the Missouri statutes.¹³³ Appropriate statutory language is not hard to discover. Section 386.250, RSMo, provides:

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter: (1) To the manufacture, sale or distribution of . . . electricity for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; and to . . . electric plants, and to persons or corporations owning, leasing, operating or controlling the same[.]

The cited language is somewhat complex. First, it grants jurisdiction to the Commission over two activities or entities, “the manufacture, sale or distribution of . . . electricity for light, heat and power, within the state” and “electric plants.” Second, in each case, it also grants jurisdiction to the Commission over “persons or corporations owning, leasing, operating or controlling the same.” GPE, as it insists, does not itself either manufacture, distribute or sell electricity or have electric plants; but it is a corporation that controls both the manufacture and retail sale of electricity and electric plants by virtue of its ownership and control of KCPL and GMO.¹³⁴ Section 386.250(1), RSMo., by its plain language, establishes Commission jurisdiction over electric utility holding companies.

This conclusion is reinforced by other language in the Public Service Commission Law. Section 386.020(15), RSMo., provides that an “electrical corporation” is “every corporation . . . owning, operating, controlling or managing any electric plant

Proposed Merger of Verizon Communications, Inc. and MCI, Inc., Case No. TM-2005-0370 (May 3, 2005).

¹³³ ***UCCM***, *supra*, 585 S.W.2d at 47.

¹³⁴ For this reason, the rule of ***State ex rel. M.O. Danciger & Co. v. P.S.C.***, 257 Mo. 483, 205 S.W. 36 (1918) is inapplicable.

...” Like § 386.250(1), RSMo., the scope of § 386.020(15), RSMo., extends to and encompasses GPE. Staff earlier in this case had occasion to note that the Missouri Supreme Court recognized long ago that a corporation and its subsidiary can together constitute an “enterprise” whose activities render it subject to regulation by the Commission.¹³⁵ The United States Supreme Court has recognized the same principle:

North American concedes that four of its direct utility subsidiaries, Union Electric Company of Missouri, Washington Railway and Electric Company, North American Light & Power Company and Wisconsin Electric Power Company, transmit energy across state lines and hence are engaged in interstate commerce. It further concedes that its subsidiary West Kentucky Coal Company is engaged in interstate commerce, although contending that the remaining five direct subsidiaries are not so engaged. In view of North American's very substantial stock interest and its domination as to the affairs of its subsidiaries, as well as its latent power to exercise even more affirmative influence, it cannot hide behind the facade of a mere investor. Their acts are its acts in the sense that what is interstate as to them is interstate as to North American. These subsidiaries thus accentuate and add materially to the interstate character of North American. They make even more inescapable the conclusion that North American bears not only a “highly important relation to interstate commerce and the national economy,” but is actually engaged in interstate commerce. It is thus subject to appropriate regulatory measures adopted by Congress under its commerce power.¹³⁶

Like North American Company, GPE “dominates” its subsidiaries through its outright ownership of them and “its latent power to exercise even more affirmative influence” over KCPL and GMO, and their acts are therefore its acts.

The care that the legislature took to extend the Commission’s authority to both electric utilities and electric utility holding companies is understandable in view of the palpable detriments to the public interest caused by such holding companies in the past:

¹³⁵ *May Department Stores Co. v. Union Electric Light & Power Co.*, 341 Mo. 299, 324-328, 107 S.W.2d 41, 53-56 (Mo. 1937).

¹³⁶ *North American Company v. Sec. & Exch. Comm'n*, 327 U.S. 686, 695-96, 66 S. Ct. 785, 791-92, 90 L. Ed. 945 (1946)(Internal citation omitted).

The dominant characteristic of a holding company is the ownership of securities by which it is possible to control or substantially to influence the policies and management of one or more operating companies in a particular field of enterprise. To be sure, other devices may be utilized to effectuate control, such as voting trusts, interlocking directors and officers, the control of proxies, management contracts and the like. But the concentrated ownership of voting securities is the prime method of achieving control, constituting a more fundamental part of holding companies than of other types of business. Public utility holding companies are thereby able to build their gas and electric utility systems, often gerrymandered in such ways as to bear no relation to economy of operation or to effective regulation. The control arising from this ownership of securities also allows such holding companies to exact unreasonable fees, commissions and other charges from their subsidiaries, to make undue profits from the handling of the issue, sale and exchange of securities for their subsidiaries, to issue unsound securities of their own based upon the inflated value of the subsidiaries, and to affect adversely the accounting practices and the rate and dividend policies of the subsidiaries. Congress has found that all of these various abuses and evils occur and are spread and perpetuated through the mails and the channels of interstate commerce. And Congress has further found that such interstate activities, which grow out of the ownership of securities of operating companies, have caused public utility holding companies to be “affected with a national public interest.”§1(a)¹³⁷

While the public’s first line of defense against such holding companies and the abuses they perpetrated was erected by the federal government through the Public Utility Holding Company Act of 1935 (“PUHCA”) and the Securities and Exchange Commission (“SEC”), the states were free to supplement the federal efforts.¹³⁸ PUHCA provided in relevant part that it did not preempt additional state

¹³⁷ ***North American Company v. Sec. & Exch. Comm’n***, *supra*, 327 U.S. at 701-02, 66 S. Ct. at 794-95, 90 L. Ed. at ____ (Footnotes omitted).

¹³⁸ The purpose of PUHCA was to supplement State regulation, not supplant it. See ***Rochester Telephone Corp. v. Public Service Comm’n of State of New York***, 201 A.D.2d 31, 614 N.Y.S.2d 454, 457 (1994); ***Alabama Elec. Co-op., Inc. v. Securities and Exchange Comm’n***, 353 F.2d 905, 907 (D.C.Cir.1965).

jurisdiction over utility holding companies.¹³⁹ While state jurisdiction could not conflict with any provision of PUHCA, it could supplement it.¹⁴⁰

PUHCA was repealed in 2005, but the applicable provisions of the Missouri Public Service Commission Law are still in force. In the past, the Commission has often chosen to not exert its authority over holding companies and has even, as GPE has pointed out, denied that such authority exists.¹⁴¹ Administrative agencies are not bound by *stare decisis*, nor are Commission decisions binding precedent on any court.¹⁴² These decisions have no effect on the scope of the jurisdiction granted by the statutes to the Commission.

C. Regulation of the Electric Industry:

The electric industry in the United States has developed similarly in all fifty states so that there is an agency in each state that is the equivalent of the Missouri PSC.¹⁴³ Generically, these are often referred to as “PUCs”; that is, public utility commissions. Each is an agency of state government that exercises equivalent police powers over the

¹³⁹ 15 U.S.C. § 79a; repealed, Pub. L. 109–58, title XII, § 1263, Aug. 8, 2005, 119 Stat. 974.

¹⁴⁰ *Id.*

¹⁴¹ ***Great Plains Energy Incorporated’s Verified Opposition to Staff’s Motion to Open Investigation and Request for Order Declining Jurisdiction***, pp. 7-8; ***Great Plains Energy Incorporated’s Reply To Public Counsel’s Response And Staff’s Response***, pp. 3-4.

¹⁴² ***State ex rel. AG Processing, Inc. v. Pub. Serv. Comm’n of State***, 120 S.W.3d 732, 736 (Mo. banc 2003).

¹⁴³ See www.naruc.org/about-naruc/regulatory-commissions: “Founded in 1889, the National Association of Regulatory Utility Commissioners (NARUC) is a non-profit organization dedicated to representing the State public service commissions who regulate the utilities that provide essential services such as energy, telecommunications, power, water, and transportation. NARUC’s members include all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. Most State commissioners are appointed to their positions by their Governor or Legislature, while commissioners in 14 States are elected. Our mission is to serve in the public interest by improving the quality and effectiveness of public utility regulation. Under State law, NARUC’s members have an obligation to ensure the establishment and maintenance of utility services as may be required by law and to ensure that such services are provided at rates and conditions that are fair, reasonable and nondiscriminatory for all consumers.”

rates and other intrastate activities of (at least) the state's investor-owned public utility companies providing electric utility service.¹⁴⁴ As in Missouri, electric cooperatives and municipal electric utilities are generally excluded. In Kansas, the PUC is the "Kansas Corporation Commission" or "KCC."¹⁴⁵ GPE acknowledges that its acquisition of Westar must be approved by the KCC.¹⁴⁶

The interstate activities of electric utilities are another matter. The Federal Power Act grants FERC "exclusive authority to regulate the transmission and sale of electric energy in interstate commerce."¹⁴⁷ "Congress meant to draw a bright line easily ascertained, between state and federal jurisdiction This was done in the Power Act by making [FERC] jurisdiction plenary and extending it to all wholesale sales in interstate commerce except those which Congress has made explicitly subject to regulation by the States."¹⁴⁸ FERC is obligated to ensure that transmission and wholesale power rates are "just and reasonable."¹⁴⁹ States are not permitted to regulate in areas where FERC has exercised its jurisdiction to determine just and reasonable

¹⁴⁴ *State ex rel. Chicago, R. I. & P. R. Co. v. Pub. Serv. Comm'n*, 312 S.W.2d 791, 796 (Mo. banc 1958): "The public service commission is essentially an agency of the Legislature and its powers are referable to the police power of the state."

¹⁴⁵ See www.kcc.ks.gov/about/index.htm: "The mission of the Kansas Corporation Commission is to protect the public interest by impartially and efficiently regulating oil and gas production; rates, services, and safety of public utilities and commercial trucking, and promoting energy programs."

¹⁴⁶ *Great Plains Energy Incorporated's Verified Opposition to Staff's Motion to Open Investigation and Request for Order Declining Jurisdiction*, p. 3.

¹⁴⁷ *New England Power Co. v. New Hampshire*, 455 U.S. 331, 340, 102 S.Ct. 1096, 71 L.Ed.2d 188 (1982).

¹⁴⁸ *Nantahala Power and Light Co. v. Thornburg*, 476 U.S. 953, 966, 106 S.Ct. 2349, 90 L.Ed.2d 943 (1986) (quoting *Fed. Power Comm'n v. S. Cal. Edison Co.*, 376 U.S. 205, 215-16, 84 S.Ct. 644, 11 L.Ed.2d 638 (1964)); *Pub. Util. Dist. No. 1 of Grays Harbor County v. IDACOR Inc.*, 379 F.3d 641, 646-47 (9th Cir.2004).

¹⁴⁹ Federal Power Act ("FPA"), 16 U.S.C. § 824d(a), (d).

rates.¹⁵⁰ GPE acknowledges that the proposed transaction requires approval by the FERC.¹⁵¹

Electric utilities, therefore, operate in a dual regulatory framework. Their interstate activities are generally regulated by the FERC, while their intrastate activities are generally regulated by the state PUC. However, the situation is in reality more complex than that. For example, while FERC regulates sales of energy at wholesale and the states regulate sales of energy at retail, where retail sales are unbundled, FERC regulates the transmission component.¹⁵² In our federal system, FERC regulation in some instances displaces regulation by this Commission and in others exists concurrently with it and in yet others leaves it undisturbed.¹⁵³

The Kansas PUC has jurisdiction over GPE's acquisition of Westar because Westar is located in Kansas and is regulated by that agency (the KCC) in its business of generating, conveying and selling electricity to the public at retail.¹⁵⁴ The FERC has jurisdiction over GPE's acquisition of Westar pursuant to the FPA.¹⁵⁵ The Missouri Public Service Commission also has jurisdiction over GPE's acquisition of Westar

¹⁵⁰ See *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354, 371, 108 S.Ct. 2428, 101 L.Ed.2d 322 (1988).

¹⁵¹ *Great Plains Energy Incorporated's Verified Opposition to Staff's Motion to Open Investigation and Request for Order Declining Jurisdiction*, p. 3.

¹⁵² *New York v. FERC*, 535 U.S. 1, 16-17, 22, 122 S.Ct. 1012, 1022, 1025, 152 L.Ed.2d 47, ____ (2002).

¹⁵³ On its official website, FERC states that it regulates the transmission and sale at wholesale of electricity; reviews certain mergers and other transactions of electricity companies; reviews siting applications for electric transmission projects "under limited circumstances"; protects the reliability of the high voltage interstate transmission system through mandatory reliability standards; and monitors and investigates energy markets; FERC further states that it does not regulate the sale of electricity at retail; approve the construction of generation facilities; regulate municipal power systems or rural electric cooperatives; or regulate nuclear power plants. www.ferc.gov/about.

¹⁵⁴ *Great Plains Energy Incorporated's Verified Opposition to Staff's Motion to Open Investigation and Request for Order Declining Jurisdiction*, pp. 2-3.

¹⁵⁵ FPA § 203(a); codified at 16 U.S.C. § 824b.

because, as explained, this Commission has jurisdiction over GPE. That is not an extra-territorial extension of the Commission's authority; GPE is in Missouri.

D. *The Missouri Commission's Jurisdiction over the Proposed Transaction:*

The question of jurisdiction is really, "jurisdiction to do what?" A tribunal may have jurisdiction to do some things, but not others. The Commission has already recognized that it has jurisdiction to investigate the proposed transaction and to consider its possible deleterious effects on Missouri ratepayers. As the Commission put it, "The Commission has a duty to determine whether the transaction threatens Missouri ratepayers. If so, the Commission must also determine whether any appropriate remedy requires the Commission to have jurisdiction over the transaction." In that sense, the question of jurisdiction is the question of the Commission's authority to impose a particular remedy or condition in the event that it determines that the proposed transaction would otherwise be detrimental to the public interest.

The focus of Staff's investigation upon possible detriments to the interest of the public or of Missouri ratepayers reflects the legal standard that governs utility mergers and acquisitions in Missouri. A public utility must obtain prior authorization from the Commission to sell, assign, lease, or transfer utility assets,¹⁵⁶ to merge or consolidate,¹⁵⁷ to raise capital by issuing stock, notes, or bonds, or by mortgaging property,¹⁵⁸ and to

¹⁵⁶ Section 393.190.1, RSMo.; 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.

¹⁵⁷ Section 393.190.1, RSMo.; 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.

¹⁵⁸ 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,

acquire the stock of another utility.¹⁵⁹ The standard applicable to the Commission's exercise of this authority is whether or not the proposed action is likely to be detrimental to the public interest. This Commission has the same jurisdiction over GPE's activities that it has over those of a public utility such as KCPL or GMO.

1. Section 393.190.1, RSMo.

Section 393.190.1, RSMo., provides:

No gas corporation, electrical corporation, water corporation or sewer 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. The permission and approval of the commission to the exercise of a franchise or permit under this chapter, or the sale, assignment, lease, transfer, mortgage or other disposition or encumbrance of a franchise or permit under this section shall not be construed to revive or validate any lapsed or invalid franchise or permit, or to enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or to waive any forfeiture. * * * Nothing in this subsection contained shall be construed to prevent the sale, assignment, lease or other disposition by any corporation, person or public utility of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such corporation, person or public utility shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value.

steam heat utilities; 4 CSR 240-3.615, water utilities.

¹⁵⁹ 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 leading 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. 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.¹⁶⁰

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.' "¹⁶¹

Given that the purpose of § 393.190.1, RSMo., is to ensure the continuation of adequate service to the public, the Commission typically has considered 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.¹⁶² The Commission has sometimes said that denial of such an application

¹⁶⁰ *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980) (internal citations omitted).

¹⁶¹ *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) (internal citations omitted).

¹⁶² See *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.

requires compelling evidence on the record that a public detriment is likely to occur;¹⁶³ but has also said that the mere risk of harm to the ratepayers is a detriment to the public interest.¹⁶⁴ The Commission has determined that the applicable standard requires 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.¹⁶⁵

Additionally, "what constitutes the 'public interest'" is "a matter of policy to be determined by the Commission."¹⁶⁶ In any proceeding on such an application, the applicant bears the burden of proof.¹⁶⁷

In the present case, GPE is *buying* a public utility, not selling one. Section 393.190.1, RSMo., therefore, does not apply. However, the standard described

¹⁶³ 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).

¹⁶⁴ *In the Matter of Aquila, Inc.*, Case No. EF-2003-0465 (**Report & Order**, issued Feb. 24, 2004) pp. 6-7.

¹⁶⁵ *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."

¹⁶⁶ 17 Mo.P.S.C.3d at 543.

¹⁶⁷ *Id.*

above, developed in cases involving § 393.190.1, RSMo., also applies to § 393.190.2, RSMo.

2. Section 393.190.2, RSMo.

Section 393.190.2, RSMo., provides:

No such corporation [i.e., a gas corporation, electrical corporation, water corporation or sewer corporation] shall directly or indirectly acquire the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business, or proposing to operate or operating under a franchise from the same or any other municipality; neither shall any street railroad corporation acquire the stock or bonds of any electrical corporation, unless, in either case, authorized so to do by the commission. Save where stock shall be transferred or held for the purpose of collateral security, no stock corporation of any description, domestic or foreign, other than a gas corporation, electrical corporation, water corporation, sewer corporation or street railroad corporation, shall, without the consent of the commission, purchase or acquire, take or hold, more than ten percent of the total capital stock issued by any gas corporation, electrical corporation, water corporation or sewer corporation organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the capital stock of any gas corporation, electrical corporation, water corporation or sewer corporation may, with the consent of the commission, acquire and hold the remainder of the capital stock of such gas corporation, electrical corporation, water corporation or sewer corporation, or any portion thereof.

In holding this statute to be constitutional despite its unabashed application to extra-territorial transactions, the 8th Circuit Court of Appeals said:¹⁶⁸

For over fifty years, Congress has regulated the interstate transmission of natural gas (the Natural Gas Act), the interstate transmission of electric power (the Federal Power Act), and the ownership of utilities (the Public Utility Holding Company Act of 1935). A major purpose of these laws was to preserve and protect state and local regulation of the distribution of natural gas and electricity to local retail customers.

The statute here at issue [§393.190.2, RSMo.] is part of Chapter 393 of the Missouri Statutes, which authorizes the Commission to establish “just and reasonable” rates for the local distribution of natural gas, electricity, water, and sewer services. Rate regulation is a complex

¹⁶⁸ ***Southern Union Co. v. Missouri Pub. Serv. Comm'n***, 289 F.3d 503, 507-08 (8th Cir. 2002).

process. A public utility's investments in other companies can affect its regulated rate of return, if investment losses are allocated to the regulated business. Transactions between affiliated utilities can present rate regulators with difficult issues of preferential treatment and cost allocation. The abuses Congress identified in enacting the Public Utility Holding Company Act attest to the long-standing regulatory concern over interlocking ownership and management of public utilities. This concern does not mean that Southern Union's acquisition strategy is necessarily contrary to the public interest, but it tends to confirm the presumptive validity of Missouri regulating that strategy by requiring pre-acquisition approval.

The Commission asserts that § 393.190.2 is part of its rate regulation responsibilities. Southern Union does not deny that assertion, and the administrative record in this proceeding supports it. For this reason, Southern Union's contention that this is merely “extraterritorial” regulation of interstate commerce is incorrect. Though Southern Union's stock purchases are no doubt conducted from its corporate headquarters in Texas, the Commission scrutinizes these transactions because they potentially affect the company's regulated rate of return in Missouri. Thus, § 393.190.2 regulates interstate stock purchases because of their impact on Southern Union's regulated local activities in Missouri. Likewise, calling this “direct” regulation of interstate commerce does not make it per se unlawful. As the Fourth Circuit observed, the direct/indirect distinction is not analytically helpful when a state statute regulates interstate stock transactions for the purpose of protecting local consumers from public utility abuses.¹⁶⁹

By its express terms, § 393.190.2, RSMo., requires GPE to obtain the Commission's *prior authorization* when it acquires the stocks or bonds of a public utility (“the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business”). GPE's acquisition of Westar, therefore, requires the prior approval of this Commission; an approval that GPE has steadfastly refused to seek. Whether that approval would be granted would be governed by the Commission's application of the “not detrimental to the public interest” standard.

¹⁶⁹ **Baltimore Gas & Elec. Co. v. Heintz**, 760 F.2d 1408, 1421 (4th Cir.1985).

3. Section 393.250, RSMo.

Section 393.250, RSMo., provides:

1. Reorganizations of gas corporations, electrical corporations, water corporations and sewer corporations shall be subject to the supervision and control of the commission, and no such reorganization shall be had without the authorization of the commission.

2. Upon all such reorganizations the amount of capitalization, including therein all stocks and bonds and other evidence of indebtedness, shall be such as is authorized by the commission, which in making its determinations, shall not exceed the fair value of the property involved, taking into consideration its original cost of construction, duplication cost, present condition, earning power at reasonable rates and all other relevant matters and any additional sum or sums as shall be actually paid in cash; provided, however, that the commission may make due allowance for the discount of bonds.

3. Any reorganization agreement before it becomes effective shall be amended so that the amount of capitalization shall conform to the amount authorized by the commission. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary.

The *First Amended Stipulation and Agreement* that GPE executed in Case No. EM-2001-464 contained a series of specific conditions and the Commission's approval of KCPL's reorganization into a holding company (GPE) with an operating subsidiary (KCPL) was predicated upon compliance with those conditions. Section 393.250.3, RSMo., expressly authorizes the Commission's imposition of conditions on a reorganization, so they are presumptively valid. As Staff pointed out earlier in this case, GPE's commitment in the *First Amended Stipulation and Agreement* to seek Commission approval of future acquisitions was an acknowledgement that such is required by the Public Service Commission Law.

Staff has already noted GPE's violation of the conditions contained in the *First Amended Stipulation and Agreement*.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions:

The “not detrimental to the public interest” standard requires a cost-benefit analysis.¹⁷⁰ Based on information known at this time, Staff is unaware of any benefits that the proposed transaction will confer on the Missouri ratepayers of KCPL or GMO; but has identified a number of potential detriments. It is not possible now to predict whether, or the extent to which, any of these detriments will occur. However, it appears likely to Staff that the proposed transaction will mean higher rates in Missouri due to an encumbered access to capital. Likewise, the distraction of KCPL’s employees by the acquisition and subsequent integration of the companies and harvesting of synergies appears likely to Staff to result in both decreased operational efficiency and improper affiliate transactions.

At this time, Staff maintains that all of the known evidence supports a determination that the proposed transaction is detrimental to the public interest and ought not to be permitted to go forward. For this reason, Staff concludes that GPE must comply with the approval provisions of the *First Amended Stipulation and Agreement* and seek Commission approval so the Commission may make a determination as to whether the proposed transaction is likely to be detrimental to the public interest.

B. Recommendations:

Staff recommends that the Commission exercise its jurisdiction over GPE and order GPE to seek Commission approval prior to acquiring Westar. Staff will prepare

¹⁷⁰ *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).

and file a complaint against GPE and KCPL should GPE not comply with a Commission order requiring prior approval over the proposed transaction.

WHEREFORE, Staff prays that the Commission will accept its *Report* of its investigation of the announced acquisition of Westar Energy, Inc., by Great Plains Energy, Inc.

Respectfully submitted,

/s/ Kevin A. Thompson

Kevin A. Thompson
Missouri Bar Number 36288
Chief Staff Counsel

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Attorney for the Staff of the
Missouri Public Service Commission

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 25th day of July, 2016, on the Public Counsel and on counsel for GPE, KCPL and GMO.

/s/ Kevin A. Thompson

**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)

File No. EM-2016-0324

AFFIDAVIT

State of Missouri)
) ss.
County of Cole)

COMES NOW Lisa A. Kremer and on her oath declares that she is of sound mind and lawful age; that she contributed to the attached *Staff Report* and that the same is true and correct according to her best knowledge and belief.

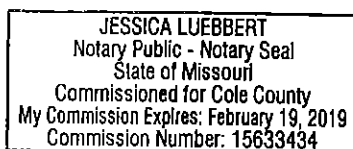
Further the Affiant sayeth not.

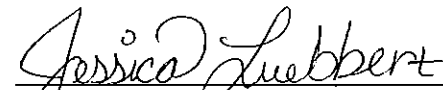


Lisa A. Kremer

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 21st day of July, 2016.





NOTARY PUBLIC

**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)


File No. EM-2016-0324

AFFIDAVIT

State of Missouri)
) ss.
County of Cole)

COMES NOW David Murray and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached *Staff Report* and that the same is true and correct according to his best knowledge and belief.

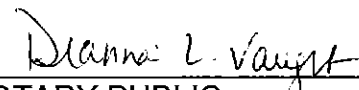
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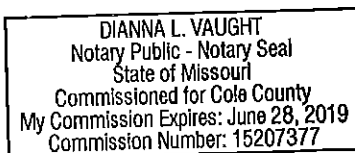
David Murray

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 22nd day of July, 2016.



NOTARY PUBLIC



**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)

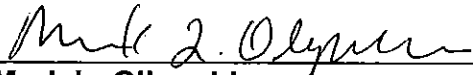
File No. EM-2016-0324

AFFIDAVIT

State of Missouri)
) ss.
County of Cole)

COMES NOW Mark L. Oligschlaeger and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached *Staff Report* and that the same is true and correct according to his best knowledge and belief.

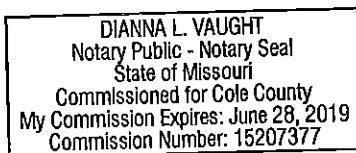
Further the Affiant sayeth not.

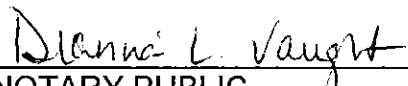


Mark L. Oligschlaeger

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 22nd day of July, 2016.





NOTARY PUBLIC

**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)

File No. EM-2016-0324

AFFIDAVIT

State of Missouri)
) ss.
County of Cole)

COMES NOW Robert E. Schallenberg and on his oath declares that he is of sound mind and lawful age; that he contributed to the attached *Staff Report* and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.


Robert E. Schallenberg

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 22nd day of July, 2016.


NOTARY PUBLIC

DIANNA L. VAUGHT Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: June 28, 2019 Commission Number: 15207377
