

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

FILED  
April 13, 2017  
Data Center  
Missouri Public  
Service Commission

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.<sup>1</sup>

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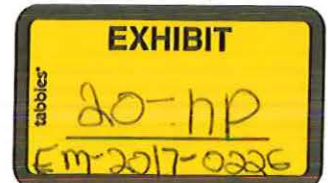
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I. **INTRODUCTION**

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.<sup>2</sup> 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

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<sup>2</sup> See Appendix 1, Bassham email of May 31, 2016, and revised News Release. The original attached News Release was replaced later 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.<sup>3</sup> 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.<sup>4</sup> GPE and Westar jointly own and operate the Wolf Creek Nuclear Generating Station and the La Cygne and Jeffrey power plants.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup>

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<sup>3</sup> Revised News Release, *supra*.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

The news release stated that the value of the above-described consideration is expected to be approximately \$8.6 billion<sup>9</sup> and that GPE will also assume approximately \$3.6 billion in existing Westar debt.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

GPE reportedly expects savings generated from combining the two companies to be "consistent with recent comparable transactions and its own recent experience."<sup>14</sup> 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.<sup>15</sup> GPE will add one director from

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* This is a reference to GPE's acquisition of Aquila, Inc.

<sup>15</sup> *Id.*

the Westar Board of Directors to the GPE Board of Directors.<sup>16</sup> GPE will maintain the operating headquarters of its Kansas service territory in downtown Topeka.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup>

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.<sup>21</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 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."<sup>22</sup>
- KMWU: "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."<sup>23</sup>
- 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."<sup>24</sup>
- 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

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<sup>22</sup> Bloomberg, May 31, 2016.

<sup>23</sup> KMWU, May 31, 2016.

<sup>24</sup> 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.<sup>25</sup>

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<sup>25</sup> *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."<sup>26</sup>

- 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.<sup>27</sup>

- 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.

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<sup>26</sup> TransmissionHub, May 31, 2016.

<sup>27</sup> 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."<sup>28</sup> \* \* \* "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."<sup>29</sup>

- 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

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<sup>28</sup> Market Realist, June 1, 2016.

<sup>29</sup> *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.<sup>30</sup>

- 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."<sup>31</sup>

- Bloomberg: "S&P reaffirmed its BBB+ rating for Great Plains, but changed its outlook to negative from stable."<sup>32</sup> 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]."<sup>33</sup>
- The Kansas City Star reported on July 15, 2016, that a Westar shareholder has filed suit in Shawnee County, Kansas, to block the

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<sup>30</sup> EnergyCentral, June 6, 2016.

<sup>31</sup> Topeka Capital Journal, June 8, 2016.

<sup>32</sup> Bloomberg, June 9, 2016.

<sup>33</sup> *Id.*

transaction on the grounds that GPE was not paying enough for Westar.<sup>34</sup>

"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."<sup>35</sup>

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

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<sup>34</sup> Kansas City Star, July 15, 2016.

<sup>35</sup> *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-2001-464<sup>36</sup> 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*,<sup>37</sup> the Commission granted Staff's *Motion*.<sup>38</sup> 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

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<sup>36</sup> 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).

<sup>37</sup> 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*.

<sup>38</sup> *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.<sup>39</sup> The Commission noted that GPE conceded that it has authority to investigate GPE's compliance.<sup>40</sup> 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."<sup>41</sup> 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.<sup>42</sup>

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.<sup>43</sup> 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."<sup>44</sup> 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."<sup>45</sup>

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

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<sup>39</sup> *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).

<sup>40</sup> *Order Granting Staff's Motion*, *supra*, p. 6.

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

<sup>42</sup> *Order Granting Staff's Motion*, *supra*, p. 5.

<sup>43</sup> *Id.*, at p. 6.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

jurisdiction over the proposed transaction.<sup>46</sup> 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.”<sup>47</sup> 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.<sup>48</sup>

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.<sup>49</sup> By its order granting Staff’s motion, the Commission delegated its

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<sup>46</sup> *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.)

<sup>47</sup> *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).

<sup>48</sup> *Id.*, p. 8.

<sup>49</sup> *Id.*, p. 2.

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

### **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?<sup>52</sup>
2. Whether or not the proposed transaction threatens a detriment to the public interest or the interests of Missouri ratepayers?<sup>53</sup>
3. If either or both of Questions 1 and 2 are answered in the affirmative, what remedies are available to the Commission?<sup>54</sup>
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.,<sup>55</sup> and Commission

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<sup>50</sup> *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."

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

<sup>52</sup> *Order Opening Investigation*, pp. 5-6.

<sup>53</sup> *Id.*, p. 6.

<sup>54</sup> *Id.*, pp. 5 and 6.

<sup>55</sup> "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,<sup>56</sup> 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.<sup>57</sup> 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.<sup>58</sup> There were no objections to Staff's *Motion* or to any of Staff's DRs by either GPE or Westar.<sup>59</sup> 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

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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."

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

<sup>57</sup> *Staff's Motion to Shorten Time to Respond and Object to Data Requests and Motion for Expedited Treatment.*

<sup>58</sup> *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).

<sup>59</sup> 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.<sup>60</sup> 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.<sup>61</sup>

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,

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<sup>60</sup> Staff appreciates the courtesy.

<sup>61</sup> See Appendix 3, GPE's Submissions.

Missouri 65101.<sup>62</sup> 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").<sup>63</sup> 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.<sup>64</sup>

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.<sup>65</sup> 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.<sup>66</sup> KCPL and GMO are both in the business of using electrical plant<sup>67</sup> that they own, control and operate to produce

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<sup>62</sup> 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.

<sup>63</sup> GPE/KCPL 10-K *supra*.

<sup>64</sup> *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.

<sup>65</sup> *Id.*; Missouri Secretary of State records, *supra*.

<sup>66</sup> *Id.*

<sup>67</sup> 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.<sup>68</sup>

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.<sup>69</sup> KCPL and GMO have 6,600 MW of generating capacity in service.<sup>70</sup> 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.<sup>71</sup>

Westar is a publicly-traded Kansas general business corporation in good standing, incorporated in 1924;<sup>72</sup> 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.<sup>73</sup> Westar is duly authorized to do business in Missouri.<sup>74</sup> Westar is the largest electric company in Kansas, serving 700,000 customers in the eastern third of the state.<sup>75</sup> Westar has generating capacity of 6,297 MW in service and purchases

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<sup>68</sup> Section 386.020, (15) and (43), RSMo.

<sup>69</sup> 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*.

<sup>70</sup> GPE website, Corporate Overview, retrieved June 9, 2016.

<sup>71</sup> GPE/KCPL 10-K *supra*.

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

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

<sup>74</sup> Records of the Missouri Secretary of State, retrieved June 9, 2016.

<sup>75</sup> 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.<sup>76</sup> Westar owns more than 6,300 miles of transmission lines and about 28,100 miles of distribution lines.<sup>77</sup>

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.<sup>78</sup> The SPP coordinates the operation of Westar's transmission system within an interconnected transmission system that covers all or portions of 14 states.<sup>79</sup>

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.<sup>80</sup> Immediately following the merger, Merger Sub will cease to exist, and GPE will acquire all of the capital stock of Westar (the "Proposed Transaction").<sup>81</sup>

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

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<sup>76</sup> Westar 10-K, *supra*.

<sup>77</sup> Wikipedia, *supra*.

<sup>78</sup> Westar 10-K, *supra*.

<sup>79</sup> *Id.*

<sup>80</sup> *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.

<sup>81</sup> *Id.*

of \$3.6 billion of existing Westar debt.<sup>82</sup> 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.<sup>83</sup> The consideration mix for the acquisition of Westar's common stock is 85 percent cash and 15 percent GPE common stock.<sup>84</sup> 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.<sup>85</sup>

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.<sup>86</sup> GPE also states that the Proposed Transaction is subject to the notification, clearance and reporting requirements of the Hart-Scott-Rodino Act.<sup>87</sup> Closing is expected to occur in the Spring of 2017 and, as of the closing of the

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

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

**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.<sup>89</sup>

**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

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<sup>88</sup> *Id.*, pp. 3-4.

<sup>89</sup> 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:<sup>90</sup>

### 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.<sup>91</sup> 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*<sup>92</sup> 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

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

<sup>91</sup> *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:

<sup>92</sup> *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."<sup>93</sup>

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

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<sup>93</sup> 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;<sup>94</sup> 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,*

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<sup>94</sup> 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 headcounts<sup>95</sup> (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

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<sup>95</sup> 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:

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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.<sup>96</sup> 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."<sup>97</sup>

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<sup>96</sup> 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.

<sup>97</sup> 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,<sup>98</sup> the Commission has also promulgated rules governing affiliated transactions in the electric, gas, steam heat and refrigeration industries.<sup>99</sup>

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

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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.

<sup>98</sup> 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.

<sup>99</sup> 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.<sup>100</sup>

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.<sup>101</sup>

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

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

<sup>101</sup> 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.<sup>102</sup>

The asymmetrical pricing standards have been characterized as “in essence, a simple prohibition to all utilities against providing a financial advantage to their affiliates[.]”<sup>103</sup> 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.”<sup>104</sup>

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:<sup>105</sup>

*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

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<sup>102</sup> Rule 4 CSR 240-20.015(1)(F).

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

<sup>104</sup> *Office of Public Counsel, supra*, 2013 WL 3894953, at 6.

<sup>105</sup> 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.<sup>106</sup> 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

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<sup>106</sup> *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.<sup>107</sup> In general, courts have broad jurisdiction under the Missouri Constitution to hear and resolve any controversies brought to them.<sup>108</sup>

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

<sup>108</sup> 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.<sup>109</sup> In Missouri, the issue of jurisdiction is considered to include the tribunal's authority to grant the requested relief.<sup>110</sup> 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.<sup>111</sup> 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."<sup>112</sup> 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.<sup>113</sup> "Agency adjudicative power extends only to the ascertainment of facts and the application of existing law thereto in order to resolve issues within the

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<sup>109</sup> *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."

<sup>110</sup> *Id.*

<sup>111</sup> 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."

<sup>112</sup> *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).

<sup>113</sup> *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.”<sup>114</sup> 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.<sup>115</sup>

Over the years, the courts have compiled a catalog of the things the Commission may not do: it may not award money damages<sup>116</sup> or grant refunds;<sup>117</sup> it may not construe or enforce contracts;<sup>118</sup> it may not declare or enforce any principle of law or equity;<sup>119</sup> it may not manage a public utility<sup>120</sup> or compel it to exercise any property right;<sup>121</sup> it may not limit the liability of a public utility for negligence resulting in damage to

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<sup>114</sup> *State Tax Commission, supra*.

<sup>115</sup> 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.

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

<sup>117</sup> *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).

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

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

<sup>120</sup> *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).

<sup>121</sup> *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.<sup>122</sup> The principal duties of the Commission are to set just and reasonable rates for utility services rendered<sup>123</sup> and generally to supervise the activities of the state's monopolistic public utilities;<sup>124</sup> 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.<sup>125</sup> The Commission cannot act as a receiver, however desirable that may be in any particular case.<sup>126</sup> The Missouri Supreme Court has held that the Commission has "plenary power to coerce a public utility corporation into a safe and adequate service."<sup>127</sup>

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:<sup>128</sup>

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

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

<sup>123</sup> *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."

<sup>124</sup> Section 386.250, RSMo.

<sup>125</sup> *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).

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

<sup>127</sup> *State ex rel. Missouri Southern R. Co. v. Public Service Commission*, 259 Mo. 704, \_\_\_, 168 S.W. 1156, 1163 (banc 1914).

<sup>128</sup> *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."<sup>129</sup> 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."<sup>130</sup> 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."<sup>131</sup>

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.<sup>132</sup> As has been explained at some length, the Commission is a creature of

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<sup>129</sup> *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.*

<sup>130</sup> *State ex rel. Electric Co. of Missouri v. Atkinson*, 275 Mo. 325, \_\_\_, 204 S.W. 897, 899 (1918).

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

<sup>132</sup> *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.<sup>133</sup> 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.<sup>134</sup> 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

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

<sup>133</sup> *UCCM*, *supra*, 585 S.W.2d at 47.

<sup>134</sup> 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.<sup>135</sup> 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.<sup>136</sup>

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:

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

<sup>136</sup> *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)<sup>137</sup>

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.<sup>138</sup> PUHCA provided in relevant part that it did not preempt additional state

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<sup>137</sup> *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).

<sup>138</sup> 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.<sup>139</sup> While state jurisdiction could not conflict with any provision of PUHCA, it could supplement it.<sup>140</sup>

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.<sup>141</sup> Administrative agencies are not bound by *stare decisis*, nor are Commission decisions binding precedent on any court.<sup>142</sup> 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.<sup>143</sup> 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

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

<sup>140</sup> *Id.*

<sup>141</sup> *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.

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

<sup>143</sup> See [www.naruc.org/about-naruc/regulatory-commissions](http://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.<sup>144</sup> As in Missouri, electric cooperatives and municipal electric utilities are generally excluded. In Kansas, the PUC is the "Kansas Corporation Commission" or "KCC."<sup>145</sup> GPE acknowledges that its acquisition of Westar must be approved by the KCC.<sup>146</sup>

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."<sup>147</sup> "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."<sup>148</sup> FERC is obligated to ensure that transmission and wholesale power rates are "just and reasonable."<sup>149</sup> States are not permitted to regulate in areas where FERC has exercised its jurisdiction to determine just and reasonable

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<sup>144</sup> *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."

<sup>145</sup> See [www.kcc.ks.gov/about/index.htm](http://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."

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

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

<sup>148</sup> *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).

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



rates.<sup>150</sup> GPE acknowledges that the proposed transaction requires approval by the FERC.<sup>151</sup>

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.<sup>152</sup> 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.<sup>153</sup>

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.<sup>154</sup> The FERC has jurisdiction over GPE's acquisition of Westar pursuant to the FPA.<sup>155</sup> The Missouri Public Service Commission also has jurisdiction over GPE's acquisition of Westar

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<sup>150</sup> 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).

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

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

<sup>153</sup> 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](http://www.ferc.gov/about).

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

<sup>155</sup> 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,<sup>156</sup> to merge or consolidate,<sup>157</sup> to raise capital by issuing stock, notes, or bonds, or by mortgaging property,<sup>158</sup> and to

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<sup>156</sup> 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.

<sup>157</sup> 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.

<sup>158</sup> 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.<sup>159</sup> 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.

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

<sup>159</sup> 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.<sup>160</sup>

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.' "<sup>161</sup>

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.<sup>162</sup> The Commission has sometimes said that denial of such an application

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

<sup>161</sup> *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).

<sup>162</sup> 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;<sup>163</sup> but has also said that the mere risk of harm to the ratepayers is a detriment to the public interest.<sup>164</sup> 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.<sup>165</sup>

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

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

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<sup>163</sup> 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).

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

<sup>165</sup> *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."

<sup>166</sup> 17 Mo.P.S.C.3d at 543.

<sup>167</sup> *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 8<sup>th</sup> Circuit Court of Appeals said:<sup>168</sup>

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

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<sup>168</sup> *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.<sup>169</sup>

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.

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<sup>169</sup> *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.<sup>170</sup> 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

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<sup>170</sup> *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

Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102  
573-751-6514 (Voice)  
573-526-6969 (Fax)  
kevin.thompson@psc.mo.gov

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 25<sup>th</sup> 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         )

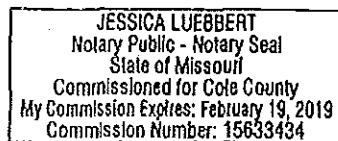
**COMES NOW** Lisa A. Kremer and on her oath declares that she is of sound mind and lawful age; that she contributed to the attached *Staff Report* and that the same is true and correct according to her best knowledge and belief.

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 21<sup>st</sup> day of July, 2016.



  
\_\_\_\_\_  
NOTARY PUBLIC



Blanca L. Vaughn  
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.

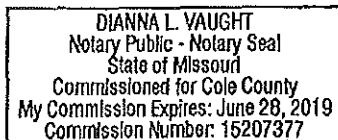
Further the Affiant sayeth not.

  
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 22<sup>nd</sup> day of July, 2016.

  
NOTARY PUBLIC



**From:** Bassham Terry [mailto:Terry.Bassham@kcpl.com]  
**Sent:** Tuesday, May 31, 2016 7:54 AM  
**To:** Hall, Daniel; Stoll, Steve; Kenney, Bill; Rupp, Scott; Coleman, Maida  
**Cc:** Ives Darrin; Caisley Chuck; Hack Rob; 'james.owen@ded.mo.gov'; Dietrich, Natelle; 'shelley.brueggeman@psc.mo.gov'; Thompson, Kevin  
**Subject:** Great Plains Energy, Inc. acquisition of 100% of Westar Energy, Inc.

Chairman Hall and Commissioners:

Thank you for taking my telephone call during which I informed you of a press release (attached) that would be issued today announcing a merger agreement by and between Great Plains Energy and Westar. The press release crossed the business wire at 5:00a this morning.

It was important to me that you and your colleagues hear about this first from Great Plains Energy because our utility subsidiaries operate under your regulatory authority in Missouri. Although I would have preferred to discuss this personally, time constraints and logistics made a face-to-face meeting impossible.

The purpose of this e-mail is to confirm our telephone conversation as follows:

- 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. The MPSC has reached this conclusion many times before. See, for example, Re Proposed Acquisition of Cilcorp by Ameren Corporation, Case No. EO-2002-1082 (*Order Closing Case* issued June 13, 2002); In the matter of the Merger of American Water Works Company with National Enterprises Inc and the indirect Acquisition by American Water Works Company of the total Capital Stock of St. Louis Water Company, Case No. WM-99-224 (*Report and Order* issued March 23, 1999); and In the Matter of the Merger of SBC Communications Inc and Ameritech Corporation, Case No. TM-96-76 (*Report and Order* issued October 8, 1998).
- The merger promises benefits for all customers, whether located in Missouri or Kansas, served by our existing utility subsidiaries and the utility subsidiaries to be acquired by Great Plains Energy through the merger with Westar. Once the merger closes, benefits will be realized by customers in the form of future rate requests that will be lower than if the merger had not occurred.
- 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.
- The transaction will require approval by the KCC and NRC as well as Hart-Scott-Rodino approval. Majority approval of Great Plains shareholders will be required for issuance of additional shares in connection with financing the transaction and approval of the transaction by Westar's shareholders will also be required.

- We would be pleased to meet with you and your colleagues to discuss the merger in more detail should you or your fellow commissioners so desire. Just let me know and we'll schedule a meeting, or meetings, for that purpose. In fact, we spoke with Chairman Hall about following up to speak with you in an open Agenda meeting in the near future and will be working with your advisors and Shelley Brueggeman to work to do so in the very near future.

Thank you for your time.

Attachment: May 31, 2016 Announcement Press Release





GREAT PLAINS ENERGY

## **Great Plains Energy to Acquire Westar Energy, Creating Long-Term Value for Shareholders and Cost Savings for Customers**

*Transaction, valued at \$12.2 billion, creates leading Midwest electric utility better positioned to serve customers and meet the region's energy needs.*

**Kansas City, MO – May 31, 2016** – Great Plains Energy Incorporated (NYSE: GXP), the parent company of KCP&L, and Westar Energy, Inc. (NYSE: WR), today announced a definitive agreement for Great Plains Energy to acquire Westar in a combined cash and stock transaction with an enterprise value of approximately \$12.2 billion, including total equity value of approximately \$8.6 billion. Upon closing, Westar will become a wholly owned subsidiary of Great Plains Energy.

Once the transaction is complete, Great Plains Energy will have more 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. In addition, more than 45 percent of the combined utility's retail customer demand can be met with emission-free energy.

"Westar and KCP&L are trusted neighbors and have worked together for generations in Kansas. The combination of our two companies is the best fit for meeting our region's energy needs," said Terry Bassham, chairman and chief executive officer of Great Plains Energy and KCP&L. "This is an important transaction for Kansas and our entire region. By combining our two companies, we are keeping ownership local and management responsive to regulators, customers and regional needs, while enhancing our ability to build long-term value for shareholders."

Currently, Great Plains Energy and Westar jointly own and operate the Wolf Creek Nuclear Generating Station, as well as the La Cygne and Jeffrey power plants. With the addition of Westar's generation fleet, Great Plains Energy will have a more diverse and sustainable generation portfolio. This will provide increased flexibility to mitigate the potential customer impacts from future carbon regulation. In addition, among investor-owned utilities in the United States, the combined company will have one of the largest portfolios of wind generation in the country.

"This is an important day for Westar, our customers, employees, shareholders, the communities we support and for the state of Kansas," said Mark Ruelle, president and chief executive officer of Westar. "Our commitment to reliability, customer satisfaction, safety and sustainability is consistent with Great Plains Energy's values, which makes them our ideal partner. We're eager to join the Great Plains Energy team, and excited about this new chapter that combines the unique strengths of our respective organizations to form an even stronger company for our state."

Great Plains Energy has an established track record of successful integration with adjacent electric utilities. In 2008, Great Plains Energy completed its acquisition of Aquila, an electric utility serving customers in adjacent areas of Missouri. That successful acquisition has delivered – and continues to deliver – significant savings for customers, which exceeded initial expectations and was reviewed and approved by both the Missouri Public Service Commission and the Kansas Corporation Commission.

"The utility industry is facing rising customer expectations, increasing environmental standards and emerging cyber security threats. These factors, coupled with slower demand growth for electricity, are driving our costs and customer rates higher. Our acquisition of Westar will create operational efficiencies and future cost savings that will benefit all involved – customers, shareholders, employees and the communities we serve. These savings also will help reduce future rate increase requests," said Bassham. "Combining our two companies will result in cost savings and operational benefits for our more than 900,000 Kansas and 600,000 Missouri customers."

#### **Transaction terms and financing profile**

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.

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.

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.

#### **Leadership and headquarters**

Upon completion of the transaction, Bassham will be chairman and chief executive officer of the combined company. Ruelle will remain in his current role with Westar until the closing of the transaction. In addition, Great Plains Energy will add one director from the Westar Board of Directors to the Great Plains Energy Board of Directors.

"We understand the importance of Westar to the communities it serves and the meaningful contributions it makes as a major employer in Kansas," said Bassham. "We are committed to maintaining the operating headquarters for our Kansas service territory in downtown Topeka. We also know that Westar has a reputation as a strong supporter of community and charitable initiatives. We will continue this legacy and are committed to maintaining a strong presence in all of the communities Westar serves."

#### **Sustainability**

Customers today expect their utility providers to identify and advance energy efficiency options that give them greater control and choice. The combined company will have a greater, more diverse

portfolio of energy solutions that give customers the opportunities to better manage their individual energy needs. In addition, Great Plains Energy operates the nation's largest utility-owned electric vehicle charging network, which can be expanded to benefit Westar's customers.

### **Regulatory Approval**

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.

### **Advisors**

Goldman, Sachs & Co. served as the exclusive financial advisor and Bracewell LLP served as legal advisor to Great Plains Energy. Guggenheim Securities, LLC served as the sole financial advisor and Baker Botts LLP served as legal advisor to Westar Energy.

### **Analyst Conference Call/Webcast**

Great Plains Energy and Westar will host a financial community conference call to provide additional information on Tuesday, May 31, 2016, at 10:00 a.m. Eastern Daylight Time/9:00 a.m. Central Daylight Time to discuss the Great Plains Energy and Westar transaction.

A live audio webcast of the conference call and presentation slides will be available on the investor relations page of Great Plains Energy's website at [www.greatplainsenergy.com](http://www.greatplainsenergy.com). The webcast will be accessible only in a "listen-only" mode.

The conference call may be accessible by dialing (888) 353-7071 (U.S./Canada) or (724) 498-4416 (international) five to ten minutes prior to the scheduled start time. The passcode is 23802311.

A replay and transcript of the call will be available on or before Wednesday, June 1, 2016, by accessing the investor relations section of the company's website. A telephonic replay of the conference call will also be available on or before Wednesday, June 1, 2016, through June 7, 2016, by dialing (855) 859-2056 (U.S./Canada) or (404) 537-3406 (international). The passcode is 23802311.

### **About Great Plains Energy**

Headquartered in Kansas City, Mo., Great Plains Energy Incorporated (NYSE: GXP) is the holding company of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, two of the leading regulated providers of electricity in the Midwest. Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company use KCP&L as a brand name. More information about the companies is available on the internet at [www.greatplainsenergy.com](http://www.greatplainsenergy.com) or [www.kcpl.com](http://www.kcpl.com).

### **Investors**

Calvin Girard, 816-654-1777  
Senior Manager, Investor Relations  
[calvin.girard@kcpl.com](mailto:calvin.girard@kcpl.com)

**Media**

Courtney Hughley, 816-392-9455  
Manager, Corporate Communications  
[courtney.hughley@kcpl.com](mailto:courtney.hughley@kcpl.com)

**About Westar Energy**

Westar Energy, Inc. (NYSE: WR) is Kansas' largest electric utility. For more than a century, Westar has provided Kansans the safe, reliable electricity needed to power their homes, businesses and communities. Every day, Westar professionals generate and deliver electricity, protect the environment and provide excellent service to nearly 700,000 customers. Westar's 2,400 employees live, volunteer and work in the communities they serve. The company has 7,200 MW of electric generation capacity fueled by wind, coal, uranium, natural gas and landfill gas. Westar also is a leader in electric transmission in Kansas. For more information about Westar Energy, visit us at [www.WestarEnergy.com](http://www.WestarEnergy.com).

**Investors**

Cody VandeVelde, 785-575-8227  
Director, Investor Relations  
[Cody.VandeVelde@westarenergy.com](mailto:Cody.VandeVelde@westarenergy.com)

**Media**

Jana Dawson  
Director, Corporate Communications, 785-575-1975  
[Jana.Dawson@WestarEnergy.com](mailto:Jana.Dawson@WestarEnergy.com)  
Westar Energy Media line: 888-613-0003

**Forward-Looking Statements**

Statements made in this release that are not based on historical facts are forward-looking, may involve risks and uncertainties, and are intended to be as of the date when made. Forward-looking statements include, but are not limited to, statements relating to Great Plains Energy's proposed acquisition of Westar, shareholder and regulatory approvals, the completion of the proposed transactions, benefits of the proposed transactions, and anticipated future financial measures and operating performance and results, including estimates for growth and other matters affecting future operations. In connection with the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, Great Plains Energy and KCP&L are providing a number of important factors that could cause actual results to differ materially from the provided forward-looking information. These important factors include: the risk that Great Plains Energy or Westar may be unable to obtain shareholder approvals for the proposed transactions or that Great Plains Energy or Westar may be unable to obtain governmental and regulatory approvals required for the proposed transactions, or that required governmental and regulatory approvals or agreements with other parties interested therein may delay the proposed transactions or may be subject to or impose adverse conditions or costs; the occurrence of any event, change or other circumstances that could give rise to the termination of the proposed transactions or could otherwise cause the failure of the proposed transactions to close; risks relating to the potential decline in the Great Plains Energy share price resulting in an increase in the exchange ratio of Great Plains Energy shares offered to Westar shareholders in accordance with the transaction agreement and resulting in reduced value of the proposed transactions to Great Plains Energy shareholders; the risk that a condition to the closing of the proposed transactions or the committed debt or equity financing may not be satisfied; the failure to obtain, or to obtain on favorable terms, any equity, debt or equity-linked financing necessary to complete or permanently finance the proposed transactions and the costs of such financing; the outcome of any legal proceedings, regulatory proceedings or enforcement matters that may be instituted relating to the proposed transactions; the receipt of an unsolicited offer from another party to acquire assets or capital stock of Great Plains Energy or

Westar that could interfere with the proposed transactions; the timing to consummate the proposed transactions; the costs incurred to consummate the proposed transactions; the possibility that the expected value creation from the proposed transactions will not be realized, or will not be realized within the expected time period; the credit ratings of the companies following the proposed transactions; disruption from the proposed transactions making it more difficult to maintain relationships with customers, employees, regulators or suppliers; the diversion of management time and attention on the proposed transactions; future economic conditions in regional, national and international markets and their effects on sales, prices and costs; prices and availability of electricity in regional and national wholesale markets; market perception of the energy industry, Great Plains Energy and KCP&L changes in business strategy, operations or development plans; the outcome of contract negotiations for goods and services; effects of current or proposed state and federal legislative and regulatory actions or developments, including, but not limited to, deregulation, re-regulation and restructuring of the electric utility industry; decisions of regulators regarding rates the Companies can charge for electricity; adverse changes in applicable laws, regulations, rules, principles or practices governing tax, accounting and environmental matters including, but not limited to, air and water quality; financial market conditions and performance including, but not limited to, changes in interest rates and credit spreads and in availability and cost of capital, derivatives and hedges and the effects on nuclear decommissioning trust and pension plan assets and costs; impairments of long-lived assets or goodwill; credit ratings; inflation rates; effectiveness of risk management policies and procedures and the ability of counterparties to satisfy their contractual commitments; impact of terrorist acts, including but not limited to cyber terrorism; ability to carry out marketing and sales plans; weather conditions including, but not limited to, weather-related damage and their effects on sales, prices and costs; cost, availability, quality and deliverability of fuel; the inherent uncertainties in estimating the effects of weather, economic conditions and other factors on customer consumption and financial results; ability to achieve generation goals and the occurrence and duration of planned and unplanned generation outages; delays in the anticipated in-service dates and cost increases of generation, transmission, distribution or other projects; Great Plains Energy's ability to successfully manage transmission joint ventures or to integrate the transmission joint ventures of Westar; the inherent risks associated with the ownership and operation of a nuclear facility including, but not limited to, environmental, health, safety, regulatory and financial risks; workforce risks, including, but not limited to, increased costs of retirement, health care and other benefits; and other risks and uncertainties.

This list of factors is not all-inclusive because it is not possible to predict all factors. Additional risks and uncertainties will be discussed in the joint proxy statement/prospectus and other materials that Great Plains Energy will file with the SEC in connection with the proposed transactions. Other risk factors are detailed from time to time in Great Plains Energy's and KCP&L's quarterly reports on Form 10-Q and annual report on Form 10-K filed with the Securities and Exchange Commission. Each forward-looking statement speaks only as of the date of the particular statement. Great Plains Energy and KCP&L undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise.

#### **Information Concerning Forward-Looking Statements**

Certain matters discussed in this news release are "forward-looking statements." The Private Securities Litigation Reform Act of 1995 has established that these statements qualify for safe harbors from liability. Forward-looking statements may include words like "believe," "anticipate," "target," "expect," "pro forma," "estimate," "intend," "guidance" or words of similar meaning. Forward-looking statements describe future plans, objectives, expectations or goals. Although Westar believes that its expectations are based on reasonable assumptions, all forward-looking statements involve risk and uncertainty. The factors that could cause actual results to differ materially from these forward-looking statements include those discussed herein as well as (1)

those discussed in the company's Annual Report on Form 10-K for the year ended Dec. 31, 2015 (a) under the heading, "Forward-Looking Statements," (b) in ITEM 1. Business, (c) in ITEM 1A. Risk Factors, (d) in ITEM 7. Management's Discussion and Analysis of Financial Condition and Results of Operations, and (e) in ITEM 8. Financial Statements and Supplementary Data: Notes 13 and 15; (2) those discussed in the company's Quarterly Report on Form 10-Q filed May 3, 2016, (a) in ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations and (b) in Part I, Financial Information, ITEM 1. Financial Statements: Notes 10 and 11; and (3) other factors discussed in the company's filings with the Securities and Exchange Commission. Any forward-looking statement speaks only as of the date such statement was made, and the company does not undertake any obligation to update any forward-looking statement to reflect events or circumstances after the date on which such statement was made.

#### **Additional Information and Where to Find It**

This communication does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any proxy, vote or approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. In connection with the proposed transactions, Great Plains Energy will file a Registration Statement on Form S-4, that includes a joint proxy statement of Great Plains Energy and Westar, which also constitutes a prospectus of Great Plains Energy, as well as other materials. WE URGE INVESTORS TO READ THE REGISTRATION STATEMENT AND JOINT PROXY STATEMENT/PROSPECTUS AND THESE OTHER MATERIALS CAREFULLY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT GREAT PLAINS ENERGY, WESTAR AND THE PROPOSED TRANSACTION. Investors will be able to obtain free copies of the registration statement and joint proxy statement/prospectus (when available) and other documents that will be filed by Great Plains Energy and Westar with the SEC at <http://www.sec.gov>, the SEC's website, or from Great Plains Energy's website (<http://www.greatplainsenergy.com>) under the tab, "Investor Relations" and then under the heading "SEC Filings." These documents will also be available free of charge from Westar's website (<http://www.westarenergy.com>) under the tab "Investors" and then under the heading "SEC Filings."

#### **Participants in Proxy Solicitation**

Great Plains Energy, Westar and their respective directors and certain of their executive officers may be deemed, under SEC rules, to be participants in the solicitation of proxies from Great Plains Energy's and Westar's shareholders with respect to the proposed transaction. Information regarding the officers and directors of Great Plains Energy is included in its definitive proxy statement for its 2016 annual meeting filed with SEC on March 24, 2016. Information regarding the officers and directors of Westar is included in its definitive proxy statement for its 2016 annual meeting filed with the SEC on April 1, 2016. More detailed information regarding the identity of potential participants, and their direct or indirect interests, by securities, holdings or otherwise, will be set forth in the registration statement and joint proxy statement/prospectus and other materials when they are filed with the SEC in connection with the proposed transaction.

###

FILED<sup>2</sup>

JUL 9 2001

Missouri Public  
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

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**

As a result of discussions among the parties to Case No. EM-2001-464, the Staff of the Missouri Public Service Commission ("Staff"), the Office of the Public Counsel ("Public Counsel"), Kansas City Power & Light Company ("KCPL"), Great Plains Energy, Incorporated ("GPE") and Great Plains Power, Incorporated ("GPP"), hereby submit to the Missouri Public Service Commission ("Commission") for its consideration and approval the following Stipulation And Agreement:

**I. Kansas City Power & Light Company's Application**

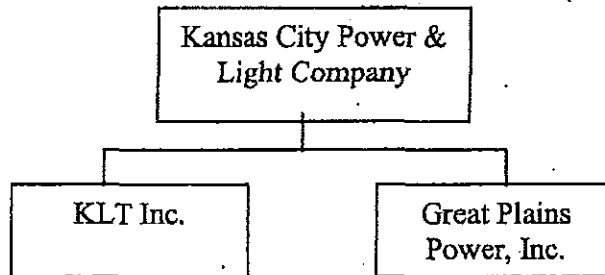
On February 26, 2001, KCPL filed its Application. KCPL is a vertically integrated electric utility company under the jurisdiction of the Commission. In its Application, KCPL proposed to reorganize into a registered holding company structure as follows:

A. After reorganization, a new holding company, GPE<sup>1</sup> will be the sole owner of three subsidiary companies, all of which already exist - i.e., KCPL, KLT Inc. ("KLT") and Great Plains Power, Incorporated ("GPP"). KCPL will remain a vertically integrated electric utility subject to this Commission's jurisdiction and will not transfer any of its generating assets as a part of this proposed restructuring plan. KLT will continue to invest in competitive, high growth businesses. GPP will pursue opportunities in the competitive wholesale generation market. KCPL's existing corporate structure, and the corporate ~~structure that will exist~~

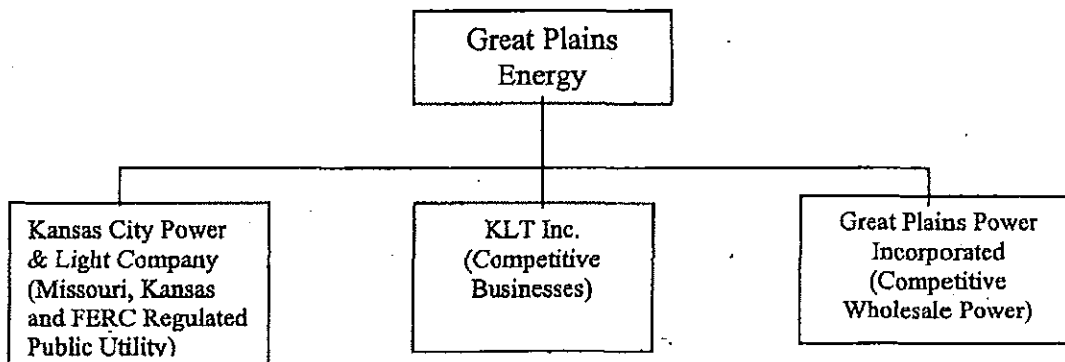
<sup>1</sup> The Articles of Incorporation for GPE were filed with the Missouri Secretary of State on February 26, 2001.

immediately following the completion of the restructuring plan proposed herein, are illustrated below.

#### CURRENT CORPORATE STRUCTURE<sup>2</sup>



#### RESTRUCTURED COMPANY



The two corporate structures illustrated above are snapshots of KCPL at the beginning and end of the proposed restructuring process. KCPL's restructuring process contains several intermediary steps. KCPL has formed a wholly owned subsidiary, GPE. In turn, GPE will form a wholly owned, new subsidiary, NewCo. Pursuant to a merger agreement ("Merger Agreement") between KCPL, GPE and NewCo, KCPL then will merge with NewCo. A copy of the Merger Agreement was attached to the Application as

<sup>2</sup> The only other existing subsidiary of KCPL that is relatively significant in terms of its size is Home Services Solutions ("HSS"). It is anticipated that HSS will be sold or otherwise disposed of in the near future. None of KCPL's subsidiaries are involved in the provision of regulated utility services.



Exhibit 1. Under the terms of the Merger Agreement, the separate existence of NewCo will cease and KCPL will continue as the surviving corporation of the merger. At this point, KCPL will be a wholly owned subsidiary of GPE. As a part of the merger, each outstanding share of KCPL stock automatically converts into the right to receive one share of GPE stock. Similarly, each share of KCPL's various series of preferred stock will be converted into one share of an identical series of GPE preferred stock. The pro forma balance sheets and income statements of KCPL before and after the proposed restructuring plan were attached to the Application as Exhibit 2. Once the merger is consummated, KCPL will dividend its stock of KLT and GPP to GPE. At this point, GPE will be a publicly held corporation that owns 100% of KCPL, KLT and GPP.

B. KCPL further stated that KCPL anticipates that it will form a service company ("ServCo") within a certain period of time following the completion of the reorganization. The ServCo will provide certain shared services to the affiliated companies. A form of the General Services Agreement that will be used for the provision of support services was attached to the Application as Exhibit 3. A copy of KCPL's cost allocation manual ("CAM"), which describes the bases currently used by KCPL for allocating certain costs related to shared services, was attached to the Application as Exhibit 4. KCPL stated that the new holding company system will continue to use service agreements, work orders and a CAM to assure that costs are properly tracked and assigned. Upon completion of the reorganization, GPE will register with the SEC and become subject to additional regulation under the Public Utility Holding Company Act of 1935 ("PUHCA").

C. The proposed reorganization will not involve the transfer of any assets, including generating assets, from KCPL to affiliates. KCPL will remain a vertically integrated electric utility. It is the intent of this Stipulation And Agreement that this Commission will continue to have the authority to ensure that KCPL's retail electric customers receive electric service that is safe, reliable and reasonably priced.

## II. STIPULATIONS AND AGREEMENTS

Having considered the verified Application that KCPL submitted in this matter and having conducted settlement negotiations and discussions with other parties, KCPL and GPE, the Staff and the Public Counsel agree and recommend, subject to the conditions set forth below, that the Commission should approve KCPL's Application to restructure and reorganize, as proposed in its Application and as conditioned and modified in this Stipulation And Agreement.

### 1. Approval of the Proposed Restructuring and Reorganization

The signatories agree that the Commission should approve the restructuring and reorganization of KCPL as requested in the Application filed February 26, 2001, on the basis that, subject to the conditions and modifications set forth below, said restructuring and reorganization is not detrimental to the public interest. In addition, the Commission should grant KCPL authority to merge with NewCo with KCPL being the surviving corporation, grant GPE the authority to own more than ten percent (10%) of the common stock of KCPL, and grant all other approvals requested in KCPL's Application necessary to implement the restructuring plan described in KCPL's Application, including authority of KCPL to issue the stock dividends to GPE, as conditioned and modified in this Stipulation And Agreement.

## **2. State Jurisdictional Issues**

In *Re Western Resources, Inc./Kansas City Power & Light Company*, Case No. EM-97-515, and *Re Union Electric Company/Central Illinois Public Service Company*, Case No. EM-96-149, the Commission approved settlement agreements designed to ensure the protection of customers of Missouri utilities that were to possibly become or become a subsidiary of a Registered Holding Company. KCPL and GPE hereby agree to those same conditions as set forth below. KCPL further commits that it and its affiliates will continue to comply with the provisions of 4 CSR 240-20.015 and 20.017 after the reorganization is completed. As used in this Stipulation And Agreement, and in all attachments to this document, any reference to "GPE" includes both GPE and its successors in interest.

### **a. Access to Books, Records and Personnel**

GPE and KCPL agree to make available to the Staff and Public Counsel, at reasonable times and places, all books, records, employees and officers of GPE, KCPL and any affiliate of KCPL as provided under applicable law and Commission rules; provided that KCPL and any affiliate or subsidiary of GPE shall have the right to object to such production of records or personnel on any basis under applicable law and Commission rules, excluding any objection that such records and personnel of affiliates or subsidiaries are not subject to the Commission's jurisdiction and statutory authority or are not in the control, custody or possession of KCPL, including objections based on the operation of PUHCA.

GPE and its affiliates (including KCPL) will provide the following documents to the Staff and Public Counsel on an annual basis:

- All new, revised and updated business plans for GPE and its affiliates (including KCPL).
- Description of any and all joint marketing/promotional campaigns between KCPL and GPE and any of its affiliates.
- Narrative description of all products and services offered by GPE and its affiliates (including KCPL). KCPL is not required to provide narrative descriptions of its tariffed products and services.
- All information provided under this subsection shall be considered "highly confidential" or "proprietary" as those terms are used in 4 CSR 240-2.085, and shall be treated as highly confidential or proprietary information by the Staff and Public Counsel.

At the Commission's request, officers and employees of GPE or its affiliates will be made available for deposition or cross-examination concerning affiliated transactions affecting KCPL and diversification plans.

**b. Contracts Required to be Filed with the SEC**

All contracts, agreements or arrangements of any kind, including any amendments thereto, between KCPL and any affiliate, associate, holding, mutual service, or subsidiary company within the same holding company system, as these terms are defined in 15 U.S.C. § 79b, as subsequently amended, that are required to be filed with and/or approved by the Securities and Exchange Commission ("SEC") pursuant to PUHCA, as subsequently amended, shall be conditioned upon the following without modification or alteration: Neither KCPL nor any of its affiliates, will seek to overturn, reverse, set aside, change or enjoin, whether through appeal or the initiation or maintenance of any action in any forum, a decision or order of the Commission which pertains to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost (including cost of capital) or allocation incurred or accrued by KCPL in, or as a result of, a contract, agreement, arrangement, or transaction with any affiliate, associate,

holding, mutual service or subsidiary company on the basis that such expense, charge, cost (including cost of capital) or allocation has itself been filed with or approved by the SEC or was incurred pursuant to a contract, arrangement, agreement or allocation method that was filed with or approved by the SEC.

**c. Electric Contracts Required to be Filed with FERC**

All wholesale electric energy or transmission service contracts, tariffs, agreements or arrangements of any kind, including any amendments thereto, between KCPL and any GPE subsidiary or affiliate, that are required to be filed with and/or approved by the Federal Energy Regulatory Commission ("FERC"), pursuant to the Federal Power Act, as subsequently amended, shall be conditioned upon the following without modification or alteration: Neither KCPL nor any of its affiliates will seek to overturn, reverse, set aside, change or enjoin, whether through appeal or the initiation or maintenance of any action in any forum, a decision or order of the Commission which pertains to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost (including cost of capital) or allocation incurred or accrued by KCPL in, or as a result of, a wholesale electric energy or transmission service contract, agreement, arrangement or transaction on the basis that such expense, charge, cost (including cost of capital) or allocation has itself been filed with or approved by FERC, or was incurred pursuant to a contract, arrangement, agreement or allocation method that was filed with or approved by FERC.

**d. No Pre-Approval of Affiliated Transactions**

KCPL agrees to provide the Commission and Public Counsel with copies of all documents that must be filed with the SEC or FERC relating to affiliate transactions. KCPL and GPE further agree that the Commission may make its determination regarding the ratemaking treatment to be accorded these transactions in a subsequent ratemaking proceeding.

**e. Contingent Procedure Stipulation Regarding  
Affiliate Contracts Required to be Filed With FERC**

KCPL agrees that in the exclusive event that any court with jurisdiction over KCPL, GPE or any of their affiliates or subsidiaries issues an opinion or order that invalidates a decision or order of the Commission pertaining to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost (including cost of capital) or allocation incurred or accrued by KCPL on the basis that such expense, charge, cost (including cost of capital) or allocation has itself been filed with or approved by FERC, then the Contingent Procedure Stipulation, attached hereto as Exhibit A, shall apply to FERC filings according to its terms, at the option of the Commission.

**f. Contingent Procedure Stipulation Regarding  
Affiliate Contracts Required to be Filed with SEC**

KCPL agrees that in the exclusive event that any court with jurisdiction over KCPL, GPE or any of their affiliates or subsidiaries issues an opinion or order that invalidates a decision or order of the Commission pertaining to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost (including cost of capital) or allocation incurred or accrued by KCPL on the basis that such expense, charge, cost (including cost of capital) or allocation has itself been filed with or approved by SEC, then the Contingent Procedure Stipulation, attached hereto as Exhibit A, shall apply to SEC filings according to its terms, at the option of the Commission.

g. **Stipulation Regarding the Creation of the Service Company**

KCPL agrees that it will file an Application with the Commission, pursuant to 4 CSR 240-2.060(7), and obtain the Commission's approval, before KCPL sells, assigns, leases or transfers any assets from KCPL to its proposed ServCo. KCPL agrees to provide the Staff and Public Counsel with copies of all documents that must be filed with the SEC or FERC relating to creation of ServCo.

4 CSR 240-20.015, Affiliate Transactions, sets forth financial standards, evidentiary standards and record-keeping requirements applicable to any Commission regulated electrical corporation whenever such corporation participates in transactions with any affiliated entity (except with regard to HVAC services as defined in Section 386.754, RSMo 2000). Section (5) (Records of Affiliated Entities) of said Rule provides, *inter alia*, that:

(A) Each regulated electrical corporation shall ensure that its parent and any other affiliated entities maintain books and records that include, at a minimum, the following information regarding affiliate transactions:

\* \* \* \*

5. Names and job descriptions of the employees from the regulated electrical corporation that transferred to a nonregulated affiliated entity;

In addition to the above-stated requirements, KCPL agrees to seek agreement with the Staff and Public Counsel concerning an appropriate notification procedure to be utilized regarding the transfer of functions to ServCo from KCPL.

KCPL further agrees that the Commission may make its determination regarding the ratemaking treatment to be accorded the creation of ServCo in a subsequent ratemaking proceeding. All contracts, agreements or arrangements of any kind, including any amendments thereto, between KCPL and ServCo, as these terms are defined in 15 U.S.C. § 79b, as

subsequently amended, that are required to be filed with and/or approved by the SEC pursuant to PUHCA, as subsequently amended, shall be conditioned upon the following without modification or alteration: Neither KCPL nor any of its affiliates, will seek to overturn, reverse, set aside, change or enjoin, whether through appeal or the initiation or maintenance of any action in any forum, a decision or order of the Commission which pertains to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost (including cost of capital) or allocation incurred or accrued by KCPL in, or as a result of, a contract, agreement, arrangement, or transaction with ServCo on the basis that such expense, charge, cost (including cost of capital) or allocation has itself been filed with or approved by the SEC or was incurred pursuant to a contract, arrangement, agreement or allocation method that was filed with or approved by the SEC.

3. **Surveillance Condition**

KCPL agrees that, following the close of the transaction, KCPL will continue to provide the Commission with annual surveillance reports on a total company and Missouri jurisdictional basis similar to the annual surveillance reports currently provided by KCPL.

4. **Modification and Enhancement to KCPL's Cost Allocation Manual**

KCPL agrees to the various modifications and enhancements of its Cost Allocation Manual ("CAM"), as identified in Exhibit B to the Stipulation And Agreement, and agrees to submit to the Staff a modified and enhanced CAM within 120 days of the close of the transaction.



**5. Financial Projections in Pro Forma Financial Statements**

KCPL believes that the financial information and accompanying adjustments contained in Exhibit 2 of the Application, as amended, are reasonable projections of the actual and expected financial condition of KCPL and its affiliates, based upon the information available at the time of the filing of Exhibit 2. However, KCPL also acknowledges that the financial information contained in Exhibit 2 may change before the transaction closes, as a result of normal business operations. KCPL agrees to provide to the Staff and Public Counsel a copy of the actual journal entries that are made by KCPL within thirty (30) days of completion of the journal entries on the books and records of KCPL following the close of the transaction. In the event that the actual results at the close of the transaction deviate from the projections contained in Exhibit 2, as amended, by more than ten (10%) percent, KCPL agrees to provide the Staff and Public Counsel with an explanation for any deviation from the projections contained in Exhibit 2, as amended.

**6. Financial Conditions**

In order to resolve concerns raised by the parties regarding financing issues, GPE and KCPL agree to the following:

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

- c. KCPL will not guarantee the notes, debentures, debt obligations or other securities of the Holding Company or any of its subsidiaries, or enter into any "make-well" agreements without prior Commission approval.
- d. GPE agrees to maintain consolidated common equity of no less than 30 percent of total consolidated capitalization. GPE and KCPL agree to maintain KCPL's common equity at no less than 35 percent. Total capitalization is defined as common equity, preferred stock, long-term debt and short-term debt in excess of CWIP. Common equity is defined as par value of common stock, plus additional paid-in capital, plus retained earnings, minus treasury stock.
- 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
- f. KCPL's total long-term borrowings including all instruments shall not exceed KCPL's regulated rate base.
- g. KCPL shall maintain separate debt. KCPL agrees to maintain its debt at investment grade. This condition should not be construed to mean the Staff recommends or will recommend in any future application to the Commission or Commission proceeding the approval of any preferred stock issuance below investment grade.
- h. GPE, KCPL and the Staff agree that the allowed return on common equity and other costs of capital will not increase as a result of the reorganization.
- i. GPE and KCPL guarantee that the customers of KCPL shall be held harmless if the reorganization creating GPE, with KCPL as a subsidiary, results in a higher revenue requirement for KCPL than if the reorganization had not occurred.
- j. GPE and KCPL shall provide the Staff and Public Counsel unrestricted access to all written information provided to common stock, bond, or bond rating analysts, which directly, or indirectly, pertains to KCPL or any affiliate that exercises influence or control over KCPL, or has affiliate transactions with KCPL. Such information includes, but is not limited to, reports provided to, and presentations made to, common stock analysts and bond rating analysts. For purposes of this condition,

"written" information includes, but is not limited to, any written and printed material, audio and videotapes, computer disks, and electronically stored information. Nothing in this condition shall be deemed to be a waiver of GPE's or KCPL's right to seek protection of the information.

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

**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.

**8. Transaction Costs**

KCPL agrees that it shall not seek to recover the amount of any transaction costs in rates associated with the transactions that are the subject of this proceeding in any Missouri proceeding, and agrees to account for transaction costs in a manner that will enable the Staff and Public Counsel to quantify and seek disallowances of such transaction costs, if necessary, from rates in any Missouri rate proceeding.

9. **Combustion Turbines**

Following the close of the transactions that are the subject of this proceeding, KCPL, GPE, and GPP expect that five (5) combustion turbine generation units will be leased and operated by GPP. KCPL currently has a memorandum of understanding dated January 10, 2001, with General Electric Company that gives KCPL the opportunity to enter into a contract to purchase or lease five (5) combustion turbine generation units.

KCPL presently anticipates that it will need an additional 231 megawatts of capacity in the next three years. KCPL, GPE, and GPP agree that, prior to the transfer of the rights contained in the memorandum of understanding, KCPL and GPP and/or any GPE affiliate to which the transfer of rights is made will initiate a proceeding before the Commission to address all issues related to the transfer of the rights contained in the memorandum of understanding. KCPL further agrees that, prior to the transfer of rights contained in the memorandum of understanding to any entity other than GPP and/or any GPE affiliate, it will provide timely notice to Staff and Public Counsel relating to the transfer of the rights contained in the memorandum of understanding. KCPL, Staff and Public Counsel reserve the right to assert their respective positions regarding this matter in this future proceeding.

KCPL might enter into a purchase supply agreement with GPP to acquire capacity and energy. Any purchase supply agreement that KCPL enters into with GPP or any GPE affiliate to acquire capacity and associated energy will be cost based. Any purchase supply agreement between KCPL and GPP and/or any GPE affiliate will be submitted by KCPL for review and approval by the Commission.

10. **Membership In A Regional Transmission Organization (RTO) and Transfer of Control of Assets Related To Membership In An RTO**

Commission approval shall be required for the sale, assignment, lease or other disposition, including but not limited to a transfer of control, of transmission facilities by KCPL to an affiliated or unaffiliated regional transmission organization, independent system operator, or similar entity that is subject to the jurisdiction of FERC. In the event that KCPL seeks to withdraw from its participation in an affiliated or unaffiliated regional transmission organization, independent system operator, or similar entity that is subject to the jurisdiction of FERC, KCPL shall file a notice of withdrawal with the Commission. Such withdrawal shall become effective when the Commission and other applicable regulatory bodies approve or authorize such withdrawal.

11. **The Commission's Rights**

Nothing in this Stipulation And Agreement is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information, or any statutory obligation.

12. **Staff Requirement**

The Staff shall file suggestions or a memorandum in support of this Stipulation And Agreement and other parties shall have the right to file responsive suggestions or a memorandum.

13. **Staff's Rights**

If requested by the Commission, the Staff shall have the right to submit to the Commission an additional memorandum addressing the matters requested by the Commission. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission within five (5) days of receipt of the Staff's memorandum, a responsive memorandum which shall also be served on all parties. All memoranda submitted by

the parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Stipulation And Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation And Agreement, whether or not the Commission approves and adopts this Stipulation And Agreement.

The Staff also shall have the right to provide, at any agenda meeting at which this Stipulation And Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosures, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

#### **14. No Acquiescence**

None of the signatories to this Stipulation And Agreement shall be deemed to have approved or acquiesced in any question of Commission authority, accounting authority order principle, cost of capital methodology, capital structure, decommissioning methodology, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence, that may underlie this Stipulation And Agreement, or for which provision is made in this Stipulation And Agreement.

**15. Negotiated Settlement**

This Stipulation And Agreement represents a negotiated settlement. Except as specified herein, the signatories to this Stipulation And Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Stipulation And Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Stipulation And Agreement in the instant proceeding, or in any way condition its approval of same.

**16. Provisions Are Interdependent and Effect Of Failure To Receive Commission's Total, Unconditional Approval**

The provisions of this Stipulation And Agreement have resulted from negotiations among the signatories and are interdependent. In the event that the Commission does not approve and adopt the terms of this Stipulation And Agreement in total, it shall be void and no party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof.

If the Commission does not unconditionally approve this Stipulation And Agreement without modification, and notwithstanding its provision that it shall become void thereon, neither this Stipulation And Agreement, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any party has to a hearing on the issues presented by the Stipulation And Agreement, for cross-examination, or for a decision in accordance with Section 536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the parties shall retain all procedural and due process rights as fully as though this Stipulation And Agreement had not been presented for approval, and any testimony or exhibits that have been offered or received in support of this Stipulation And Agreement shall thereupon become privileged as reflecting the substantive content of settlement discussions and

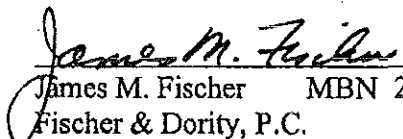
shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

**17. Waiver Of Rights Upon Commission Acceptance**

In the event the Commission accepts the specific terms of the Stipulation And Agreement, the signatory parties waive their respective rights to cross-examine witnesses; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 2000; and their respective rights to judicial review pursuant to Section 386.510 RSMo 2000. This waiver applies only to a Commission Report And Order respecting this Stipulation And Agreement issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Stipulation And Agreement.

**WHEREFORE** the Staff, the Office of the Public Counsel and Kansas City Power & Light Company, Great Plains Energy, Incorporated, and Great Plains Power, Incorporated hereby request that the Commission approve the instant Stipulation And Agreement.

Respectfully submitted:

  
James M. Fischer MBN 27543  
Fischer & Dority, P.C.  
101 Madison, Suite 400  
Jefferson City, Missouri 65101  
Telephone: (573) 636-6758  
Facsimile: (573) 636-0383  
E-mail: [jfischerpc@aol.com](mailto:jfischerpc@aol.com)

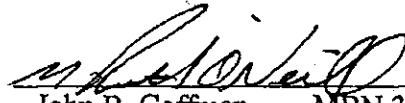
And

  
Steven Dottheim MBN 29149  
Chief Deputy Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102  
Telephone: (573) 751-7489  
Facsimile: (573) 751-9285  
E-mail: [sdotthei@mail.state.mo.us](mailto:sdotthei@mail.state.mo.us)  
Attorney for  
Missouri Public Service Commission Staff



William G. Riggins MBN 42501  
General Counsel  
Kansas City Power & Light Company  
1201 Walnut, 20<sup>th</sup> Floor  
P.O. Box 418679  
Kansas City, Missouri 64141-9679  
Telephone: (816) 556-2645  
Facsimile: (816) 556-2787  
E-mail: [bill.riggings@kcpl.com](mailto:bill.riggings@kcpl.com)

Attorneys for  
Kansas City Power & Light Company  
Great Plains Energy, Incorporated  
And Great Plains Power, Incorporated



John B. Coffman MBN 36591  
Deputy Public Counsel  
Ruth O'Neill MBN 49456  
Assistant Public Counsel  
Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, Missouri 65102  
Telephone: (573) 751-4857  
Facsimile: (573) 751-5562  
E-mail: [jcoffman@mail.state.mo.us](mailto:jcoffman@mail.state.mo.us)  
Attorneys for  
Office of the Public Counsel

## CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Entry of Appearance has been hand-delivered or mailed, First Class, postage prepaid, this 9<sup>th</sup> day of July, 2001, to:

John B. Coffman,  
Office of the Public Counsel  
P.O. Box 7800  
Jefferson City MO 65102

Dana K. Joyce, General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City MO 65102

Steven Dottheim, Chief Deputy Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City MO 65102

William B. Moore  
City Counselor  
111 East Maple  
Independence MO 64050

Duncan Kincheloe  
2407 W. Ash  
Columbia MO 65203

William D. Geary  
Assistant City Attorney  
2700 City Hall  
414 E. 12<sup>th</sup> Street  
Kansas City MO 64106

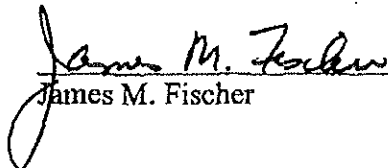
Paul A. Boudreau  
Brydon Swearngen & England P.C.  
P.O. Box 456  
Jefferson City MO 65102-0537

Mark W. Comley  
Newman Comley & Ruth P.C.  
P.O. Box 537  
Jefferson City MO 65102-0456

Gary W. Duffy  
Brydon Swearngen & England P.C.  
P.O. Box 456  
Jefferson City MO 65102-0537

Lelia Y. Dietiker  
Assistant County Counselor  
415 East 12<sup>th</sup> Street  
Kansas City MO 64106

Robert C. Johnson  
Lisa C. Langeneckert  
Law Office of Robert C. Johnson  
720 Olive Street  
Suite 2400  
St. Louis MO 63101

  
James M. Fischer

## **CONTINGENT PROCEDURE STIPULATION**

### **1.0 APPLICABILITY**

- 1.1 Principles stated in this Contingent Procedure Stipulation ("Procedure Stipulation") shall govern the situations described in Sections II (e) and (f) of the Stipulation And Agreement.
- 1.2 Changes to this Procedure Stipulation may be proposed from time-to-time by Kansas City Power & Light Company ("KCPL") or Great Plains Energy, Incorporated ("GPE"), the Commission Staff or the Office of the Public Counsel ("OPC" or "Public Counsel"), subject to the approval of the Commission; provided, however, that KCPL, the Commission Staff and the OPC shall meet and discuss any such proposed changes prior to the submission of such changes to the Commission by KCPL or GPE, the Commission Staff or the OPC.

### **2.0 DEFINITIONS**

When used in this Procedure Stipulation, the following terms shall have the respective meanings set forth below:

- 2.1 "Affiliate" means an entity that is GPE, a subsidiary of KCPL, a subsidiary of GPE (other than KCPL), or other subsidiary within the Holding Company organization.
- 2.2 "Affiliate Contract" means an Affiliate Operating Contract, an Affiliate Sales Contract, an Affiliate Surety Contract, a Section 205 Contract, a Service Agreement, or an amendment to any such contract.
- 2.3 "Affiliate Operating Contract" means a contract, other than a Section 205 Contract, between KCPL and one or more of its Affiliates providing for the operation of any part of KCPL's generating, transmission and/or distribution facilities by such Affiliate(s).
- 2.4 "Affiliate Sales Contract" means a contract, other than an Affiliate Operating Contract or a Section 205 Contract, between KCPL and one or more of its Affiliates involving the purchase of Assets, Goods or Services.
- 2.5 "Affiliate Surety Contract" means a contract between KCPL and one or more of its Affiliates involving the assumption by KCPL of any liability as a guarantor, endorser, surety, or otherwise in respect of any security or contract of an Affiliate.

- 2.6 "Assets" means any land, plant, equipment, franchises, licenses, or other right to use assets.
- 2.7 "Commission" means the Missouri Public Service Commission or any successor governmental agency.
- 2.8 "Commission Staff" or "Staff" means the Staff of the Missouri Public Service Commission.
- 2.9 "Entity" means a corporation or a natural person.
- 2.10 "FERC" means the Federal Energy Regulatory Commission, or any successor governmental commission.
- 2.11 "Goods" means any goods, inventory, materials, supplies, appliances, or similar property (except electric energy and capacity).
- 2.12 "Non-Utility Affiliate" means an Affiliate which is neither a public utility nor a Utility Service Company.
- 2.13 "OPC" or "Public Counsel" means the Office of the Public Counsel.
- 2.14 "Review Period" means a period of ninety (90) consecutive calendar days commencing on the first day immediately following the date that KCPL or GPE submits an Affiliate Contract to the Commission for the Commission Staff's review. Any part of the Review Period for a particular Affiliate Contract may be waived by agreement of KCPL, the Commission Staff and the OPC.
- 2.15 "SEC" means the United States Securities and Exchange Commission, or any successor governmental agency.
- 2.16 "Section 205 Contract" means an interconnection, interexchange, pooling, operating, transmission, power sale or ancillary power services contract or similar contract entered into between KCPL and an Affiliate and subject to regulation by the FERC pursuant to § 205 of the Federal Power Act, 15 U.S.C. § 824d, or any successor statute.
- 2.17 "Service Agreement" means the agreement entered into between KCPL, GPE, and an affiliated or subsidiary service company, under which services are provided by such services company to KCPL and GPE.
- 2.18 "Services" means the performance of activities having value to one party, such as managerial, financial, accounting, legal, engineering, construction, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, and other similar services.

- 2.19 "Subsidiary" means any corporation 10 percent (10%) or more of whose voting capital stock is controlled by another Entity; Subsidiaries of GPE are those corporations in which GPE owns directly or indirectly (or in combination with GPE's other Affiliates) 10 percent (10%) or more of such corporation's voting capital stock.
- 2.20 "KCPL's Holding Company" means GPE or its successor in interest.
- 2.21 "Utility Affiliate" means an Affiliate of KCPL which is also a public utility.
- 2.22 "Utility Service Company" means an Affiliate whose primary business purpose is to provide administrative and general or operating services to KCPL and Utility Affiliate(s).

3.0 AFFILIATE CONTRACTS REQUIRED TO BE FILED WITH THE SEC

The following will apply to Affiliate Contracts that are required to be filed with the SEC.

- 3.1 Prior to filing any such Affiliate Contract with the SEC or the Commission, KCPL will submit to the Commission Staff, the OPC, and the appropriate parties requesting a copy, a copy of the Affiliate Contract which it proposes to file with the SEC and the Commission.
- 3.1.1 If the Commission Staff clears the contract for filing, or does not object to it, and no objections from affected parties are submitted to KCPL (with a copy to the Commission Staff) during the Review Period for such contract, KCPL may file such contract with the SEC and the Commission. The contract will become effective upon the receipt of all necessary regulatory authorizations and will continue in effect until it is terminated pursuant to its terms or is amended or superseded, subject to the receipt of all necessary regulatory authorizations.
- 3.1.2 If, during the expiration of the Review Period for such contract, the Commission Staff recommends that the Commission reject, disapprove or establish a proceeding to review such contract, or if an objection(s) is submitted to KCPL (with a copy to the Commission Staff) by an affected party (or parties), KCPL may file the contract with the Commission, but shall not file the contract with the SEC until at least thirty (30) days after the date that it is filed with the Commission; provided, that both such filings shall disclose the Commission Staff's recommendation or the objection(s) regarding the contract; provided, further, that if the Commission, within twenty (20) days after the contract is filed, institutes a proceeding to review such contract, KCPL shall not file the contract with the SEC unless and until KCPL receives a Commission Order which resolves issues raised with regard to the contract and which does not reject or disapprove the contract. The contract will become effective upon the receipt of all necessary

regulatory authorizations and will continue in effect until it is terminated pursuant to its terms or is amended or superseded, subject to the receipt of all necessary authorizations.

- 3.2 After the Affiliate Contract has been filed with the Commission, the Commission may in accordance with Missouri law, reject or disapprove the contract, and upon such rejection or disapproval:
  - 3.2.1 If such contract has not yet been accepted or approved by the SEC, KCPL will, as soon as possible, file to seek to withdraw its filing requesting SEC acceptance or approval of such contract; or
  - 3.2.2 If such contract has been accepted or approved by the SEC and none of the other contracting parties are Utility Affiliates subject to any other state utility regulatory commission's jurisdiction, KCPL will:
    - a. terminate such contract according to its terms; or
    - b. at its sole option, take such steps as are necessary to cause such contract to be amended in order to remedy the Commission's adverse findings with respect to such contract; KCPL will refile such amended contract with both the Commission and the SEC; such amendment will become effective only upon the receipt of all necessary regulatory authorizations, and the previous contract (to the extent already in effect) will remain in effect until such authorizations are received; if the SEC does not finally accept or approve such amendment within one (1) year from the date of KCPL's filing of such amendment with the SEC, KCPL will, upon request of the Commission, terminate the contract according to its terms.
- 3.2.3 If such contract has been accepted or approved by the SEC, and one or more of the other contracting parties are Utility Affiliates subject to another state utility regulatory commission's jurisdiction, KCPL will make a good faith effort to terminate, amend or modify such contract in a manner which remedies the Commission's adverse findings with respect to such contract. KCPL will request to meet with representatives from the affected state commissions and make a good faith attempt to resolve any differences in their respective interests regarding the subject contract. If agreement can be reached to terminate, amend, or modify the contract in a manner satisfactory to the contracting parties and the representatives of each state commission, KCPL shall file such amended contract with the Commission and the SEC under the procedures set forth in this Section 3. If no agreement can be reached satisfactory to each contracting party and to each affected state commission, after good faith negotiations, KCPL has no further obligations under this Procedure Stipulation. Nothing herein affects, modifies or

alters in any way the rights and duties of the Commission under applicable state and federal law.

#### 4.0 AFFILIATE CONTRACTS REQUIRED TO BE FILED WITH THE FERC

The following will apply to Affiliate Contracts that are required to be filed with the FERC.

- 4.1 Prior to filing any Affiliate Contract with the FERC or the Commission, KCPL will submit to the Commission Staff, the OPC and appropriate parties requesting a copy, a copy of the Affiliate Contract which it proposes to file with the FERC and the Commission.
  - 4.1.1 If the Commission Staff clears the contract for filing, or does not object thereto, and no objections from affected parties are submitted to KCPL, (with a copy to the Commission Staff) during the Review Period for such contract, KCPL may file such contract with the FERC and the Commission. The contract will become effective upon the receipt of all necessary regulatory authorizations and will continue in effect until it is terminated pursuant to its terms or is amended or superseded, subject to the receipt of all necessary regulatory authorizations.
  - 4.1.2 If, during or upon the expiration of the Review Period for such contract, the Commission Staff recommends that the Commission reject, disapprove or establish a proceeding to review such contract, or if any objection(s) is submitted to KCPL (with a copy to the Commission Staff) by an affected party (or parties), KCPL may file the contract with the Commission, but shall not file the contract with the FERC until at least thirty (30) days after the date that it is filed with the Commission; provided, that if the Commission, within twenty (20) days after the contract is filed, institutes a proceeding to review such contract, KCPL shall not file the contract with the FERC unless and until KCPL receives a Commission Order which resolves issues raised with regard to the contract and which does not reject or disapprove the contract. The contract will become effective upon the receipt of all necessary regulatory authorizations and will continue in effect until it is terminated pursuant to its terms or is amended or superseded, subject to the receipt of all necessary regulatory authorizations.
- 4.2 After the Affiliate Contract has been filed with the Commission, the Commission may in accordance with Missouri law, reject or disapprove the contract, and upon such rejection or disapproval:
  - 4.2.1 If such contract has not yet been accepted or approved by the FERC, KCPL will, as soon as possible, file to seek to withdraw its filing requesting the FERC acceptance or approval of such contract; or

4.2.2 If such contract has been accepted or approved by the FERC and none of the other contracting parties are Utility Affiliates subject to any other state utility regulatory commission's jurisdiction, KCPL will:

- a. terminate such contract according to its terms; or
- b. at its sole option, take such steps as are necessary to cause such contract to be amended in order to remedy the Commission's adverse findings with respect to such contract; KCPL will refile such amended contract with the Commission and the FERC; such amendment will become effective only upon the receipt of all necessary regulatory authorizations, and the previous contract (to the extent already in effect) will continue in effect until such authorizations are received; if the FERC does not finally accept or approve such amendment within one (1) year from the date of KCPL's filing of such amendment with the FERC, KCPL will, upon request of the Commission, terminate the contract according to its terms.

4.2.3 If such contract has been accepted or approved by the FERC and one or more of the other contracting parties are Utility Affiliates subject to another state utility regulatory commission's jurisdiction, KCPL will make a good faith effort to terminate, amend or modify such contract in a manner which remedies the Commission's adverse findings with respect to such contract. KCPL will request to meet with representatives from the affected state commissions and make a good faith attempt to resolve any differences in their respective interests regarding the subject contract. If agreement can be reached to terminate, amend, or modify the contract in a manner satisfactory to the contracting parties and the representatives of each state commission, KCPL shall file such amended contract with the Commission and the FERC under the procedure set forth in this Section 4. If no agreement can be reached satisfactory to each contracting party and each affected state commission, after good faith negotiations, KCPL has no further obligations under this Procedure Stipulation. Nothing herein affects, modifies or alters in any way the rights and duties of the Commission under applicable state and federal law.



**CAM MODIFICATIONS  
STIPULATION AND AGREEMENT  
KANSAS CITY POWER & LIGHT COMPANY  
CASE NO. EM-2001-464**

1. KCPL's Cost Allocation Manual ("CAM") will be modified to identify and describe all KCPL functions that will provide support to nonregulated affiliated business units, including the Holding Company.  
The information provided will include:
  - A. A listing of each function.
  - B. The positions and numbers of employees providing each function.
  - C. The procedures to be used to measure and assign costs to nonregulated business units for each function provided by KCPL.
2. The CAM will be modified to include:
  - A. A description of all services and goods that will be provided to KCPL from each affiliate of KCPL.
  - B. A description of all services and goods that will be provided to affiliated companies from KCPL.
  - C. The dollar amount of each service and good charged to each affiliate by KCPL, and the total cost related to each service and good listed.
  - D. The dollar amount of each service and good bought from each affiliate from KCPL, and the total cost related to each service and good listed.
  - E. A detailed discussion of the basis for determining the charges from the regulated utility, affiliated companies and the Holding Company, including:
    - a. If costs are allocated, a description of the cost allocation process employed for each service and good.
    - b. How direct, indirect and common activities are assigned for each service and good.
    - c. How market value for each service and good is determined.
    - d. A description of the criteria employed to determine whether volume discounts or other pricing considerations are to be provided to KCPL or affiliates.
3. The CAM will be modified to include a Code of Conduct to ensure adherence to the policies and procedures incorporated within the CAM.
  - A. Training will be provided and information disseminated regarding the current policies and procedures and any future modification to them.
  - B. KCPL will enforce penalties, up to and including possible termination, for noncompliance with its policies and procedures.
  - C. A designated person will be responsible for enforcement of the policies and procedures.

- D. KCPL will conduct regularly scheduled internal and/or external audits to examine compliance with its policies and procedures.
  - E. At least once a year, KCPL will consider whether modifications to the Code of Conduct are necessary to support appropriate compliance with the Company's policies and procedures. If modifications to the Code of Conduct are made by KCPL, they will be provided as part of the overall CAM filing.
- 4. KCPL will file as part of the CAM the following organization charts:
    - A. Total family of companies within the Holding Company.
    - B. KCPL alone.
    - C. Affiliates doing business with KCPL.
  - 5. The CAM will be modified to include a listing of all deregulated activities that will be provided within the regulated company (KCPL) to nonaffiliated third party customers following formation of the Holding Company. The information to be provided in this area shall include:
    - A. The amount of revenues and expenses for each deregulated activity for the last calendar year.
    - B. Listings of all KCPL cost centers/functions that will directly assign, indirectly assign, or allocate costs to each deregulated activity listed.

All of the above information (Items 1 through 5) shall be provided by KCPL to the Commission on an annual basis through the CAM filing process.

- 6. All CAM modifications agreed to as part of the Stipulation And Agreement resolving this case shall be filed with the Commission within 120 days of the effective date of the approval of the Stipulation And Agreement by the Commission.

Note: Any direct activities related to the study or formation of the Holding Company, or study or formation of new corporate entities after the Holding Company is implemented, will not be subject to allocation to regulated operations.

# Submissions by GPE

CASE NO. EM-2016-0324

Item	Description
Submission 1	<p>Notice of Submission.  Appendix A – Broker Reaction.  Appendix B – Ratings Agency Reports (HC).  Appendix C – Coverage.  Appendix D – Media Report, June 11, 2016.  Appendix E – SEC Filings.  Appendix F – Agreement and Plan of Merger (HC).  Appendix G – Stock Purchase Agreement.  Appendix H – Merger Sub Formation.</p>
Submission 2	<p>Second Notice of Submission.  Appendix A –  (1) Joint Application filed by GPE and Westar on June 28, 2016, with the KCC (HC).  <ul style="list-style-type: none"> <li>Appendix A -- Map of Kansas and Missouri KCP&amp;L Service Areas. . .</li> <li>Appendix B – Map of Westar Service Area.</li> <li>Appendix C – Agreement and Plan of Merger (Confidential).</li> <li>Appendix D – Great Plains Energy Post-Transaction Org Chart.</li> <li>Appendix E – Map Showing Combined Westar/KCP&amp;L Service Area.</li> <li>Appendix F – Great Plains Energy Resolutions of Board of Directors.</li> <li>Appendix G – Westar Resolutions of Board of Directors.</li> <li>Appendix H – Confidential Designation Sheet.</li> </ul> (2) Terry Bassham Direct Testimony  (3) Mark A. Ruelle Direct Testimony  <ul style="list-style-type: none"> <li>Exhibit MR-1</li> </ul> (4) Kevin E. Bryant Direct Testimony  (5) Charles A. Caisley Direct Testimony  <ul style="list-style-type: none"> <li>Schedule CAC-1</li> <li>Schedule CAC-2</li> </ul> (6) Scott H. Heidtbrink Direct Testimony  (7) Darrin R. Ives Direct Testimony  (8) William Kemp Direct Testimony  <ul style="list-style-type: none"> <li>Schedule WJK-1</li> <li>Schedule WJK-2</li> <li>Schedule WJK-3</li> <li>Schedule WJK-4</li> <li>Schedule WJK-5</li> </ul> (9) Steven P. Busser Direct Testimony  <ul style="list-style-type: none"> <li>Schedule SPB-1</li> </ul> </p>
Submission 3	<p>Third Notice of Submission.  Appendix A –  Joint Application for Authorization of Disposition of Jurisdictional Assets and Merger, filed by GPE and Westar on July 11, 2016, with the FERC.  Attachment 1 – Proposed Protective Order.  Attachment 2 – Verifications.  Exhibit A – Business Activities of the Applicants. See Part II and Exhibit J.  Exhibit B – Energy Subsidiaries and Affiliates:  Exhibit B-1 – Great Plains Energy, Inc.  Exhibit B-2 – Westar Energy, Inc. See Part II.B of the Application.  Exhibit C – Organizational Charts, Current and Post-Transaction Structures.  Exhibit C-1 – Great Plains Energy, before.  Exhibit C-2 – Westar Energy, before.</p>

	<p>Exhibit C-3 -- After.</p> <p>Exhibit D -- Joint Ventures, etc.</p> <p>Exhibit E -- Common Officers or Directors.</p> <p>Exhibit F -- Description and Location of Wholesale Power Sales Customers and Unbundled Transmission Services Customers Served by Applicants or Their Affiliates.</p> <p>Exhibit G -- Description of Jurisdictional Facilities of Applicants and Their Affiliates.</p> <p>    FERC Form 1 -- KCP&amp;L.</p> <p>    FERC Form 1 -- GMO.</p> <p>    FERC Form 1 -- Transource Missouri, LLC.</p> <p>    FERC Form 1 -- Westar Energy, Inc.</p> <p>    FERC Form 1 -- Kansas Gas &amp; Electric Co.</p> <p>    FERC Form 1 -- Prairie Wind Transmission, LLC.</p> <p>    FERC Form 1 -- Westar Generating, Inc.</p> <p>Exhibit H -- Jurisdictional Facilities and Securities Associated with or Affected by the Transaction.</p> <p>Exhibit I -- Contracts with Respect to the Disposition of Facilities.</p> <p>Exhibit I-1 -- Agreement and Plan of Merger.</p> <p>    Exhibit A -- Defined Terms.</p> <p>    Exhibit B -- Regulatory Commitments.</p> <p>Exhibit I-2 -- Stock Purchase Agreement.</p> <p>Exhibit J -- Prepared Direct Testimony and Exhibits of David Hunger and Edo Macan on Behalf of Applicants.</p> <p>Exhibit J-1 -- Testimony.</p> <p>Exhibit J-2 -- CV of David Hunger.</p> <p>Exhibit J-3 -- CV of Edo Macan.</p> <p>Exhibit J-4 -- Market Power Study -- GPE.</p> <p>Exhibit J-5 -- Market Power Study -- Westar.</p> <p>Exhibit J-6 -- Delivered Price Sensitivity Cases.</p> <p>Exhibit K -- Maps.</p> <p>Exhibit L -- Status of Regulatory Actions and Orders.</p> <p>Exhibit M -- Cross Subsidization.</p>
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KCPL and KCPL GMO  
Case Name: Westar Aquisition  
Case Number: EM-2016-0324

Response to Kremer Lisa Interrogatories - MPSC\_20160616  
Date of Response: 6/27/2016

Question:0017

Please provide a description and/or copies of all Great Plains Energy, Inc., and/or KCP&L and KCP&L-GMO actions taken to date, analysis and/or studies conducted to determine that the purchase of Westar Energy, Inc. will not have any detrimental impact upon KCP&L and KCP&L-GMO Missouri customers respecting the service quality / quality of service matters/areas, including but not limited to: call center operations, service order processes, meter reading, credit and collections, connection and disconnection processes, payment remittance and others. Please include all planned or anticipated operational changes during and post-acquisition of Westar Energy in any and all service quality matters/areas that include outsourcing and/or terminating current KCP&L employee headcounts. DR requested by Lisa Kremer ([lisa.kremer@psc.mo.gov](mailto:lisa.kremer@psc.mo.gov)).

RESPONSE: (do not edit or delete this line or anything above this)

Thus far 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.

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.

Information Provided By:

Attachment: Q0017\_Verification.pdf

**ATTACHMENT 2**

**HAS BEEN DEEMED**

**HIGHLY CONFIDENTIAL**

**IN ITS ENTIRETY**

**ATTACHMENT 3**

**HAS BEEN DEEMED**

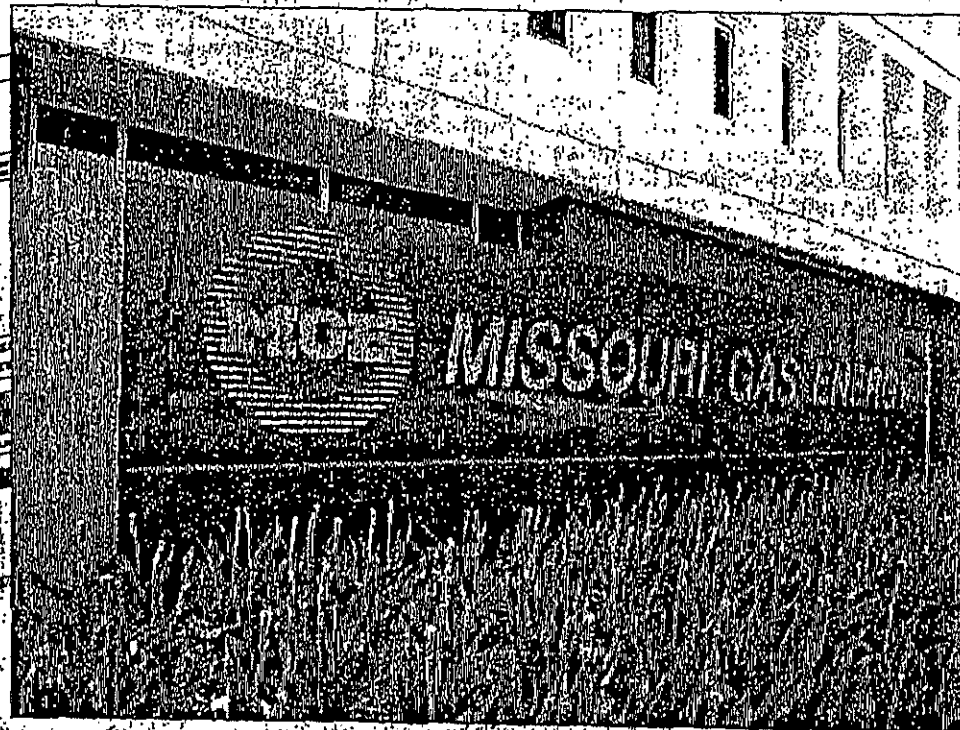
**HIGHLY CONFIDENTIAL**

**IN ITS ENTIRETY**

## Debt load brings deep cuts; ability to serve public in question

**Missouri Gas Energy Inc. faced a financial straitjacket early on:**

- [illegible]



KEVIN ANDERSON/The Star

Company officials say they are aware of the problems at Missouri Gas Energy.



## System still safe, even critics say, but some practices raise worries

By STEVE EVERLY *KC Star*  
and MARTIN ROSENBERG  
Staff Writers

P. 1 5/9/97

Missouri Gas Energy executives were tense as they looked at budget numbers two summers ago in a Texas corporate suite. The message from their Southern Union Co. superiors was unmistakable: agree to steep budget cuts.

But the cuts risked slashing into muscle rather than fat, some of them feared. Two of the half dozen Missouri Gas executives gave their approval, but the rest refused.

"We're all gone," warned Gene Dubay, Missouri Gas chief operating officer, as he and the others who dissented left the meeting.

Dubay's comments were prophetic. Dubay, in an emotional meeting three months later, told his staff he was being forced out. By early 1996, the three other executives who wouldn't submit also were gone.

Missouri Gas is finishing a winter in which it faced thousands of customer complaints about billing errors and high prices. The utility blames many of the grievances on volatile wholesale gas prices.

But interviews in recent weeks with two dozen current and former Missouri Gas employees, officials at other utilities and state regulators suggest a larger problem.

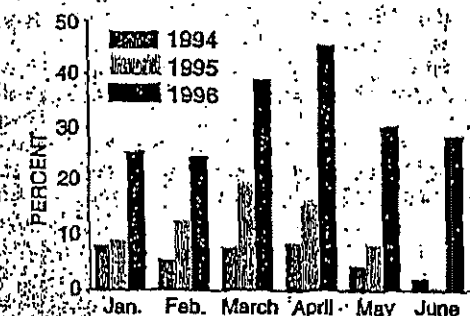
Southern Union, based in Austin, Texas, is saddled with debt and has relentlessly

See MGE's A-24; Col. 1

### ... and service suffered

Before long, cost-cutting reduced service levels: Calls to the company were increasingly going unanswered as a result of surging calling volumes and busy lines.

### Percentage of abandoned calls



Source: Missouri Public Service Commission

cut expenses to a point that it's had to scramble to perform even basic tasks such as reading meters and calculating bills.

While most critics of the company say that safety has not been compromised, they contend that cost-cutting remains the company's chief priority.

Southern Union concedes that it cut back further in some areas than it should have. In response to recent billing problems, it's enlarging its customer service staff.

"We've got this problem in our sights and we'll fix it," said Peter H. Kelley, Southern Union president.

But Southern Union denies it has set out to strip Missouri Gas because of financial pressures.

"That statement is completely and utterly false," Kelley said. "We realize that we cut back greater than we should have."

### Rough beginning

Natural gas is the latest of a variety of business pursuits by Southern Chairman George L. Lindemann, who amassed a fortune in cosmetics, contact lenses, cable television and cellular telephones. A 1993 article in *Forbes* magazine estimated Lindemann's worth at \$600 million.

But Lindemann, who could not be reached for comment, faced a major challenge in turning around the fortunes of Missouri Gas.

Southern Union bought Missouri Gas from Western Resources for roughly \$41.5 million above its book value. Kelley said his company drove a hard bargain and bought Missouri Gas at a good price. Missouri Gas serves 475,000 customers.

But the acquisition burdened Southern Union with too much debt, contends Missouri Public Counsel Martha Hogerty, who represents the state's consumers in regulatory matters. The utility's debt after the deal represented 72 percent of its capital, which was in excess of other utilities, she said.

Southern Union, which was barred from seeking immediate rate increases, did, in fact, move rapidly to cut internal costs after buying Missouri Gas in early 1994. Several company trucks, compressors and other equipment from Joplin were auctioned off.

Southern also closed Missouri Gas' last Kansas City office where customers could pay bills and ask questions in person. And it tried to alter an existing program in which customers take their monthly gas payments to grocery stores or other retailers. The retailers are paid a handling fee. Southern wanted to eliminate the fee but eventually backed off.

Many of these cuts were overdue and necessary to prepare the utility for deregulation, the new owners said. But just months after the purchase, state regulators were seeing a growing number of complaints against Missouri Gas.

Part of the problem was staffing. Missouri Gas' customer service ranks decreased 32 percent from 164 in 1994 to 111 in 1996, according to an August report by the Missouri Public Service Commis-

61  
sion.

"The deal with Southern Union is that it wants to cut expenses no matter what," said John Fernald, former director of rates and regulation for Missouri Gas Energy. He was one of the executives who didn't approve the budget cuts; he was fired in October 1995.

Fernald said training sessions for customer service workers often were haphazard, and that trainers often argued among themselves about the material, such as the rules for disconnecting gas service during cold weather.

Fernald also said there were recurring problems with the billing system. Computers were supposed to select unusually high bills to be double-checked, but the function wasn't working.

"I was always told, 'Yeah, yeah, we'll get to it,' but it never was," said Fernald, who now owns a utility consulting company. He added: "I'm putting my career at risk, but I'm talking because I think it's important."

The problem worsened last year. In the first half of 1996, Missouri Gas customers encountered jammed lines; and 24 percent to almost 46 percent of those calls had to be abandoned, according to the Missouri Public Service Commission.

Janet Hoerschgen, Public Service Commission staff member, summarized the staff's growing concerns in 1996 about Southern Union's commitment to adequate service and meeting regulatory obligations by referring to the company's annual report.

"To make certain that no one underestimates the degree of emphasis," she wrote, "management describes Southern Union as 'a sales and marketing company that just happens to be in the utility business.'"

Southern Union recently hired more meter readers and opened a branch office as part of the effort to improve customer service.

### Pressure to cut

But the company had looked for other cuts beyond those related to serving customers.

At one point, Southern Union pushed Missouri Gas to delay the utility's gas-line replacement program, a safety measure mandated by the state that Southern had promised to continue.

The program began in the late 1980s. Several deaths caused by leaking natural gas lines pushed Missouri regulators to require that all pipes susceptible to corrosion — and leaks — be replaced.

Southern Union promised to

continue the program. But just months after the purchase, it began to pressure Missouri Gas executives to extend it over more years, Fernald said.

Southern Union discovered that some small Missouri utilities had received delays in replacing pipes and it wanted a delay for Missouri Gas.

Fernald said Missouri Gas executives resisted the effort. The smaller utilities won delays because only one or two gas lines were involved, while Missouri Gas faced a massive line replacement program. They forwarded the request to the company attorney in Jefferson City. It never reached the state's regulators.

Southern Union eventually dropped its request and told the utility to destroy documents that mentioned the proposed delay.

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Fernald said. (Fernald said he doesn't know if the documents were destroyed.)

Darrek Porter, a spokesman for Missouri Gas Energy, said the company did consider a plan to fine-tune the replacement program and perhaps lengthen some portions while shortening others. Nothing would have harmed safety even if it had been adopted, which it wasn't, he said.

He said no one at Missouri Gas or Southern Union recalls an order to destroy documents. In addition, the documents weren't destroyed and they remain in company files.

"We have nothing to hide here," he said.

Porter would not produce the documents for *The Kansas City Star* because they never were made available to the Missouri Public Service Commission.

"That wouldn't be good form," he said.

### Budget cuts OK'd

By June 1995, when Southern Union summoned the Missouri Gas executives to discuss the capital budget, Kelley reminded them they were over budget for the year and more reductions had to be made.

One source of the tension, Fernald said, was failure to get the pipe replacement program extended.

By the end of the first day of the budget meeting, those involved agreed to cut the budget by \$10 million to \$37 million. Among the cuts was the reduction of fees paid to some contractors who laid gas lines. Missouri gas officials sought to level what it paid contractors across all of its regions. Some contractors, then, are getting less pay for the same amount of work.

The next morning, the meeting turned tougher. The figure "\$34.6 million" had been written on a flip chart — a figure the four Missouri Gas executives refused to approve in part because they didn't know where the extra cuts would be made, Fernald said.

Southern Union and current Missouri Gas executives point out that such budget negotiations are common in business.

Since the pivotal meeting, other cost-cutting has occurred.

Jerry Riley, a retired Missouri Gas inspector in Joplin, was bothered last summer when he learned Missouri Gas no longer would install seals in lines that were turned off to homes and businesses. The change required less labor.

The gas lines have "stops" that shut off the gas when turned by utility employees. But the stops don't always completely seal the lines; small amounts of gas can leak through, Riley said.

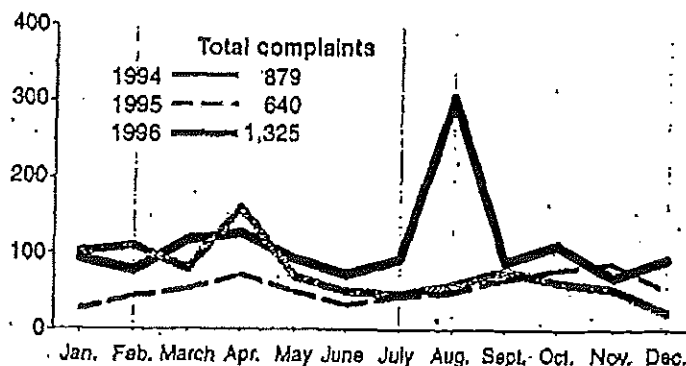
The seals aren't required by state law, but Missouri Gas Energy's previous owners, including Western Resources, considered them an important safety precaution, Riley said.

Missouri Gas executives say they still seal lines to old meters. New meters have stops that are tight enough when shut off, so seals aren't needed, they say. Riley disagrees. New or old, all such lines should be sealed, he said.

Riley and two current Missouri Gas employees knowledgeable about pipe installation also question a company decision to stop using a rubber seal in a pipe replacement procedure. (The em-

### Number of complaints

And while complaints about MGE to state regulators dipped in 1995, they grew at a fast clip, particularly after the fall of 1995.



Source: Missouri Public Service Commission

The Star

ployees asked not to be identified because they believed their jobs would be at risk.)

As gas service lines to homes and businesses are replaced with plastic tubing, the plastic line is threaded through the existing metal line.

That leaves a gap between the plastic and metal pipes. If there's a leak in the gas main under the street, gas could enter the gap and make its way to the home or business.

Western Resources, when it owned the utility, placed a rubber, tubelike "shrink" or seal at the end of the metal pipe so that gas couldn't get in. Western still uses the seals when installing lines for its KPL and KGE customers.

Missouri Gas is phasing out the rubber shrink and using tape to seal the gap. A Missouri regulator

said he was told the rubber shrink, which isn't required by state law, was being phased out because of expense. The rubber shrink costs \$5.33; the tape costs just a few cents.

Missouri Gas, Southern Union, state regulators and most critics of the companies say they don't think anything has been done to harm safety. Southern Union executives point to statistics that show that leaks in the Missouri Gas system have declined nearly 50 percent since 1993.

Even Fernald, the former Missouri Gas executive, said that while cost cutting has affected customer service, the system so far is safe.

### Not bailing out

Southern Union says it plans to hold on to its Missouri properties and will make any necessary im-

provements. Twenty-five more customer service staff members are undergoing training. The company vows to avoid past problems by next winter.

Two-thirds of Southern Union's utility-related capital expenditures are in Missouri, even though Missouri represents roughly half of the company's customer base, he said.

"There should be no doubt in the

community mind that safety is pretty important to us," Kelley said.

Kelley said top officials at Southern Union know that the industry is consolidating, and executives with marketing savvy will be the big winners as the industry is deregulated.

Southern Union would like to expand its customer base within

about seven years to about 2 million people from almost 500,000, Kelley said.

But the company will have to win back the confidence of critics in territories it already serves.

Karl Zobrist, chairman of the Missouri Public Service Commission, is eager to see improvements.

"I'm trying to fix the problem, not fix the blame," he said.

KC STAR- P.1

# Critics urge regulators to get tough on utilities

By MARTIN ROSENBERG  
Staff Writer

3/13/97

Gas bills in the last few months have never been higher or less accurate. So where are the state regulators?

That's a question many consumers — and a former governor long suspicious of utilities — are asking as the winter winds down.

"Those utilities will go crazy with their rates as long as they can," former Missouri Gov. Joe Teasdale said. "I didn't trust them while I was governor. And I don't today."

Missouri Gas Energy and Western Resources have sent out at least 140,000 incorrect bills.

There have been astronomical increases in natural gas rates, which state regulators say they are powerless to address.

But part of the problem, say many industry watchers and experts, is today's state regulators. They seem less willing to take on the gas companies.

"They don't want to go against the flow," said Martha Hogerty, Missouri public counsel. "In years past, they were much more aggressive."

Indeed, the 1970s and 1980s led to a dizzying round of rate increases by energy utilities because of the Arab oil embargo and runaway inflation. Angry consumers spawned regulatory

See **REGULATORS, A-10, Col. 1**



**"I don't think we have enough auditors to keep on these companies all the time."**

—Karl Zobrist,  
Missouri PSC



**"We're happy to examine problems when they come to our attention."**

—Tim McKee,  
Kansas  
Corporation  
Commission

### Continued from A-1

bodies with a strong mandate to watch out for the consumer, first and foremost.

Today's regulators are somewhat confused about their role, said Walker Hendrix, consumer counsel with Kansas' Citizens' Utility Ratepayer Board. The reason, he says, is deregulation.

Gas and phone companies are all, to some degree, being freed to compete with each other. Long-distance phone companies soon will offer local telephone service. At some point, Kansas City residents will be able to choose a gas supplier from several gas utilities.

That's caused regulators not only to wonder about their mission but also to process more paperwork, not less, during the transition. Meanwhile, the staffs have not grown to keep up with the workload.

### More paperwork

Karl Zobrist, chairman of the five-member Missouri commission, said commissioners still manage to antagonize powerful utilities, but he concedes regulators could be tougher.

"As a matter of regulation, I don't think we have enough auditors to keep on these companies all the time," he said. But he added that Missouri legislators would not want to see the commission expand.

In Kansas, top regulator Tim McKee said a more vigilant Kansas Corporation Commission would not have prevented the recent billing problems.

"We're happy to examine problems when they come to our attention," McKee said.

That's not good enough, in Hogerty's opinion.

"That's really a problem with regulators," she said. They have to act in a proactive manner, she said.

If state regulators have become more reactive — and less proactive — it is because they are increasingly swamped with new kinds of regulatory work.

In Kansas, for instance, there

were 707 legal regulatory filings last year, up from 379 in 1990. The bulk of the increase dealt with competition in local telephone service authorized by Congress last year.

In recent months, regulators have been certifying new local telephone companies. The regulators have also had to review the startups' efforts to gain access to the networks of local phone monopolies such as Southwestern Bell Telephone Co.

Commissions also are increasingly preoccupied with dissecting megadeals, such as the proposed merger of Western Resources and Kansas City Power & Light Co.

As a result, regulatory commissions have less time and resources to devote to the traditional policing of utilities.

### Staffing woes

In fact, the army of lawyers, accountants and engineers in the trenches regulating gas, electric and phone companies has not grown in Missouri and has shrunk in Kansas.

The Kansas commission is at 213 employees, down from 233 in 1990, said spokeswoman Rosemary Foreman.

The Missouri commission employs 205 — relatively unchanged in the last decade, according to Cecil Wright, commission executive secretary.

Compounding the challenges has been turnover in the commissioners' ranks. The chairmen of the utility commissions in Kansas and Missouri have held their jobs for about one year.

The chairmen and their colleagues were not on board during the great regulatory battles of the 1970s and 1980s, when some companies sought — and were denied — rate hikes on the order of 52 percent.

Zobrist has been chairman since January 1996. He is a former partner in the Kansas City law firm of Blackwell Sanders Matheny Weary & Lombardi.

M. Dianne Drainer, a vice chairman, was appointed one year ago. Earlier, she was manager of re-

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■ On-line resources for  
utility customers are available  
on *The Star's* site at  
<http://www.kansascity.com>.

**kansascity.com**

search and evaluation for the Missouri Department of Social Services.

All three members of the Kansas Corporation Commission — McKee, Susan Seltsam and John Wine — have been appointed within the last three years.

Opinions are mixed on how well the commissions are coping.

"The job has gotten tougher — there is so much more for them to do," said John Hoffman, Sprint Corp. senior vice president. "There are brighter, smarter people in the job."

But Steve Weber, an AT&T attorney based in Jefferson City, notes the considerable turnover in the Missouri commission "has been pretty traumatic."

### What's ahead

The trauma these days, of course, concerns the surge in public anger about gas bills. Both Missouri and Kansas regulators are reacting, prodding their staffs to develop policies to prevent a repeat episode.

"We are very concerned, if not outraged, about the billing problems ourselves," Zobrist said.

The governors of Kansas and Missouri, through their spokesmen, say they are monitoring developments.

The regulators are considering new ways to shield consumers from sudden natural-gas price increases, and they want bills to be precise.

Right now, natural gas distribution companies such as Missouri

Gas Energy can adjust their rates — as often as every few weeks — to recover the cost of higher-priced gas purchased from a supplier.

In turn, say some critics, local gas utilities have no incentive to get the lowest priced gas because costs are fully passed on to consumers.

In response, Kansas regulators may require gas utilities to get a minimum of three bids from suppliers before buying gas, McKee said.

McKee also suggests that the utilities be prevented from getting into gas supply contracts for longer than five years, so they can take advantage of future price drops.

Missouri is considering ways of keeping winter gas rates down somewhat by allowing gas rates to not fall as steeply in the summer, Zobrist said.

Despite the problems, regulators are not likely to develop radical policy changes because they reflect the times in which they serve, observers say. In the '70s, consumers were angry. But even with the anger today, deregulation is here to stay. Regulators will be less inclined to micromanage the utilities.

Ultimately, say experts, the regulators, corporations and consumers must prepare for a new world of competitive utility services.

"We're headed into an era that's new for everybody. It needs flexibility on everybody's part," said Richard Pettway, finance professor at the University of Missouri-Columbia.

Teasdale believes that regulators may be underestimating the public's appetite for continued strong utility regulation. Consumer anger with rising utility bills helped elect "Walkin' Joe" governor in 1976.

"If I were governor, I would be embarrassed that the (utility) commission is acting so gingerly," he said. "For some reason, the PSC never has had the guts to stand up to the utilities. They never had."