

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

In the Matter of the Application of)
Great Plains Energy Incorporated for)
Approval of its Merger with)
Westar Energy, Inc.)

Case No. EM-2018-0012

STAFF’S REPLY BRIEF

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

Introduction:

In its *Initial Brief*, Staff recommended that the Commission grant the *Joint Application* of Great Plains Energy Incorporated (“GPE”) and Westar Energy, Inc., together with GPE’s subsidiaries, Kansas City Power & Light Company (“KCPL”) and KCP&L Greater Missouri Operations Company (“GMO”), for authority for GPE to merge with Westar, conditioned on the two *Stipulations and Agreements* joined by most of the parties and filed in the case. Staff further recommended that the Commission also grant the variance requested by the Joint Applicants from the Commission’s affiliate transaction rule for electric utilities, also subject to the conditions set out in the two *Stipulations and Agreements* referred to above. Staff made these recommendations because it has determined that, with the requested conditions, the transaction is not detrimental to the public interest and should therefore be approved.¹

Argument:

In its *Initial Brief*, Staff described the history of the transaction, its details, and the conditions included in the two *Stipulations and Agreements*. Staff also described in

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

summary fashion the benefits expected to result from the merger. What Staff did not do in its *Initial Brief* was spend any time addressing the objections raised by the parties that oppose the merger.

Who Opposes the Merger Among the Parties?

Actually, no one opposes the merger. Two parties seek additional conditions.

As already stated, the Joint Applicants are GPE, its regulated operating subsidiaries, KCPL and GMO, and Westar. Their shared interest is to successfully consummate the proposed merger in order to realize various economic and organizational benefits.

Who are the other parties to this case and what are their interests?

There are the two statutory parties, the Commission Staff and the Office of the Public Counsel (“OPC”), so-called because, by statute or by rule, they are part of every Commission case.² The Staff’s mission is to “support the Commission in meeting its statutory responsibilities by providing technical expertise in safety; utility rates, tariffs, rules and regulations; economic analysis; engineering oversight and investigations; and construction inspections.”³ To that end, “the Commission Staff Division serves as a neutral, independent party in all cases before the Commission, presenting Staff’s recommended resolution as well as viable alternatives with supporting analyses and documentation, as applicable.”⁴ Staff’s interest is providing a recommendation to the

² Rule 4 CSR 240-2.010(10) provides in part, “Commission staff and the public counsel are also parties unless they file a notice of their intention not to participate within the period of time established for interventions by commission rule or order.” Section 386.710(2), RSMo., provides that the Public Counsel “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.” Section 386.710(3), RSMo., provides in pertinent part that the Public Counsel “shall have discretion to represent or refrain from representing the public in any proceeding.”

³ *Annual Report of the Missouri Public Service Commission, 2017*, p. 12.

⁴ “Commission Staff Mission” at <https://my.psc.mo.gov/CommissionStaff>; retrieved April 9, 2018.

Commission, supported by expert commentary, particularly with respect to the conditions necessary to protect the public interest.

OPC is an independent state agency within the Missouri Department of Economic Development; its mission is “to represent the public and the interests of utility customers in proceedings before the Missouri Public Service Commission (PSC) and in investor-owned electric, natural gas, telephone, water, sewer and steam heat utilities, including safety issues, adequate and quality service, complaints and disputes, connections and disconnections, and billing and collection practices.”⁵ OPC’s interest is to protect utility customers from any adverse consequences of the merger; OPC, therefore, has also been active in seeking protective conditions.

There is a private, not-for-profit consumer advocacy group, Consumers Council of Missouri, Inc. (“CCM”). CCM is a Missouri nonprofit corporation; its registered agent is Cara Spencer, 3407 South Jefferson, St. Louis, Missouri 63118.⁶ Its website states that CCM’s goal is “to educate consumers statewide and advocate for their collective interests through leadership and partnerships on issues such as utility rates, health care access, personal finance and others as they arise.”⁷ Like OPC, CCM’s interest is to protect utility customers from any adverse consequences of the merger. To that end, CCM has participated in the negotiations concerning protective conditions.

There are four governmental parties. First, the Division of Energy of the Missouri Department of Economic Development (“MoDOE”), which “assists, educates, and encourages Missourians to advance the efficient use of diverse energy resources to

⁵ <https://opc.mo.gov/who-we-are.html>; retrieved April 9, 2018.

⁶ Business entity search at the website of the Missouri Secretary of State, <https://bsd.sos.mo.gov>; retrieved April 9, 2018.

⁷ <https://moconsumers.org/about-com/our-history/>; retrieved April 9, 2018.

drive economic growth, provide for a healthier environment, and achieve greater energy security for future generations.”⁸ In its *Motion to Intervene*, MoDOE stated, “DE’s interests are different than those of the general public, as illustrated by its statutory authority to plan for future energy needs and energy resource development; develop, promote, administer and monitor energy conservation programs; consult and cooperate with all state and federal governmental agencies on matters of energy research and development, management, conservation and distribution; and analyze the potential for increased use of energy alternatives and make recommendations for the expanded use of such alternate energy sources and technologies DE’s intervention, moreover, will serve a public interest, as DE will evaluate the filings from a formal state policy and planning perspective consistent with its interests in clean, affordable, abundant energy, and its efficient use.”⁹ Given MoDOE’s fundamental commitment to encouraging economic growth, MoDOE can be expected to support the merger and to seek conditions implementing its concerns with “clean, affordable, abundant energy, and its efficient use.”

Second, the Federal Executive Agencies (“FEA”), which “consists of certain agencies of the United States Government which have offices, facilities, and/or installations in the service area of KCP&L Greater Missouri Operations Company (GMO), and which offices, facilities, and/or installations purchase utility service from

⁸ <https://ded.mo.gov>; retrieved April 9, 2018.

⁹ *In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.*, Case No. EM-2018-0012 (*Motion to Intervene*, filed September 8, 2017), p. 2.

GMO.”¹⁰ As customers of the Joint Applicants, the FEA’s interest is to ensure continued service at reasonable prices.

Third, the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”), described as “a joint action agency specifically authorized by state law to obtain sufficient and economical electrical power and energy for the benefit of member municipalities and their residents.”¹¹ MJMEUC purchases both energy and transmission services from the Joint Applicants. Like the FEA, MJMEUC’s interest is to ensure continued services at reasonable prices.

Fourth, the City of Independence, Missouri, which operates “a municipal electric utility, Independence Power and Light (“IPL”), established in 1901 to provide the residents and businesses of Independence, Missouri, with safe, reliable, and affordable electric service.”¹² Serving over 55,000 customers with generating units, substations, and more than 650 miles of electric distribution and transmission lines, IPL nonetheless acquires much of the power and energy needed to meet its customers’ demand from resources and suppliers that are outside of the City and is thus dependent on transmission facilities owned and operated by the Joint Applicants.¹³ Like the FEA and MJMEUC, Independence’s interest is to ensure continued services at reasonable prices.

¹⁰ *In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.*, Case No. EM-2018-0012 (*The Federal Executive Agencies Petition to Intervene*, filed October 11, 2017), p. 1.

¹¹ <http://mpua.site-ym.com>; retrieved April 9, 2018.

¹² *In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.*, Case No. EM-2018-0012 (*Application to Intervene by the City of Independence, Missouri*, filed September 27, 2017), pp. 1-2.

¹³ *Id.*

One party is a coalition of Kansas rural electric cooperatives. Kansas Electric Power Co-operative (“KEPCo”) is “a non-profit generation and transmission cooperative with its principal place of business in Topeka, Kansas,”¹⁴ with “19 rural electric cooperative member systems which together distribute electric power to more than 300,000 rural Kansans.”¹⁵ KEPCo is “responsible for supplying the full power and energy requirements at the designated delivery points of its members”¹⁶ and “KEPCo’s financial well-being is inextricably tied to that of Westar and to that of GPE’s subsidiary, Kansas City Power & Light Company (“KCP&L”).”¹⁷ In particular, KEPCo is a joint owner with one or more of the Joint Applicants of various facilities, takes power from Westar under a long-term partial requirements contract, and depends upon transmission services purchased from various of the Joint Applicants.¹⁸ Like the FEA, MJMEUC, and the City of Independence, KEPCo’s interest is to ensure continued services at reasonable prices. To that end, “KEPCo has presented substantial evidence in the KCC proceeding regarding the need for robust ring-fencing conditions and a comprehensive, rigorous and transparent integrated resource plan, including market-tested pricing observed from competitive request for proposal processes.”¹⁹

¹⁴ ***In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.***, Case No. EM-2018-0012 (***Motion to Intervene of Kansas Electric Power Cooperative, Inc.***, filed September 25, 2017), pp. 3-4.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ ***In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.***, Case No. EM-2018-0012 (***Initial Brief of Kansas Electric Power Cooperative, Inc.***, filed March 30, 2018), p. 2.

KEPCo recommends that the Commission approve the merger, but impose additional conditions.²⁰

There are two associations of large industrial and commercial customers, the Missouri Energy Consumers Group (“MECG”) and the Missouri Industrial Energy Consumers (“MIEC”). MECG is “an incorporated association representing the interests of large commercial and industrial users of electricity, [including] numerous customers of KCPL and KCP&L GMO.”²¹ According to its website, MECG “represents the interests of large commercial and industrial customers before the Missouri Public Service Commission and in the Missouri General Assembly. MECG represents approximately 40 large companies employing over 70,000 employees and using approximately 3.5 billion kWh's at an annual total cost of over \$300,000,000. MECG is active in electric matters involving Ameren, KCPL, KCP&L Greater Missouri Operations Company and Empire District Electric Company. Furthermore, MECG represents customer interests in gas cases involving Laclede, Missouri Gas Energy, and Empire District Gas Company. Moreover, MECG is active in water cases involving Missouri American Water Company. Finally, MECG has been instrumental in opposing harmful utility legislation in the General Assembly the last several years.”²² MECG’s interest is to ensure continued services at reasonable prices for its members. In the 2nd *Stipulation and Agreement*, MECG withdrew its objection to the merger.²³

²⁰ *Id.*, p. 4.

²¹ ***In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.***, Case No. EM-2018-0012 (***Application to Intervene of Midwest Energy Consumers Group***, filed September 7, 2017), p. 1.

²² <https://midwestecg.com/about-us>; retrieved April 9, 2018.

²³ ***In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.***, Case No. EM-2018-0012 (***Stipulation and Agreement***, filed March 8, 2018), ¶ 14.

In its *Initial Brief*, MCEG recommended that the Commission approve the merger, “subject to the conditions set forth in the testimony of the Joint Applicants, as well as those agreed to in the January 12, 2018 and March 8, 2018 Stipulation and Agreements[.]”²⁴

MIEC “is a Missouri nonprofit corporation that represents the interests of industrial customers in matters involving utility issues. Those interests include the interests of large industrial customers of the subsidiary utilities of Great Plains Energy Incorporated (“GPE”).”²⁵ Like MCEG, MIEC’s interest is to ensure continued services at reasonable prices for its members. MIEC did not join either of the *Stipulations and Agreements*, prefile testimony, participate in the hearing, or file a brief.

There are a number of parties with environmental and “green” power agendas, including Brightergy, LLC, the Natural Resources Defense Council (“NRDC”), the Sierra Club, and Renew Missouri.

Brightergy “is a limited liability company organized under the laws of the State of Missouri with its principal place of business at 1712 Main Street, 7th Floor, Kansas City, MO, 64108.”²⁶ It is self-described as “a major provider of a variety of energy products and services in the Company’s service territory.”²⁷ *Solar Power World* reports that “[w]ith more than 1,500 completed commercial solar projects, Brightergy is

²⁴ *In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.*, Case No. EM-2018-0012 (*Initial Brief of MCEG*, filed March 30, 2018), p. 1.

²⁵ *In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.*, Case No. EM-2018-0012 (*Application to Intervene of The Missouri Industrial Energy Consumers*, filed September 14, 2017), p. 1.

²⁶ *In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.*, Case No. EM-2018-0012 (*Application for Intervention of Brightergy, LLC*, filed September 8, 2017), p. 1.

²⁷ *Id.*

one of the most experienced commercial solar companies in the United States.”²⁸ Brightergy joined in both of the *Stipulations and Agreements* filed in this case, but did not file a brief.

The NRDC “was founded in 1970 by a group of law students and attorneys at the forefront of the environmental movement.”²⁹ NRDC’s interest is “promoting energy efficiency, peak demand reduction and renewable energy resources to meet Missouri’s energy needs and to do so more cost-effectively than conventional fossil-fuel and nuclear generation.”³⁰ NRDC did not join in either of the *Stipulations and Agreements*, prefile testimony, participate in the hearing, or file a brief.

The Sierra Club “is a nonprofit organization organized and existing under the nonprofit corporation laws of the state of California” with “more than 800,000 members nationally and over 12,000 members in Missouri, many of whom are KCP&L and GMO ratepayers.”³¹ Sierra Club asserts that its “members have a strong interest in having their electricity provided in a dependable and environmentally responsible manner, and at costs that are competitive over the long term,” which “interests are implicated by the merger.”³² Like NRDC, the Sierra Club did not join in either of the *Stipulations and Agreements*, prefile testimony, participate in the hearing, or file a brief.

²⁸ <https://www.solarpowerworldonline.com/2017/03/solect-energy-acquires-northeast-division-of-brightergy>; retrieved April 9, 2018.

²⁹ <https://www.nrdc.org/about>; retrieved April 10, 2018.

³⁰ ***In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.***, Case No. EM-2018-0012 (***Application to Intervene of NRDC***, filed September 27, 2017), p. 1.

³¹ ***In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.***, Case No. EM-2018-0012 (***Application to Intervene of Sierra Club***, filed September 27, 2017), p. 1.

³² *Id.*

Renew Missouri is the fictitious name of Renew Missouri Advocates, a Missouri non-profit corporation with its principal place of business in Columbia, Missouri.³³ Renew Missouri states that it is “a non-profit policy group whose mission is to transform Missouri into a leading state in renewable energy and energy efficiency.”³⁴ In its *Initial Brief*, Renew Missouri appears to argue that the Commission should approve the transaction, but impose additional conditions that are described in the testimony of its witness, Karl Rabago.³⁵

The answer to the question posed at the beginning of this section – Who opposes the merger among the Parties? – is simply, “no one.” None of the Parties opposes the merger.³⁶ However, all of the parties that have been heard from recommend that the Commission impose protective conditions on the merger. Two parties seek additional conditions.

What Conditions Should the Commission Impose on the Merger?

Most of the Parties are in agreement that the conditions set out in the *1st Stipulation and Agreement* and the *2nd Stipulation and Agreement* should be imposed on the transaction by the Commission. Staff enumerated these conditions in its *Initial Brief* and will not do so again here. Two parties, KEPCo and Renew Missouri, seek additional conditions.

³³ ***In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.***, Case No. EM-2018-0012 (***Application to Intervene of Renew Missouri***, filed September 7, 2017), p. 1.

³⁴ *Id.*

³⁵ ***In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.***, Case No. EM-2018-0012 (***Renew Missouri's Post-Hearing Brief***, filed March 30, 2018), pp. 11-17.; Ex. 450, Rebuttal Testimony of Karl R. Rabago.

³⁶ Three parties – MIEC, NRDC and Sierra Club – evidently lost interest along the way and have not been heard from, pro or con. Evidently, they are content to see the merger consummated, subject to the conditions set out in the two *Stipulations and Agreements*.

KEPCo is a Kansas entity and its main participation has been in the parallel Kansas proceeding. Consequently, while KEPCo has stated that “[t]he Commission should condition its approval of the merger on measures that better protect customers from future adverse impacts of the merger,” including “additional ring-fencing measures and alterations to the commitments in Exhibit A to the Initial S&A,” nonetheless, KEPCo did not bother to list the additional conditions it seeks in its brief.³⁷

The only additional condition that KEPCo actually articulated is “a requirement that Joint Applicants cannot retire any generating capacity without first obtaining approval from the Commission,” based upon “a comprehensive, rigorous and transparent integrated resource plan, including market-tested pricing observed from competitive request for proposal processes.”³⁸ Why? Because:

- The Joint Applicants have yet to file a full integrated resource plan that includes Westar, and will not do so until 2019.³⁹
- The Joint Applicants did not consider all of the options for meeting their capacity needs, but rather studied only a handful of plants for retirement.⁴⁰
- The Joint Applicants’ plans for replacing the retired capacity are unclear and could result in increased costs for customers.⁴¹
- The lack of a transparent competitive bidding process adds to the uncertainty.⁴²

³⁷ *In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.*, Case No. EM-2018-0012 (*Initial Brief of Kansas Electric Power Cooperative, Inc.*, filed March 30, 2018), p. 4.

³⁸ *Id.*, at pp. 4-5.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

Staff does not consider this proposed additional condition to be necessary to protect the public interest. Further, the Commission has a robust integrated resource planning process to more fully analyze capacity needs and utilities do not need Commission authority to retire generating facilities.

KEPCO also questioned why certain conditions originally proposed by the Joint Applicants were dropped from the *Stipulations and Agreements*.⁴³ The answer is that they were deemed no longer necessary given the very different nature of the revised transaction as compared to the original transaction, in particular, no acquisition debt, no acquisition premium, no exchange of cash.⁴⁴

Renew Missouri, by contrast, has described the several additional conditions it seeks:⁴⁵

- A firm date-certain commitment to close the Westar coal- and gas-fired power plants slated for early retirement, and an additional commitment to review the Applicants' existing generation fleet for more retirement opportunities.⁴⁶
- A firm date-certain commitment to construct additional renewable energy generation.⁴⁷

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See *In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.*, Case No. EM-2018-0012 (*Staff's Initial Brief*, filed March 30, 2018), pp. 7-18.

⁴⁵ *In the Matter of Great Plains Energy Incorporated for Approval of its Merger with Westar Energy, Inc.*, Case No. EM-2018-0012 (*Renew Missouri's Post-Hearing Brief*, filed March 30, 2018), pp. 11-17.

⁴⁶ *Id.*, p. 11.

⁴⁷ *Id.*

- A commitment to initiate a comprehensive, transparent, parallel integrated resource planning process for the combined companies, in both Missouri and Kansas, and to make provisions for stakeholders to submit a reasonable number of alternative development scenarios for evaluation in the planning effort. A comprehensive integrated resource planning process could demonstrate that increased deployment of renewable energy generation, beyond the Applicants' current commitments, could further support the early retirement of coal- and gas-fired generators and its associated avoided costs.⁴⁸
- A commitment to expand energy efficiency program efforts and customer energy efficiency education, and to develop a plan to cost-effectively achieve efficiency improvement across the combined service territories.⁴⁹
- A commitment to offer green power programs to customers in all classes.⁵⁰
- A commitment to develop pilot projects for shared or community generation projects.⁵¹
- A commitment to develop and implement a demonstration program for grid connected energy storage.⁵²
- A commitment to develop and seek regulatory approvals for implementation of a grid modernization plan, and to provide funding for a Value of Solar study to be managed by the Commission staff.⁵³

⁴⁸ *Id.*, p. 12.

⁴⁹ *Id.*, p. 14.

⁵⁰ *Id.*

⁵¹ *Id.*, p. 15.

⁵² *Id.*

- A commitment to refrain from implementing any new tariffs or rate designs adversely impacting development and adoption of distributed energy resources, including distributed generation for the next 5 years following approval of the Application.⁵⁴

The signatories to the two *Stipulations and Agreements* did not adopt the additional conditions urged by Renew Missouri because they frankly are designed to further the interests of Renew Missouri rather than the public interest. Renew Missouri's proposed additional conditions, taken as a group, would mean significantly increased spending on renewables in furtherance of its admitted goal "to transform Missouri into a leading state in renewable energy and energy efficiency."⁵⁵ While Staff agrees that the public interest is served by the development of renewable energy, the entity resulting from the merger has demonstrated that it is, and Staff has no reason to believe it will not continue to be, a leader in that arena.⁵⁶ Staff does not agree that the public interest requires that Missouri become "a leading state in renewable energy and energy efficiency." Therefore, Staff recommends that the Commission not adopt the additional conditions proposed by Renew Missouri.

Chairman Hall's Questions:

Chairman Hall asked the parties to respond to two questions related to the affiliate transaction variance. First, whether it would be appropriate to limit the variance to transactions between affiliates that provide retail electricity service regulated by the

⁵³ *Id.*, p. 16.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Tr. 3:283, line 14, through p. 285, line 12.

Missouri Public Service Commission or the Kansas Corporation Commission? Second, whether it would be appropriate to indicate that “this waiver does not in any way limit any party from asserting that a particular transaction is imprudent or limit the Commission’s capacity to make such a finding?”

1. Should the Variance be Limited to Transactions Between Affiliates that Provide Retail Electricity Service Regulated by the Missouri Public Service Commission or the Kansas Corporation Commission?

No, the variance should not be so limited because it would then exclude transactions between the regulated operating companies and an affiliated service corporation. GPE does not presently have a service corporation, but such a structure is common and the post-merger entity, “HoldCo,” may well adopt such an organization.

2. Would it be appropriate to indicate that “this waiver does not in any way limit any party from asserting that a particular transaction is imprudent or limit the Commission’s capacity to make such a finding”?

Yes, such an indication would be appropriate because the public interest is best served by contested case ratemaking in which stakeholders are able to vigorously challenge the transactions for which the regulated entity seeks rate recovery.

Conclusion:

In its *Initial Brief*, Staff advised the Commission to approve the proposed merger subject to the conditions set out in the two *Stipulations and Agreements*, because, not only are there no likely detriments to the public interest, but considerable and significant affirmative benefits. Nothing in the initial briefs filed by the other Parties causes Staff to revise that recommendation.

Staff therefore recommends that the Commission grant the *Joint Application of GPE and Westar* for authority to merge, conditioned on the *1st Stipulation and Agreement* and the *2nd Stipulation and Agreement*. Staff further urges the Commission to approve those stipulations and to grant the variance requested by the Joint Applicants from the Commission's affiliate transaction rule for electric utilities, also subject to those conditions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 13th day of April, 2018, on the parties and their representatives as identified on the Service List maintained for this docket by the Commission's Data Center.

/s/ Kevin A. Thompson