

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: John Wine, Chair
 Cynthia L. Claus
 Brian J. Moline

In the Matter of the Application of Western)
Resources, Inc., and Kansas City Power & Light)
Company for Approval of the Merger of Kansas)
City Power & Light Company with Western)
Resources, Inc. and for Other Related Relief.)

Docket No. 97-WSRE-676-MER

ORDER ON MERGER APPLICATION

I. BACKGROUND

1. On May 30, 1997, Western Resources, Inc. (WRI) and Kansas City Power & Light Company (KCPL) filed an application seeking approval of their merger. On June 17, 1998, WRI, Kansas Gas and Electric Company (KGE), NKC, Inc. and KCPL filed a First Amended Joint Application for approval of a merger of WRI's utility business (Kansas Power and Light Company or KPL), KGE, and KCPL. The resulting new electric utility would be called Westar and would be a subsidiary of WRI. This June 17, 1998 Amended Joint Application is the subject of this Order.

2. Notice of public hearings on the Amended Joint Application was required by Order Nos. 17 and 18, and was given as stated in the Joint Applicants' Affidavit of Publication filed on January 12, 1999. Pursuant to this notice, public hearings were held in Wichita, Kansas, on January 4, 1999; in Olathe, Kansas, on January 11, 1999; and in Topeka, Kansas, on January 19, 1999.

3. Notice of the technical evidentiary hearing on the Amended Joint Application was given on January 29, 1999, in Order No. 24.

4. The evidentiary hearing was held from May 3, 1999, through May 20, 1999. Martin J. Bregman, Michael Lennen and John D. Peterson appeared on behalf of WRI, KGE and NKC, Inc. William Riggins, Deborah R. Swank and Gerald A. Reynolds appeared on behalf of KCPL. These companies are collectively referred to as the Joint Applicants. Other appearances were as follows: Glenda Cafer, Glen W. Froelich, Otto Newton, Anne Bos, Scott Hempling and Ann Hoover on behalf of the Commission Staff; Walker Hendrix and Allen Brady Cantrell on behalf of the Citizens' Utility Ratepayer Board (CURB); Harold L. Haun and William T. Miller on behalf of Kansas Electric Power Cooperative, Inc. (KEPCo); John Coyle and Jon R. Stickman on behalf of the Board of Public Utilities of Kansas City, Kansas (KC-BPU); James P. Zakoura on behalf of Kansas Industrial Consumers (KIC); C. Edward Petersen on behalf of Midwest Utility Users Association, the Cities of Lenexa, Overland Park, Westwood, Mission Hills, Roeland Park, Leawood, Mission, Fairway, Prairie Village, and the Chamber of Commerce of Lenexa, Kansas (collectively referred to as Midwest Utility Users); Gregg D. Ottinger on behalf of the City of Wichita (Wichita); and John C. Frieden and Kevin Fowler on behalf of the City of Topeka (Topeka). The following parties intervened in this proceeding, but did not appear at the hearing: Distribution Electric Cooperatives; International Brotherhood of Electric Workers, AFL-CIO, Local No. 304 (IBEW); Aquila Power Corporation and UtiliCorp United, Inc.

5. On May 6, 1999, a document entitled Joint Recommendations, Stipulations, and Agreement (Joint Recommendation) was filed by the Joint Applicants, Staff, Topeka, and IBEW. The Joint Recommendation contained a settlement of various issues in this docket by the signatories and was submitted to the Commission for consideration. Evidence in support of and against the Joint Recommendation was presented during the hearing.

II. JURISDICTION

6. WRI, KPL, KGE and KCPL are electric public utilities under K.S.A. 66-101a and K.S.A. 1998 Supp. 66-104. The Amended Joint Application was filed for Commission approval pursuant to K.S.A. 66-101, *et seq.*, 66-1,170, *et seq.*, and 66-1,200, *et seq.* The Commission finds that it has jurisdiction over the Joint Applicants and over the subject matter of this docket.

III. PRELIMINARY MATTERS

7. On May 3, 1999, the Commission granted from the bench the motion to intervene of the Lenexa, Kansas, Chamber of Commerce. The Chamber of Commerce indicated that it is represented by the same counsel who represents Midwest Utility Users and agreed to present its positions in this case through Midwest Utility Users.

8. During the hearing, the Commission took administrative notice, pursuant to K.A.R. 82-1-230(i), of the following Commission files and records:

- a. WRI Power Supply Plan filed in the Gordon Evans Facility siting docket, Docket No. 99-WSRE-381-EGF. (Vol. 1, 198-203.)
- b. Transcripts in Docket Nos. 193,306-U and 193,307-U (1996 KGE and WRI rate settlement case.) (Vol. 2, 297.)
- c. November 15, 1991 Order in Docket Nos. 172,745-U and 174,155-U (Order approving merger between KPL and KGE.) (Vol. 3,723.)
- d. March 30, 1999 and April 30, 1999 Orders in Docket No. 99-WSRE-381-EGF (Orders granting Gordon Evans siting permit application.) (Vol. 8, 1636-38.)

IV. MARKET POWER

9. Many of the issues raised by the parties are not objections to the merger, but express concern over the structure, operation and rates of Westar, and propose conditions to be imposed on Westar in connection with the merger. However, several parties have argued that market power considerations are sufficient to deny the merger application. These parties rely on the 1992 U.S.

Department of Justice -Federal Trade Commission Horizontal Merger Guidelines. Because market power is the only basis presented to deny the merger, it will be addressed first. In this context, market power is defined as “the ability profitably to maintain prices above competitive levels for a significant period of time.” (1992 DOJ-FTC Merger Guidelines, 3.)

10. Any discussion about market power must begin with the observation that the generation and transmission of electricity for retail consumption in Kansas is governed by the Retail Electric Suppliers Act, K.S.A. 66-1,170, *et seq.* This statute divides the state into exclusive territories for the provision of retail electric service. Because the delivery of retail electric service is currently a legislatively mandated monopoly, meaningful market power concerns materialize only if and when K.S.A. 66-1,170, *et seq.* is repealed and retail competition is implemented.

11. In Order Nos. 6 and 8, the Commission requested market power analyses from the parties. Although market power will not become an issue for entities regulated by the Commission until the implementation of retail competition, there are indications that retail competition in the electric industry will emerge in some form in the future and that the structure of Westar could have a significant effect on the retail market. For that reason, the Commission decided that it would be appropriate to consider potential market power issues in connection with this merger.

12. On the basis of the testimony of KC-BPU witness Wilson, KEPCo witness Taylor, CURB witness Ruback, KIC witness Chalfant, and Staff witnesses Clifford and Cita, the Commission is persuaded that there may be legitimate market power concerns relating to Westar if and when retail competition occurs. [Vol. 6, 1289-1306, 1347-51; Vol. 17, 4559-66, 4622-33 (Cita direct testimony, 5-12, 68-79); Vol. 18, 5254-55 (Ruback direct testimony regarding market power, 9-10); Vol. 19, 5440-5529 (Taylor direct testimony, 7-96); Vol. 19, 5763-5772, 5816 (Wilson direct testimony, 1-10, 54); Vol. 20, 5901-5904, 5910-13 (Chalfant direct testimony, 4-7, 13-16).]

However, the Commission further finds that market power considerations are regional or national in scope, rather than being exclusively local or statewide matters. [Vol. 15, 3704 (Spann supplemental testimony, 3); Vol. 15, 3815-16 (Spann rebuttal testimony, 5-6); Vol. 17, 4560-65 (Cita direct testimony, 6-11).] A number of the market power issues raised by the parties are more properly under the jurisdiction of the Federal Energy Regulatory Commission (FERC) or cannot be appropriately addressed within the limited context of this proceeding. The resolution of other issues depends upon the details of industry restructuring, and it is premature to resolve these issues or condition this merger when it is not known what terms, requirements or protections might be adopted in connection with restructuring.

13. Staff and several parties argue that establishing a properly designed and managed Regional Transmission Organization (RTO) would address some of the market power concerns. [Vol. 17, 4564 (Cita direct testimony, 11); Vol. 18, 5281-82 (Ruback direct testimony, 36-37); Vol. 19, 5581 (Taylor direct testimony, 148); Vol. 20, 5913 (Chalfant direct testimony, 10).] The Joint Applicants also support some form of RTO. [Vol. 12, 2754; Vol. 15, 3631-34 (Dixon direct testimony, 29-32).]

14. CURB, KIC and Staff indicate that an RTO must have independent control over the transmission system, with the ability to independently coordinate and dispatch both generation and transmission assets over a sufficiently large regional market area. [Vol. 17, 4564 (Cita direct testimony, 11); Vol. 18, 5281-82 (Ruback direct testimony, 36-37); Vol. 20, 5913 (Chalfant direct testimony, 10).] Staff testifies that the regional area would need to be at least as large as the total area encompassed by the electric utilities directly connected to the Joint Applicants (the Tier I utilities) and those non-Tier I utilities that are also members of the Southwest Power Pool. Staff emphasizes that it is the size of the control or market area and the amount of generation capacity

included that is crucial, and not the exact physical location or composition of the RTO. [Vol. 17, 4561, 4565, 4580 (Cita direct testimony, 7, 11, 26).] Several parties have also stated that the RTO would need to administer a single, efficiently designed transmission tariff. [Vol. 19, 5581 (Taylor direct testimony, 148); KC-BPU Post Hearing Brief, 11, 66.] However, no RTO with these characteristics exists at this time. (Vol. 6, 1237-38; 1335; Vol. 9, 1909.) Without the RTO structure, the market area may be more confined, giving rise to the potential of market power abuse notwithstanding the open access practices and standards of FERC. The Commission agrees that an RTO with the features referred to above is desirable and necessary for the industry as it restructures and moves toward the realization of retail competition. An RTO with these features should help ensure that market power will not be a structural problem once a deregulated retail energy market is established. The Commission expects that Westar will participate in the formation and implementation of such an RTO and will join such an RTO, but will not make this a specific condition of the merger since forming an RTO will require a regional effort. The Commission takes this opportunity to emphasize its commitment to actively support and advocate the formation of an effective RTO in appropriate forums.

15. One of the mitigation measures proposed by KEPCo is that the Joint Applicants or their successors in interest may not sell, lease or transfer any interest in the Wolf Creek Generating Station or the Wolf Creek Nuclear Operating Corporation to a third party or an affiliate without providing KEPCo with reasonable notice and an opportunity to participate in the transaction on equivalent terms. [Vol. 19, 5500-01, 5584 (Taylor direct testimony, 67-68, 151).] KCPL witness Jennings stated that KCPL had no objection to including KEPCo in any negotiations involving sale or transfer of its interest in Wolf Creek. (Vol. 3, 611-12.) The Commission will order this as a condition of the merger.

16. The Commission concludes that market power considerations, while serious and legitimate, do not warrant denial of the merger. The Commission will now discuss specific details and conditions relating to the merger.

V. MERGER STANDARDS

17. The November 15, 1991 Order approving the merger between KPL and KGE (Docket Nos. 172,745-U and 174,155-U) stated that mergers should be approved where the applicant can demonstrate that the merger “will promote the public interest.” (p. 35.) The Order set forth a number of factors to be weighed and considered in determining whether this standard is met:

- (a) The effect of the transaction on consumers, including:
 - (i) the effect of the proposed transaction on the financial condition of the newly created entity as compared to the financial condition of the stand-alone entities if the transaction did not occur;
 - (ii) reasonableness of the purchase price, including whether the purchase price was reasonable in light of the savings that can be demonstrated from the merger and whether the purchase price is within a reasonable range;
 - (iii) whether ratepayer benefits resulting from the transaction can be quantified;
 - (iv) whether there are operational synergies that justify payment of a premium in excess of book value;
 - (v) the effect of the proposed transaction on the existing competition.
- (b) The effect of the transaction on the environment.
- (c) Whether the proposed transaction will be beneficial on an overall basis to state and local economies and to communities in the area served by the resulting public utility operations in the state.
- (d) Whether the proposed transaction will preserve the jurisdiction of the KCC and the capacity of the KCC to effectively regulate and audit public utility operations in the state.
- (e) The effect of the transaction on affected public utility shareholders.

- (f) Whether the transaction maximizes the use of Kansas energy resources.
- (g) Whether the transaction will reduce the possibility of economic waste.
- (h) What impact, if any, the transaction has on the public safety. (pp. 35-36.)

18. The Commission reaffirms that the information in these standards should be addressed by parties in merger cases. These factors are the beginning criteria to be used when evaluating a merger application, and are to be supplemented by any other considerations that are relevant given the circumstances existing at the time of the merger proposal. In essence, the question is whether the public interest is served by approving the merger as determined by the specific facts and circumstances of each case. The Joint Applicants bear the burden of proof in this case, and must demonstrate through the evidence in the record a sufficient basis upon which to approve the merger.

19. Staff requested that merger factor (c) be revised to read “whether the proposed transaction will likely create labor dislocations that may be particularly harmful to local communities, or the state generally, and whether measures can be taken to mitigate the harm.” [Vol. 17, 4633-4638 (Cita direct testimony, 79-84).] The Commission will not replace factor(c), but will adopt Staff’s suggested language as an additional area to be specifically addressed under factor (c).

20. The Commission has considered and reviewed the above factors and the other evidence presented. In considering the public interest, it has been of primary importance to the Commission that the merger appears to result in increased efficiencies for the merged company, a substantial level of savings that can benefit both shareholders and ratepayers, enhancement of the reliability of electric service in the area, and a stronger, financially secure public utility. The Commission finds that the public interest standard can be met and the merger application approved if conditions are required. The Commission concludes that the merger should be approved, subject to certain reasonable conditions.

VI. JOINT RECOMMENDATION

21. In summary, the Joint Recommendation proposes that Westar be allowed to include \$300 million of the acquisition premium associated with the merger in Kansas jurisdictional rate base, a four year rate moratorium, the creation of a regulatory asset for the deferred return on certain investments in new facilities, rebates over three years totaling \$45 million, no additional recovery or stranded investment recovery of the acquisition premium beyond the \$300 million, the use of all Kansas jurisdictional merger savings to reduce Westar's revenue requirements at the end of the moratorium, the location of corporate and field offices, the manner of allocation for KCPL's interest in the Wolf Creek Nuclear Generating Station in future Westar rate proceedings, and an agreement for certain filings to be made if an issue arises over possible federal preemption of Commission authority over Westar and its affiliates. The Joint Recommendation emphasizes that the various components of the agreement are interdependent and the proposal is to be considered as a whole.

22. The Commission has carefully considered the terms of the Joint Recommendation. While the proposal is a good faith and earnest attempt, the Commission does not find it to be an acceptable resolution of the issues in this proceeding. The Joint Recommendation proposes recovery of part of the acquisition premium in rate base. Rate base treatment requires a return on as well as a return of rate based investment, and the Commission believes that this would subject Kansas ratepayers to an undue burden of the costs of the merger. The Commission therefore declines to accept the suggested settlement and does not adopt the Joint Recommendation.

23. All parties to the Joint Recommendation reserved their rights to maintain their original positions in the event that the Joint Recommendation was not accepted in its entirety. The Commission will consider the original testimony and arguments of the parties when deciding the issues relating to the merger application.

VII. MERGER SAVINGS

24. The Joint Applicants have emphasized that savings will result from the merger, and that these savings will benefit ratepayers. [Vol. 16, 3948, 3953 (Flaherty direct testimony, 35, 40).] Other parties have either accepted the Joint Applicants' savings projections or have acknowledged that there will be significant merger savings. [Vol. 8, 1762; Vol. 18, 5321 (Crane direct testimony, 15); Vol. 17, 4779-82 (Proctor direct testimony, 57-60); Vol. 20, 6053-56 (Corrigan direct testimony, 15-18); Vol. 20, 6081-82 (Wagnon direct testimony, 6-7).] Although the evidence is conflicting as to the precise amount, the Commission agrees that there will be substantial savings related to the merger, and finds that it is reasonable and appropriate for these savings to be shared between the ratepayers and the shareholders.

25. A contentious and vexing issue in this proceeding has been the acquisition premium (AP). The AP is the amount of the payment to KCPL shareholders that exceeds KCPL's book value. [Vol. 17, 4786-88 (Proctor direct testimony, 64-66).] In prefiled testimony, the Joint Applicants had implicitly allowed for recovery of the AP through their regulatory plan. The Commission will permit the Joint Applicants the opportunity to recover a portion of the AP through retention of some of the savings that can be directly tied to the merger, as further discussed in Paragraphs 29 through 32. The AP shall not be granted inclusion in the cost of service for Westar or any of its successors subsequent to the rate moratorium set forth in this Order, except to the extent described in Paragraph 34 of this Order. Specifically, the AP shall not be included in rate base for Westar or any of its successors in any ratemaking or stranded cost proceeding. WRI voluntarily agreed to pay an AP to the shareholders of KCPL. The Commission agrees with KIC witness Phillips that stranded cost recovery cannot be justified when more than the book value is paid for an asset. (Vol. 12, 2817-18.)

26. The Commission accepts the merger savings projection of Joint Applicants witness Flaherty, starting in the year 2000. [Vol. 16, 3981-3982 (Flaherty direct testimony, Exh. TJF-2, 68).] The Flaherty exhibit only projected savings for a portion of the tenth year after the merger. The Commission believes that a full ten-year period should be used. Adjusting the Flaherty calculation for a full ten year period beginning on January 1, 2000, the savings projected as a result of the merger are approximately \$ 1.072 billion. Based on the testimony of Staff witness Rohrer, the Commission finds that an adjustment relating to unfilled positions should be made to the Joint Applicants' estimated costs to achieve. This amount of this adjustment is \$12.1 million. [Vol. 11, 2438; Vol. 22, 6597, 6602 (Rohrer direct testimony, 26 and Exh. GDR-1).] The Rohrer adjustment reduces the Joint Applicants' costs to achieve to \$44.1 million. This results in the projected net savings that are related to the merger being \$1.028 billion. The Commission notes that these numbers are for the total company, including Missouri and non-jurisdictional wholesale transactions, and that the amounts actually implemented will be only for the Kansas jurisdictional portion.

27. The Commission finds that it would be reasonable to utilize the after-tax, net present value of the projected savings. Applying a 40% tax rate to \$1.028 billion results in an after tax amount of \$616.8 million. For the determination of the discount rate for net present value purposes, the Commission has utilized the capital structure for Westar submitted by Staff witness Proctor. [Vol. 21, 6448 (Proctor exhibits, Exh. JMP-8, Schedule 1).] Joint Applicant witness Cicchetti advocated a range of 11% to 13.5% for Westar's return on equity. [Vol.16, 4191 (Cicchetti direct testimony, 45).] For purposes of this calculation only, the Commission will use the midpoint of the range suggested by the Joint Applicants, or 12.25%. The resulting discount rate is 9.6%. Applying this discount rate to the after-tax, net projected savings of \$616.8 million produces a net present value of merger-related savings of \$ 358.9 million, on a total company basis.

28. The Commission finds that the savings and benefits from the merger are one of the primary reasons why the merger is in the public interest. The Commission further finds that these savings should be shared between the utility company and its customers. The manner of doing this is through the regulatory plan discussed in the next section.

VIII. REGULATION OF WESTAR

29. The Commission has reviewed the evidence to determine an appropriate and reasonable method for the sharing of merger-related savings and to formulate a regulatory plan for Westar. In doing this, the Commission has balanced a myriad of conflicting factors, including the expectations of investors, uncertainties in a rapidly changing electric marketplace, and fairness to present and future ratepayers. After consideration, the Commission has concluded that the Joint Applicants should be afforded the opportunity to retain an equitable portion of the \$358.9 million in merger-related savings through the following method.

30. The Joint Applicants will have the opportunity to recover merger-related savings through a rate moratorium. In addition to the moratorium, the Commission notes that the Joint Applicants have acknowledged that they have already achieved and retained merger-related savings in the years leading up to the merger (Vol. 2, 320-25). The Joint Applicants will also retain additional incremental savings that occur after the rate case at the end of the moratorium and in between subsequent rate cases. Furthermore, the Joint Applicants have indicated that the savings estimates of Flaherty for this merger may also be surpassed. Joint Applicants witness Wittig stated that the actual savings that materialized in connection with the merger of KGE and KPL were in excess of the savings estimates provided by Flaherty at the time. (Wittig Vol. 1, 260-61; See also Joint Applicants' Post Hearing Brief, 30, footnote 9.)

31. A rate moratorium provides the Joint Applicants with a reasonable opportunity to retain merger savings. A rate moratorium is the form of regulation presented in the Joint Recommendation and is a concept accepted by the Joint Applicants. (A rate moratorium has also been agreed to by the Joint Applicants in their merger proceeding in Missouri, and has been ordered by the Missouri Public Service Commission.) During a moratorium, the utility is able to realize the benefits of lower operating costs while retaining the existing rate structure. This affords the Joint Applicants with an opportunity to recover a substantial portion of the merger-related savings. A rate moratorium gives the Joint Applicants a strong incentive to maximize savings as early as possible and allows the Joint Applicants to continue retaining savings immediately following the merger. This contributes to Westar's financial health and will allow Westar to address and adjust to changes that may take place in the industry. This is of special concern to the Commission because approximately 75% of Westar's customers are residents of Kansas and the stability of the merged entity is of importance to the citizens in this state. After the moratorium ends, the rate case in which new rates are set will reflect the savings that have been achieved. This procedure will return merger benefits to the ratepayers.

32. The Commission finds that four years is a reasonable amount of time for the rate moratorium. This provides the Joint Applicants with a reasonable time period for achieving savings. The moratorium begins on the effective date of the merger. Westar is ordered to file a rate case within the first month of the fifth year following the effective date of the merger. The test year shall be the most recent practicable, but should encompass a 12-month period ending no earlier than six months prior to the end of the moratorium. The rate case filed at this time shall be presented on a consolidated company basis incorporating all operating divisions of Westar. This means that the costs of service for KGE, KPL and KCPL will be presented on a single company basis.

33. The Commission is aware of the new construction planned by the Joint Applicants during the period of the moratorium. This Order does not prohibit the parties from making an application with the Commission for accounting orders with respect to carrying charges for the new construction at the time it occurs. If such an application is made, the Commission sitting at the time will decide whether to approve the application.

34. The Commission will also permit the Joint Applicants to amortize \$179.45 million, total company, on a straight-line basis over a period of 35 years commencing at the time new rates are filed at the end of the moratorium. This amount is approximately one-half of the estimated merger savings. The precise amount of the amortization expense will be determined during the rate case at the end of the moratorium, but it appears that the Kansas jurisdictional allocation should be approximately \$3.85 million per year.

IX. QUALITY OF SERVICE STANDARDS

35. After the merger, the Joint Applicants will be working to achieve savings, and a primary focus will be to reduce costs. (Vol. 2,310.) Without appropriate safeguards, this emphasis has the potential of adversely affecting the level of service provided to ratepayers. [Vol. 11, 2306-07, 2342; Vol. 18, 5167-68, 5170 (Doljac direct testimony, 6-7, 9).] Staff witness Doljac presented six quality of service standards with penalties for failure to meet certain benchmarks. Staff's proposal is intended to ensure that the overall acceptable quality of service received by ratepayers is not negatively impacted by the merger. [Vol. 11, 2315, 2339; Vol. 18, 5174-5179, 5188, 5195-96 (Doljac direct testimony, 13-18, 27, 34-35).] CURB is in favor of the proposed standards and penalties. [Vol. 18, 5378-79 (Crane Answering Testimony, 4-5).] The Joint Applicants agree that most of Staff's proposed standards are appropriate measures of quality of service [Vol. 16, 4108 (Jenkins rebuttal testimony, 8)], but maintain that they would continue to provide quality service

without any standards being imposed. They argue that if there are penalties, there should also be rewards for exceptional service. [Vol. 10, 2188-89, Vol. 16, 4105-06 (Jenkins rebuttal testimony, 5-6).] CURB is strongly opposed to the suggestion that there should be rewards for providing quality service in a monopoly environment. [Vol. 18, 5387-88 (Crane surrebuttal testimony, 4-5).]

36. The Commission finds that the imposition of quality of service standards is justified as a condition of the merger. With respect to storm normalization procedures, KGE, KPL and KCPL shall use normalization procedures that are specified in Staff's testimony and further detailed in Attachment A. [Vol. 10, 2215-16; Vol. 18, 5182-84 (Doljac direct testimony, 21-23).]

37. Staff's proposed standards and penalties are adopted by the Commission as a condition of the merger. See Doljac Exhibits MD-1 and MD-2. (Vol. 18, 5202-5204.) Westar is to file an annual quality of service performance report that contains all of the information specified in Exhibit MD-9. (Vol. 18, 5214-15.) The first report shall be due on the first March 1 occurring after the merger has been in effect for one year, with additional reports due on March 1 of subsequent years. Staff is to review the reports and to notify Westar of any resulting penalties. Westar may file a request for the Commission to review any penalties within 30 days of its notification by Staff. The Commission emphasizes that it has discretion as to penalties, and may waive or adjust the penalties upon a showing by Westar of good cause to do so. Any amounts assessed as penalties shall be returned to the retail customers of Westar as a billing credit within 60 days of the final assessment, and shall appear as a separate line item identified as "Quality of Service Rebate." [Vol. 18, 5196-97 (Doljac direct testimony, 35-36).] The 60 day period is what was suggested by the Joint Applicants. [Vol. 16, 4118 (Jenkins rebuttal testimony, 18).] The reporting requirements and penalty provisions will remain in place until modified by later order of the Commission. Exhibits MD-1, MD-2 and MD-9 are Attachments B, C and D to this Order.

X. CUSTOMER SERVICE PROGRAMS

38. Staff argues that Westar should be required to continue the various service programs that now exist for customers of KCPL, KPL and KGE. [Vol. 11, 2308 ; Vol. 18, 5197-99 (Doljac direct testimony, 36-38).] The Joint Applicants state that these programs were implemented voluntarily and that they are unsure whether the programs will be continued after the merger. [Vol. 10, 2224-25; Vol. 16, 4119-20 (Jenkins rebuttal testimony, 19-20).] The Commission finds that these programs are of value to customers and that it is important that customers receive the same benefits and services that were available prior to the merger. The Commission orders, as a condition of the merger, that these programs continue after the merger until further order of the Commission.

XI. STANDARD TERMS AND CONDITIONS FOR CUSTOMER SERVICE

39. Staff maintains that uniform customer service terms and conditions for all divisions of Westar should be developed. Staff asks that a definite time frame for this be ordered because Staff had been frustrated with the level of commitment shown by WRI in developing uniform terms and conditions for KGE and KPL. It is Staff's opinion that the Joint Applicants would not consider this to be a priority unless the Commission establishes a deadline. (Vol. 12, 2728-2731; Vol. 18, 5121-25 (Holloway direct testimony, 19-23).] The Joint Applicants agree that it is necessary to develop one uniform set of terms and conditions for Westar, but state that there should be no time limit for accomplishing this and the Commission should instead have a status report on the process filed 18 months after the merger. [Vol. 10, 2191-97; Vol. 16, 4121-22 (Jenkins rebuttal testimony, 21-22).] The Commission finds Staff's concern about the Joint Applicants' level of commitment to this matter to be valid, and orders that the Joint Applicants consult with Staff and develop standards terms and conditions be filed within 18 months of the date of the merger. .

XII. PUBLIC UTILITIES HOLDING COMPANY ACT OF 1935

40. Several parties in this proceeding have asserted that the Commission faces the possible loss of jurisdiction due to the fact that WRI would become a non-utility holding company after the merger. These parties point to uncertainties relating to the effect and interpretation of the Public Utilities Holding Company Act of 1935 (PUHCA), 15 U.S.C. §§ 79, *et seq.*, and argue that if Westar is required to become registered with the Securities and Exchange Commission (SEC), the ability of the Commission to review transactions between Westar and its affiliates could be questioned. [Vol. 8, 1776-78; Vol. 18, 5340 (Crane direct testimony, 34); Vol. 21, 6256-58, 6363-64 (Proctor direct testimony, 32-34, 139-40); KIC Post-Hearing Brief, 30-35.]

41. The Joint Applicants state that PUHCA was not intended to preempt state ratemaking authority, and that they have sought expert advice on this matter and are convinced that the corporate structure existing after the merger will be exempt from registration under PUHCA. [Vol. 16, 4312-14 (Cicchetti rebuttal testimony, 97-99).] At the hearing, Joint Applicants witness Cicchetti acknowledged that waiver of any claims to federal preemption in relation to ratemaking determinations is typical with mergers of this type. (Vol. 13, 2932.) The Joint Applicants have also said that if the Commission determines that specific provisions are necessary to preserve its ability to review intra-affiliate transactions, they would not object to certain identified provisions being ordered. (Joint Applicants' Responsive Statement, 13.)

42. The Commission finds that the concerns raised about possible challenges to its future jurisdiction are legitimate. As a condition of this merger, the Commission orders that the Joint Applicants agree in writing to the following:

- A. Westar, WRI and each affiliate or subsidiary thereof must waive any rights to challenge Commission review of affiliate transactions to determine the reasonableness and prudence of any costs or expenses arising from affiliate

transactions, agreements or contracts based upon any claim of federal preemption.

- B. Westar, WRI and each affiliate or subsidiary thereof must waive any rights to challenge Commission disallowances of unreasonable or imprudent costs for administrative and other services provided by affiliates in any Kansas rate case based upon any claim of federal preemption.
- C. Westar, WRI and each affiliate or subsidiary thereof agree to make available to the Commission, at reasonable times and places, all books, records, employees and officers of Westar, WRI, and any affiliate or subsidiary as provided under applicable law and Commission rules; provided, that Westar, WRI and any affiliate or subsidiary thereof 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 are not subject to Commission jurisdiction by operation of the Public Utility Holding Act of 1935 (PUCHA). In the event that rules imposing any affiliate guidelines regarding access to books, records and personnel applicable to similarly situated electric utilities in Kansas are adopted, then Westar, WRI and each affiliate or subsidiary thereof shall become subject to the same rules as such similarly situated electric utilities in lieu of this paragraph.
- D. Westar, WRI and each affiliate or subsidiary thereof agree to continue voluntary and cooperative discovery practices with Staff.

43. As a related matter, Staff has requested that the Joint Applicants be required to prepare and submit to the Commission a comprehensive accounting policy and procedures manual for use in allocating costs among affiliates and for pricing and accounting for affiliate transactions. [Vol. 18, 5078-79 (Rohrer direct testimony, 28-29); Vol. 21, 6232, 6256-58 (Proctor direct testimony, 8, 32-34).] The Commission finds that this is reasonable and necessary to regulate Westar effectively and efficiently. As a condition of the merger, the Commission directs that such a manual be filed with the Commission for approval within 12 months of the effective date of the merger.

XIII. RATE DISPARITY

44. The rate differential that exists between KPL and KGE customers is a consequence of the different cost of service factors existing before the 1991 merger of KPL and KGE. [Vol. 20,

5978-79 (Dittmer direct testimony, 7-8).] The Commission has previously noted its intention to work gradually toward rate parity. However, the regulatory plan ordered in this merger does not result in any immediate rate impacts, and does not present an opportunity to directly address differences in rates. All ratepayers will benefit from the efficiency gains and savings resulting from the merger. The consolidated single company cost of service study filed in the rate case following the moratorium will provide specific information about the operations of Westar for consideration by a future Commission.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The First Amended Joint Application for the merger is approved, subject to the requirements and conditions stated above. Within 30 days of the merger, the Joint Applicants are to file written notice of the effective date of the merger with the Commission.

(B) A party may file a petition for reconsideration of this Order within fifteen (15) days of the date of this Order. If service is by mail, three (3) additional days may be added to the fifteen (15) day time limit to petition for reconsideration.

(C) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it may deem necessary.

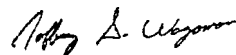
BY THE COMMISSION IT IS SO ORDERED.

Wine, Chr.; Claus, Corn.; Moline, Corn.

Dated: SEP 28 1999

ORDER MAILED

SEP 28 1999

 Executive Director

Jeffrey S. Wagaman
Executive Director

STORM NORMALIZATION PROCEDURES

KGE and KPL

KGE and KPL shall use normalization procedures that are characterized by the following simultaneous criteria:

- 1) outside crews are called to support restoration work;
- 2) restoration times are greater than 24 hours; and
- 3) the serving offices' customers' outage minutes for the storm date are greater than 2.5 times the monthly normal customers' outage minutes.

KCPL

KCPL shall discount service interruptions that result from storms that are currently defined as Class III or Class IV storms in KCPL's Storm Evaluation and Restoration Plan (SERP) Manual, Part B, Revised April 1995.

A Class III storm condition is defined as "extensive, wide spread system damage caused by a significantly more severe storm than Condition II, such as a severe summer thunderstorm accompanied by high winds. Service would be interrupted to 15,000-50,000 customers in the [Kansas City] Metro area, 425 to 1,416 customers in the East District, and 818 to 2,726 customers in the South District, and restoration activities would last 24-48 hours. Service restoration requires all Operations & Maintenance and Construction & Maintenance personnel and outside help from contractors. The level of this storm damage requires that certain additional planning and organization be provided for maximum efficiency of restoration and may include the decentralization of restoration activities. Since the damage to the system could be localized, decentralization will take place at each service center as required."

A Class IV storm condition is defined as "the most severe system damage caused by a storm, such as a tornado, ice storm, or unusually severe summer thunderstorm. There would be extensive damage to the distribution system as well as transmission and possibly substation facilities. This level of storm damage will require a large amount of outside help and will require that restoration efforts be performed in a decentralized mode for maximum efficiency. Many non-essential activities will be suspended during this condition. Service would be interrupted to at least 50,000 customers in the Metro area, 1,416 customers in the East District, and 2,726 customers in the South District, and restoration activities would last more than 48 hours."

[Vol. 18, 5182-84 (Doljac direct testimony, 22-23)]

WRI / KCPL Merger
Recommended Quality of Service Performance Standards
Docket No. 97-WSRE-676-MER

Recommended Quality of Service Performance Standards for Westar

| | Continuity of Service | | | | | | Violations | | Call Center | | Meter Readine | |
|--------------------|-------------------------------|--------------|-------------------------------------|--------------|-------------------------------|--------------|---|--------------|--------------------------|--------------|--|--------------|
| | Nonnalized SAIDI (minutes) | | Normalized SAIFI (interruptions) | | Normalized CAIDI (minutes) | | Complaints Resulting in Violations of Rules, etc. (Violations per 100,000 Customers) | | Unanswered Call Rate (%) | | Estimated Bills per 1,000 Customers | |
| | Value of Measure | Penalty (\$) | Value of Measure | Penalty (\$) | Value of Measure | Penalty (\$) | Value of Measure | Penalty (\$) | Value of Measure | Penalty (\$) | Value of Measure | Penalty (\$) |
| Maximum Penalty | | 3,000,000 | | 3,000,000 | | 1,500,000 | | 3,000,000 | | 2,250,000 | | 2,250,000 |
| Trigger 1 | 120 | 300,000 | 1.50 | 300,000 | 80 | 150,000 | 5.63 | 300,000 | 6.50 | 225,000 | 177 | 225,000 |
| Trigger 2 | 133 | 600,000 | 1.56 | 600,000 | 86 | 300,000 | 6.98 | 600,000 | 7.30 | 450,000 | 192 | 450,000 |
| Trigger 3 | 145 | 1,200,000 | 1.63 | 1,200,000 | 91 | 600,000 | 8.33 | 1,200,000 | 8.10 | 900,000 | 206 | 900,000 |
| Trigger 4 | 158 | 2,100,000 | 1.69 | 2,100,000 | 97 | 1,050,000 | 9.67 | 2,100,000 | 8.89 | 1,575,000 | 221 | 1,575,000 |
| 5Trigger | 170 | 3,000,000 | 1.75 | 3,000,000 | 102 | 1,500,000 | 11.02 | 3,000,000 | 9.69 | 2,250,000 | 235 | 2,250,000 |

Maximum Possible Overall Penalty **\$15,000,000**

ATTACHMENT B

WRI / KCPL Merger
Electrical System Reliability - Sustained Interruption Indices
Docket No. 97-WSRE-676-MER

System average interruption frequency index (SAIFI)

SAIFI provides information about the average frequency of sustained interruptions per customer in a defined area. Sustained interruptions are those customer outages which exceed five minutes in duration.

$$SAIFI = \frac{\text{Total Number of Customer Interruptions}}{\text{Total Number of Customers Served}} \quad (1)$$

$$SAIFI = \frac{\sum N_i}{N_T} \quad (2)$$

where N_i = the number of interrupted customers during the reporting period, and
 N_T = the total number of customers served for the area being indexed.

System average interruption duration index (SAIDI)

SAIDI provides information about the average time customers are interrupted in a defined area.

$$SAIDI = \frac{\sum \text{Customer Interruption Durations}}{\text{Total Number of Customers Served}} \quad (3)$$

$$SAIDI = \frac{\sum r_i N_i}{N_T} \quad (4)$$

where r_i = the restoration time for each interruption event
 N_i = the number of interrupted customers during the reporting period, and
 N_T = the total number of customers served for the area being indexed.

WRI / KCPL Merger
Electrical System Reliability - Sustained Interruption Indices
Docket No. 97-WSRE-676-MER

Customer average interruption duration index (CAIDI)

CAIDI represents the average time required to restore service to the average customer per sustained interruption. In other words, it quantifies the average outage time experienced per sustained outage.

$$CAIDI = \frac{\sum \text{Customer Interruption Durations}}{\text{Total Number of Customer Interruptions}} \quad (5)$$

$$CAIDZ = \frac{\sum r_i N_i}{\sum N_i} \quad (6)$$

where r_i = the restoration time for each interruption event, and
 N_i = the number of interrupted customers during the reporting period.

Note, that according to definition, the following relationship holds:

$$CAIDI = \frac{SAIDI}{SAIFI} \quad (7)$$

**WRI / KCPL Merger
Recommended Form of Annual Quality of Service Performance Report
Docket No. 97-WSRE-676-MER**

**QUALITY OF SERVICE STANDARDS
Westar Energy Annual Report for [Year]
Docket No. 97-WSRE-676-MER**

1
2
3

| | J | A | N | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC | TOTAL YEAR | INITIAL PENALTY TRIGGER |
|---|---|---|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|------------|-------------------------|
| 4 Continuity of Service: Normalized SAIDI, SAIFI and CAIDI | | | | | | | | | | | | | | | | |
| 5 KPL | | | | | | | | | | | | | | | | |
| 6 Total Customers | | | | | | | | | | | | | | | | |
| 7 Total Customers Out | | | | | | | | | | | | | | | | |
| 8 Normalized Customers Out* | | | | | | | | | | | | | | | | |
| 9 Hours Off | | | | | | | | | | | | | | | | |
| 10 Normalized Hours Off* | | | | | | | | | | | | | | | | |
| System Average Interruption Duration Index (SAIDI, minutes) | | | | | | | | | | | | | | | | |
| Normalized SAIDI (minutes) | | | | | | | | | | | | | | | | |
| System Average Interruption Frequency Index (SAIFI, Interruptions) | | | | | | | | | | | | | | | | |
| Normalized SAIFI (Interruptions) | | | | | | | | | | | | | | | | |
| Customer Average Interruption Duration Index (CAIDI, minutes) | | | | | | | | | | | | | | | | |
| Normalized CAIDI (minutes) | | | | | | | | | | | | | | | | |
| 18 KGE | | | | | | | | | | | | | | | | |
| 19 Total Customers | | | | | | | | | | | | | | | | |
| 20 Total Customers Out | | | | | | | | | | | | | | | | |
| 21 Normalized Customers Out* | | | | | | | | | | | | | | | | |
| 22 Hours Off | | | | | | | | | | | | | | | | |
| 23 Normalized Hours Off | | | | | | | | | | | | | | | | |
| 24 System Average Interruption Duration Index (SAIDI, minutes) | | | | | | | | | | | | | | | | |
| 25 Normalized SAIDI (minutes) | | | | | | | | | | | | | | | | |
| 26 System Average Interruption Frequency Index (SAIFI, Interruptions) | | | | | | | | | | | | | | | | |
| 27 Normalized SAIFI (Interruptions) | | | | | | | | | | | | | | | | |
| 28 Customer Average Interruption Duration Index (CAIDI, minutes) | | | | | | | | | | | | | | | | |
| 29 Normalized CAIDI (minutes) | | | | | | | | | | | | | | | | |
| 29 KCPL - Kansas Only | | | | | | | | | | | | | | | | |
| 30 Total Customers | | | | | | | | | | | | | | | | |
| 31 Total Customers Out | | | | | | | | | | | | | | | | |
| 32 Normalized Customers Out* | | | | | | | | | | | | | | | | |
| 33 Hours Off | | | | | | | | | | | | | | | | |
| 34 Normalized Hours Off* | | | | | | | | | | | | | | | | |
| System Average Interruption Duration Index (SAIDI, minutes) | | | | | | | | | | | | | | | | |
| Normalized SAIDI (minutes) | | | | | | | | | | | | | | | | |
| System Average Interruption Frequency Index (SAIFI, interruptions) | | | | | | | | | | | | | | | | |
| Normalized SAIFI (Interruptions) | | | | | | | | | | | | | | | | |
| Customer Average Interruption Duration Index (CAIDI, minutes) | | | | | | | | | | | | | | | | |
| Normalized CAIDI (minutes) | | | | | | | | | | | | | | | | |

ATTACHMENT D

r

WRI / KCPL Merger
Recommended Form of Annual Quality of Service Performance Report
Docket No. 97- WSRE-676-MER

DUALITY OF SERVICE STANDARDS
Westar Energy Annual Report for [Year]
Docket No.97-WSRE-676-MER

1
2
3

| | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC | TOTAL YEAR | INITIAL PENALTY TRIGGER |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|------------|-------------------------|
| Continuity of Service: Normalized SAIDI, SAIFI and CAIDI | | | | | | | | | | | | | | |
| Combined Company - Kansas Only | | | | | | | | | | | | | | |
| Total Customers | | | | | | | | | | | | | | |
| Total Customers Out | | | | | | | | | | | | | | |
| Normalized Customers Out* | | | | | | | | | | | | | | |
| Hours Off | | | | | | | | | | | | | | |
| Normalized Hours Off | | | | | | | | | | | | | | |
| System Average Interruption Duration Index (SAIDI) | | | | | | | | | | | | | | |
| Normalized SAIDI | | | | | | | | | | | | | | 120 |
| System Average Interruption Frequency Index (SAIFI) | | | | | | | | | | | | | | |
| Normalized SAIFI | | | | | | | | | | | | | | 1.5 |
| Customer Average Interruption Duration Index (CAIDI) | | | | | | | | | | | | | | |
| Normalized CAIDI | | | | | | | | | | | | | | 80 |
| * Attach a list of events which have been discounted in calculating normalized values. The list should include a description of the event, the number of customers interrupted during the event, and the cumulative customer-hours of interruption. | | | | | | | | | | | | | | |
| Conformity to Rules, Regulations and Tariffs: Violations Per 100,000 Customers | | | | | | | | | | | | | | |
| This information to be provided by Commission Staff. | | | | | | | | | | | | | | 5.63 |
| Call Center: Unanswered Call Rate | | | | | | | | | | | | | | |
| KPL and KGE | | | | | | | | | | | | | | |
| Total Calls | | | | | | | | | | | | | | |
| Total Answered | | | | | | | | | | | | | | |
| Percent Answered | | | | | | | | | | | | | | |
| KCPL | | | | | | | | | | | | | | |
| Total Calls | | | | | | | | | | | | | | |
| Total Answered | | | | | | | | | | | | | | |
| Percent Answered | | | | | | | | | | | | | | |
| Combined Company | | | | | | | | | | | | | | |
| Total Calls | | | | | | | | | | | | | | |
| Total Answered | | | | | | | | | | | | | | |
| Percent Answered | | | | | | | | | | | | | | 6.50% |
| Meter Reading: Estimated Bills Per 1,000 Customers | | | | | | | | | | | | | | |
| KPL and KGE | | | | | | | | | | | | | | |
| Total Billed | | | | | | | | | | | | | | |
| Estimated Bills | | | | | | | | | | | | | | |
| Estimated Bills Per 1,000 Customers | | | | | | | | | | | | | | |
| KCPL - Kansas Only | | | | | | | | | | | | | | |
| Total Billed | | | | | | | | | | | | | | |
| Estimated Bills | | | | | | | | | | | | | | |
| Estimated Bills Per 1,000 Customers | | | | | | | | | | | | | | |
| Combined Company - Kansas Only | | | | | | | | | | | | | | |
| Total Billed | | | | | | | | | | | | | | |
| Estimated Bills | | | | | | | | | | | | | | |
| Estimated Bills Per 1,000 Customers | | | | | | | | | | | | | | 177 |

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing on behalf of the Kansas Corporation Commission was placed in the United States Mail, postage prepaid on this ____day of September, 1999, to the parties of record* in this matter: SEP 28 1999

ORDER MAILED

*See attached list

SEP 28 1999

Atty. Gen. Ulysses Executive Director

ORDER MAILED SEP 28 1999