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Kansas Corporation Commission

THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before Commissioners: Jay Scott Emler, Chairman
Shari Feist Albrecht
Pat Apple

In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company and Westar Energy, Inc. for approval of the Acquisition of Westar Energy, Inc. by Great Plains Energy Incorporated.	)	Docket No. 16-KCPE-593-ACQ

ORDER ON MERGER STANDARDS

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1. On June 28, 2016, Kansas City Power & Light Company (KCP&L) and Westar Energy, Inc. and Kansas Gas and Electric Company (Westar) filed a Joint Application seeking approval for Great Plains Energy's acquisition of Westar. Great Plains Energy is the parent company of KCP&L. Great Plains Energy agreed to acquire 100% of the stock of Westar in a transaction then valued at approximately $12.2 billion, including assumed debt.[1] Upon closing, Kansas' two largest jurisdictional utilities will be owned by Great Plains Energy, with Westar becoming a wholly-owned subsidiary of Great Plains Energy.[2]

2. At its August 4th business meeting, the Commission expressed its desire to reiterate the merger standards to ensure consistent approaches in the three pending merger dockets.[3] Kansas statutes do not contain a specific standard for mergers.[4]

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[1] Joint Application, June 28, 2016, ¶ 6.
[2] *Id.*
[3] 16-ITCE-512-ACQ (Fortis's proposed acquisition of ITC Great Plains), 16-KCPE-593-ACQ (Great Plains' proposed acquisition of Westar), 16-EPDE-410-ACQ (Empire's proposed merger with Liberty Utilities).

3. On November 14, 1991, the Commission issued an order approving the Kansas Power & Light and Kansas Gas & Electric merger in the consolidated dockets, 172,745-U and 174,155-U. In approving the merger, the Commission stated that mergers should be approved where the applicant can demonstrate that the merger "will promote the public interest."[5] Specifically, the Order listed several factors to consider in determining whether the public interest is promoted.[6]

4. On September 28, 1999, in the 97-WSRE-676-MER Docket (97-676 Docket), which approved the merger between Western Resources (forerunner of Westar) and KCP&L, before the companies withdrew their merger, the Commission reaffirmed the merger standards, but made clear they are to be supplemented by other consideration relevant to the unique facts and circumstances of each proposed merger: Since the 97-676 Docket, the Commission has applied the merger standards in several dockets.[7]

5. The Commission reaffirms the merger standards as modified in the 97-676 Docket. The Commission's central concern is whether the merger will promote the public interest. In determining whether a proposed merger will promote the public interest, the Commission will evaluate the application under the following criteria:

(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;

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[4] Order, Consolidated Dockets 172,745-U and 174,155-U, Nov. 14, 1991, p. 34.
[5] *Id.*, p. 35
[6] *Id.*, pp. 35-36.
[7] *See* 13-BHCG-509-ACQ (Black Hills' acquisition of Anadarko's HRDS holdings), 14-KGSG-100-MIS (ONEOK's separation of its natural gas utility distribution business into a stand-alone publicly traded company, ONE Gas), and 16-BHCG-144 ACQ Docket (Black Hills' acquisition of Anadarko's West HRDS holdings).

(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; and

(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. 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.

(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.

6. In the 97-676 Docket, the Commission made clear that the enumerated criteria can be supplemented to account for the unique facts and circumstances of each docket.

> 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.[8]

7. The Commission recognizes that the 97-676 Docket allows for some flexibility in the merger standards, including modifying those standards or even adding additional standards or considerations. At the same time, the Commission will require any deviation from the standards

[8] Order on Merger Application, 97-WSRE-676-MER, Sept. 28, 1999, ¶ 18.

reaffirmed in paragraph 5 of this Order to be clearly identified in the application and justified in supporting testimony. Similarly, if Staff or an intervenor believes the standards need to be modified in a particular docket, they are obligated to explain the proposed modification and provide grounds supporting the proposed modification.

THEREFORE, THE COMMISSION ORDERS:

A. The Commission will evaluate the Application under the merger standards reaffirmed in paragraph 5 of this Order. Any party to the Docket that wishes to modify those standards shall identify the proposed modifications and justify each and every modification with supporting testimony.

B. Since the Joint Applicants have already filed their Joint Application with supporting testimony, any modifications to comply with paragraph A, should be filed with the Commission within 21 days of this Order being issued. In addition to identifying the modifications, the Joint Applicants' filing should explain: (1) how the merger standards listed in the Joint Application differ from those endorsed in this Order; (2) why their Joint Application includes different merger standards than those endorsed in this Order, and (3) how their prefiled testimony should be amended to conform to the merger standards reaffirmed in paragraph 5 of this Order, as opposed to the standards cited on pages 8-9 of the Joint Application.

C. Any other party to the Docket that wishes to modify the standards set forth in paragraph 5 of this Order shall identify the proposed modifications in their direct testimony.

D. The parties have 15 days from the date this Order was electronically served to petition for reconsideration.[9]

[9] K.S.A. 66-118b; K.S.A. 77-529(a)(1).

E. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

Dated: AUG 09 2016

Amy L. Green
Secretary to the Commission

BGF

EMAILED

AUG 09 2016

CERTIFICATE OF SERVICE

16-KCPE-593-ACQ

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on AUG 0 9 2016.

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