

**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 the)
Empire District Electric Company, Liberty)
Sub Corp. and Liberty Utilities (Central) Co.) Docket No. 16-EPDE-410-ACQ
for Approval of an Agreement and Plan of)
Merger and for Other Related Relief.)

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 March 16, 2016, Empire District Electric Company (Empire) and Liberty Sub Corp. (LSC) and Liberty Utilities (Central) Co. (LU Central) (collectively Joint Applicants), filed an application with the Commission for approval of an agreement and plan of merger and for other related relief.

2. At its August 4, 2016 business meeting, the Commission expressed its desire to reiterate the merger standards to ensure consistent approaches in all pending merger dockets. Kansas law applicable to utility mergers and acquisitions is silent on the subject matter.

3. On November 14, 1991, the Commission issued an order approving the merger between Kansas Power & Light Company and Kansas Gas & Electric Company.¹ In approving the merger, the Commission stated that mergers should be approved where the applicant can

¹ Order at 34, *Application of Kansas City Power & Light Co.*, Consolidated Docket Nos. 172,745-U and 174,155-D (Nov. 14, 1991).

demonstrate that the merger “will promote the public interest.”² Specifically, the Order listed several factors to consider in determining whether the public interest is promoted.³

4. On September 28, 1999, the Commission approved the merger between Western Resources Inc. (forerunner of Westar) and Kansas City Power & Light Company. Even though the companies withdrew their application, 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.⁴ Since the 97-676 Docket, the Commission has applied the merger standards in several dockets.⁵

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;
 - (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;

² *Id.* at 35.

³ *Id.* at 35-36.

⁴ Order on Merger Application at 7-8, *Application of Western Resources, Inc., and Kansas City Power & Light Co.*, Docket No. 97-WSRE-676-MER (Sep. 28, 1999) [*hereinafter* 97-676 Docket].

⁵ *See e.g.* Order Approving Transfer of the West HRDS to Black Hills at 10-15, *Joint Application of Anadarko Natural Gas Co., LLC and Black Hills/Kansas Gas Utility Co., LLC*, Docket No. 16-BHCG-144 ACQ (June 7, 2016) (Black Hills’ acquisition of Anadarko’s West HRDS holdings); Order Approving Unanimous Settlement Agreement at 31-33, *Application of ONEOK Inc. for an Order Authorizing Its Plan of Reorganization*, Docket No. 14-KGSG-100-MIS (Dec. 19, 2013) (ONEOK’s separation of its natural gas utility distribution business into a stand-alone publicly traded company, ONE Gas); Order Approving Joint Application at 13-14, *Joint Application of Anadarko Natural Gas Co. and Black Hills/Kansas Gas Utility Co., LLC*, 13-BHCG-509-ACQ (Oct. 4, 2013) (Black Hills’ acquisition of Anadarko’s HRDS holdings).

- (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.⁶

7. The Commission recognizes that the 97-676 Docket allows for some flexibility in the merger standards. At the same time, the Commission will require any deviation from the standards 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.

⁶ Order on Merger Application at 8, 97-676 Docket.

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 applicants have already filed their Application, with supporting testimony, any modifications should be filed with the Commission within 21 days of this Order being issued. Any other party to the Docket that wishes to modify the standards shall identify the proposed modifications in their direct testimony.

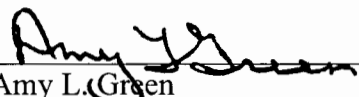
C. The parties have 15 days from the date this Order was electronically served to petition for reconsideration.⁷

D. 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

DLK/sc

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⁷ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

16-EPDE-410-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 09 2016 .

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CERTIFICATE OF SERVICE

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