THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

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

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 May 31, 2016, Great Plains Energy[1] (Great Plains or GPE) announced it had reached a definitive agreement to acquire 100% of the stock of Westar Energy, Inc. and Kansas Gas and Electric Company (Westar) in a transaction then valued at approximately $12.2 billion, including assumed debt.[2]

2. Less than a month after publicly announcing the transaction, on June 28, 2016, GPE, KCP&L and Westar elected to file a Joint Application seeking approval for GPE's acquisition of Westar. The Joint Application was accompanied by direct testimony from eight witnesses for the Joint Applicants. Upon closing, Kansas' two largest jurisdictional utilities would be owned by GPE, with Westar becoming a wholly-owned subsidiary of GPE.[3]

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[1] Great Plains Energy is the parent company of Kansas City Power & Light Company (KCP&L). *See* Joint Application, June 28, 2016.
[2] *Id*, ¶ 6.
[3] *Id.*

3. The Commission has jurisdiction to supervise and control electric public utilities, as defined in K.S.A. 66-101a, doing business in Kansas.[4] K.S.A. 66-131(c) requires the Commission to issue a decision on a public utility's application for a merger or acquisition within 300 days of receiving the application. The applicant may waive or extend the 300-day period.[5] The Joint Applicants did not request to extend the 300-day timeframe.[6]

4. The Citizens' Utility Ratepayer Board (CURB); the Kansas Industrial Consumers (KIC);[7] Kansas Electric Cooperative, Inc. (KEPCo); the Kansas Power Pool (KPP); the International Brotherhood of Electrical Workers (IBEW), Local Union No. 304; the Kroger Company; Sunflower Electric Power Corporation (Sunflower) and Mid-Kansas Electric Company, LLC (Mid-Kansas); IBEW Local Union #225; IBEW Local Union #1523; Midwest Energy, Inc.; IBEW Local Union #412; IBEW Local Union #1464; IBEW Local Union #1613; Wal-Mart Stores, Inc. (Wal-Mart); Kansas City, Kansas Board of Public Utilities (BPU); Kansas Municipal Energy Agency (KMEA); City of Independence, Missouri; and Kansas Municipal Utilities (KMU); and Missouri Joint Municipal Electric Utility Commission (MJMEUC) were granted intervention. The Sierra Club's intervention was limited to the issues of "the effect of the transaction on the environment" and "whether the transaction maximizes the use of Kansas energy resources."[8] Brightergy, LLC was granted limited intervention, but not permitted to participate in the evidentiary hearing or file testimony. All of the intervenors were generally opposed to the proposed acquisition.[9]

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[4] K.S.A. 66-101.
[5] K.S.A. 66-131(c).
[6] *See* Joint Motion for Order on Procedural Schedule, July 28, 2016, ¶ 4.
[7] KIC consists of Spirit Aerosystems, Inc.; the Goodyear Tire & Rubber Co.; Coffeyville Resources Refining & Marketing, LLC; Cargill, Inc.; CCPS Transportation, LLC; Occidental Chemical Corporation; and HollyFrontier El Dorado Refining LLC.
[8] Order Granting Limited Intervention to the Sierra Club, Nov. 29, 2016, ¶ 7.
[9] *See* Transcript of Hearing on Prehearing Motions, Jan. 24, 2017, p. 8 ("There are 28 parties and they are all except for the Joint Applicants, they are aligned with each other. They are objecting to the merger.")

5. The Commission is not opposed to mergers as evidenced by its approval of two acquisitions within the past six months.[10] As one of the intervenors notes, in many ways a merger between GPE and Westar makes sense, but for one insurmountable obstacle – the purchase price is simply too high.[11] The Commission agrees. Both KCP&L and Westar have a long history of providing sufficient and efficient service in Kansas and the Commission agrees that based on their geographies a merger makes sense. But not this merger. The proposed transaction is not a merger of equals, but an acquisition with an excessive purchase price, requiring GPE to take on significant debt. The $4.9 billion acquisition premium exceeds GPE's $4.8 billion market capitalization by $100 million.[12] Unfortunately, the transaction was presented to the Commission as a take it or leave it proposal. Repeatedly, the Joint Applicants advised the Commission that any significant safeguards that would protect consumers, such as maintaining a separate, independent Westar Board of Directors, would halt the transaction. Therefore, the proposed transaction could not be salvaged and the Commission is left with no choice but to reject the proposed transaction.

MERGER STANDARDS

6. On August 9, 2016, the Commission issued its Order on Merger Standards, reaffirming the merger standards as modified in the 97-WSRE-676-MER Docket (97-676 Docket).[13] In explaining its central concern is whether the merger will promote the public interest, the Commission outlined the following criteria to evaluate whether the merger will promote the public interest:

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[10] *See* Order Granting Joint Motion to Approve the Unanimous Settlement Agreement and approval of the Joint Application, Docket No. 16-EPDE-410-ACQ (Approving Liberty Utilities' Acquisition of Empire District Electric Company), Dec. 22, 2016; Order Approving the Transaction with Conditions, Docket No, 16-ITCE-512-ACQ (Approving Fortis's acquisition of ITC Holdings), Oct. 11, 2016.
[11] Transcript of Evidentiary Hearing (Tr.) Vol. 1, p. 72.
[12] KEPCo's Posthearing Brief (KEPCo Brief), Mar. 13, 2017, p. 44.
[13] Order on Merger Standards, Aug. 9, 2016, ¶ 5.

(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 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 demonstrated savings 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 Commission's jurisdiction and capacity 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.[14]

[14] *Id.*

7. The Commission recognized that the 97-676 Docket allows for some flexibility in the merger standards, including modifying those standards or even adding additional standards or considerations.

> 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.*** (emphasis added)[15]

While the Commission refers to its "merger standards," it recognizes the proposed transaction is an acquisition, rather than a merger. Nonetheless, the Commission's merger standards apply as agreed to by all parties.[16]

8. The Order on Merger Standards instructed any party wishing to modify those standards to identify the proposed modifications and justify each and every modification with supporting testimony.[17] In response, on August 20, 2016, the Joint Applicants filed their Verified Response to Commission's Order on Merger Standards, stating:

> Joint Applicants did not intend, and do not wish, to modify the standards as set forth in ¶5 of the Order. The Joint Applicants accept the standards enumerated by the Commission and believe they have addressed those standards in their Joint Application and Direct Testimony ... The Joint Applicants did not and do not seek to change the Commission's merger standards in any way.[18]

9. On September 9, 2016, Staff filed its Reply to Joint Applicants' Verified Response to Commission's Order on Merger Standards, claiming the Joint Applicants altered the

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[15] *Id.*,¶ 6, *quoting* Order on Merger Application, 97-WSRE-676-MER, Sept. 28, 1999, ¶ 18.
[16] Joint Applicants' Verified Response to Commission's Order on Merger Standards, Aug. 30, 2016, ¶ 6. ("The Joint Applicants accept the standards enumerated by the Commission and believe they have addressed those standards in their Joint Application and Direct Testimony ... The Joint Applicants did not and do not seek to change the Commission's merger standards in any way.")
[17] Order on Merger Standards, Ordering Clause A.
[18] Joint Applicants' Verified Response to Commission's Order on Merger Standards, ¶ 6.

merger standards to ease the burden on themselves.[19] Staff contended the Joint Application only refers to potential savings, but does not detail any savings that can be demonstrated from the merger.[20] Accordingly, Staff requested the Commission direct the Joint Applicants to provide evidence of savings that can be demonstrated from the merger and evidence that operational synergies and cost savings that justify acquiring Westar for nearly $5 billion above book value.[21] On September 12, 2016, the CURB filed its Response to Staff's Reply to Joint Applicants' Verified Response to Commission's Order on Merger Standards, agreeing with Staff that the Joint Application is deficient, especially in regards to merger standards (a)(ii) and (a)(iv).[22]

10. On September 19, 2016, the Joint Applicants filed their Response to Staff's and CURB's Reply to Joint Applicants' Verified Response to Commission's Order on Merger Standards, reiterating, "they were not and are not requesting *any* modifications to the merger standards set out by the Commission in ¶5 of the Order. They fully accept that their Application will be evaluated under those standards."[23] The Joint Applicants acknowledge, "[t]he Commission has made it clear, and the Joint Applicants have agreed, that the merger standards contained in ¶5 of the Order are the standards that will be used in this case."[24]

11. In its October 28, 2016 Order Addressing Joint Applicants' Verified Responses on the Commission's Merger Standards, the Commission noted,

> [t]he Joint Applicants correctly state, "[t]he only relevant question is whether the testimony addresses the merger standards as set out by the

[19] Staff's Reply to Joint Applicants' Verified Response to Commission's Order on Merger Standards, Sept. 9, 2016, ¶ 4.
[20] *Id.*, ¶ 9.
[21] *Id.*, ¶ 21.
[22] CURB's Response to Staff's Reply to Joint Applicants' Verified Response to Commission's Order on Merger Standards, Sept. 12, 2016, ¶ 8.
[23] Response to Staff's and CURB's Reply to Joint Applicants' Verified Response to Commission's Order on Merger Standards, Sept. 19, 2016, ¶ 7.
[24] *Id.*, ¶ 8.

> Commission in its Order..."[25] The Commission has provided the Joint Applicants with an opportunity to amend their Joint Application to conform to the applicable merger standards. Despite their recognition that the Joint Application will be reviewed under the merger standards enumerated in the Order on Merger Standards, the Joint Applicants have elected not to do so, and are bound by their filings.[26]

12. In Addressing Joint Applicants' Verified Responses on the Commission's Merger Standards, the Commission expressed concern that the Joint Applicants failed to take advantage of another opportunity to amend their Joint Application to conform to the applicable merger standards.

13. The Joint Applicants presented testimony from James Proctor to "describe how these [Commission's merger] standards should be applied to the facts and circumstances in this application."[27] Proctor purports to testify as to the "original intent and subsequent application of the Merger Standards."[28] His testimony is premised on his knowledge garnered as a Commission employee at the time Docket No. 172,745-U (KCP&L's attempted acquisition of Kansas Gas & Electric Co.) and Docket No. 172,155-U (Kansas Power & Light's acquisition of Kansas Gas & Electric Co.) were filed.[29] But on cross-examination, Proctor admitted that he was no longer employed at the Commission at the time Docket No. 172,155-U was filed.[30] Since the underpinning for Proctor's testimony -- his claimed first-hand knowledge of the "original intent" of the merger standards, collapsed under cross-examination, the Commission gives no weight to Proctor's testimony, finding it lacking in both credibility and probative value. Expert testimony is proper if it will be of special help to the factfinder on technical subjects with which the factfinder is not familiar or if it would assist the factfinder in reaching a reasonable factual

[25] Order Addressing Joint Applicants' Verified Responses on the Commission's Merger Standards, Oct. 18, 2016, ¶ 11.
[26] *Id.*
[27] Rebuttal Testimony of James M. Proctor (Proctor Rebuttal), Jan. 9, 2017, p. 3.
[28] *Id.*, p. 4.
[29] *Id.*, p. 6.
[30] Tr. Vol. 2, p. 308-309.

conclusion.[31] The Commission is more than capable of interpreting the merger standards without the aid of expert testimony as to their meaning. Since Proctor's testimony has no probative value, the Commission affords it no weight.

14. On November 2, 2016, Joint Applicants filed their Motion for Leave to File Supplemental Direct Testimony and Petition for Reconsideration of Order Addressing Joint Applicants' Verified Responses on the Commission's Merger Standards, seeking to supplement the direct testimony of Kevin Bryant (Senior Vice President – Finance and Strategy and Chief Financial Officer for GPE, KCP&L, and KCP&L Greater Missouri Operations (GMO)) and Darrin Ives (Vice-President – Regulatory Affairs for GPE, KCP&L, and GMO) to address alleged deficiencies of the Joint Application and supporting Direct Testimony. Over the objections of both Staff[32] and CURB, the Commission allowed the Joint Applicants to supplement Mr. Bryant's and Mr. Ives' testimony, but emphasized the Joint Applicants are still obligated to comply with the Order on Merger Standards and cautioned, "Accepting the Joint Applicants' supplemental testimony should not be construed as alleviating the Commission's concerns that the Application may not conform to the merger standards."[33]

PROCEDURAL HISTORY

15. On December 16, 2016, five members of Staff and three consultants filed testimony opposing the proposed acquisition on behalf of Staff. Also on December 16, 2016, sixteen people filed testimony in response to the Joint Application: Mark Doljac, Laurence Kirsch, Ph.D, and David Dismukes, Ph.D. on behalf of KEPCo; Andrea Crane and Stacey Harden on behalf of CURB; Larry Holloway on behalf of KPP; Michael Gorman on behalf of

[31] *Sterba v. Jay*, 249 Kan. 270, 282 (1991).
[32] On November 17, 2016, Staff filed its Reply to Joint Applicants' Reply to Staffs Response and Objection, withdrawing its objection to the Joint Applicants' request to file supplemental direct testimony. *See* Staff's Reply to Joint Applicants' Reply to Staff's Response and Objection, Nov. 17, 2016, ¶ 6.
[33] Order Granting Joint Applicants' Motion for Leave to File Supplemental Direct Testimony, Dec. 1, 2016, ¶ 17.

KIC; Steve Chriss on behalf of Wal-Mart; Joseph Herz on behalf of KMEA, KMU, and the City of Independence, Missouri; John Krajewski, Boris Steffen, and Jonathan Lesser on behalf of BPU; James Brungardt on behalf of Sunflower and Mid-Kansas; Raymond Rogers on behalf of IBEW #225; John Garretson on behalf of IBEW #304; and Duane Nordick on behalf of IBEW #1523. All of the intervenors were generally opposed to the proposed acquisition.[34]

16. On December 22, 2016, Jessica Oakley filed cross-answering testimony on behalf of Brightergy. Oakley's testimony is limited to Staff witness Scott Hempling's testimony on solar and distributed generation.[35] Essentially, she disputes Hempling's conclusion that the proposed acquisition could limit the development of new technologies and inhibit new entrants from entering the energy market.[36]

17. On January 9, 2017, the Joint Applicants filed rebuttal testimony from fourteen witnesses. On January 11, 2017, Staff, CURB, BPU, and KEPCo filed a Joint Motion to Strike and for Sanctions Against Joint Applicants, arguing the Joint Applicants attempted to introduce new data and information in rebuttal testimony of: (1) updated savings estimates following continuing work by the Integration Teams; (2) updated financial modeling extending cash flow projections through 2022 and unveiling GPE's plan to pay down debt; and (3) an entirely new model relevant to economic impact of the transaction.[37] The Joint Motion to Strike was based on the concern that Staff and intervenors would be denied the opportunity to perform any meaningful analysis of the new savings estimates from the Integration Teams.[38]

18. On January 24, 2017, the Commission held a hearing to address the Joint Motion to Strike along with two other pending motions. On January 26, 2016, the Commission issued its

[34] *See* Transcript of Hearing on Prehearing Motions, Jan. 24, 2017, p. 8.
[35] Cross-Answering Testimony of Jessica Oakley on Behalf of Brightergy, LLC, Dec. 22, 2016, p. 3.
[36] *Id.*, pp. 3-4.
[37] Joint Motion to Strike and for Sanctions Against Joint Applicants, Jan. 11, 2017, ¶ 16.
[38] *Id.*, ¶ 17.

Order on Prehearing Motions, noting while it shared the Joint Movants' concerns, since the Joint Applicants bear the burden of demonstrating the proposed acquisition is in the public interest, the Commission elected to factor in the lack of time the Joint Movants had to perform any meaningful analysis of the new evidence raised on rebuttal, when determining how much weight to afford to the rebuttal testimony, rather than to strike portions of rebuttal testimony.

19. Beginning on January 30, 2016, the Commission held seven days of evidentiary hearings. The resulting transcript consists of over 1600 pages, plus more than 120 exhibits. The Joint Applicants, Staff, CURB, BPU, KEPCo, KIC, KPP, Sunflower/Mid-Kansas, Midwest Energy; KMEA/KMU/City of Independence, Missouri, MJMEUC, and the Unions appeared by counsel. The Commission heard live testimony from a total of twenty-four witnesses, including fourteen on behalf of the Joint Applicants, eight on behalf of Staff, and one each on behalf of KEPCo and BPU.[39] The parties agreed to waive cross-examination of several witnesses and had the opportunity to cross-examine the remaining witnesses at the evidentiary hearing and to redirect their own witnesses. Following the evidentiary hearing, the Joint Applicants; Staff; CURB; Wal-Mart; KMEA/KMU/City of Independence; KIC; BPU; KPP; the Sierra Club; Sunflower/Mid-Kansas; and KEPCo submitted posthearing briefs.

THE PROPOSED TRANSACTION

20. In a December 9, 2015 presentation to the Westar Board of Directors, Guggenheim, Westar's Investment Bankers, presented the Board with a list of potential strategic counterparties.[40] GPE was not listed, in part because at the time, it was smaller than Westar.[41] The total enterprise value of the potential counterparties ranged from $17.7 billion to $82

[39] At the outset of the hearing, the Commission waived in the direct testimony and rebuttal testimony of sixteen witnesses. *See* Tr. Vol. 1, pp. 13-14. The Commission received and reviewed testimony from a total of forty witnesses.
[40] BPU Ex. 10, p. 14.
[41] *Id.*, Tr. Vol. 1, pp. 177, 180.

billion.[42] Westar recognized, "[i]t is a big transaction for Great Plains"[43] and expressed concerns the transaction would be "too big for Great Plains."[44]

21. On February 23, 2016, Guggenheim presented an expanded list of potential strategic counterparties to the Westar Board.[45] This time, GPE was on the list.[46] With a total enterprise value of $8.5 billion, GPE was the second smallest party listed.[47] The largest party, by enterprise value, was listed at $93.8 billion.[48]

22. Westar established a May 23, 2016 deadline for interested parties to submit a formal bid to acquire Westar.[49] GPE was one of three companies to submit a bid.[50] Of the three bidders, GPE had the lowest market cap of $4.8 billion.[51] The other two bidders had market caps of $12.6 billion and $54.4 billion respectively.[52] As Westar's President and CEO Mark Ruelle acknowledges:

> they [GPE] were small. This was a big stretch for them to do this. And it was, it was why they weren't in the original document and why they would -- you know, we sort of characterize them as the little engine that thinks it can throughout the process because they were so much smaller than everybody else, but they put together a bid that knocked it out of the park.[53]

23. In response to Guggenheim asking the two finalists (GPE and Bidder D) to consider improving their terms, on May 26, 2016, Great Plains and Bidder D submitted their final offers for Westar.[54] Great Plains increased its bid to $60 per share and Bidder D increased

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[42] BPU Ex. 10, p. 14.
[43] Tr. Vol. 1, p. 180.
[44] *Id.*
[45] BPU Ex. 11.
[46] *Id.*, p. 7.
[47] *Id.*, Tr. Vol. 1, p. 184.
[48] BPU, Ex. 11, p. 7.
[49] Tr. Vol. 1, p. 188.
[50] *Id.*
[51] *Id.*, p. 191.
[52] *Id.*
[53] *Id.*, p. 192.
[54] Responsive Brief of the Kansas City, Kansas Board of Public Utilities (BPU Brief), Mar. 13, 2017, p. 12.

its bid to $56 per share.[55] With its $60 per share offer, GPE outbid much bigger competitors who could have more easily absorbed a $5 billion acquisition premium. As Ruelle acknowledged,

> Great Plains was a little bit smaller than us at this time ... [w]e weren't sure that Great Plains would be willing to finance a transaction like this. ... It is a big transaction for Great Plains. And at this time, the market improved after this even more, but at this time that was a big stretch.[56]

In comparison, Ruelle noted that "Bidder A was someone that nobody would have batted an eye about their ability to write a $7 or $8 billion check.[57]

MERGER STANDARD (a)(i)

24. The size of the purchase price, particularly for a company Great Plains' size, calls into question GPE's ability to service the acquisition-related debt. The Commission's concerns over Great Plains' ability to service its debt fall within merger standards (a)(i) and (a)(ii). Under merger standard (a)(i), the Commission compares the financial condition of the newly-created entity to that of the stand-alone entities absent a merger. Under merger standard (a)(ii), the Commission examines the reasonableness of the purchase price, factoring in the demonstrated savings from the merger.

25. Great Plains claims if approved, GPE will be a stronger regional utility holding company, with a service territory covering approximately the eastern one-third of Kansas, much of the Kansas City metropolitan area, and a large portion of northwest Missouri.[58] Post-transaction, Great Plains would have over 1.5 million customers, including 950,000 Kansas customers.[59] Great Plains characterizes the transaction as a unique opportunity to significantly

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[55] *Id.*
[56] Tr. Vol. 1, p. 180 (Ruelle).
[57] *Id.*
[58] Direct Testimony of Terry Bassham (Bassham Direct), June 28, 2016, p. 3.
[59] *Id.*

increase the operating scale of the utilities and better position them to realize long-term efficiencies, which will benefit ratepayers.[60]

26. As part of the deal, GPE will assume responsibility for approximately $3.6 billion of Westar's existing net debt.[61] GPE plans to finance the $8.6 billion purchase of outstanding Westar common stock with a package of 50% equity and 50% debt, including an initial estimate of $4.4 billion of new GPE market issued debt.[62] On March 7, 2017, Great Plains issued $4.3 billion of debt financing.[63] Absent the need to pay for the transaction and acquisition premium, GPE "wouldn't have issued a nickel of debt."[64]

27. While GPE acknowledges that it will be taking on substantial debt to acquire Westar, it claims all of the transaction-related financing will occur at the holding company level.[65] Since GPE has already completed both the equity and debt portions of the financing, it argues its ability to accomplish the financial steps necessary to close and support the transaction is no longer a concern.[66] But the issue facing the Commission in evaluating the transaction under merger standard (a)(i) is not whether GPE could obtain financing, but whether post-transaction, the resulting entity would be financially stronger than the stand-alone entities would be absent the transaction.

28. In evaluating whether GPE can absorb the transaction-related debt, the Commission looks to the credit rating agencies for guidance. All of the parties cite to both Moody's Investors Service (Moody's) and Standard & Poor's (S&P) and give great weight to

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[60] Direct Testimony of Kevin E. Bryant (Bryant Direct), June 28, 2016, p. 4.
[61] *Id*, p. 6.
[62] *Id.*, p. 9.
[63] Joint Applicants' Motion to Reopen the Record, Mar. 8, 2017, ¶ 3.
[64] Joint Applicants' Initial Post-Hearing Brief (Joint Applicants' Brief), Feb. 28, 2017, p. 7, *citing* Tr., p. 749 (Bryant).
[65] Bryant Direct, p. 10.
[66] Joint Applicants' Reply Brief, Mar. 20, 2017, p. 14.

their findings. But the parties reach drastically different conclusions on the rating agencies' interpretation of the merger's effect on Great Plains, KCP&L, and Westar.

29. Before the transaction was announced, S&P had issued GPE, KCP&L and Westar corporate credit ratings of BBB+, which is an investment grade rating.[67] After the proposed transaction was publicly announced, S&P affirmed these ratings, but placed Great Plains, KCP&L and Westar on negative outlook.[68] GPE opined that placing the companies on negative outlook is a common practice following a merger announcement.[69] Similarly, prior to the transaction being announced, Moody's had issued GPE a Baa2 rating for senior unsecured debt and Baa1 ratings for KCP&L and Westar.[70] After the proposed transaction was publicly announced, Moody's affirmed the ratings for KCP&L and Westar with their outlook remaining stable, but placed Great Plains on review for downgrade.[71]

30. In testimony filed with the Joint Application, GPE admits that based on the level of holding company debt, it expected Moody's to downgrade GPE's senior unsecured debt rating from Baa2 to Baa3.[72] Baa3 is Moody's lowest investment grade credit rating.[73] In summary, GPE explains that post-transaction, the only change in credit rating will be Moody's downgrading GPE from Baa2 to Baa3.[74] The Joint Applicants agree, "the primary financial risk associated with the Transaction is that GPE has higher financial leverage for a period of time before it de-levers."[75] While Bryant intends GPE will pay off $300-500 million of debt within 3

[67] Bryant Direct, p. 21.
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] Post-Hearing Brief of CURB (CURB Brief), Mar. 13, 2017, ¶ 17.
[74] Joint Applicants' Brief, pp. 33-34.
[75] Direct Testimony of John J. Reed, Jan. 9, 2017, p. 86.

to 5 years,[76] he admits that GPE still has no written plan to pay down the debt.[77] Bryant's claim that "I think about that unwritten plan every day"[78] is not sufficient. The Commission does not doubt that Bryant thinks about deleveraging each day, but without a written plan, the Commission has nothing to evaluate. Bryant's testimony, "so it absolutely is our intended plan to delever. Obviously, we're going through our planning process now as we go through these hearings and our annual five-year planning,"[79] demonstrates GPE is still in the planning process of determining how to pay down its debt. Since GPE has failed to formulate any written plan to pay down the debt, the Commission has nothing to review and cannot assume GPE will be able to rapidly deleverage. Therefore, the Commission must review the Joint Application under the assumption that a post-transaction GPE will have substantial debt that will likely result in downgrades to its credit rating.

31. BPU argues that by overpaying for Westar, GPE leaves itself little financial flexibility.[80] Specifically, BPU claims that as early as March 2016, GPE was aware that the proposed transaction would "likely fully leverage" its "improving standalone credit capability."[81] BPU points to a May 18, 2016 letter from Moody's warning the transaction will "result in consolidated financial metrics [that] reflect levels that are typically associated with a speculative grade financial profile in 2018."[82]

32. BPU is not alone. CURB, KEPCo, and Staff share BPU's concerns that the proposed transaction would negatively impact the credit rating of GPE, KCP&L, and Westar to the possible detriment of ratepayers. Andrea Crane testified on behalf of CURB that by

[76] Tr. Vol. 3, p. 747.
[77] Tr. Vol. 3, p. 607.
[78] Tr. Vol. 3, p. 772 (Bryant).
[79] *Id.*, p. 746.
[80] BPU Brief, p. 49.
[81] *Id.*, p. 50.
[82] *Id.*, p. 51.

proposing to finance the transaction largely with debt, GPE's financial risk will increase, possibly jeopardizing the Joint Applicants' credit ratings and result in higher financing costs and deteriorating service.[83] Currently, GPE is financed with 49.1% equity, similar to the equity capitalization of KCP&L.[84] Westar is currently financed with 54.6% equity.[85] If the transaction was approved, on a consolidated basis, the resulting entity would only have 32.4% common equity.[86] Crane explains the proposed transaction leaves GPE with very little margin of error.[87] Therefore, even if all of GPE's projections are accurate, its ability to maintain an investment grade credit rating is tenuous.[88] If its projections are overly optimistic or a negative event such as an increase in interest rates occurs, GPE's ability to service its debt could be in jeopardy.[89]

33. David Dismukes, Ph.D. testified on behalf of KEPCo that GPE's debt would increase substantially due to the acquisition of Westar and, "[i]f its debt increases substantially on a post-merger basis, as this key credit metric suggests, GPE will face increasing pressure to obtain cash from its affiliates, likely through increased dividends, to help service its high level of debt."[90] Adam Gatewood of Staff testified that all three credit rating agencies expressed concern that as a result of the proposed transaction, the Joint Applicants will be riskier investments than they are pre-transaction.[91] Conversely, only the Joint Applicants take the position that the proposed transaction will not harm credit ratings.

34. On March 6, 2017, Moody's downgraded the long-term ratings of GPE, including its senior unsecured rating, to Baa3 from Baa2. Specifically, Moody's explained:

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[83] Direct Testimony of Andrea C. Crane (Crane Direct), Dec. 16, 2016, p. 7
[84] *Id.*, p. 18.
[85] *Id.*
[86] *Id.*
[87] *Id.*, p. 34.
[88] *Id.*
[89] *Id.*
[90] Direct Testimony of David E. Dismukes, Ph.D., Dec. 16, 2016, p. 25.
[91] Direct Testimony of Adam H. Gatewood (Gatewood Direct), Dec. 16, 2016, p. 9.

> The significant amount of additional parent debt, leaving very little financial flexibility, and our view that Great Plains' management has a higher tolerance for financial risk were the key rationales for the downgrade ... In addition, although there is a sound strategic reason for the acquisition, the combined company's credit metrics will be significantly weaker, another reason for the downgrade.
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> With the additional $4.3 billion of debt, Great Plains' parent holding company debt as a percentage of consolidated debt is expected to be over 35%. As a combined company, Great Plains' ratio of cash flow from operations before changes in working capital (CFO pre-WC) to debt will be in the 13% range, lower than Great Plains' pre-acquisition stand-alone level of around 17% in 2016.
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> We believe that Great Plains' management and board of directors have adopted a higher risk tolerance for leverage than had been exhibited prior to this transaction, a long-term credit negative. Great Plains will have limited financial flexibility for some time following the merger and could potentially be under greater pressure if regulatory support in Kansas and Missouri wanes or if there is a softening of regional macro-economic fundamentals.
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> A rating upgrade is unlikely in the near-term given higher leverage incurred to finance the Westar acquisition. However, a rating upgrade could be considered if there is a significant reduction in parent debt or the company's financial performance improves meaningfully such that its CFO pre-WC to debt increases to high teens on a sustained basis.[92]

35. If the transaction is approved, GPE would own all of the shares of both Westar and KCP&L, making GPE the only publicly-traded entity.[93] In their Reply Brief, filed after Moody's March 6, 2017 downgrade of GPE's long-term ratings, the Joint Applicants acknowledge GPE was downgraded one notch by one rating agency, but remains investment grade.[94] The Joint Applicants also point out there was no downgrade of either Westar's or KCP&L's credit ratings.[95] But merger standard (a)(i) asks whether the resulting post-transaction

[92] Moody's March 6, 2017 Rating Action, attached as Exhibit A to Commission Staff's Response to Joint Applicants' Motion to Reopen the Record, Mar. 13, 2017.
[93] Direct Testimony of Andrea C. Crane, refiled on Jan. 27 2017, p. 17.
[94] Joint Applicants' Reply Brief, p. 2.
[95] *Id.*

entity is stronger financially than the pre-transaction entities. The Joint Applicants do not dispute GPE's credit rating was downgraded. Therefore, the substantial competent evidence suggests that GPE will be weaker post-transaction than it would be absent the transaction.

36. The Commission shares the concerns voiced by BPU and CURB that if the transaction is approved, GPE has little financial flexibility[96] and very little margin of error[97] to keep its investment grade rating. The Joint Applicants accept that if the transaction is approved, Moody's will downgrade GPE to Baa3, its lowest investment grade rating.[98] Similarly, the Joint Applicants accept that absent the transaction, GPE would maintain its Baa2 rating. The evidence is overwhelming that the rating agencies believe the GPE will be a riskier investment if the transaction goes through. Therefore, the Commission finds the proposed transaction does not meet merger standard (a)(i), which asks whether the post-merger, resulting entity would be financially stronger than the stand-alone entities would be absent the merger.

37. The merger standards serve as factors to evaluate whether a proposed merger is in the public interest, rather than a strict checklist.[99] Therefore, an application does not need to satisfy each and every standard, but needs to satisfy enough standards to demonstrate it advances the public interest. Accordingly, even though the Joint Application cannot satisfy standard (a)(i), the Commission evaluates the transaction under all of its merger standards.

38. Before addressing standards (a)(ii) and (a)(iv), the Commission must examine GPE's claim that those standards do not apply to this transaction as it is not seeking to recover the $5 billion acquisition premium through rates.[100]

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[96] *See* BPU Brief, p. 49.
[97] Crane Direct, p. 34.
[98] *See* Joint Applicants' Brief, pp. 33-34.
[99] *Id.*, p. 17.
[100] Proctor Rebuttal, pp. 17-18.

ACQUISITION PREMIUM

39. At the outset, the Commission notes James Proctor, who testified on behalf of the Joint Applicants and claimed (a)(ii) and (a)(iv) should not apply as GPE is not seeking to recover the acquisition premium from ratepayers, advised "[w]here the merging companies indicate they will not seek recovery of AP in rates, the Commission's concern for the purchase price should only be related to an inquiry concerning the impact of the price on the post-merger entity's financial health."[101]

40. As the Commission discussed in its evaluation of merger standard (a)(i), it has grave concerns as to the purchase price's impact on the post-transaction entities' financial health. That alone is sufficient reason for the Commission to apply (a)(ii) to the proposed transaction. Also, the Commission does not find the Joint Applicants' repeated claims that they do not intend to seek recovery of the acquisition premium to be credible.

41. First, the commitment to not seek recovery of the acquisition premium is not a firm one. As Darrin Ives readily admits, it is merely a "goal" not to seek the acquisition premium be recovered through rates.[102] The Joint Applicants explicitly reserve the right to seek recovery of the acquisition premium "if any party seeks to impose GPE's consolidated capital structure."[103] The Commission is particularly troubled that the exception outlined by the Joint Applicants has no time constraints. If "any party to a future KCP&L or Westar rate case proposes to use GPE's or a consolidated capital structure … then Westar and KCP&L reserve the right to seek, in any such rate case, recovery of the acquisition premium and transaction costs

[101] *Id.*, p 19.
[102] Tr. Vol. 2, p. 428 (Ives).
[103] Joint Applicants' Brief, p. 3, fn. 2.

associated with the Transaction."[104] The exception is so open-ended as to render the Joint Applicants' commitment not to seek recovery of the acquisition premium meaningless.

42. In Westar's last rate case (15-WSEE-115-RTS), 22 parties intervened. In KCP&L's last rate case (15-KCPE-116-RTS), 9 parties intervened. The Joint Applicants' exception is triggered if a single intervenor simply proposes to use a different capital structure, regardless of whether the Commission adopts the intervenor's proposal. Neither the Commission nor the Joint Applicants have any control over what an intervenor might propose in a future rate case. Therefore, allowing the Joint Applicants to seek recovery of the acquisition premium if *any* party in *any* future Westar or KCP&L rate case proposes a different capital structure renders the Joint Applicants' promise not to seek the acquisition premium from ratepayers hollow. An exception that is so easily triggered is an empty commitment.

43. Second, on multiple occasions, the Joint Applicants assured the Commission that it accepted the merger standards.[105] Specifically, in their Verified Response to Commission's Order on Merger Standards filed on August 30, 2016, the Joint Applicants, "accept the standards enumerated by the Commission and … do not seek to change the Commission's merger standards in any way."[106] The Joint Applicants accepted the Commission's standards, only to later claim (a)(ii) and (a)(iv) are not applicable. Even in their post-hearing reply brief, the Joint Applicants state, "Joint Applicants are not asking for a modification of any merger standards."[107] Yet, they continue to challenge the applicability of two of the merger standards. This inconsistency causes the Commission to question the Joint Applicants' veracity. Neither merger standard (a)(ii), which refers to "purchase price" rather than "acquisition premium", nor (a)(iv),

[104] *Id.*, p. 54.
[105] *See* Tr. Vol. 2, p. 382 (Ives).
[106] Joint Applicants' Verified Response to Commission's Order on Merger Standards, Aug. 30, 2016, ¶ 6.
[107] Joint Applicants' Reply Brief, p. 69.

which references "payment of a premium in excess of book value," restricts (a)(iv)'s applicability to instances where the applicants request recovery of an acquisition premium. Accordingly, by accepting the merger standards as is, the Joint Applicants are bound by them.

44. Third, it appears that while the Joint Applicants do not propose to include the acquisition costs in rate base, they still plan to recover the acquisition premium indirectly from ratepayers. As CURB, BPU, KEPCo, and Staff claim, if the Joint Applicants are allowed to use a capital structure for ratemaking purposes that is not representative of the financing for the transaction, the ratepayers are actually subsidizing the acquisition premium.[108] There is a separate weighted cost of capital at the operating utility level versus the parent level. Traditionally, there is little difference between the weighted cost of capital at both levels. But as proposed by the Joint Applicants, the parent (GPE) is taking on additional leverage at historically low rates. As a result, the weighted cost of capital for GPE will be significantly less than that of the operating utility subsidiaries. Such a financial structure allows the Joint Applicants to recover the acquisition premium by taking advantage of the difference between the higher returns paid to the operating utilities and the low cost of debt. GPE "acknowledges that there is a financial benefit derived from the way the transaction is being financed."[109] Rather than refund the difference to the ratepayers, GPE is retaining those funds to pay the acquisition premium. Essentially, GPE is using the ratepayers as its bank.

45. The Commission gives great weight to the Joint Applicants' repeated assertions that they will be unable to complete the transaction if the Commission applies a consolidated capital structure which includes GPE's transaction-related debt.[110] These assertions are a tacit

[108] Crane Direct, p. 19; BPU Brief, p. 3; KEPCo Brief, p. 77; Direct Testimony of Justin T. Grady, Dec. 16, 2016, pp. 81-82.
[109] Tr. Vol. 2, p. 357 (Proctor).
[110] Joint Applicants' Brief, p. 43.

admission that the Joint Applicants' ability to complete the deal is entirely dependent on its ability to use the operating utilities' higher rates of return to finance the transaction.

46. Since the Joint Applicants are indirectly recovering the acquisition premium from ratepayers by taking advantage of the difference between the allowed rate of return of the operating utilities (over 9%) and the cost of debt, the Commission needs to apply standard (a)(ii), which evaluates the reasonableness of the purchase price, including whether it is reasonable in light of the demonstrated savings from the merger, to the proposed transaction.

47. GPE's winning bid of $60 per share is $4 per share higher than that of the next highest offer.[111] Assuming 142.685 million outstanding shares as of May 31, 2016, GPE's offer exceeded the next highest offer by $570 million.[112] The Joint Applicants argue the purchase price was validated through Fairness Opinions from Goldman Sachs on behalf of GPE and from Guggenheim on behalf of Westar.[113] But the evidence suggests the $60 per share purchase price exceeded the expectations of both Goldman Sachs and Guggenheim. In a December 9, 2016 presentation to the Westar Board, Guggenheim identified a range of $45 to $55 per share as a target price.[114] In a May 29, 2016 presentation to Westar's Board, Guggenheim offered eight different valuation methods, of those eight, only one, the Precedent Transaction Premia Analysis, produced a range with an upper end above $57.76.[115] And even the Precedent Transaction Premia Analysis' range of $45.44 to $61.71 is dependent on using Westar's March 9, 2016 stock price.[116] If Westar's November 9, 2015 stock price is used, the range drops to between $45.44 and $55.31.[117] Other than the Precedent Transaction Premia Analysis, only two of the eight

[111] Exhibit BPU-13, p. 9.
[112] KEPCo Brief, p. 49, fn. 29; Exhibit BPU-13, p. 11.
[113] Rebuttal Testimony of Darrin R. Ives, Jan. 10, 2017, p. 18.
[114] BPU Brief, pp. 33-34.
[115] *Id.*, p. 34.
[116] *Id.*
[117] *Id.*

analyses produced by Westar's own advisors result in a range with an upper level above $55.[118] And two of the analyses result in a range with an upper level of $48 or lower.[119] Similarly, GPE's own analysts identified a mid-fifties price point as the high end of a reasonable purchase price.[120]

48. Based on the review of presentations made to the Boards of Directors of the Joint Applicants by sophisticated financial advisors, it appears that the purchase price is outside a reasonable range. Therefore, the Commission will put great weight on the other prong of merger standard (a)(ii), which asks whether the price is reasonable in light of the demonstrated savings from the merger. Merger standard (a)(iv) asks whether there are operational synergies that justify payment of a premium in excess of book value. Due to substantial overlap in merger standards (a)(ii) and (a)(iv), the Commission addresses these two standards together.

MERGER STANDARDS (a)(ii) and (a)(iv)

49. There is a significant debate as to both the amount of savings the proposed merger will produce and whether those savings are sufficiently demonstrated. The Joint Applicants claim they can demonstrate approximately $426 million in merger-related savings over the 3.5 year period from mid-2017 to the end of 2020.[121] Beyond 2020, the Joint Applicants expect $176 million in annual savings, net of transition costs.[122] In total, the Joint Applicants estimate the transaction will produce a net present value of $4.3 billion in synergy savings.

50. KEPCO, BPU, Staff, and CURB question the accuracy of the savings estimates. CURB has major concerns over the speculative nature of the cost savings.[123] Beyond those

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[118] *Id.*
[119] *Id.*
[120] *Id.*, p. 36.
[121] Joint Applicants' Brief, p. 83.
[122] *Id.*
[123] CURB Brief, ¶ 58.

concerns, CURB does not believe that even if the savings estimates are accurate, that those savings estimates are sufficient to cover the acquisition premium.[124] On its face, there is a $600 million gap between the $4.3 billion in estimated synergy savings and the $4.9 acquisition premium. Joint Applicants' witness Bryant admits this discrepancy in his supplemental direct testimony.[125] While GPE identifies possible sources of benefits that could account for the remaining $600 million of acquisition premium, it never quantifies the possible benefits.[126] The Joint Applicants do not offer any plan to handle the $600 million gap between their estimated savings and the acquisition premium. The Commission is deeply troubled by that omission.

51. The $4.3 billion of net present value (NPV) in estimated savings may be overstated. Several of the intervenors claim the NPV of estimated savings are inflated based on mathematical errors and faulty assumptions. Through its expert, Dr. Kirsch, KEPCo claims the $4.3 billion estimate is overstated by anywhere between $1.03 and $1.407 billion.[127] To reach the $1.03 billion figure, KEPCo asserts $686 million is attributable to mathematical errors in Bryant's calculations and $344 million is attributable to Bryant's erroneous assumption that the benefits of the transaction will last forever.[128] The $377 million difference between the $1.03 and $1.407 billion is attributable to Bryant's misinterpretation of William Kemp's annual operational savings figures beginning in year 2021.[129] The Joint Applicants elected not to cross-examine Kirsch, nor did they rebut his findings that the Joint Applicants significantly overstated the estimated merger-related savings.[130] Since the Joint Applicants fail to rebut Kirsch, the Commission has no choice but to conclude the merger-related savings are between $1.7 billion to

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[124] *Id.*
[125] Supplemental Direct Testimony of Kevin E. Bryant, Nov. 2, 2016, p. 8.
[126] Direct Testimony of Dr. Laurence D. Kirsch, Dec. 16, 2016, p. 4.
[127] KEPCo Brief, p. 21.
[128] *Id.*, p. 21.
[129] *Id.*
[130] *Id.*, p. 22.

$2.0 billion less than the acquisition premium.[131] Not only do the Joint Applicants fail to rebut the criticisms of Bryant's calculations, but by comparing Westar's undisturbed stock price to the "net present value of Transaction savings from 2017 forward calculated as approximately $3.6 billion by KEPCo witness Kirsch" in their post-hearing brief, the Joint Applicants essentially abandon Bryant's savings estimates in favor of KEPCo's savings estimates.[132]

52. As Crane explains, GPE's ability to maintain an investment grade rating assumes all of GPE's assumptions are correct.[133] Therefore, if GPE's estimated savings are over $1 billion too high, the Commission fears GPE will not be able to maintain an investment grade rating and casts further doubt on the Joint Applicants' ability to satisfy merger standards (a)(i) and (a)(ii).

53. There is also the question of whether the estimated savings are merger related. If not, the general consensus is that they should not be considered.[134] According to William J. Kemp, who testified on behalf of the Joint Applicants, "GPE counted only operational and capital cost savings that were attributable to the Transaction, *i.e.*, they were directly created or enabled by the Transaction, and could not be realized in the normal course of business as separate companies."[135] BPU contends merger standard (a)(ii) requires an applicant to demonstrate its claimed savings could not be achieved absent the merger.[136] The Joint Applicants believe the more appropriate interpretation is to require an applicant to demonstrate savings can be achieved at a significantly greater speed or lower risk through the merger, even if the savings could be achieved as separate entities.[137]

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[131] *Id.*
[132] Joint Applicants' Brief, p. 80, fn. 29.
[133] Crane Direct, p. 34.
[134] *See* Rebuttal Testimony of William J. Kemp (Kemp Rebuttal), Jan. 9, 2017, p. 5.
[135] *Id.*, p. 13.
[136] Direct Testimony of Boris J. Steffen (Steffen Direct), Dec. 16, 2016, p. 21.
[137] Kemp Rebuttal, p. 13.

54. One of the major points of dispute involves the closing of power plants. A primary driver of proposed savings comes from retiring plants by the end of 2019.[138] The Joint Applicants' savings assume they close five generating units at KCP&L plants (Sibley Units 1 -3 and Montrose Units 2-3) and five generating units at Westar plants (Lawrence Energy Units 4-5; Murray Gill Units 3-4; and Tecumseh Energy Center Unit 7).[139] BPU claims 9 of the 10 units the Joint Applicants assume merger-related savings for were identified for retirement prior to the Transaction being negotiated.[140] Specifically, BPU identifies an October 14, 2015 article explaining Westar decided to retire two coal units at Tecumseh Energy Center as a result of the EPA's proposed Clean Power Plan.[141] Similarly, on January 20, 2015, KCP&L announced it planned to discontinue burning coal at its Montrose plant and two of its units at Sibley.[142] BPU relies on Westar's and KCP&L's public statements issued well in advance of merger negotiations to suggest the accelerated retirements used in Kemp's savings estimates should be excluded, as they were planned before the merger.[143]

55. The savings related to plant retirements is significant. GPE estimates that $70 million of its total $199 million in net savings for 2020 comes from generation savings; and $80 million of its total $176 million in net savings for 2021 comes from generation savings.[144] Roughly 35% of GPE's net savings estimates for 2020 are due to generation savings. Roughly 45% of GPE's net savings estimates for 2021 are due to generation savings. Therefore, if the claimed generation savings are not transaction related, GPE's savings estimates are dramatically overstated.

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[138] Direct Testimony of John A. Krajewski, P.E. (Krajewski Direct), Dec. 16, 2016, p. 9.
[139] Exhibit JAL-2.
[140] Exhibits JAL-30, JAL 31, and JAL 32.
[141] Steffen Direct, p. 27.
[142] *Id.*, p. 28.
[143] *Id.*, BPU Brief, p. 67.
[144] Schedule WJK-3, attached to Direct Testimony of William J. Kemp (Kemp Direct), June 28, 2016.

56. BPU raises two other issues with Kemp's estimated savings from accelerated retirement of generation units. First, in discovery, Joint Applicants admit they have not identified any generating plant retirements, calling into question the credibility of Kemp's savings analysis.[145] Before making retirement decisions, GPE needs to complete its Integrated Resource Plan (IRP),[146] and the "testimony is pretty clear we are not going to complete that IRP until July of 2017."[147] Second, BPU disputes Kemp's treatment of accelerated retirements as permanent savings.[148] In response, the Joint Applicants offer, "if the Commission is concerned about the issues raised in regard to the inclusion of Generation-related efficiencies, they can rest assured that even absent the inclusion of those efficiencies; this Transaction is still favorable as compared to the other industry transactions in recent years."[149] Not only is a comparison to other recent industry transactions not the appropriate standard, but it does not provide any assurance to the Commission. The Joint Applicants fail to rebut the closings assumed in Kemp's analysis were planned well in advance of any merger negotiations. Also, the Joint Applicants have not produced any formal plan to retire generating plants. Therefore, the Commission finds fault with Kemp's estimated savings because: (1) they do not appear to be merger-related and (2) they are too speculative to be reliable. The Joint Applicants cannot satisfy merger standards (a)(ii) or (a)(iv) as they fail to demonstrate savings from the transaction. Absent being able to show quantifiable, operational synergies, the Joint Applicants cannot justify the purchase price.

MERGER STANDARD (a)(iii)

57. The question of demonstrable savings dovetails into merger standard (a)(iii), which questions whether ratepayer benefits resulting from the transaction can be quantified.

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[145] Direct Testimony of Jonathan A. Lesser (Lesser Direct), Dec. 16, 2016, pp. 17-18.
[146] Tr., Vol. 6, p. 1396 (Ives).
[147] *Id.*, p. 1402 (Ives).
[148] Lesser Direct, p. 18.
[149] Joint Applicants' Reply Brief, pp. 76-77.

58. GPE management, in collaboration with a team from Enovation Partners, LLC (Enovation) headed by Kemp, developed efficiency estimates to demonstrate transaction-related savings.[150] Kemp was retained by Joint Applicants to estimate the reasonably achievable level of savings related to the proposed transaction.[151] GPE developed the estimated savings through a bottom-up approach, using experience from prior mergers.[152] The resulting estimated savings were used to determine the target price for a final bid to acquire Westar.[153] GPE estimated there would be approximately $426 million of transaction-related, non-fuel savings from mid-2017 to the end of 2020, but did not perform a detailed analysis of savings beyond 2020.[154]

59. Several parties, chiefly BPU, KMEA, and Staff, expressed concerns that the estimated savings are unrealistic and will not be fully realized.[155] Those concerns are justified as the Joint Applicants admit their claimed savings will not be known or measurable until they file rate cases.[156]

60. Enovation began intensive work for GPE on April 20, 2016.[157] In late April, GPE provided Enovation with minimum target savings of $50 million for 2018, $100 million for 2019, and $150 million for 2020.[158] Enovation had no role in developing those targets.[159] Instead, those targets were designed to make the transaction work.[160] To maintain confidentiality, the initial estimates were put together with a fairly small team within GPE.[161]

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[150] Joint Applicants' Brief, p. 83.
[151] Kemp Direct, pp. 1-2.
[152] Direct Testimony of Joseph A. Herz (Herz Direct), Dec. 16, 2016, p. 11.
[153] *Id.*, p. 12.
[154] Kemp Direct, pp. 19-20.
[155] Herz Direct, p. 8.
[156] *Id.*
[157] Tr. Vol. 5, p. 1256.
[158] *Id.*, p. 1257.
[159] *Id.*
[160] *Id.*
[161] Tr. Vol. 5, p. 1214 (Busser).

Admittedly, Enovation's savings analysis was produced with limited input from both GPE and Westar due to confidentiality concerns.[162]

61. What the Joint Applicants filed with the Commission is a savings estimate developed by GPE prior to announcing the transaction, based on the best available information at the time.[163] Enovation began to analyze transaction related savings on April 20, 2016 and completed its savings analysis just three weeks later on May 10, 2016.[164] The three-week due diligence phase offered little opportunity to review Westar data.[165] Due to the Hart-Scott-Rodino Act, GPE was unable to work in concert with Westar or review Westar's books to identify possible savings before announcing the proposed transaction.[166] The savings analysis was presented to GPE's Board of Directors on May 18, 2016.[167]

62. The Joint Applicants elected to file for Commission approval only one month after publicly announcing the transaction. As GPE acknowledges,"[w]e knew what the 300-day clock in Kansas meant," but felt we had a process that could confirm those efficiencies.[168] As a result, GPE limited its transition savings analysis team's ability to fully integrate Westar specific data or involve Westar's management in the process.[169] Those preliminary savings estimates, developed with limited access to Westar's books are being used by the Joint Applicants as preliminary efficiency targets in their ongoing integration planning process.[170] The process remains ongoing. As the Joint Applicants admit, "[c]ertain detailed plans exist in draft form at the integration team level, but none have been approved through the integration governance

[162] Tr. Vol. 5, p. 1244 (Kemp).
[163] Rebuttal Testimony of Thomas J. Flaherty, Jan. 9, 2017, p. 8.
[164] Direct Testimony of Ann Diggs (Diggs Direct), Jan. 27, 2016, p. 13.
[165] *Id.*, p. 23.
[166] *See* Reed Direct, p. 47.
[167] Diggs Direct, p. 14.
[168] Tr. Vol. 5, pp. 1216-1217.
[169] Diggs Direct, p. 26.
[170] *Id.*, p. 27.

process at this time."[171] The Joint Applicants have yet to file the actual plans and do not expect to finalize their plans until the end of March 2017.[172] As of the evidentiary hearing, the Joint Applicants "have not made any final decisions on our efficiencies … have made no decisions in regards to the finality of those numbers. And they remain an estimate."[173]

63. Despite the abbreviated time to review the estimates, Kemp claims GPE's general approach to estimating savings is consistent with industry standards, and more detailed and better supported than most transactions.[174] The Joint Applicants assure the Commission, "[t]he efficiencies that were developed in the pre-announcement period have been further refined and affirmed through the Integration Project over the last six plus months and are achievable."[175] But the Joint Applicants do not provide any evidence to support that the efficiencies are achievable.

64. The Commission has been presented with GPE's preliminary due diligence analysis, rather than a thorough savings estimate.[176] The Joint Applicants support their Application with little more than preliminary estimates, developed in only three weeks and without full access to Westar's books or personnel. Since the results of the integration team's work were not expected to be completed until late March 2017, they have not been introduced into the record and therefore cannot be considered by the Commission.[177] Not only did the results not get admitted into the record, but since they were not shared with Staff and intervenors, Staff and intervenors were unable to evaluate the accuracy of the results of the integration team's work. Without input from Staff and intervenors, the Commission did not have the benefit of a fully developed record.

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[171] Tr. Vol. 5, p. 1219.
[172] *Id.*, pp. 1220-1221.
[173] *Id.*, p. 1225.
[174] Kemp Direct, p. 6.
[175] Rebuttal Testimony of Steven P. Busser, Jan. 9, 2017, p. 6.
[176] Diggs Direct, pp. 24-25.
[177] K.S.A. 77-526(d).

65. At the hearing the Commission expressed concerns that the Application could satisfy merger standard (a)(iii) since the only savings evidence used to support the Application comes from Kemp's savings analysis, which was based on pre-bid activity, and performed in a relatively short period of time.[178] In response, the Joint Applicants tell the Commission,

> they would continue to focus on savings and the integration process would enable the Company to do that. I think also that there have been steps as I mentioned through the course of this time frame that the Company has given a window of insight into, into the Staff and Intervenors as to what is going on in the integration process. When that occurred in October November, the process simply wasn't far enough along to be able to produce those kinds of updates. ... I don't know what I'm going to learn over the succeeding months. And I get you to particular juncture like where we are now and we have a little more insight where the savings have been validated.[179]

Essentially, the Joint Applicants acknowledge the savings estimates are a work in progress that Staff and Intervenors have not been able to comprehensively review.

66. Since the Application still relies on the original savings estimates,[180] the Commission must rely on the original savings estimates developed without Westar's input and limited GPE input, over a short time frame. By denying Staff and intervenors the opportunity to comprehensively review the results of the integration team's work, the Joint Applicants have hindered the Commission's ability to evaluate the savings estimates. Instead, the Joint Applicants are asking the Commission to simply trust them. The Commission finds there is inadequate evidence in the record to support the estimated savings proposed in the Joint Application. The Joint Applicants have failed to meet their burden of demonstrating savings to justify the purchase price. The Joint Application fails to satisfy merger standards (a)(iii) and (a)(iv).

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[178] Tr. Vol. 5, p. 1333 (Flaherty).
[179] *Id.*, pp. 1334-1335 (Flaherty).
[180] *Id.*, pp. 1337 (Flaherty).

67. Merger standard (a) examines the effect of the transaction on consumers. It is undisputed that the Joint Applicants are not proposing a rate moratorium or a refund to its customers as part of the proposed transaction.[181] Instead, the Joint Applicants propose to pass savings to its customers through rate cases. The Joint Applicants "expect all those savings to flow back to customers when we file a rate case, but there are no interim flow back processes before we file that next rate case."[182] KCP&L has committed to filing a rate case in January 2019, and expects Westar to file a rate case along a similar timeline.[183] In the interim, the utilities can retain any transaction-related savings to pay dividends to GPE to finance the debt, thus depriving the customers of full benefit of any transaction-related savings. Without any interim flow back processes, the proposed transaction does not adequately benefit consumers.

68. Having concluded the Joint Application fails to meet merger standards (a)(i) – (a)(iv), it is very difficult for the Commission to find the proposed transaction is in the public interest, but the Commission will examine the remaining merger standards.

MERGER STANDARD (a)(v)

69. Next, the Commission examines merger standard (a)(v), the effect of the proposed transaction on the existing competition. As the Joint Applicants explain, there is a limited effect on existing competition since each electric utility is only authorized to provide service within a specified geographic area.[184] K.S.A. 66-1,172 divides the State into electric service territories and certificates only one retail electric supplier to provide retail electric service within the certified territory. CURB, the only party to address the issue of competition in its post-hearing brief, reiterates its concern that eliminating one significant entity in the electric industry may

[181] Kansas Industrial Consumers Group's Post Hearing Brief (KIC Brief), Mar. 13, 2017, p. 9.
[182] Tr. Vol. 1, p. 85 (Bassham).
[183] *Id.*, pp. 86-87 (Bassham).
[184] Joint Applicants' Reply Brief, p. 95.

impact future technological development and implementation of new power sources.[185] The Commission agrees with the Joint Applicants that CURB's concerns are too speculative to lead the Commission to find the proposed transaction would have a negative effect on competition. At the same time, the Joint Applicants have not demonstrated the transaction will have a beneficial effect on competition. Accordingly, merger standard (a)(v) neither advances nor impairs the probability of approving the proposed transaction.

MERGER STANDARD (b)

70. Merger standard (b) questions the effect of the transaction on the environment. The Joint Applicants claim there is no evidence that the proposed transaction will have a negative effect on the environment, nor is there any requirement to prove the transaction will have a positive effect on the environment.[186] The Joint Applicants point to the 16-EPDE-410-ACQ Docket, where in approving Liberty Utilities' Acquisition of Empire District Electric Company, the Commission concluded the transaction would not negatively impact the environment.[187]

71. The Sierra Club counters by arguing that by waiting to complete an IRP until July 2017, the Joint Applicants cannot demonstrate the proposed transaction will positively impact the environment or maximize Kansas' energy resources.[188]

72. Since the Joint Applicants have not filed an IRP to substantiate their claims regarding the proposed transaction's effect on Kansas' energy resources, the Commission is unable to determine what if any effect the proposed transaction will have on the environment. There is insufficient evidence to conclude the proposed transaction will have any environmental

[185] *Id.*; Crane Direct, p. 51.
[186] Joint Applicants' Reply Brief, pp. 95-96.
[187] *Id.*, p. 96.
[188] Sierra Club's Post-Hearing Brief, Mar. 13, 2017, pp. 3-4.

impact. Similar to the Commission's finding on merger standard (a)(v), applying merger standard (b) neither advances nor impairs the likelihood of approving the transaction.

MERGER STANDARD (c)

73. Merger standard (c) addresses whether the proposed transaction will provide a benefit to the state and local economies and the likelihood that the transaction will lead to labor dislocations and harm local communities. The first prong of merger standard (c) involves whether the proposed transaction will provide an economic benefit to the state and local economy. The Joint Applicants advance two major claims to suggest the transaction will provide an economic benefit: (1) the transaction will result in lower energy costs for consumers; and (2) the transaction ensures local control.[189]

74. GPE admits that over the past decade, both KCP&L and Westar have substantially increased their rates,[190] and by combining, they can operate in a less costly fashion to keep energy costs affordable.[191] Similarly, Westar expresses confidence that the combined company will reduce the size of future rate cases, benefitting customers and the state's economy as energy costs are an important factor in production costs.[192] GPE claims the resulting savings will flow to customers indefinitely, in the form of lower revenue requirements than would be possible absent the transaction.[193]

75. As discussed above, rather than propose a rate moratorium or refund,[194] the Joint Applicants plan to pass savings to its customers through rate cases. The savings would stay with the utilities until the filing of a rate case.[195] Until the next rate cases, which are not expected to

[189] Joint Applicants' Brief, pp. 115-116.
[190] Bassham Direct, p. 9.
[191] *Id.*, p. 7.
[192] Direct Testimony of Mark A. Ruelle (Ruelle Direct), June 28, 2016, pp. 9-10.
[193] Direct Testimony of Darrin R. Ives, June 28, 2016, p. 10.
[194] KIC Brief, p. 9.
[195] Tr. Vol. 1, p. 86 (Bassham).

be filed before 2019,[196] customers will not receive any benefit from savings. GPE admits for the first three years after the transaction, its customers would not see any savings.[197] GPE is not promising to reduce rates, only that they would likely request lower rate increases if the transaction is approved.[198]

76. Smaller rises in rate increases are premised on GPE recognizing savings. Absent savings, customers are unlikely to see lower rate increases. The Commission has already concluded the Joint Applicants' preliminary savings estimates are too speculative to satisfy merger standard (a)(ii)-(a)(iv). If GPE's estimated savings from plant retirements are overstated by $70 million for 2020 and $80 million for 2021, it calls into question whether KCP&L and Westar will be able to deliver lower rate increases to its customers. Those figures alone cast doubt on the utilities' ability to pass on any savings to its customers. Plus, GPE estimates only about half of the savings will be shared with customers in the form of lower rate increases, the other half will go to shareholders.[199] Accordingly, the Commission finds the evidence of savings to be too speculative to support the Joint Applicants' claim that they will be able to pass savings on to their customers. Without a showing of lower rate increases, the Joint Applicants cannot establish an economic benefit resulting from the transaction.

77. The Joint Applicants tout local ownership as one of the central benefits to the proposed transaction, arguing it will ensure jobs are not lost to an out-of-state utility.[200] This argument is flawed as it ignores the fact that GPE is an out-of-state utility, headquartered in Missouri. More importantly, while the Commission supports local ownership of its utilities, there is no evidence that local ownership will keep jobs in Kansas. The geographic proximity of

[196] *Id.*, pp. 86-87 (Bassham).
[197] *Id*, p. 88-89 (Bassham).
[198] Tr. Vol. 2, p. 358 (Proctor).
[199] *See* Direct Testimony of Robert H. Glass, Ph.D., Jan. 27, 2017, p. 9.
[200] Joint Applicants' Brief, p. 116.

the service territories actually makes it easier to eliminate jobs as maintenance crews can cover both territories. Similarly, the value of having two corporate headquarters approximately 75 miles apart is questionable. The Commission acknowledges that "GPE has also committed to retain Topeka Westar's headquarters and plans to continue operating Westar's contact center and general operating center in Wichita. These assurances recognize the importance of Westar's presence in Topeka and Wichita and demonstrate GPE's commitment to these communities and the employees, the Westar employees who work there."[201] But that pledge falls short of a commitment to preserve jobs in Kansas. Retaining a Topeka headquarters is not the same as a commitment to fully staffing the headquarters or maintaining certain employment levels.

78. The Joint Applicants rely on endorsements from public officials and community leaders in support of the Joint Application by touting the benefits of local control.[202] While GPE boasts 22 organizations offered support for the transaction at the December 5, 2016 public hearing,[203] on cross-examination, Charles Caisley, Vice President of Marketing and Public Affairs for GPE, admitted that of 93 public comments filed in the Docket, only 26 support the transaction.[204] Caisley attributes the majority of the public comments which are opposed to the transaction to "misguided" concerns that rates would increase.[205]

79. On cross-examination, Caisley acknowledged that he could not say whether GPE made Kemp's savings estimates available to any of the community leaders that offered public comments at the December 5, 2016 public hearing.[206] Caisley testified he did not think the Joint Applicants shared confidential documents at their meetings with customers and community

[201] Tr. Vol. 1, p. 30 (GPE Opening Statement).
[202] Joint Applicants' Brief, p. 118.
[203] Rebuttal Testimony of Terry Bassham, Jan. 9, 2017, p. 17.
[204] Tr. Vol. 6, p. 1499 (Caisley).
[205] *Id.*, p. 1500.
[206] *Id.*, p. 1506.

leaders.[207] The public comment period ended on January 18, 2017.[208] Since the Joint Applicants designated the number of job losses and the identity of power plants possibly targeted for closure as confidential until the Commission ordered them to remove the redactions on January 26, 2017,[209] the Commission does not believe the supporters of the transaction were fully advised of the transaction's potential consequences.

80. The Commission finds it telling that in both the Joint Applicants' initial post-hearing brief and its reply brief, they reference merger standard (c) as "whether the proposed transaction will be beneficial on an overall basis to state and local economies and communities in the area served by the resulting public utility operations in the state."[210] In referring to merger standard (c), the Joint Applicants omit the second sentence of (c), which asks "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."

81. The Joint Applicants claim they will attempt to achieve any reductions to their labor force through attrition.[211] But they cannot guarantee attrition will be sufficient to account for all necessary job reductions. The far greater concern is whether more job reductions will be necessary if GPE's projected savings estimates fall short. If the generation savings are overstated by $70 million for 2020 and $80 million for 2021, that money has to be accounted for. The two most likely sources are either job reductions or higher rates. Again, the Commission emphasizes the Joint Applicants' failure to submit IRPs. Without information on which plants are scheduled to be retired, the Commission lacks sufficient information to evaluate potential job

[207] *Id.*, p. 1513 (Caisley).
[208] Notice of Filing of Public Comments, Jan. 26, 2017.
[209] Order on Prehearing Motions, Jan. 26. 2017, ¶ 12.
[210] Joint Applicants' Brief, p. 114; Joint Applicants' Reply Brief, p. 100.
[211] Ruelle Direct, p. 34.

losses associated with plant closures. The Joint Application fails to demonstrate the proposed transaction will provide a benefit to the state and local economies or is unlikely to lead to labor dislocations and harm local communities. Therefore, the Joint Application does not satisfy merger standard (c).

MERGER STANDARD (d)

82. Merger standard (d) is whether the proposed transaction will preserve the Commission's jurisdiction and capacity to effectively regulate and audit public utility operations in the state. The Joint Applicants argue the transaction will not change the Commission's jurisdiction over KCP&L or Westar.[212] Specifically, the Joint Applicants claim they have demonstrated GPE's acquisition-related debt will not impose additional risks on the operating utilities or customers.[213] The Commission has already found that GPE's acquisition-related debt will impose additional risk as demonstrated by Moody's downgrade of GPE. The Commission remains concerned that the proposed transaction could result in a financially weakened GPE; forcing the Commission to adopt practices it would not otherwise adopt to provide a higher stream of revenue to the utility to support GPE's debt.[214] The higher stream of revenue would be in the form of higher rates. The Joint Applicants claim effective ring fencing would prevent GPE from becoming so financially weak as to require the Commission to take extraordinary action.[215] But the Joint Applicants object to any effective ring fencing, claiming it would prevent them from completing the transaction. For example, the Joint Applicants caution that imposing additional conditions could make the transaction impossible.[216] The conditions the Joint Applicants include in DRI-3 do not effectively insulate the operating utilities from any financial

[212] Joint Applicants' Brief, p. 26.
[213] *Id.*, p. 29.
[214] *See* Gatewood Direct, p. 44.
[215] *See* Joint Applicants' Brief, p. 31.
[216] *Id.*, p. 66.

difficulties that may be encountered by GPE. By refusing to even consider additional conditions, such as maintaining a separate board of directors for Westar, the Joint Applicants do not offer any real ring fencing to effectively insulate the operating utilities from any financial risks assumed by GPE. Therefore, the Joint Application fails under merger standard (d).

MERGER STANDARD (e)

83. Merger standard (e) addresses the effect of the transaction on affected public utility shareholders. It is uncontested that at special shareholder meetings held on September 26, 2016, over 92% of the votes cast by GPE shareholders and over 95% of the votes cast by Westar shareholders supported the transaction.[217] As of September 26, 2016, approximately 85% of GPE's common stock was held by sophisticated, institutional investors.[218] The Commission is reluctant to second guess the overwhelming majority of both GPE and Westar shareholders. Therefore, the Commission finds the proposed transaction satisfies merger standard (e).

MERGER STANDARDS (f) and (g)

84. Since merger standard (f), which asks whether the transaction maximizes the use of Kansas' energy resources, and merger standard (g), which asks whether the transaction will reduce the possibility of economic waste, have substantial overlap, the Commission addresses them together. As BPU reminds the Commission, "[t]he Joint Applicants control the timeline of this Transaction. Nothing forced them to come to this Commission with an auction developed savings analysis when more formal, better vetted savings analyses were apparently underway through the integration process."[219] Yet, the Joint Applicants elected not to include the integration process results in the record.[220]

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[217] *Id.*, p. 80.
[218] *Id.*
[219] BPU Brief, p. 73.
[220] *Id.*

85. The Joint Applicants did not include the integration process results in the record, because they have not reached a final decision on plant retirements.

> The estimated savings that have been put forward by GPE based on the analysis and work that occurred pre-announcement of the transaction is just an estimate. Now, there are generation retirements in those estimates, but what I would tell you is no final decision has been made with respect to those requirements until we do a post close integrated resource plan to determine what is in the long-run best interest of customers, so releasing that information which is simply an estimate of a possibility, in our view, needlessly raises fears on the part of workers at those generating units, the communities where those generating units are housed when no final decision has been made.[221]

Since the Joint Applicants have not even reached a final decision on plant retirements, there is nothing in the record for the Commission to determine whether the transaction maximizes the use of Kansas' energy resources, or will reduce the possibility of economic waste.

86. As the Commission concluded when reviewing the effect of the proposed transaction on the environment, the Joint Applicants' failure to provide IRPs identifying which facilities they intend to close as a result of the transaction,[222] there is insufficient evidence in the record for the Commission to determine whether the transaction would maximize the use of Kansas' energy resources or reduce the likelihood of economic waste.

MERGER STANDARD (h)

87. The final merger standard, (h), asks what impact, if any, the transaction has on the public safety. The Joint Applicants claim there is no reasonable basis to conclude the transaction will negatively impact public safety.[223] Specifically, they note savings from the vegetation management program will not reduce the number of trees they trim.[224] Reductions in spending on vegetation management poses a risk to public safety by making it more likely to knock down

[221] Transcript of January 24, 2017 Hearing on Prehearing Motions, p. 49 (Hack).
[222] *See id.*
[223] Joint Applicants' Brief, p. 105.
[224] *Id.*

power lines, which could come into contact with people or property or simply cause power outages.[225] BPU and Staff are concerned that as a result of the financial risks GPE is assuming as part of the transaction, financial pressure could force GPE and the operating utilities to defer maintenance and system improvements to service the debt.[226] BPU also raises concerns that reduced capital expenditures for distribution facilities could lead to aging facilities becoming less reliable and more dangerous.[227]

88. As discussed above, the Joint Applicants have not demonstrated sufficient savings to instill confidence that they will be able to service the transaction-related debt. If GPE's projected savings estimates fall short, and the evidence suggests that the generation savings are overstated by $70 million for 2020 and $80 million for 2021, the operating utilities may have to find additional cuts above and beyond those already identified to the Commission. The Commission is deeply concerned that additional cuts could come from spending on vegetation management and deferring maintenance and system improvements. Therefore, the Commission remains concerned the transaction may negatively impact public safety. Accordingly, the Commission finds the transaction does not satisfy merger standard (h).

89. After a thorough examination of its merger standards, the Commission concludes the proposed transaction is not in the public interest. The proposed transaction fails not only to meet the majority of the merger standards, but it fails to meet the most important of the factors.

90. Since the Commission is denying the Joint Application, it is not necessary to determine the appropriate capital structure for the post-transaction entity. Nonetheless, the

[225] Krajewski Direct, p. 22
[226] *Id.*, p. 22; Direct Testimony of Casey Gile, Dec. 16, 2016, p. 9.
[227] Krajewski Direct, p. 23.

Commission reaffirms its commitment to use a capital structure that will result in the lowest overall cost of capital that is representative of utility operations.[228]

CONCLUSION

91. While the Joint Applicants argue "the repetition of the same arguments by multiple parties does not make them deserving of more weight, true, reasonable, or supportive of the public interest,"[229] the Commission cannot ignore the substantial, competent evidence in opposition to the proposed transaction. As the Joint Applicants admit, of the 28 parties to the Docket, only the Joint Applicants are in favor of the merger.[230] All of the other parties are aligned in opposition to the merger.[231] The Joint Applicants try to discredit the opposition by claiming "most of the intervenors in this case intervened to pursue private individual interests"[232] rather than representing the public interest the Commission is charged to protect. But the Joint Applicants are also pursuing their own interests in advocating for the transaction.

92. As Westar's CEO Mark Ruelle testified, "[i]dentifying risk is not the stopping point for an analysis; it's the starting point for an analysis."[233] The threshold question facing the Commission is how much financial risk can be accepted before the proposed transaction does not serve the public interest.[234] In its detailed review of an extensive record, the Commission found the proposed transaction to be too risky. GPE's market capitalization is only $4.8 billion, yet it proposes to pay Westar a $4.9 billion acquisition premium. The size of the acquisition premium calls into question GPE's ability to service the transaction-incurred debt as evidenced by

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[228] *See Moundridge Tel. Co. v. Kan. Corp. Comm'n*, No. 114,064, 2015 WL 7693784, at *16 (Kan. Ct. App. Nov. 25, 2015); *Aquila, Inc. v. Kan. Corp. Comm'n*, No. 94, 326, 2005 WL 1719705, at *2-3 (Kan. Ct. App. July 22, 2005); *Wheat State Tel. Co. v. Kan. Corp. Comm'n*, No. 91,640, 2004 WL 895534, at *2 (Kan. Ct. App. Apr. 23, 2004).
[229] Joint Applicants' Reply Brief, p. 3.
[230] Transcript of Jan. 24, 2017 Hearing on Prehearing Motions, p. 8 (Cafer).
[231] *Id.*
[232] Joint Applicants' Reply Brief, p. 3.
[233] Tr. Vol. 1, pp. 263-64 (Ruelle).
[234] *See* KEPCo Brief, p. 1.

Moody's decision to downgrade GPE to the lowest investment grade rating. To remain at an investment grade rating, there is little margin for error. If GPE's projections are inaccurate or intervening events such as rising interest rates occur, GPE is in danger of losing its investment grade rating.

93. The Joint Applicants essentially ask the Commission to trust their raw estimates and projections. The Commission cannot take that risk because if the Joint Applicants' projections are overly rosy, the customers will face higher rates or decreased service.

94. GPE does not dispute that they will incur a large amount of debt to acquire Westar. Nor does it dispute it has no written plan to deleverage. The Joint Application is deficient. It does not include plans showing which generation plants will be retired early. There are no examples of reduced spending through procurement savings and no evidence that customers will see any savings. The Joint Application simply does not give the Commission any assurances that it will be able to service the newly-incurred debt without raising rates or reducing services. Therefore, the Commission has no choice but to find the proposed transaction is not in the public interest. Accordingly, the Commission denies GPE's application to acquire Westar.

THEREFORE, THE COMMISSION ORDERS:

A. The Joint Application is denied. The Commission finds the proposed transaction is not in the public interest and rejects Great Plains' application to acquire Westar.

B. Parties have 15 days from the date of electronic service of this Order to petition for reconsideration.[235]

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

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

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: APR 19 2017

Amy L. Green
Secretary to the Commission

BGF

EMAILED

APR 19 2017

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 APR 19 2017.

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