

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

In the Matter of the Capital Plan Compliance	)	
Docket for Kansas City Power & Light	)	
Company and Westar Energy, Inc. Pursuant to	)	Docket No. 19-KCPE-096-CPL
the Commission's Order in Docket No.	)	
18-KCPE-095-MER.	)	

**Sierra Club's Comments on the Joint Parties'  
March 1 Compliance Filing and June 18 Work-Study**

On March 1, 2019, the Staff of the State Corporation Commission ("Staff"), Citizens' Utility Ratepayer Board ("CURB"), Kansas City Power & Light Company ("KCP&L"), and Westar Energy, Inc. and Kansas Gas and Electric Company ("Westar") (collectively, the "Joint Parties") submitted a Notice of Compliance Filing ("Compliance Filing") in this docket. On April 17, Sierra Club filed a motion for the Kansas Corporation Commission ("Commission") to provide a 60-day comment period for interested stakeholders to submit comments on the Compliance Filing, after which Sierra Club submitted comments on May 24 ("May 24 Comments") regarding the Joint Parties' proposed process for an Integrated Resource Plan ("IRP"). On June 4, 2019, the Commission issued a Scheduling Order in which it denied Sierra Club's motion and established a work-study for June 18 where the Joint Parties presented their reporting framework. The Commission noted that Sierra Club could file comments by July 18. Sierra Club's May 24 Comments covered the pillars and practices of prudent IRP planning, citing numerous examples from around the country. Sierra Club incorporates its May 24 Comments herein by reference. Sierra Club focuses this set of comments on several deficiencies with and solutions for the ideas presented in both the Compliance Filing and the work-study.

**I. The Commission Should Establish a Comprehensive and Formal IRP Process Using Nationwide Best Practices.**

IRP processes arose in the United States in the 1980s, when states were determining how to address the oil embargo and nuclear cost overruns from the 1970s. IRPs are now an accepted and established method for utilities to conduct long-term planning in order to deliver reliable energy services at the lowest practical cost to customers. At least 33 states have incorporated some type of IRP process<sup>1</sup> and, as a result, there are decades of lessons learned, from which best practices have emerged. In its May 24 Comments, Sierra Club summarized some of these best practices in a discussion about how and why the Commission should create a robust IRP process. The present comments focus on why the Joint Parties' Compliance Filing and work-study presentation is inadequate. Proceeding with the status quo entails real risk for Kansas ratepayers, and the lack of an IRP process in Kansas is a glaring omission in the Commission's regulatory toolkit. The Commission has an opportunity to create an IRP that helps ensure utilities plan prudently for the benefit of all Kansans. The Commission should embrace the challenge, reject the current Compliance Filing and, instead, adopt a process that incorporates nationwide best practices, including comprehensive long-term planning and substantial stakeholder involvement.

**A. The Compliance Filing Fails to Establish a Proper Purpose for the IRP.**

Sierra Club's May 24 Comments discussed the importance of the Commission articulating a clear and concise statement of purpose for the IRP process. Staff appeared to take issue with this proposal at the work-study meeting. Establishing a strong statement of purpose is important because it frames the whole process. For example, the Compliance Filing states that

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<sup>1</sup> See Energy and Environment Guide to Action - Chapter 7.1: Electricity Resource Planning and Procurement, U.S. Environmental Protection Agency, Table 7.1.2, *available at* <https://www.epa.gov/statelocalenergy/energy-and-environment-guide-action-chapter-71-electricity-resource-planning-and> (2015).

“[t]he purpose of the IRP process is to present the utility's preferred portfolio of resources to customers and the Commission.” Sierra Club contends that this approach is inappropriate because it suggests that the utility has a predetermined plan before the IRP process even begins, and that the IRP should just seek to inform people of what that predetermined plan is. Instead, the purpose of an IRP process should be to develop a long-term resource portfolio that minimizes customer costs and risks. Such process should include identifying and evaluating a range of potential resource plans, carefully assessing the benefits and risks of each under a reasonable range of likely futures, and then determining through a robust, objective, and transparent process what the Preferred Resource Plan should be.

B. Long-Term Planning is the Best Way to Account for Short-Term Variability.

At the June 18 work-study meeting, Staff supported a “non-traditional” IRP process that prioritizes short-term planning in order to provide flexibility in a rapidly changing energy market. This appears to be a drastically different approach than the path set forth in the Compliance Filing, which described a “Standard IRP Structure” that would incorporate “Medium-Run future expectations (10-15 years)” with an explicit recognition that “given the long-lived nature of some utility investments, the IRP evaluation timeframe may need to extend beyond the specified 10-15-year period.” If the Joint Parties intended to rewrite the Compliance Filing, then the Joint Parties should file another plan and the Commission should establish a reasonable time for public comment.

Ultimately, if function and flexibility are what the Joint Parties seek, then long-term (20-year) rather than short-term (5-year) planning is the best path forward. The Compliance Filing itself recognizes this, noting that “[t]he flexibility and robustness of an optimal portfolio is determined by input sensitivity analysis and contingent scenario analysis.” That is, although a



utility will select a Preferred Resource Plan after completing an IRP process, this portfolio is informed by complex electricity system modeling which includes a wide range of inputs, settings, assumptions, and scenarios. These models take into account what happens to the long-term portfolio if, for example, near-term coal or gas fuel costs stay constant, drop, or rise, or whether and how new technologies such as battery storage and electric vehicles affect the utility depending on adoption rates.

A real-world example may illustrate the importance of a long-term process: a utility might have to decide in the five years whether to spend hundreds of millions of dollars to upgrade and retrofit an aging coal unit, or whether to retire and replace that unit. If the unit is retrofitted, it would likely continue operating for two or three decades, in part because it would take that long to pay off the retrofit expense. Similarly, if the unit is retired, the utility would presumably want to keep any replacement resources operating for two or three decades in order to pay off those expenses. Thus, in order to decide whether the Preferred Resource Plan today should involve retrofitting or retiring the aging coal unit, the utility must look at the likely future economics of the coal unit against replacement resources over a two-to-three decade period. Adopting an approach that is shorter in time would eliminate the long-term view, and would not be consistent with the public interest.

Finally, as discussed in Sierra Club's May 24 Comments, each IRP should include a shorter-term proposed action plan that describes how the utility will work to achieve its Preferred Resource Plan over the following five years. A process that incorporates a triennial IRP cycle coupled with a five-year action plan effectively addresses the rapidly evolving regulatory environment while ensuring that the long-term focus needed for reasonable utility planning occurs. In practice, the action plan overlaps with the subsequent IRP, ensuring a continuity of

planning and enabling a process that accounts for modifications due to new information, such as changing economics.

C. Comprehensive and Consistent Planning Can Limit Stranded Assets.

The following clause of the Compliance Filing generated significant discussion at the work-study meeting:

When Staff and CURB agree that the utility's initial decision for a major capital investment was prudent, but current events require the utility to adjust or abandon planned or in-progress investments as a result of unexpected developments, Staff and CURB will **not** seek to financially penalize the utility and will not apply hindsight judgement in evaluating the utility's initial decisions. In such instances, Staff and CURB will consider recovery of investments that should be adjusted or abandoned in order to pursue an alternative investment or option that benefits customers in the long-term.

This clause lacks clarity and should be modified or removed. Its most charitable interpretation implies that past actions should not compel future performance, which is agreeable and a good business practice. A not-so-charitable interpretation would be that Staff and CURB—the ostensible protectors of the public interest—are willing to tie their hands in perpetuity. That latter interpretation would ignore the fact that prudence is an ongoing concept that can change over time. As such, what is important to the public interest is ensuring that (a) the prudence of major spending is being evaluated in advance of that spending, (b) even if the spending is deemed prudent initially, such prudence is reevaluated periodically, and (c) once a resource is determined to be imprudent, further spending beyond what is needed to retire the resource expeditiously halts.

A relevant example may illustrate the importance of a robust IRP as it pertains to ongoing prudence. In 2011, KCP&L sought through a pre-determination docket to recover over \$1.2B for



environmental retrofits at its La Cygne coal-fired power plant.<sup>2</sup> Sierra Club opposed these retrofits, as it was clear then—eight years ago—that the economics of coal were quickly changing and that the expenditures would be uneconomic. The fiscal picture for coal has steadily become bleaker over the years. A number of recent reports have examined the declining cost competitiveness of coal-burning power plants nationwide.<sup>3</sup> Just last week, Moody’s Investors Service issued a report indicating that coal-fired electricity could comprise just 11% of U.S. generation by 2030.<sup>4,5</sup> Moreover, researchers and market monitors have raised concerns about

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<sup>2</sup> See generally *In the Matter of the Petition of Kansas City Power & Light Company (KCP&L) for Determination of the Ratemaking Principles and Treatment That Will Apply to the Recovery in Rates of the Cost to be Incurred by KCP&L for Certain Electric Generation Facilities Under K.S.A. 66-1239, Docket No. 11-KCPE-581-PRE*, available at <http://estar.kcc.ks.gov/estar/portal/kscs/page/docket-docs/PSC/DocketDetails.aspx?DocketId=29c43954-9a79-46ff-8211-9d45316c6b64>.

<sup>3</sup> See, e.g., *Coal-Fired Electricity Generation in the United States and Future Outlook*, M.J. Bradley & Associates, LLC, available at <https://www.mjbradley.com/sites/default/files/MJBacoalretirementissuebrief.pdf> (2017); Jeremy Richardson, Sam Gomberg, Julie McNamara, and J.C. Kibbey, *A Dwindling Role for Coal*, Union of Concerned Scientists, available at <https://www.ucsusa.org/clean-energy/coal-and-other-fossil-fuels/coal-transition> (2017); Trevor Houser, Jason Bordoff, and Peter Marsters, *Can Coal Make a Comeback?*, Columbia University Center on Global Energy Policy, School of International and Public Affairs, and Rhodium Group, available at <https://rhg.com/research/can-coal-make-a-comeback/> (2017); *Public Power Utilities And Electric Generation & Transmission Cooperatives - US: Efficient Coal Plants Are Still Competitive, But Nationwide Fleet Remains Under Pressure*, Moody’s Investor Services, available at [https://www.moody.com/research/Moodys-Some-coal-plants-still-perform-economically-but-competitiveness-could--PR\\_381891](https://www.moody.com/research/Moodys-Some-coal-plants-still-perform-economically-but-competitiveness-could--PR_381891) (2018); and Annie Benn, Paul Bodnar, James Mitchell, and Jeff Waller, *Managing the Coal Capital Transition: Collaborative Opportunities for Asset Owners, Policymakers, and Environmental Advocates*, Rocky Mountain Institute, available at <http://www.rmi.org/insight/managing-coal-capital-transition/> (2018).

<sup>4</sup> *Fading utility demand for thermal coal will increase reliance on exports, met coal*, Moody’s Investors Service, available at [https://www.moody.com/research/Moodys-Fading-utility-demand-for-thermal-coal-will-continue-US--PBC\\_1183925](https://www.moody.com/research/Moodys-Fading-utility-demand-for-thermal-coal-will-continue-US--PBC_1183925) (2019).

<sup>5</sup> Moody’s reports that the decreased demand for coal will have the greatest impact on the Powder River Basin (PRB). But these effects ripple outwards. For example, Jeffrey Energy Center received all of its coal from one mine in the PRB region—the Eagle Butte Mine, which

some generators' decisions to self-commit, rather than to commit economically based on market operator instructions.<sup>6</sup> Had Kansas incorporated an IRP years ago, KCP&L would have had to submit several cycles of system modeling and reports to show whether continued expenditures on La Cygne and other coal plants are economic. The Commission's order in the La Cygne pre-determination docket specifically noted that:

the issue of prudence does not end with a finding by this Commission that, at the time its determination was made, KCP&L made a prudent decision that the La Cygne Project was the least cost option. While implementing the La Cygne Project, KCP&L will need to continue to be careful, use caution, be attentive, and use good judgment in addressing ongoing changes that arise and in making decisions regarding the La Cygne Project to be sure its decision remains prudent.<sup>7</sup>

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permanently shuttered on July 1, 2019. See Form EIA-923, U.S. Energy Information Administration, available at <https://www.eia.gov/electricity/data/eia923/>; Camille Erickson, *Two Wyoming coal mines close, send 700 workers home after bankruptcy filing*, Casper Star-Tribune, July 1, 2019, available at [https://trib.com/business/energy/two-wyoming-coal-mines-close-send-workers-home-after-bankruptcy/article\\_773100d1-b5b4-57d8-af49-842518b9e219.html](https://trib.com/business/energy/two-wyoming-coal-mines-close-send-workers-home-after-bankruptcy/article_773100d1-b5b4-57d8-af49-842518b9e219.html). A comprehensive IRP considers many different analysts' predictions for fuel sources and prices. From where is Westar obtaining its fuel for Jeffrey Energy Center now—and at what price?

<sup>6</sup> See *State of the Market Summer 2018*, Southwest Power Pool Market Monitoring Unit, pp. 52-56, available at [https://www.spp.org/documents/58811/spp\\_mmu\\_qsom\\_summer\\_2018\\_final.pdf](https://www.spp.org/documents/58811/spp_mmu_qsom_summer_2018_final.pdf) (published Oct. 15, 2018); *State of the Market 2018*, Southwest Power Pool Market Monitoring Unit, pp. 5, 13, 125-26, 229, 243-245, 253-56, available at <https://spp.org/documents/59861/2018%20annual%20state%20of%20the%20market%20report.pdf> (published May 15, 2019); Joseph Daniel, *The Billion-Dollar Coal Bailout Nobody Is Talking About: Self-Committing In Power Markets*, Union of Concerned Scientists, June 3, 2019, available at <https://blog.ucsusa.org/joseph-daniel/billion-dollar-coal-bailout-nobody-is-talking-about>; Brian Grimmett, *Report: Kansas Utilities Run Coal Plants Year-Round Even Though It Costs Ratepayers Millions*, KMUW, June 21, 2019, available at <https://www.kmuw.org/post/report-kansas-utilities-run-coal-plants-year-round-even-though-it-costs-ratepayers-millions>.

<sup>7</sup> *Order Granting KCP&L Petition for Predetermination of Rate-Making Principles and Treatment*, Docket No. 11-KCPE-581-PRE, pg. 35 (August 19, 2011), available at <http://estar.kcc.ks.gov/estar/ViewFile.aspx/20110819153509.pdf?Id=fc7ebca0-3355-4374-8007-a76ddb717fd9>.



As it stands, Westar and KCP&L officials are essentially asking the Commission—and all Kansans—to trust that various expenditures will pay off.<sup>8</sup> There is no evidence for this certainty. It is time for the Commission to incorporate inclusive and thorough IRP principles into its regulatory regime so that there is a consistent and ongoing evaluation of the prudence of the utility's use of ratepayer funds. A comprehensive IRP would certainly not replace a pre-determination docket or rate case; however, information derived from an IRP would help ensure that expenditures that are likely to become uneconomic are not made in the first place, and that the prudence of expenditures that are made continues to be evaluated on an ongoing basis.

## **II. Public Participation is Paramount.**

At the June 18 work-study meeting, Staff appeared to disagree that public participation was a necessary component of an IRP. In contrast, Evergy's Chief Customer Officer, Chuck Caisley appears to understand the importance of stakeholder input. In a March interview with KCUR, Caisley said that he would like to get all of the interested parties together to plot a long-term path for what the future of Kansas electric utilities will look like.<sup>9</sup> There is no better forum or venue to convene such a process than an IRP docket before the Commission. Strong stakeholder input is also an efficiency consideration, as utilities can seek buy-in throughout the process, which can reduce protracted litigation later. In addition to Sierra Club's May 24 Comments, the Commission should consider live-streaming stakeholder and other IRP-related processes. For instance, the June 18 work-study meeting was neither publicly available nor

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<sup>8</sup> Brian Grimmett, *Westar And KCP&L Say Coal Pushed Up Kansas Electric Rates, But Investments Will Pay Off Soon*, KMWU, Jan. 22, 2019, available at <https://www.kmuw.org/post/westar-and-kcpl-say-coal-pushed-kansas-electric-rates-investments-will-pay-soon>.

<sup>9</sup> See Brian Grimmett, *Environmentalists And Businesses Agree: Kansas Utility Rates Are Too High*, KCUR, Mar. 4, 2019, available at <https://www.kcur.org/post/environmentalists-and-businesses-agree-kansas-utility-rates-are-too-high#stream/0>.



widely publicized, and thus only the people privy to the process and able to attend in-person could know what occurred at the meeting. At a minimum, a transcript of the proceeding should have been made available in the docket, free of charge.

### **III. Conclusion**

As explained in these and Sierra Club's May 24 Comments, the Joint Parties' Compliance Filing does not sufficiently account for the present-day complex utility planning environment. Sierra Club urges the Commission to establish a fulsome IRP process that will benefit all Kansans by ensuring that utilities engage in an open, transparent, and objective planning process that robustly evaluates both existing and the full range of potential new resources in order to develop a resource plan that minimizes costs and risks to customers.

Respectfully submitted this 18th day of July, 2019.

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# VERIFICATION

STATE OF KANSAS                   )  
  ) ss  
COUNTY OF JACKSON           )

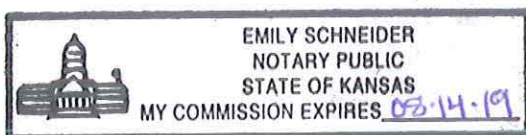
I, Robert Eye, of lawful age and being duly sworn, state and affirm the following: that I am counsel for Sierra Club; I have read and reviewed the above and foregoing Comments; and the contents thereof are true and correct to the best of my information, knowledge, and belief.

  
Robert Eye

SUBSCRIBED AND SWORN before me this 18th day of July, 2019.

  
Notary Public

My commission expires:





**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on this 18th day of July, 2019, a true and correct copy of the above and foregoing **Sierra Club's Comments on the Joint Parties' March 1 Compliance Filing and June 18 Work-Study** was electronically delivered to the following individuals, who constitute the service list for Docket No. 19-KCPE-096-CPL:

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