

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Great)
Plains Energy Incorporated, Kansas City)
Power & Light Company and Westar Energy,) Docket No. 18-KCPE-095-MER
Inc. for Approval of the Merger of Westar)
Energy, Inc. and Great Plains Energy)
Incorporated.)

**KIC RESPONSE TO RESPONSE OF APPLICANTS TO MOTION TO
EXTEND DEADLINE FOR TESTIMONY IN OPPOSITION TO
SETTLEMENT AGREEMENT**

The Kansas Industrial Consumers Group, Inc. ("KIC"), respectfully files this *Response to Response of Applicants to Motion to Extend Deadline for Testimony in Opposition to Settlement Agreement*. In support of its Response, KIC states to the State Corporation Commission of the state of Kansas ("Commission" or "KCC") as follows:

I. Background

1. On March 6, 2018, KIC filed its Motion requesting the Commission extend the deadline to file testimony opposing a settlement. In its Motion, KIC explained a 3-day deadline for opposition testimony was both 1) unfair and 2) procedurally inappropriate, providing good cause for a short extension to Thursday, March 15.¹

2. On March 7, 2018, Applicants filed a Response to KIC's Motion. Applicants argue KIC did not petition for reconsideration of the Commission's procedural schedule when it was issued. In addition, Applicants contend KIC "voluntarily absented" itself from the latter stages of settlement discussions. Applicants further contend the settling parties' "agreements" were

¹ Though fully implied by its Motion, KIC also notes this good cause also extends to a waiver of the deadline to file Motions in this proceeding, which was March 5, 2018.

provided to KIC on March 3, 2018. Finally, Applicants cite Commission rules regarding *written Objections* to a settlement.

II. Response

3. KIC does not wish to belabor this Response and does not want to discuss settlement more than reasonably necessary. However, it is compelled to respond to certain allegations regarding KIC's participation in such negotiations. KIC attended every session of settlement negotiations in person or by telephone from Tuesday, February 27, through the morning of Friday, March 2, 2018. At the conclusion of the Friday morning session, which KIC attended in person, KIC's attorneys informed the parties KIC would attend afternoon discussions by telephone. KIC further requested those parties contact KIC when a time for afternoon discussions was scheduled, so it could rejoin the discussions. KIC was never contacted or invited to participate further. KIC was later informed that certain other parties had reached an agreement in principle.² KIC is willing to allow that its "dis-invitation" from the March 2nd settlement discussions may have been the result of an unintentional miscommunication. However, the allegation that KIC "voluntarily absented" itself from settlement discussions is entirely unfounded.

4. Finally, KIC must also address the Applicants' flawed argument conflating two separate filings – written objections to settlement agreements and testimony opposing settlement agreements. Testimony is evidence. A written objection is a legal filing notifying the tribunal of a party's objections to the settlement – both substantive and legal in nature. KIC intends to file

² KIC was provided a term sheet on Saturday, March 3, 2018. Subsequent to the filing of its Motion, KIC has also been provided a draft a settlement. KIC appreciates this good-faith courtesy. However, no executed agreement has been filed. KIC has a due process right to review the a fully-executed and filed settlement agreement before formulating a response. KIC's rights are not protected by simply relying upon purported oral agreements, term sheets, and draft settlements. As of the filing of this Response, no Settlement Agreement has been filed in this proceeding.

testimony addressing the settlement. However, KIC may also elect to file a written objection identifying additional grounds for the Commission to reject the settlement.

5. In addition to the Response above, KIC refers the Commission to the good cause demonstrated in its Motion and requests the Commission extend the deadline to file testimony opposing any settlement until Thursday, March 15, 2018.

WHEREFORE, KIC respectfully requests the Commission issue an order extending the deadline to file testimony opposing any settlement until Thursday, March 15, 2018.

Respectfully submitted,

/s/ **Andrew J. French**

James P. Zakoura, KS Bar #07644
Andrew J. French, KS Bar # 24680
Smithyman & Zakoura, Chartered
750 Commerce Plaza II
7400 West 110th Street
Overland Park, KS 66210
Phone: (913) 661-9800
Fax: (913) 661-9863
Email: jim@smizak-law.com
andrew@smizak-law.com

**Attorneys for Kansas Industrial Consumers
Group, Inc.**

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

Andrew J. French, being duly sworn upon his oath, deposes and states that he is the Attorney for the Kansas Industrial Consumers Group, Inc., that he has read and is familiar with the foregoing *Response to Response of Applicants to Motion to Extend Deadline for Testimony in Opposition to Settlement Agreement*, and the statements therein are true to the best of his knowledge, information, and belief.



Andrew J. French

SUBSCRIBED AND SWORN to before me this 7th day of March, 2018.



Notary Public

My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or regular U.S. mail (unless otherwise noted), the 7th day of March, 2018 to the parties below:

MARTIN J. BREGMAN BREGMAN LAW OFFICE, L.L.C. 311 PARKER CIRCLE LAWRENCE, KS 66049 mjb@mjbregmanlaw.com	GLEND A CAFER CAFER PEMBERTON LLC 3321 SW 6TH ST TOPEKA, KS 66606 glenda@caferlaw.com
TERRI PEMBERTON CAFER PEMBERTON LLC 3321 SW 6TH ST TOPEKA, KS 66606 terri@caferlaw.com	THOMAS J. CONNORS CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 tj.connors@curb.kansas.gov
TODD E. LOVE CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 t.love@curb.kansas.gov	DAVID W. NICKEL CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 d.nickel@curb.kansas.gov
DELLA SMITH CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 d.smith@curb.kansas.gov	SHONDA SMITH CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 sd.smith@curb.kansas.gov
ROBERT J. HACK KANSAS CITY POWER & LIGHT COMPANY ONE KANSAS CITY PL 1200 MAIN ST 31ST FLOOR PO BOX 418679 KANSAS CITY, MO 64141-9679 rob.hack@kcpl.com	DARRIN R. IVES KANSAS CITY POWER & LIGHT COMPANY ONE KANSAS CITY PL 1200 MAIN ST 31ST FLOOR PO BOX 418679 KANSAS CITY, MO 64141-9679 darrin.ives@kcpl.com
ROGER W. STEINER KANSAS CITY POWER & LIGHT COMPANY ONE KANSAS CITY PL 1200 MAIN ST 31ST FLOOR PO BOX 418679 KANSAS CITY, MO 64141-9679 roger.steiner@kcpl.com	NICOLE A. WEHRY KANSAS CITY POWER & LIGHT COMPANY ONE KANSAS CITY PL 1200 MAIN ST 31ST FLOOR PO BOX 418679 KANSAS CITY, MO 64141-9679 nicole.wehry@kcpl.com

ANTHONY WESTENKIRCHNER KANSAS CITY POWER & LIGHT COMPANY ONE KANSAS CITY PL 1200 MAIN ST 31ST FLOOR PO BOX 418679 KANSAS CITY, MO 64141-9679 anthony.westenkirchner@kcpl.com	MICHAEL NEELEY KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 m.neeley@kcc.ks.gov
AMBER SMITH KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 a.smith@kcc.ks.gov	MARK DOLJAC KANSAS ELECTRIC POWER CO-OP, INC. 600 SW CORPORATE VIEW PO BOX 4877 TOPEKA, KS 66604-0877 mdoljac@kepco.org
WILLIAMS G. RIGGINS KANSAS ELECTRIC POWER CO-OP, INC. 600 SW CORPORATE VIEW PO BOX 4877 TOPEKA, KS 66604-0877 briggins@kepco.org	CATHRYN J. DINGES WESTAR ENERGY, INC. 818 S KANSAS AVE PO BOX 889 TOPEKA, KS 66601-0889 cathy.dinges@westarenergy.com
JEFFREY L. MARTIN WESTAR ENERGY, INC. 818 S KANSAS AVE PO BOX 889 TOPEKA, KS 66601-0889 jeffrey.martin@westarenergy.com	MICHAEL E. AMASH BLAKE & UHLIG PA SUITE 574 NEW BROTHERHOOD BLDG. 753 STATE AVE. KANSAS CITY, KS 66101 mea@blake-uhlig.com
ANDREW J. ZELLERS BRIGHTERGY, LLC 1712 MAIN ST 6TH FLR KANSAS CITY, MO 64108 andy.zellers@brightergy.com	CARY CATCHPOLE CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66044 c.catchpole@curb.kansas.gov
JONATHAN LESSER CONTINENTAL ECONOMICS, INC. 6 REAL PLACE SCANDIA PARK, NM 87047 jlesser@continentalecon.com	DANIEL R. ZMIJEWSKI DRZ LAW FIRM 9229 WARD PARKWAY STE 370 KANSAS CITY, MO 64114 dan@drzlawfirm.com

<p>ASHLEY M. BOND DUNCAN & ALLEN 1730 RHODE ISLAND AVENUE NW SUITE 700 WASHINGTON, DC 20036-3155 amb@duncanallen.com</p>	<p>KENNETH M. HOLMBOE DUNCAN & ALLEN 1730 RHODE ISLAND AVENUE NW SUITE 700 WASHINGTON, DC 20036-3155 kh@duncanallen.com</p>
<p>GREGG D. OTTINGER DUNCAN & ALLEN 1730 RHODE ISLAND AVENUE NW SUITE 700 WASHINGTON, DC 20036-3155 gdo@duncanallen.com</p>	<p>SHANNON FISK EARTH JUSTICE 1617 JOHN F KENNEDY BLVD SUITE 1675 PHILADELPHIA, PA 19103 sfisk@earthjustice.org</p>
<p>SARAH STEELE GILMORE & BELL, P.C. ONE MAIN PLACE 100 NORTH MAIN, STE. 800 WICHITA, KS 67202 ssteele@gilmorebell.com</p>	<p>DARRELL McCUBBINS IBEW LOCAL UNION NO. 1464 1760 UNIVERSAL AVENUE KANSAS CITY, MO 64120 kwhiteman@ibew1464.org</p>
<p>DAVID PINON IBEW LOCAL UNION NO. 1613 6900 EXECUTIVE DR SUITE 180 KANSAS CITY, MO 64120 local1613@earthlink.net</p>	<p>RANDY ADAMS IBEW LOCAL UNION NO. 412 1760 UNIVERSAL AVENUE KANSAS CITY, MO 64120 business.manager@ibew412.org</p>
<p>JOHN KRAJEWSKI J K ENERGY CONSULTING LLC 650 J STREET, STE 108 LINCOLN, NE 68508 jk@jkenergyconsulting.com</p>	<p>ALAN I. ROBBINS JENNINGS, STROUSS & SALMON, P.L.C. 1350 I STREET, NW, SUITE 810 WASHINGTON, DC 20005 arobbins@jsslaw.com</p>
<p>DEBRA D. ROBY JENNINGS, STROUSS & SALMON, P.L.C. 1350 I STREET, NW, SUITE 810 WASHINGTON, DC 20005 droby@jsslaw.com</p>	<p>ANDREA I. SARMENTERO GARZON JENNINGS, STROUSS & SALMON, P.L.C. 1350 I STREET, NW, SUITE 810 WASHINGTON, DC 20005 asarmentero@jsslaw.com</p>
<p>SUSAN ALIG KANSAS CITY KANSAS BOARD OF PUBLIC UTILITIES 701 N 7TH STREET KANSAS CITY, KS 66101 salig@wycokck.org</p>	<p>ANGELA LAWSON KANSAS CITY KANSAS BOARD OF PUBLIC UTILITIES 540 MINNESOTA AVENUE KANSAS CITY, KS 66101-2930 alawson@bpu.com</p>

BRIAN G. FEDOTIN KANSAS COPRORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 b.fedotin@kcc.ks.gov	DUSTIN KIRK KANSAS COPRORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 d.kirk@kcc.ks.gov
JAMES GING KANSAS POWER POOL 100 N BROADWAY, STE L110 WICHITA, KS 67202 jging@kansaspowerpool.org	LARRY HOLLOWAY KANSAS POWER POOL 100 N BROADWAY, STE L110 WICHITA, KS 67202 lholloway@kansaspowerpool.org
ROBERT V. EYE KAUFFMAN & EYE 4840 BOB BILLINGS PKWY, STE 1010 LAWRENCE, KS 66049-3862 bob@kauffmaneye.com	JOHN MICHAEL ADRAGNA MCCARTER ENGLISH, LLP 1015 15TH STREET, NW, 12TH FLOOR WASHINGTON, DC 20005 jadragna@mccarter.com
KIMBERLY BRICKELL FRANK MCCARTER ENGLISH, LLP 1015 15TH STREET, NW, 12TH FLOOR WASHINGTON, DC 20005 kfrank@mccarter.com	WILLIAM DOWLING MIDWEST ENERGY, INC. 1330 CANTERBURY ROAD PO BOX 898 HAYS, KS 67601-0898 bdowling@mwenergy.com
EARNEST A. LEHMAN MIDWEST ENERGY, INC. 1330 CANTERBURY RD PO BOX 898 HAYS, KS 67601-0989 elehman@mwenergy.com	PATRICK PARKE MIDWEST ENERGY, INC. 1330 CANTERBURY RD PO BOX 898 HAYS, KS 67601-0989 patparke@mwenergy.com
ANNE E. CALLENBACH POL SINELLI PC 900 W 48 TH PLACE, STE 900 KANSAS CITY, MO 64112 acallenbach@polsinelli.com	FRANK A. CARO POL SINELLI PC 900 W 48 TH PLACE, STE 900 KANSAS CITY, MO 64112 fcaro@polsinelli.com
BORIS STEFFEN RMS US LLP 1861 INTERNATIONAL DRIVE, STE 400 MCLEAN, VA 22102 boris.steffen@rsmus.com	SUNIL BECTOR SIERRA CLUB 2101 WEBSTER, STE 1300 OAKLAND, CA 94312-3011 sunil.bector@sierraclub.org

AMY FELLOWS CLINE TRIPLETT, WOOLF & GARRETSON, LLC 2959 N ROCK RD., STE 300 WICHITA, KS 67226 amycline@twgfirm.com	TIMOTHY E. MCKEE TRIPLETT, WOOLF & GARRETSON, LLC 2959 N ROCK RD., STE 300 WICHITA, KS 67226 temckee@twgfirm.com
DAVID L. WOODSMALL WOODSMALL LAW OFFICE 308 E HIGH ST., STE 204 JEFFERSON CITY, MO 65101 david.woodsmall@woodsmalllaw.com	IBEW Local Union No. 304 3906 NW 16 th Street Topeka, KS 66615
IBEW Local 225 P.O. Box 404 Burlington, KS 66839	SHONDA RABB CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 s.rabb@curb.kansas.gov
DOROTHY BARNETT CLIMATE & ENERGY PROJECT P.O. BOX 1858 HUTCHINSON, KS 67504-1858 barnett@climateandenergy.org	JOHN GARRETSON IBEW LOCAL UNION NO. 304 3906 NW 16 TH STREET TOPEKA, KS 66615 johng@ibew304.org
ROBERT MUIRHEAD MIDWEST ENERGY, INC. 1330 CANTERBURY RD P.O. BOX 898 HAYS, KS 67601-0898 bmuirhead@mwenergy.com	RENEE BRAUN SUNFLOWER ELECTRIC POWER CORPORATION 301 W. 13 TH P.O. BOX 1020 HAYS, KS 67601 rbraun@sunflower.net
JAMES BRUNGARDT SUNFLOWER ELECTRIC POWER CORPORATION 301 W. 13 TH P.O. BOX 1020 HAYS, KS 67601 jbrungardt@sunflower.net	DAVIS ROONEY SUNFLOWER ELECTRIC POWER CORPORATION 301 W. 13 TH P.O. BOX 1020 HAYS, KS 67601 hrooney@sunflower.net

AL TAMIMI SUNFLOWER ELECTRIC POWER CORPORATION 301 W. 13 TH P.O. BOX 1020 HAYS, KS 67601 atamimi@sunflower.net	MARK D. CALCARA WATKINS CALCARA CHTD 1321 MAIN ST., STE 300 P.O. DRAWER 1110 GREAT BEND, KS 67530 mcalcara@wcrf.com
TAYLOR P. CALCARA WATKINS CALCARA CHTD 1321 MAIN ST., STE 300 P.O. DRAWER 1110 GREAT BEND, KS 67530 tcalcara@wcrf.com	JOHN GARRETSON, BUSINESS MANAGER & FINANCIAL SECRETARY IBEW LOCAL UNION NO. 304 3906 NW 16TH STREET TOPEKA, KS 66615 johng@ibew304.org
BRAD MILLER, EAST END ASST. BUSINESS MANAGER IBEW LOCAL UNION NO. 304 3906 NW 16TH STREET TOPEKA, KS 66615 bradm@ibew304.org	

/s/ **Andrew J. French**
James P. Zakoura
Andrew J. French
SMITHYMAN & ZAKOURA, CHARTERED