

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Dwight D. Keen

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

**ORDER DENYING PETITIONS FOR RECONSIDERATION
FROM THE SIERRA CLUB AND KANSAS INDUSTRIAL CONSUMERS**

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 August 25, 2017, Westar Energy, Inc. and Kansas Gas and Electric Company (Westar), Great Plains Energy Incorporated (Great Plains) and Kansas City Power & Light Company (KCP&L) (the Applicants) filed an Application seeking approval to merge. The Application was supported with direct testimony from nine witnesses for the Applicants.

2. On June 5, 2018, the Applicants filed Notice of Closing, advising the Commission that their merger closed on June 4, 2018.¹ The new, publicly-traded holding company, named evergy, has a combined equity value of approximately \$14 billion.² Westar and KCP&L will be wholly-owned subsidiaries of evergy.³ Westar shareholders will own approximately 52.5% of evergy with Great Plains' shareholders owning the remaining 47.5% of evergy.⁴

¹ Applicants' Notice of Closing, June 5, 2018, ¶ 1.

² See Application, Aug. 25, 2017, ¶¶ 9-10.

³ See *id.*, ¶ 10.

⁴ *Id.*, ¶ 11.

3. The Citizens' Utility Ratepayer Board (CURB); the Kansas Industrial Consumers (KIC);⁵ Kansas Electric Cooperative, Inc. (KEPCo); the Kansas Power Pool (KPP); Sunflower Electric Power Corporation (Sunflower) and Mid-Kansas Electric Company, LLC (Mid-Kansas); Midwest Energy, Inc.; the International Brotherhood of Electrical Workers (IBEW), Local Union No. 304; 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) were granted full intervention. The Sierra Club, Brightergy LLC, and the Climate & Energy Project (CEP) were granted limited intervention.

4. The Sierra Club's intervention was limited to engaging in discovery and filing motions and briefs on the issues of: (1) the effect of the transaction on the environment; (2) whether the transaction maximizes the use of Kansas energy resources, and (3) the question of economic waste.⁶

5. All of the parties accept the applicability of the Commission's merger standards, which were enumerated in the 2016 Docket, 16-KCPE-593-ACQ (16-593 Docket). In that Docket, the Commission issued its Order on Merger Standards, reaffirming the merger standards as modified in the 97-WSRE-676-MER Docket (97-676 Docket).⁷

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

⁵ KIC consists of Spirit Aerosystems, Inc.; the Goodyear Tire & Rubber Co.; Coffeyville Resources Refining & Marketing, LLC; Cargill, Inc.; CCPS Transportation, LLC; Occidental Chemical Corporation; HollyFrontier El Dorado Refining LLC; and Learjet, Inc.

⁶ Order Granting Limited Intervention to the Sierra Club, Climate Energy Project, and Brightergy, Nov. 2, 2018, ¶¶ B, 11.

⁷ Order on Merger Standards, Docket No. 16-KCPE-593-ACQ, Aug. 9, 2016, ¶ 5.

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)⁸

7. Rather than a strict checklist, the merger standards serve as factors to evaluate whether a proposed merger is in the public interest.⁹ Therefore, an application does not need to satisfy each and every standard, but rather must satisfy enough standards to demonstrate that it advances the public interest.

8. On March 7, 2018, eight parties¹⁰ entered into a Non-Unanimous Settlement Agreement (Settlement Agreement).¹¹ While not Signatories to the Non-Unanimous Settlement Agreement, the IBEW#304, #412, #1464 and #1613; KMEA; and the City of Independence filed their support for the Settlement Agreement.¹² Jeff McClanahan, the Director of Utilities for the Commission, testified, “[t]he Agreement reflects in large part the recommendations and conditions outlined in Staff’s Direct Testimony, so much so that Staff’s Direct Testimony provides much of the support for this Agreement.”¹³ Some key terms in the Settlement Agreement include:

⁸ *Id.*, ¶ 6, quoting Order on Merger Application, 97-WSRE-676-MER, Sept. 28, 1999, ¶ 18.

⁹ See Order, 16-KCPE-593-ACQ (16-593 Order), Apr. 19, 2017, ¶ 37.

¹⁰ The eight Signatories to the Non-Unanimous Settlement Agreement are the Applicants; Staff, CURB; Sunflower; Mid-Kansas; KPP; Midwest; and Brightergy.

¹¹ On March 22, 2018, the Signatories filed Notice of Errata to Non-Unanimous Settlement Agreement to correct two references to Docket No. 01-KCPE-701-MIS with the correct docket, Docket No. 01-KCPE-708-MIS.

¹² Motion Supporting Approval of Non-Unanimous Settlement Agreement, Mar. 9, 2018, ¶ 4; Statement of Kansas Municipal Energy Agency, Apr. 9, 2018, ¶ 3; Statement of City of Independence, Missouri, Apr. 10, 2018, ¶ 3.

¹³ Testimony in Support of Non-Unanimous Stipulation and Agreement Prepared by Jeffrey D. McClanahan (McClanahan Testimony in Support), Mar. 12, 2018, p. 3.

- Following the merger, Westar retail electric customers will receive one-time bill credits totaling \$23,065,299, and KCP&L Kansas retail electric customers will receive one-time bill credits totaling \$7,514,220;¹⁴
- For the period of 2019 through 2022, Westar retail electric customers will receive annual bill credits of \$8,649,487, and KCP&L Kansas retail electric customers will receive annual bill credits of \$2,817,832;¹⁵
- Following the respective 2018 KCP&L and Westar rate cases, both utilities will experience a five-year base rate moratorium, provided their authorized return on equity (ROE) is at least 9.3%.¹⁶ The Signatories to the Settlement Agreement agreed to recommend a 9.3% ROE in both of the utilities' 2018 rate cases.¹⁷ However, the recommendations are not binding on the Commission;
- KCP&L and Westar will file Earnings Review and Sharing Plans (ERSP) for each year from 2019-2022. If the utilities exceed their authorized ROE, the overearnings will be shared equally with retail electric customers;¹⁸
- everygy commits to not increasing retail rates for KCP&L and Westar customers as a result of the merger;¹⁹ and
- The Signatories to the Settlement Agreement recommend the opening of a compliance docket for KCP&L and Westar to track and update the status of the merger integration process, including data on employee headcounts, and efficiencies resulting from the merger;²⁰

¹⁴ Non-Unanimous Settlement Agreement, Mar. 9, 2018, ¶ 31.

¹⁵ *Id.*, ¶ 33.

¹⁶ *Id.*, ¶ 32.

¹⁷ *Id.*

¹⁸ *Id.*, ¶ 34.

¹⁹ *Id.*, ¶ 40.

²⁰ *Id.*, ¶ 50.

9. On March 12, 2018, testimony in support of the Settlement Agreement was submitted by Greg Greenwood and Darrin Ives on behalf of the Applicants; by Andrea Crane on behalf of CURB; and by Jeff McClanahan, Justin Grady, Leo Haynos, and Bob Glass on behalf of Staff. That same day, testimony opposing the Settlement Agreement was submitted by KEPCo; BPU; and Michael Gorman on behalf of KIC.

10. Gorman opposes the Settlement Agreement because it lacks: (1) a specific provision outlining the Applicants' obligation to manage cost of service during the rate moratorium;²¹ (2) a commitment to manage rate base growth;²² and (3) a comprehensive rate moratorium that would include all customer charges, other than a fuel charge rider.²³ KIC believes the merger should be conditioned on a commitment to make retail electric rates regionally competitive.²⁴

11. On March 15, 2018, the Applicants filed Notice to the Commission that the Federal Energy Regulatory Commission (FERC) issued an Order Authorizing Merger and Disposition of Jurisdiction Facilities between Great Plains and Westar in FERC Docket No. EC17-171-000.²⁵

12. Beginning on March 19, 2018, the Commission held four days of evidentiary hearings. The resulting transcript consists of over 660 pages, and more than 80 exhibits. The Applicants, Staff, CURB, BPU, KEPCo, and KIC all appeared by counsel. The Commission heard live testimony from seventeen witnesses, including eight on behalf of the Applicants, five on behalf of Staff, two on behalf of KEPCo, and one each on behalf of CURB and KIC.²⁶ The

²¹ Testimony in Opposition to Non-unanimous Settlement Agreement of Michael P. Gorman, Mar. 12, 2018, p. 3.

²² *Id.*, p. 4.

²³ *Id.*, p. 5.

²⁴ *Id.*, p. 9.

²⁵ Applicants' Notice to the Commission, Mar. 15, 2018, ¶ 4.

²⁶ At the outset of the hearing, the Commission waived in the direct testimony and rebuttal testimony of an additional ten witnesses. *See* Tr. Vol. 1, pp. 15-17.

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.

13. On March 19, 2018, KIC filed another Objection to Non-Unanimous Settlement Agreement, reiterating its earlier arguments that the Settlement does not address the long-term trend of rate escalation,²⁷ and for the first time raising concerns that the Settlement Agreement is unlawful because the Signatories did not provide proper notice of ratemaking provisions contained within the Settlement Agreement.²⁸ Specifically, KIC alleged that the ERSP mechanism is a formula rate calculation, requiring notice,²⁹ and the provisions to recommend a 9.3% ROE in the 2018 KCP&L and Westar rate cases were not properly noticed.³⁰

14. Following the evidentiary hearing, the Applicants, Staff, CURB, KIC, KEPCo, BPU, and the Sierra Club submitted post-hearing briefs.

15. On May 24, 2018, the Commission issued its Order Approving Merger, the proposed transaction satisfied each of the Commission's applicable merger standards, and the merger as conditioned in the Settlement Agreement is in the public interest.³¹

16. On June 7, 2018, the Sierra Club filed a Petition for Limited Clarification and Reconsideration on two points. The Sierra Club sought clarification on the difference between developing the IRP reporting format and developing an IRP process; and reconsideration of the portion of the Order providing the IRP reporting format would be developed by the Signatories to the Settlement Agreement, and not the Sierra Club or other potentially interested stakeholders.³²

²⁷ Objection to Non-Unanimous Settlement Agreement, Mar. 19, 2018, ¶ 5.

²⁸ *Id.*, ¶¶ 10-11.

²⁹ *Id.*, at ¶ 10.

³⁰ *Id.*, ¶ 11.

³¹ Order Approving Merger, ¶ 79.

³² Sierra Club's Petition for Limited Clarification and Reconsideration (Sierra Club Petition), June 7, 2018, ¶ 4.

17. On June 8, 2018, KIC³³ filed a Petition for Reconsideration arguing: (1) the Order failed to address rate escalation; (2) the allocation of bill credits is not equitable; (3) the Order is unlawful due to improper notice of ratemaking; (4) certain terms in the Settlement Agreement approved by the Commission are not supported by substantial, competent evidence; and (5) the ERSP is illegal under Kansas law.

18. On June 14, 2018, Staff filed its Response to Sierra Club's Petition for Limited Clarification and Reconsideration, explaining under its understanding of the phrase "IRP reporting format", the Signatories would develop a list of information everygy would report as part of the IRP process.³⁴ That list of information may include available capacity by unit, unit pricing, projected capacity needs, pricing of new resources, resource efficiency, and SPP marketplace data.³⁵ Staff understand the phrase "IRP process" to be an administrative phase, where everygy and interested parties would set reporting deadlines.³⁶

19. Staff believes Staff, CURB, and everygy should develop the initial IRP reporting format and process, and allow the Sierra Club and other parties with standing to comment on those initial format and processes in a Capital Plan Reporting compliance docket.³⁷ No other party responded to the Sierra Club's Petition.

20. On June 18, 2018, both Staff and CURB filed responses to KIC's Petition for Reconsideration urging the Commission to deny KIC's Petition. Staff agrees with the Commission's finding that the pending KCP&L and Westar rate cases are the proper forums to address rate escalation and that rate escalation is beyond the scope of the Commission's merger

³³ While HollyFrontier El Dorado Refining LLC participated in the Docket as a member of KIC, it does not join in KIC's Petition for Reconsideration. See Petition for Reconsideration, June 8, 2018, fn. 1.

³⁴ Staff's Response to Sierra Club's Petition for Limited Clarification and Reconsideration (Staff's Response to Sierra Club), June 14, 2018, ¶ 7.

³⁵ *Id.*

³⁶ *Id.*, ¶ 9.

³⁷ *Id.*, ¶¶ 14, 16.

standards.³⁸ Similarly, since the ratemaking provisions KIC objects to will be decided in the pending rate cases, the Order was lawfully noticed.³⁹

21. CURB noted KIC repeatedly voices support for the merger, even admitting it produces customer benefits.⁴⁰ In explaining the Order is lawful and reasonable, CURB states: (1) the public interest standard does not require the Commission to address the question of regionally competitive rates; (2) the allocation of bill credits among customer classes is equitable; (3) notice of the ERSP and agreement to recommend a 9.3% ROE was proper; and the terms of the Settlement Agreement are supported by substantial, competent evidence.

**THE SIERRA CLUB'S PETITION FOR LIMITED CLARIFICATION AND
RECONSIDERATION**

22. The Sierra Club seeks reconsideration of the Commission's mandate that the Signatories develop a reporting format for the IRP process and submit it for Commission approval within three months of the close of the transaction. Instead, the Sierra Club believes the process should be open to "other potentially interest stakeholders".⁴¹ As explained by Staff in its Response to the Sierra Club's Petition for Reconsideration, Paragraph 50(iv.) of the Settlement Agreement contemplated Staff, CURB, and the Applicants would initiate a Capital Plan Reporting compliance docket, which would be the forum to perform IRP analysis.⁴² The primary purpose of the Capital Plan Report is to present the Commission with information to interpret forecasted capital expenditures over a five-year period.⁴³

³⁸ Staff's Response to Kansas Industrial Consumers Group, Inc.'s Petition for Reconsideration, June 18, 2018, ¶¶ 15, 17.

³⁹ *Id.*, ¶ 19.

⁴⁰ CURB's Response to Petition for Reconsideration Filed by Kansas Industrial Consumers Group, Inc. (CURB's Response to KIC), June 18, 2018, ¶ 1.

⁴¹ Sierra Club's Petition, ¶ 11.

⁴² Staff's Response to Sierra Club, ¶ 14.

⁴³ *Id.*, ¶ 15.

23. In approving the Settlement Agreement in its entirety, the Commission gives deference to the parties' intent for a limited IRP process that would determine the appropriate information and data to report to the Commission and the reporting format. The Commission gave the Signatories three months from the close of the transaction to develop a reporting format and submit it for Commission approval. The transaction closed on June 4, 2018, giving the Signatories until September 4, 2018 to submit a proposed reporting format to the Commission. Already almost a third of that time has passed. The Commission is concerned that opening up the process of developing a reporting format to other interested parties may jeopardize the Signatories' ability to meet the Commission's mandated deadline. Therefore, the Commission finds Staff, CURB, and the Applicants should develop the initial IRP reporting format and process. Once developed and proposed to the Commission, the Sierra Club will have the opportunity to comment on the proposal.

24. The Commission denies the Sierra Club's Petition for Reconsideration.

KIC'S PETITION FOR RECONSIDERATION

25. KIC's presents two general requests for reconsideration: (1) the Order failed to address rate escalation in this proceeding; and (2) the allocation of bill credits among customer classes is not equitable.⁴⁴

26. In its Petition for Reconsideration, KIC acknowledges the Commission's Order determined the pending KCP&L and Westar rate cases are the appropriate forums to address rate escalation.⁴⁵ While "KIC disagrees in the strongest possible terms"⁴⁶ that rate escalation should be addressed in rate cases, it falls to allege the Commission acted unlawfully or unreasonably in electing to address rate escalation to the pending rate cases, rather than the merger docket. As

⁴⁴ Petition for Reconsideration (KIC PFR), June 8, 2018, pp. 7, 12.

⁴⁵ *Id.*, ¶ 10.

⁴⁶ *Id.*, ¶ 11.

opposed to arguing the Commission acted unlawfully or unreasonably in finding rate escalation is best addressed in rate cases, KIC repeatedly states it believes the merger should be approved.⁴⁷

27. In its Order, the Commission noted that KIC⁴⁸ and its members⁴⁹ have already been granted intervention in Westar's pending rate case, 18-WSEE-328-RTS.⁵⁰ Not only does KIC fail to demonstrate why its participation in the Westar rate case is inadequate to address its concerns over rate escalation, KIC does not even attempt to explain how it would be prejudiced by addressing rate escalation in the rate case, rather than the merger docket. KIC never claims the Order's finding that the pending rate cases are the proper forum to address rate escalation is unlawful or unreasonable. A petition for reconsideration must allege specific grounds for an order's unlawfulness or unreasonableness.⁵¹ Therefore, the Commission denies KIC's petition to reconsider its finding that the pending rate cases are the best forum to adjudicate rate escalation.

28. The Commission also notes in requesting the Commission reconsider its finding that the merger could create an economic stimulus,⁵² KIC ignores the impact of savings passed along to residential customers. With lower electric bills, residential customers will have more money to spend on other goods and services, which may create an economic stimulus.

29. Just as KIC ignores residential customers in concluding there may be no economic stimulus from the merger, KIC's argument that the allocation of rate credits among customer classes based on contributions to base revenue is inequitable, ignores residential

⁴⁷ KIC PFR, p. 2, ¶ 16.

⁴⁸ Order on Kansas Industrial Consumers Group, Inc. Petition to Intervene, Docket No. 18-WSEE-328-RTS, Mar. 20, 2018.

⁴⁹ Order Granting Intervention to Cargill, Coffeyville, Occidental, Spirit and Goodyear, Docket No. 18-WSEE-328-RTS, Mar. 20, 2018; Order Granting Intervention to HollyFrontier El Dorado Refining, LLC, Docket No. 18-WSEE-328-RTS, Mar. 20, 2018.

⁵⁰ Order Approving Merger, May 24, 2018, ¶ 70.

⁵¹ See *Peoples National Gas Div. of Northern Natural Gas v. Kansas Corp. Comm'n*, 7 Kan. App. 2d 519, 526 (1982).

⁵² KIC PFR, ¶ 20.

customers. Essentially, KIC is proposing industrial consumers get a larger percentage of rate credits at the expense of residential customers.

30. KIC bases its argument of inequitable allocation of rate credits on the testimony of its witness, Michael Gorman. Part of Gorman's rationale is industrial consumers are more exposed to surcharges and riders than residential customers, and therefore should be compensated with an even larger percentage of bill credits.⁵³ As explained by CURB, the Commission accepted Staff's recommendations over those of Gorman. Dr. Robert Glass, Ph.D. of Staff testified, "[a]llocating bill credits using the proof of revenue seems about as fair a method as one could conceive of."⁵⁴ The Commission finds Dr. Glass's testimony to be more credible than that of Mr. Gorman, in part because KIC has not produced any evidence to support Gorman's assertion that industrial consumers tend to be more exposed to surcharges and riders than other customers. Even if there was evidence that industrial consumers are more exposed to surcharges and riders than others customers, it does not follow that other customers should see lower bill credits as a result. Therefore, the Commission denies KIC's petition to reconsider its Order on allocation of rate credits among customer classes.

31. The remainder of KIC's Petition for Reconsideration argues the Order is unlawful. KIC asserts the Order is unlawful because the notice to customers did not identify the merger application as a major rate application.⁵⁵ Underlying KIC's claim of improper notice is the erroneous assumption that both the ERSP mechanism and the provisions of the Settlement Agreement where the Signatories agreed to recommend 9.3% ROE in the pending KCP&L and Westar rate cases constitute "major rate applications."

⁵³ KIC PFR, ¶ 24.

⁵⁴ Direct Testimony of Robert H. Glass, Ph.D., Jan. 29, p. 18.

⁵⁵ KIC PFR, ¶ 34.

32. As explained in the Order, “[n]either the ERSP mechanism nor the agreement to recommend an ROE constitute ratemaking.”⁵⁶ Specifically, the Commission found since there is no tariff associated with the ERSP mechanism, the ERSP mechanism cannot be used to change rates.⁵⁷ Rather than make changes to the rates currently on file with the Commission, the ERSP simply determines credits that would be due to ratepayers if the utilities exceed their authorized ROEs.⁵⁸ Without an ERSP, customers would not be able to share in any savings until the five-year rate moratorium ends.⁵⁹ Other than the testimony from their own witness Gorman that the ERSP appears to be a formula rate, KIC does not present any authority suggesting the ERSP is a rate. The Commission does not find Gorman’s unsubstantiated testimony to be credible.

33. Similarly, there is no support for KIC’s assertion that the Signatories’ agreement to recommend a 9.3% ROE in the pending rate cases constitutes a major rate application, requiring notice. Instead, KIC merely regurgitates its previously rejected positions. The plain language of the Settlement Agreement demonstrates the Signatories are merely making a non-binding recommendation to the Commission. The Commission is not bound to accept the Signatories’ recommended ROE. KIC has already been granted full intervention in Westar’s pending rate case, where it will have the opportunity to contest the recommended ROE.

34. Furthermore, KIC does not dispute the Commission’s finding that the ROE is not a rate; it is just a single component of the revenue requirement. The Commission finds the Settlement Agreement does not establish any rates and denies KIC’s argument that notice was defective. Therefore, the Commission denies KIC’s Petition for Reconsideration on its claims of improper notice.

⁵⁶ Order Approving Merger, ¶ 87.

⁵⁷ *Id.*, ¶ 88.

⁵⁸ *Id.*

⁵⁹ *Id.*

35. KIC also claims certain terms in the Settlement Agreement approved by the Commission are not supported by substantial, competent evidence. Specifically KIC identifies the settlement terms related to shortening the rate moratorium if the Commission approves an ROE below 9.3% for KCP&L or Westar in their pending rate cases.⁶⁰ KIC argues the Commission has no substantial evidentiary basis to determine whether that provision promotes the public interest.⁶¹ The Petition for Reconsideration also refers to the Signatories' promise to support Westar's second step rate increase in February 2019 related to the cost of service impact of a wholesale contract with Mid-Kansas.⁶² KIC acknowledges the second step rate increase is supported by evidence from another proceeding (the 18-WSEE-328-RTS Docket).⁶³ It makes perfect sense for the evidence supporting the second step rate increase to be filed in the Westar rate case as the Commission will decide whether to grant the second step rate increase in the Westar rate case.

36. The two provisions that KIC finds objectionable are merely commitments by the Signatories to recommend the Commission approve a 9.3% ROE and a second step rate increase for Westar. Neither provision binds the Commission. Since the provisions have no effect until the Commission acts on the recommendation in the 18-WSEE-328-RTS Docket, there is no requirement that they be supported by substantial, competent evidence. They are merely recommendations by the Signatories, not a Commission finding. Only Commission findings need evidentiary support, as recommendations from the Signatories are not subject to judicial review. Accordingly, the Commission denies KIC's Petition for Reconsideration on its claims that portions of the Settlement Agreement are not supported by substantial, competent evidence.

⁶⁰ See KIC PFR, ¶ 56.

⁶¹ *Id.*, ¶ 57.

⁶² *Id.*, ¶ 58.

⁶³ *Id.*, ¶ 59.

37. Lastly, KIC argues the ERSP is an impermissible incentive rate under Kansas law. The ERSP mechanism determines credits due to ratepayers in the event the utilities exceed their authorized ROEs.⁶⁴ Without an ERSP, customers would not be able to share in any savings until the five-year rate moratorium concludes.⁶⁵ The Commission is puzzled by KIC's hostility to the ERSP, which is designed to protect consumers. Under the ERSP mechanism, evergy will share any overearnings equally with its retail electric customers. Absent the ERSP, evergy would retain all of any overearnings resulting from successful implementation of cost savings plans. Therefore, granting KIC's request to strike down the ERSP would hurt retail electric consumers, including KIC itself.

38. KIC again characterizes the ERSP mechanism as a formula rate. As discussed in Paragraph 30, there is no evidence to support Gorman's labeling the ERSP as a formula rate. As CURB explains:

the ERSP is a merger savings mechanism, not an incentive rate. ... the tariffed rates that the Commission approves in the 2018 rate cases will not change due to the ERSP. Rather, the ERSP merely functions to ensure that Westar and KCP&L do not get to keep all of the unforeseen savings that may occur in the next five years resulting from the merger. The ERSP merely requires that the consumers get a share of those savings.⁶⁶

39. The Commission denies KIC's Petition for Reconsideration regarding its claim the ERSP is unlawful.

40. KIC fails to meet its burden of proof that the Commission's Order is unlawful or unreasonable. Therefore, the Commission denies KIC's Petition for Reconsideration.

⁶⁴ Applicants' Initial Brief, p. 88.

⁶⁵ *Id.*

⁶⁶ CURB's Response to KIC, ¶ 28.

THEREFORE, THE COMMISSION ORDERS:

A. The Sierra Club's Petition for Limited Clarification and Reconsideration is denied.

B. KIC's Petition for Reconsideration is denied.

C. This Order constitutes final agency action.⁶⁷ Any request for review of this action shall be in accordance with K.S.A. 77-607 and K.S.A. 77-613. Lynn M. Retz, Secretary to the Commission, is designated by the Commission to receive service of a petition for judicial review.⁶⁸

D. The Commission retains jurisdiction over the subject matter and parties to enter further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 06/28/2018



Lynn M. Retz
Secretary to the Commission

BGF

⁶⁷ K.S.A. 77-607(b)(1).

⁶⁸ K.S.A. 77-613(e).

CERTIFICATE OF SERVICE

18-KCPE-095-MER

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 06/28/2018.

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