

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

\_\_\_\_\_  
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 Merger of )  
Westar Energy, Inc. and Great )  
Plains Energy Incorporated )  
\_\_\_\_\_ )

**Docket No. 18-KCPE-095-MER**

Testimony in Opposition to Non-Unanimous  
Settlement Agreement of

**Michael P. Gorman**

On behalf of

**Kansas Industrial Consumers Group, Inc.**

March 12, 2018



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

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STATE OF MISSOURI        )  
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COUNTY OF ST. LOUIS    )

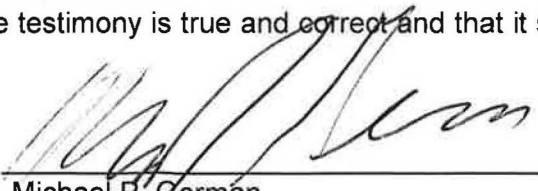
**Verification of Michael P. Gorman**

Michael P. Gorman, being first duly sworn, on his oath states:

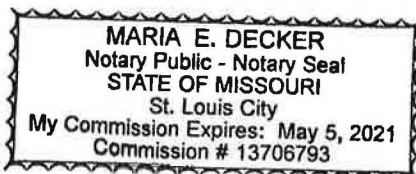
1. My name is Michael P. Gorman. I am a Managing Principal with Brubaker & Associates, Inc., having its principal place of business at 16690 Swingley Ridge Road, Suite 140, Chesterfield, Missouri 63017. We have been retained by Kansas Industrial Consumers Group, Inc. ("KIC") in this proceeding on their behalf.


2. Attached hereto and made a part hereof for all purposes is my Testimony in Opposition to Non-Unanimous Settlement Agreement which was prepared in written form for introduction into evidence in the Kansas State Corporation Commission Docket No. 18-KCPE-095-MER.

3. I hereby swear and affirm that the testimony is true and correct and that it shows the matters and things that it purports to show.

  
\_\_\_\_\_  
Michael P. Gorman

Subscribed and sworn to before me this 12th day of March, 2018.



  
\_\_\_\_\_  
Notary Public

BRUBAKER & ASSOCIATES, INC.

**BEFORE THE STATE CORPORATION COMMISSION  
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\_\_\_\_\_)

**Docket No. 18-KCPE-095-MER**

**Testimony in Opposition to Non-Unanimous Settlement  
Agreement of Michael P. Gorman**

1    **Q     PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2    A     Michael P. Gorman. My business address is 16690 Swingley Ridge Road, Suite 140,  
3           Chesterfield, MO 63017.

4    **Q     WHAT IS YOUR OCCUPATION?**

5    A     I am a consultant in the field of public utility regulation and a Managing Principal with  
6           Brubaker & Associates, Inc. ("BAI"), energy, economic and regulatory consultants.

7    **Q     ARE YOU THE SAME MICHAEL P. GORMAN WHO PREVIOUSLY FILED DIRECT  
8           AND CROSS-ANSWERING TESTIMONY IN THIS PROCEEDING?**

9    A     Yes.

**Q ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?**

A I am appearing in this proceeding on behalf of Kansas Industrial Consumers Group, Inc. ("KIC") and its participating members — Occidental Chemical Corporation, Spirit AeroSystems, Inc., CCPS Transportation, LLC, The Goodyear Tire & Rubber Company, Coffeyville Resources Refining & Marketing, LLC, Cargill, Incorporated, HollyFrontier El Dorado Refining LLC, and Learjet Inc. KIC is a group of large industrial customers which purchase substantial amounts of energy from Westar Energy, Inc., and Kansas Gas and Electric Company ("Westar").

**Q WHAT IS THE PURPOSE OF YOUR TESTIMONY IN OPPOSITION TO THE NON-UNANIMOUS SETTLEMENT AGREEMENT?**

A I will describe and respond to the primary ratemaking provisions of the Non-Unanimous Settlement Agreement filed in this Docket on March 7, 2018 ("the Settlement"). My testimony will identify material deficiencies within the Settlement and recommend additional commitments the Kansas Corporation Commission ("KCC" or "Commission") should require as conditions for approval of the merger.

**Q WHAT ARE THE PRIMARY RATEMAKING PROVISIONS OF THE SETTLEMENT?**

A The Settlement includes a number of provisions related to rate credits, rate setting, and a partial rate moratorium that the signatories recommend the Commission implement following closing of the merger. The provisions are as follows:

1. One-time upfront rate credits to customers of Westar and Kansas City Power & Light Company ("KCP&L").
2. 3 to 5-year moratorium on "base rate" filings.
3. The moratorium does not restrict the Applicants from changing rates or tariffs to recover costs subject to the Commission approval including fuel-related costs (Retail Energy Adjustment Charge, "RECA"), Annual Cost Adjustment ("ACA"),

1 Transmission Delivery Charge ("TDC"), Property Tax Surcharge ("PTS"), and  
2 Energy Efficiency Rider ("EER") tariffs. The evidence in this case shows that  
3 base rates constitute approximately 65% of total revenue collected from retail  
4 customers projected for 2018. Indeed, the amount of non-base rate revenues is  
5 projected to increase by over 13% in the five-year period following 2018.<sup>1</sup>

6 4. Signatories agree to take specific positions in the upcoming general rate cases of  
7 Westar and KCP&L.

8 5. Annual bill credits to customers of Westar and KCP&L from 2019 to 2022.

9 6. A mechanism to share savings from 2019 to 2022 if Westar and KCP&L earned  
10 returns, less the fixed annual bill credits, exceed 9.3%.

11 7. Westar and KCP&L are allowed to recover up to \$50 million of transition costs on  
12 a combined company basis.<sup>2</sup>

13 **Q DO YOU HAVE ANY CONCERNS WITH THESE RATE PROVISIONS?**

14 A Yes. I have a number of concerns with the rate provisions of the Settlement. Most  
15 importantly, this Settlement does not also include a specific provision outlining the  
16 Applicants' obligation to also manage the cost of service to Kansas customers during  
17 the base rate moratorium period. This type of commitment makes clear that a high  
18 priority commitment to the Commission and all the stakeholders in this proceeding, is  
19 that the Applicants will make competitive electric rates in Kansas a primary objective  
20 of the proposed merger. While temporary rate credits provide some consideration to  
21 the customers, a more focused and transparent objective of managing cost of  
22 service, and hence the rates to recover those costs of service, as a means of making  
23 Kansas electric rates more competitive with regional suppliers, is a material  
24 deficiency within the proposed Settlement.

25 As noted in my Direct Testimony, the Applicants' retail Kansas rates are not  
26 competitive within the Midwest region of other electric suppliers. In my Direct  
27 Testimony, I demonstrated that Westar and KCP&L have become among the highest-

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<sup>1</sup>Applicants' confidential response to KIC-70.

<sup>2</sup>Non-Unanimous Settlement Agreement, pp. 14-24.

1 cost suppliers of retail electric service in the Midwest region. If this trend continues  
2 without an explicit and concerted effort to reverse it, Kansas's ability to attract and  
3 retain energy intensive industries will become very bleak.

4 Even the signatories to the Settlement seem to recognize rate competition as  
5 a critical need for the Applicants as a basis for this merger.<sup>3</sup> However, the Settlement  
6 falls short of this goal. Indeed, meeting the goal creates a clear conflict between  
7 enhancing the value of the proposed merger to the Applicants' shareholders, versus  
8 creating value for customers in the form of more competitive rates. This conflict is  
9 created because the Applicants have refused to commit to managing rate base  
10 growth in a manner that makes necessary capital investments to maintain high quality  
11 reliable service, but do so at a pace that mitigates unnecessary increases in customer  
12 rates. Indeed, discovery explicitly makes clear that rate impacts are not considered in  
13 creating capital plans (Applicants' responses to KIC-70 and KIC-71). As part of this  
14 merger transaction, the Applicants have made a commitment to reducing the  
15 uncompetitive position of their operation and maintenance ("O&M") expenses  
16 specifically, but a measurable and verifiable commitment toward managing the far  
17 more consequential area of rate base growth should also be included in the  
18 Settlement.

19 The Settlement does not address this problem in any material manner. As  
20 noted above, there is a cursory mention of the general competitive rate issue, but the  
21 Settlement includes no commitment or verifiable plan of action to measure progress  
22 toward competitive rates.

23 The bill credits provided for in the Settlement will be promptly offset by  
24 substantial rate increases through the surcharge tariff mechanisms identified above.

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<sup>3</sup>Non-Unanimous Settlement Agreement, p. 5.

1 The Settlement should not exempt any customer charges from the rate moratorium  
2 except the fuel charge, Rider RECA. Furthermore, it appears the ultimate projected  
3 reductions in the utilities' costs of service will be overtaken by new rate increases by  
4 the end of the partial rate moratorium.<sup>4</sup> At no time in this proceeding have the  
5 Applicants committed that customer bills will ever *decrease* or remain flat as a result  
6 of this transaction or stipulation. Quite the contrary, there is every indication that  
7 rates will continue to increase during the partial rate moratorium.

8 In my Direct Testimony, I recommended explicit conditions to address this  
9 issue including the commitment to manage rate base growth, verifiable execution of  
10 the Applicants' planned O&M expense reduction, and ratemaking capital structure  
11 limits. My testimony recognized the basic reality that capital spending will have to be  
12 managed in some form or fashion before any material progress can be made to  
13 reduce, or even materially slow, cost of service, and rate increases. The Settlement  
14 does not address this critical issue.

15 **Q DOES THE SETTLEMENT INCLUDE ANY PROVISIONS REGARDING CAPITAL**  
16 **SPENDING?**

17 **A** Yes. The Settlement includes a "Capital Plan," which appears to simply track  
18 budgeted and actual capital expenditures over a period of time using a template form.  
19 The Settlement includes a capital plan reporting compliance docket to allow for  
20 tracking of budgeted versus actual capital spending. Attachment 6 to the Settlement  
21 provides a template for a reporting format for this activity. The Stipulation states in  
22 paragraph 50(iv), that the overall goal of the capital plan reporting compliance docket  
23 will be to determine the appropriate information and data to report and the format of

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<sup>4</sup>Westar Confidential Response to KIC-70.

1 such reporting. A commitment to manage capital investments should prioritize the  
2 need to maintain high quality reliable service and replacing or installing new facilities  
3 with the need to exercise discretion so as to minimize growth in rate base, and cost of  
4 service. This important cost of service commitment is simply not part of this  
5 Settlement.

6 **Q IS RATE BASE GROWTH AN IMPORTANT ELEMENT OF THE APPLICANTS'**  
7 **COMMITMENT TO SHAREHOLDERS AS A COMPONENT OF THIS PROPOSED**  
8 **MERGER?**

9 A Yes. An attractive feature that the Applicants have used to convince their  
10 shareholders to commit to this proposed merger is to enhance shareholder earnings  
11 growth to the 6% to 8% range with the merger, where growth may have only been  
12 around 4% absent the merger.<sup>5</sup> The majority of this earnings growth created by the  
13 merger will be achieved through rate base growth.<sup>6</sup> Again, meeting the objectives of  
14 maintaining high quality, reliable and competitively priced service in Kansas is  
15 completely at odds with commitments the Applicants have made to their shareholders  
16 to maximize earnings growth opportunities available from this proposed merger.

17 **Q IS THERE A PARTICULAR AREA OF CAPITAL IMPROVEMENTS WHICH IS**  
18 **RESTRICTING THE APPLICANTS' ABILITY TO BE COMPETITIVELY PRICED**  
19 **ELECTRIC SUPPLIERS IN THE REGION?**

20 A Yes. While transmission costs have been a major factor for many utilities in the  
21 Midwest and around the country, the Applicants' transmission investments appear to  
22 be particularly noteworthy in assessing significant build-outs in rate base investments

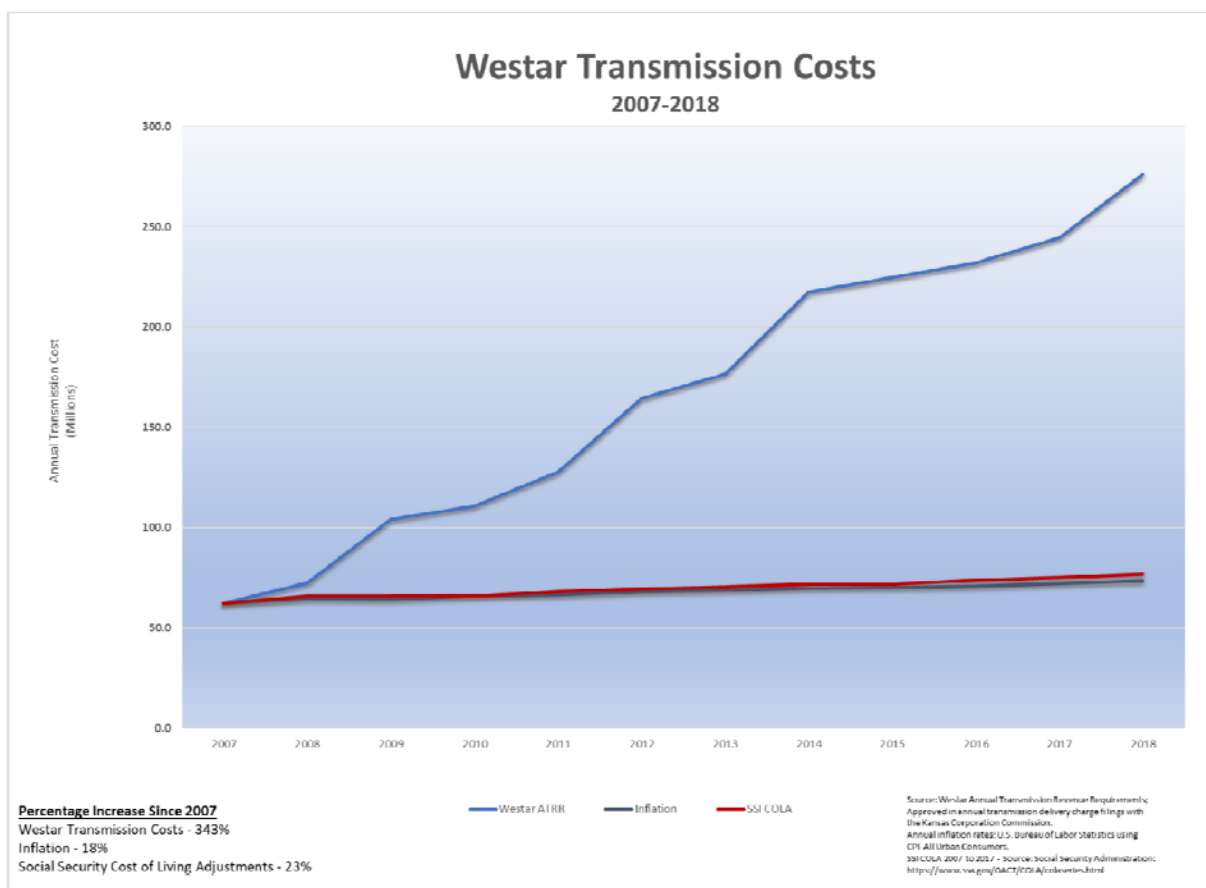
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<sup>5</sup>Direct Testimony of Michael P. Gorman, Appendix B at 15-17, 27 and 38.

<sup>6</sup>*Id.*



and charges to retail customers. For example, the trend in transmission cost of service over the last approximate ten years is particularly noteworthy, as shown in the figure below.



**Q WHY DO YOU BELIEVE THAT RATE BASE GROWTH IS AN IMPORTANT COMMITMENT TO SUPPORT EARNINGS GROWTH OBJECTIVES THE APPLICANTS HAVE MADE TO THEIR SHAREHOLDERS?**

**A** As shown in my Direct Testimony on Exhibit MPG-1, pages 7-11, the Applicants have informed investors that the merger is a platform for enhanced earnings and dividend growth, which is expected to achieve top quartile returns to shareholders of 6% to 8% through 2021, aligned with dividend growth in the same area, and which targets dividend growth of around 3% to 4% through 2022, with over \$6 billion of investment

1 from 2018-2022 including over a billion dollar investment in Federal Energy  
2 Regulatory Commission ("FERC") regulated transmission. The growth in earnings  
3 and dividends is tied to the growth in rate base, and this rate base growth puts at  
4 odds the Applicants' commitments to shareholders through merger earnings and  
5 dividend growth enhancement, and their need to commit to customers to manage  
6 cost of service and retail rates by limiting growth in rate base.

7 The Applicants in this case make it clear that an important feature of the  
8 proposed merger is enhanced value to shareholders, which places at odds this  
9 shareholder value merger objective, with a need to make Kansas rates more  
10 competitive. The Commission's approval of a merger in this case should emphasize  
11 more than a need for competitive rates in Kansas, and get a clear commitment from  
12 the Applicants to pursue this objective with explicit requirements to pursue the O&M  
13 expense cost reductions the Applicants have noted and begun studying in this case,  
14 but to also limit rate base growth in order to mitigate increases in wholesale and retail  
15 cost of service. The merger simply cannot create net economic benefits to customers  
16 if one of its primary objectives is to increase earnings growth for shareholders, by rate  
17 base growth, cost of service growth, and hence rates growth to retail customers.

18 **Q DO YOU HAVE A RECOMMENDATION BEYOND THOSE CONTAINED IN YOUR**  
19 **PREVIOUS TESTIMONIES?**

20 **A** The Commission should require the Applicants to begin addressing the issue of rate  
21 escalation and regionally-uncompetitive rates by conditioning merger approval on  
22 submittal of a cost of service and rate mitigation plan that constructively addresses  
23 cost of service management and competitive rate objectives.

I recommend the Commission include the following condition in any Order approving the merger:

Applicants must commit to begin a long-term initiative to make the retail electric rates of Westar and KCP&L-KS competitive relative to regionally alternative electric suppliers.

Within six months following an order approving this transaction, Applicants must file with the Commission a plan to begin reducing retail electric rates to regionally-competitive levels over a reasonable period of time. Such reductions will begin as soon as reasonably possible, recognizing certain costs of service are not solely within Applicants' control.

Applicants' plans to reduce retail electric rates must include measurable benchmarks enabling the Commission to evaluate and determine whether meaningful progress has been achieved. Such benchmarks will be evaluated no less frequently than once every two years.

For purposes of this commitment, the term "regionally-competitive retail electric rates" shall refer to rates which are no more than 5% above the average "All Sectors" rate for Colorado, Oklahoma, Nebraska, Missouri, Iowa, and Arkansas, as measured by the U.S. Energy Information Agency using the most recent final annual data. The rates of Westar and KCP&L-KS shall be measured using EIA data for the same time period – EIA Electric Sales, Revenue, and Average Price Report: Table 10, Utility Bundled Retail Sales – Total. A combined Westar and KG&E rate should be expressed using the average rate of the two entities.<sup>7</sup>

**Q DO YOU HAVE ANY CONCERNS WITH THE RATEMAKING PROVISIONS OF THE SETTLEMENT ASIDE FROM THE FACT THAT THEY DO NOT MATERIALLY ADDRESS RATE ESCALATION?**

**A** Yes. First, as noted in my Cross-Answering testimony, the partial rate moratorium proposed by Staff and adopted by the Settlement is troubling. At page 15 of the Settlement, all surcharges and riders are explicitly exempted from the rate moratorium. I am advised by counsel that past mergers in Kansas have included a

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<sup>7</sup>For 2016, the most recent final EIA data, the average All Sectors rate for the region above was \$0.0855 per kWh. Therefore, a competitive rate would be \$0.0898 per kWh. For 2016, KCP&L's All Sectors rate was \$0.1173 per kWh, and Westar/KG&E's was \$0.1028 per kWh.

1 full retail rate freeze.<sup>8</sup> These past Kansas mergers may have occurred before the  
2 proliferation of surcharges and riders, but there is no jurisdictional reason why all the  
3 economic benefits to customers in those past cases cannot serve as a guide for a  
4 rate moratorium in this case.

5 Typically, the purpose of a rate moratorium is to benefit customers by  
6 incentivizing a utility to contain costs and achieve maximum merger savings  
7 following approval of a merger. This produces earnings growth for shareholders  
8 without bill growth to customers.

9 It appears the only justification for exempting the non-base rates in this case is  
10 that the Applicants do not expect to contain their costs and want to pass along  
11 significant retail rate increases during the “moratorium” period. If this is, indeed, the  
12 justification, the “rate moratorium” serves no purpose and is a moratorium in name  
13 only. Consistent with my Cross-Answering Testimony, I recommend the Commission  
14 modify the Settlement to include a full retail rate freeze.

15 **Q WHAT OTHER CONCERNS DO YOU HAVE?**

16 A I have a number of concerns with the Earnings Review and Sharing Plan (“ERSP”).  
17 This appears to be a “formula rate” intended to keep customer charges at formula-  
18 based levels by requiring the utilities to share savings above a certain level of return.  
19 The ERSP is a “true-up” of base rates, a common feature of formula rates.

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<sup>8</sup>Counsel advises me that, in a recent acquisition involving the Empire District Electric Company and Liberty Utilities, this Commission adopted a base rate moratorium. However, because Empire did not have a transmission surcharge, this rate freeze covered increases in retail transmission cost.

**Q     WOULD THE ERSP INCENTIVIZE THE COMPANY TO CREATE EFFICIENCIES  
AND SHARE THE SAVINGS WITH CUSTOMERS?**

A     It is not clear how the Applicants will respond to the profit incentive under the ERSP. The ERSP certainly incentivizes the utility to maximize the profit of the utility during the rate moratorium period which meets the commitment to shareholders. However, the mechanics of the ERSP allow the utility flexibility to further enhance profits that are not created simply by reductions in cost of service, but rather are the result of manipulating the components of the ERSP earnings platform.

For example, the earned return on equity will be based on the Company's actual percentages of equity capitalization, but with a cap of 51% in 2019, 50.5% in 2020, and 50% in 2021 and 2022. But, those equity capitalizations will exclude short-term debt and debt due within one year. This creates an opportunity for the Company to substantially increase its utilization of short-term debt, while paying out most of its earnings up to its parent company as dividends, while still limiting the capital structure mix used to measure earnings that are in excess of the authorized return on equity. This practice could allow the utility to always manage its long-term capital structure mix at a target high-end common equity ratio, where its actual capital structure mix during the moratorium period could be far more heavily leveraged than that used to measure excess earnings. Again, this mismatch in capital structure could allow for an increased dollar amount of common equity, and allow for payment of that equity up to its parent company in the form of dividends, and then allow the Company to manage its long-term capital structure mix used in the ROE excess formulas by use of short-term debt. The net effect of this is a significant amount of long-term capital could be paid out of the utility companies in the form of dividends to the parent company, without impacting the earnings test under the ERSP formula. Increasing the short-

1 term debt, on the other hand, could have a negative impact on the utility's credit  
2 rating and cost of debt which will impact customers' rates during and after the  
3 moratorium period.

4 Also, to the extent the Applicants are making a strong commitment to reduce  
5 their cost of service to retail customers during the moratorium period, then all net cost  
6 savings should be used to make Kansas rates more competitive with regional  
7 competitive alternatives. If this is a primary objective of the settlement, then a much  
8 lower earnings sharing band should be awarded, which uses most excess earnings,  
9 to either produce direct rate credits to retail customers, or to buy down cost of service  
10 in a way that makes the Applicants more competitively-priced suppliers in the region.  
11 This kind of balanced sharing mechanism is particularly necessary given that  
12 customers will still be exposed to increases in bills because all the surcharges and  
13 rider mechanisms applicable to retail service will not be frozen during the rate  
14 moratorium period.

15 **Q DO YOU HAVE AN ALTERNATIVE RECOMMENDATION?**

16 A Yes. The Commission should modify the Settlement to make a full retail "bill"  
17 moratorium, excluding fuel costs, a condition of the merger. This would include  
18 freezing all non-fuel charges, including base rates, surcharges and rider mechanisms  
19 except for fuel adjustment mechanisms. This would provide customers stable rates  
20 over the five-year moratorium period, and provide a true incentive for the Applicants  
21 to manage their cost of service in a way that maximizes profits to shareholders, while  
22 producing stable and more competitive rates to retail customers.

23 With a pure non-fuel moratorium on customer bills, the ERSP would not be  
24 necessary, customers would have significant benefits over the next five years with no

1 rate increases, and the Applicants would be fully incentivized to maximize cost  
2 efficiencies and earnings during this same time period. This simple approach would  
3 also provide more assurance of direct benefit to retail customers, rather than the  
4 combination of possible ERSP sharings during the moratorium period. This more  
5 simple and direct rate-setting and profit-setting incentive mechanism would directly  
6 align producing merger benefits to both customers and shareholders, which would  
7 truly be in the public interest.

8 **Q DO YOU AGREE WITH THE METHOD OF ALLOCATING BILL CREDITS**  
9 **INCLUDED IN THE SETTLEMENT?**

10 A No. The Settlement appears to adopt Staff's methodology, which is not an  
11 appropriate approach. Staff's approach would allocate credits to the customer  
12 classes based on the *base rate* revenue percentages from the final approved proof of  
13 revenue in the 2018 Westar and KCP&L-KS rate cases. However, the cost-of-service  
14 savings are expected to occur across all elements of the utilities' cost of service – not  
15 just those recovered in base rates. This causes a mismatch of benefits to costs and  
16 will ultimately cause some customers (the industrial class) to subsidize other  
17 customers. This will occur because the industrial class contributes approximately  
18 16% of base rate revenues, but it contributes 20% of *all* retail revenues. Therefore,  
19 Staff's methodology would only allocate 16% of rate credits to industrial customers,  
20 even though those customers contribute 20% of revenues. The most appropriate  
21 approach is to allocate credits among the classes based on the classes' percentage  
22 contributions to total retail revenues in 2017.

23 The percentages above indicate that industrial customers tend to be more  
24 exposed to surcharges and riders than other customers. This is another reason to

1 allocate credits on a total retail revenue basis. If the Commission does not require a  
2 full retail rate freeze, industrial customers will be less protected by a base rate  
3 moratorium and more exposed to the expected significant rate increases through  
4 various surcharges and riders. If anything, these customers should receive a slightly  
5 larger percentage of rate credits to compensate for this inequity.

6 **Q DOES THIS CONCLUDE YOUR TESTIMONY?**

7 **A Yes.**

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### **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 12<sup>th</sup> day of March, 2018 to the parties below:

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AMBER SMITH KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 <a href="mailto:a.smith@kcc.ks.gov">a.smith@kcc.ks.gov</a>	MARK DOLJAC KANSAS ELECTRIC POWER CO-OP, INC. 600 SW CORPORATE VIEW PO BOX 4877 TOPEKA, KS 66604-0877 <a href="mailto:mdoljac@kepc.org">mdoljac@kepc.org</a>
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