**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 Acquisition of Westar Energy, Inc. by Great Plains Energy Incorporated	)))))	Docket No. 16-KCPE-593-ACQ

INTERVENORS' RESPONSIVE BRIEF

COME NOW Sunflower Electric Power Corporation ("Sunflower") and Mid-Kansas Electric Company, LLC ("Mid-Kansas"), pursuant to the Commission Order Setting Procedural Schedule, and file their Responsive Brief.

I. Introduction

1. On May 31, 2016, Great Plains Energy, Incorporated ("GPE"), the parent company of Kansas City Power & Light Company ("KCP&L") announced that it had reached a definitive agreement to acquire 100% of the stock of Westar Energy, Inc. ("Westar") in a transaction then valued at approximately $12.2 billion, including assumed debt (the "Transaction"). Upon closing, Kansas's two largest jurisdictional utilities will be owned by GPE. Westar will become a wholly owned subsidiary of Great Plains Energy. On June 28, 2016, KCP&L and Westar filed a Joint Application seeking approval for GPE's acquisition of Westar.

2. The evidence in the record, or absence thereof, clearly shows that the Transaction does not promote the public interest as required to be approved under the Commission's Merger Standards. Although there are potential beneficial outcomes from such a merger, the costs and structure of the merger do not outweigh the significant risks associated with the premium paid for the acquisition of 100% of the stock of Westar Energy, Inc. Nor does the Transaction present a tremendously beneficial outcome for the State of Kansas, its communities, customers served in Kansas by Westar and KCP&L, and the Commission, as well as Westar and GPE shareholders as stated in Joint Applicants' Initial Post Hearing Brief.

3. Sunflower and Mid-Kansas recommend the Transaction not be approved for a number of justifiable reasons, but will focus on two reasons in this Responsive Brief and will

rely upon the reasoning set forth in the Responsive Briefs of other intervenors and Commission Staff who have opposed the Transaction in order to address the others.

4. Joint Applicants have espoused a wide range of reasons to justify the approval of the application. Central to their contention are the savings that will arise from the merger which will be used to fund the Transaction and service the debt. Joint Applicants contend that the combined operating utilities will result in efficiencies and synergies to be gained through the merger of the two companies which can only be obtained by the merger. No doubt there will be some synergies and efficiencies.

5. Mr. William J. Kemp concluded, based upon his assessment of Joint Applicants' determination of savings, that the combined operations of the three operating utilities will yield the savings touted by the Joint Applicants. Mr. Kemp asserts that the savings would not be possible without the acquisition of Westar by GPE.[1] The conclusion is based upon the integration of the operating utilities into one with no consideration of the fact that each will continue to operate as separate and distinct operating utilities. In Mr. Kemp's testimony, he acknowledges each will continue to maintain separate rate bases and rate filings and then promptly ignores the fact for purposes of his testimony.[2]

6. The structure of the Transaction is not a merger of Westar and KCP&L as contemplated in a conventional merger in which one company folds into the other and the result is one surviving company. Westar and KCP&L will each remain separate, standalone legal entities with their own rate structure, staff, generation facilities, transmission lines and other operating assets. Although acknowledged, this fact is glossed over by the Joint Applicants throughout their application and supportive testimony. This raises significant issues not only as to the capability but practicability of the savings.

7. If you accept Mr. Kemp's supposition that the savings derived from the Transaction could only occur through the acquisition, then the savings, even if arguably attainable, are still questionable. Joint Applicants have not provided any evidence that the

---

[1] Kemp Direct, pg. 18, lines 2-4; "Yes. 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."

[2] Kemp Direct, pg. 9, Footnote 1.

savings are in fact attainable without violating the restriction against cross-subsidization among the operating utilities.

8. Illustrative of this flaw is the contention that the acquisition will provide significant saving from the shuttering of several plants. Mr. Kemp states that the reductions in capital expenditures for new generation or transmission capacity will be larger if one utility has a long position (*i.e.*, more than adequate capacity) and the other has a more pressing capacity need.[3] This testimony confirms that Joint Applicants either did not consider or purposely ignored whether the savings are in fact allowable if the operating utilities are maintaining their own rate base and rate filings.

9. For example, according to the Joint Applicant, Westar Lawrence Energy Center, units 4 and 5; Westar Murry Gill Energy Center, units 3 and 4; Westar Tecumseh Energy Center, unit 7; KCP&L Montrose, units 2 and 3; KCP&L Sibley, units 1 and 2; and KCP&L Sibley, unit 3 were to be shuttered. It should be noted that the Sibley units are owned by KCP&L GMO and not KCP&L as indicated in Exhibit JAL-2 to Jonathan Lesser's direct testimony. The decision as to which units to shutter was based upon the fact the units were the smaller, older, less efficient units that operate significantly less than the large baseload units.[4] The ability to shutter these plants is dependent upon the fact generation units in one operating utility are more efficient and usable, allowing units in the other operating utility to be shuttered. The Joint Applicants further contend these savings would not occur but for the Transaction. However, the Joint Applicants fail to explain how the savings can occur at all when each operating utility will continue to operate as a standalone operating utility with its own rate base and rate making. The truth is that even with the Transaction, these saving cannot occur.

10. Based upon the evidence in the record, or the lack thereof, the realization of savings by one public utility due to something another public utility made possible is impossible without one set of rate payors subsidizing the rate payors of the other public utility. This is highly inappropriate and has been summarily rejected by the Commission. Yet the Joint Applicants tout savings that cannot occur without rate payors of one operating utility subsidizing the rates of another. Without evidence in the record that subsidization will not occur, the

---

[3] Kemp Direct, pp. 32

[4] Kemp Rebuttal, pp. 21

Commission has no alternative but to discount or ignore such alleged savings. Without those savings, the Transaction becomes even more untenable.

11. The second point centers on the issue of ring fencing. This will be mentioned only briefly as other intervenors and Commission staff have more than adequately addressed this in their testimony. Mr. Reed suggested that despite the fact there are three operating utilities, the board members of Westar, KCP&L and GPE will be the same. He justifies the independence of the three separate boards on the basis each will be required to serve independently and represent the best interest of the respective companies while serving in such capacity. This is a highly idealistic view, and in practice, highly improbable.

12. If the Commission elects to approve the Transaction, the Commission should require that the boards be made up of different board members and none should be comprised by a majority of management. It is the only way the Commission can insure a shred of independence among the companies. The fact GPE rejects the concept of truly separate, independent board members should be concern enough for the Commission that independence may be compromised and independent boards mandated. At least until the debt of GPE is reduced to acceptable levels.

II. Conclusion

WHEREFORE, for the reasons set forth herein, Mid-Kansas and Sunflower contend the Transaction proposed by the Joint Applicants should be disapproved.

Respectfully submitted,

Mark D. Calcara, #09957
Taylor P. Calcara, #25561
Watkins Calcara, Chtd.
1321 Main Street - Suite 300
P.O. Drawer 1110
Great Bend, Kansas 67530
(620) 792-8231 telephone
(620) 792-2775 fascimile
Attorneys for Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF BARTON)

Taylor P. Calcara, of lawful age, being first duly sworn on oath, states:

That he is an attorney for Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC; that he has read the above and foregoing Intervenors' Responsive Brief and knows the contents thereof; and that the statements contained therein are true.

Taylor P. Calcara

SUBSCRIBED AND SWORN to before me this 13th day of March, 2017.

NOTARY PUBLIC - State of Kansas
MELISSA A. HUBBARD
My Appt. Exp. September 11, 2018

Notary Public

My Commission Expires: 9-11-2018

CERTIFICATE OF SERVICE

I do hereby certify that on the 13th day of March, 2017, I electronically filed via the Kansas Corporation Commission's Electronic Filing System, a true and correct copy of the above and foregoing Intervenors' Responsive Brief with a copy emailed to:

Taylor P. Calcara

KURT J. BOEHM, ATTORNEY
BOEHM, KURTZ & LOWRY
36 E SEVENTH ST STE 1510
CINCINNATI, OH 45202
kboehm@bkllawfirm.com

JODY KYLER COHN, ATTORNEY
BOEHM, KURTZ & LOWRY
36 E SEVENTH ST STE 1510
CINCINNATI, OH 45202
jkylercohn@bkllawfirm.com

GLENDA CAFER, ATTORNEY
CAFER PEMBERTON LLC
3321 SW 6TH ST
TOPEKA, KS 66606
glenda@caferlaw.com

TERRI PEMBERTON, ATTORNEY
CAFER PEMBERTON LLC
3321 SW 6TH ST
TOPEKA, KS 66606
terri@caferlaw.com

THOMAS J. CONNORS, Attorney at Law
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
tj.connors@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL
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

KEVIN HIGGINS
ENERGY STRATEGIES, LLC
PARKSIDE TOWERS
215 S STATE ST STE 200
SALT LAKE CITY, UT 84111
khiggins@energystrat.com

WILLIAM R. LAWRENCE
FAGAN EMERT & DAVIS LLC
730 NEW HAMPSHIRE SUITE 210
LAWRENCE, KS 66044
wlawrence@fed-firm.com

JOHN GARRETSON, BUSINESS MANAGER
IBEW LOCAL UNION NO. 304
3906 NW 16TH STREET
TOPEKA, KS 66615
johng@ibew304.org

JOHN R. WINE
JOHN R. WINE, JR.
410 NE 43RD
TOPEKA, KS 66617
jwine2@cox.net

ROBERT J. HACK, LEAD REGULATORY COUNSEL
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PL
1200 MAIN ST 19th FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
ROB.HACK@KCPL.COM

DARRIN R. IVES, VICE PRES, REGULATORY AFFAIRS
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PL
1200 MAIN ST 19th FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
darrin.ives@kcpl.com

ROGER W. STEINER, CORPORATE COUNSEL
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PL
1200 MAIN ST 19th FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
roger.steiner@kcpl.com

MARY TURNER, DIRECTOR, REGULATORY AFFAIR
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PL, 1200 MAIN ST 19th FLOOR (64105)
PO BOX 418679
KANSAS CITY, MO 64141-9679
MARY.TURNER@KCPL.COM

BRIAN G. FEDOTIN, DEPUTY GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
b.fedotin@kcc.ks.gov

DUSTIN KIRK, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
d.kirk@kcc.ks.gov

MICHAEL NEELEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
m.neeley@kcc.ks.gov

AMBER SMITH, CHIEF LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
a.smith@kcc.ks.gov

MARK DOLJAC, DIR RATES AND REGULATION
KANSAS ELECTRIC POWER CO-OP, INC.
600 SW CORPORATE VIEW (66615)
PO BOX 4877
TOPEKA, KS 66604-0877
MDOLJAC@KEPCO.ORG

WILLIAM G. RIGGINS, SR VICE PRES AND GENERAL COUNSEL
KANSAS ELECTRIC POWER CO-OP, INC.
600 SW CORPORATE VIEW (66615)
PO BOX 4877
TOPEKA, KS 66604-0877
BRIGGINS@KEPCO.ORG

CATHRYN J DINGES, CORPORATE COUNSEL
KANSAS GAS & ELECTRIC CO. D/B/A WESTAR ENERGY
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
cathy.dinges@westarenergy.com

JAMES P. ZAKOURA, ATTORNEY
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH ST STE 750
OVERLAND PARK, KS 66210-2362
jim@smizak-law.com

JEFFREY L. MARTIN, VICE PRES., REG. AFFAIRS
WESTAR ENERGY, INC.
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
JEFF.MARTIN@WESTARENERGY.COM

CURTIS M. IRBY
GENERAL COUNSEL OF KPP
LAW OFFICES OF CURTIS M. IRBY
200 EAST FIRST STREET, SUITE 415
WICHITA, KANSAS 67202
cmirby@sbcglobal.net

LARRY W. HOLLOWAY
ASSISTANT GENERAL MANAGER/OPERATIONS
KANSAS POWER POOL
100 NORTH BROADWAY, SUITE L110
WICHITA, KANSAS 67202
lholloway@kansaspowerpool.org

MICHAEL E. AMASH, ATTORNEY
BLAKE & UHLIG PA
SUITE 475, NEW BROTHERHOOD BLDG.
753 STATE AVENUE
KANSAS CITY, KS 66101
MEA@BLAKE-UHLIG.COM

MARTIN J. BREGMAN
BREGMAN LAW OFFICE, LLC
311 PARKER CIRCLE
LAWRENCE, KS 66049
mjb@mjbregmanlaw.com

ANDREW J. ZELLERS, GEN COUNSEL/VP REGULATORY AFFAIRS
BRIGHTERGY, LLC
1712 MAIN ST., 6TH FLOOR
KANSAS CITY, MO 64108
andy.zellers@brightergy.com

ASHLEY M. BOND, ATTORNEY
DUNCAN & ALLEN
1730 RHODE ISLAND AVENUE NW
SUITE 700
WASHINGTON, DC 20036-3155
amb@duncanallen.com

KIN HOLMBOE, ATTORNEY AT LAW
DUNCAN & ALLEN
1730 RHODE ISLAND AVENUE NW
SUITE 700
WASHINGTON, DC 20036-3155
kh@duncanallen.com

GREGG D. OTTINGER, ATTORNEY
DUNCAN & ALLEN
1730 RHODE ISLAND AVENUE NW
SUITE 700
WASHINGTON, DC 20036-3155
gdo@duncanallen.com

ALI NELSON, ATTORNEY
FAGAN EMERT & DAVIS LLC
730 NEW HAMPSHIRE, SUITE 210
LAWRENCE, KS 66044
anelson@fed-firm.com

DARRELL MCCUBBINS, BUSINESS MANAGER
IBEW LOCAL UNION NO. 1464
PO BOX 33443
KANSAS CITY, MO 64120
Local1464@aol.com

DUANE NORDICK, BUSINESS MANAGER
IBEW LOCAL UNION NO. 1523
609 N. BROADWAY
WICHITA, KS 67214
Duane_nordick@sbcglobal.net

DAVID PINON, BUSINESS MANAGER
IBEW LOCAL UNION NO. 1613
6900 EXECUTIVE DR.
SUITE 180
KANSAS CITY, MO 64120

RAYMOND ROGERS, BUSINESS MANAGER
IBEW LOCAL UNION NO. 225
PO BOX 404
BURLINGTON, KS 66839-0404
rcrogers@cableone.net

BILL MCDANIEL, BUSINESS MANAGER
IBEW LOCAL UNION NO. 412
6200 CONNECTICUT
SUITE 105
KANSAS CITY, MO 64120
Bmcdaniel412@msn.com

JOHN KRAJEWSKI, PRESIDENT
JK ENERGY CONSULTING, LLC
650 J STREET, SUITE 108
LINCOLN, NE 68508
jk@jkenergyconsulting.com

ANDREW FERRIS, DIR. OF ELEC. SUPPLY PLANNING
KANSAS CITY KANSAS BOARD OF PUBLIC UTILITIES
312 N. 65TH STREET
KANSAS CITY, KS 66102
aferris@bpu.com

ANGELA LAWSON, SENIOR COUNSEL
KANSAS CITY KANSAS BOARD OF PUBLIC UTILITIES
540 MINNESOTA AVENUE
KANSAS CITY, KS 66101-2930
alawson@bpu.com

WILLIAM DOWLING, VP ENGINEERING & ENERGY SUPPLY
MIDWEST ENERGY, INC.
1330 CANTERBURY ROAD
PO BOX 898
HAYS, KS 67601
bdowling@mwenergy.com

EARNEST A. LEHMAN, PRESIDENT & GM
MIDWEST ENERGY, INC.
1330 CANTERBURY ROAD
PO BOX 898
HAYS, KS 67601
elehman@mwenergy.com

ANNE E. CALLENBACH, ATTORNEY
POLSINELLI, PC
900 W. 48TH PLACE, SUITE 900
KANSAS CITY, MO 64112
acallenbach@polsinelli.com

FRANK A. CARO, ATTORNEY
POLSINELLI, PC
900 W. 48TH PLACE, SUITE 900
KANSAS CITY, MO 64112
fcaro@polsinelli.com

RENEE BRAUN, CORPORATE PARALEGAL
SUNFLOWER ELECTRIC POWER CORPORATION
301 W. 13TH
PO BOX 1020
HAYS, KS 67601
rbraun@sunflower.net

JAMES BRUNGARDT, REGULATORY AFFAIRS ADMINISTRATOR
SUNFLOWER ELECTRIC POWER CORPORATION
301 W. 13TH
PO BOX 1020
HAYS, KS 67601
jbrungardt@sunflower.net

DAVIS ROONEY, VICE PRESIDENT AND CFO
SUNFLOWER ELECTRIC POWER CORPORATION
301 W. 13TH
PO BOX 1020
HAYS, KS 67601
drooney@sunflower net

AL TAMIMI, VICE PRESIDENT, TRANSMISSION PLANNING AND POLICY
SUNFLOWER ELECTRIC POWER CORPORATION
301 W. 13TH
PO BOX 1020
HAYS, KS 67601
atamimi@sunflower.net

DAVID L. WOODSMALL
WOODSMALL LAW OFFICE
308 E. IGH STREET, SUITE 204
JEFFERSON CITY, MO 65101
David.woodsmall@woodsmalllaw.com

W. ROBERT ALDERSON, JR., ATTORNEY
ALDERSON, ALDERSON, WEILER, CONKLIN, BURGHART & CROW, LLC
2101 SW 21ST STREET (66604)
TOPEKA, KS 66604
BOBA@ALDERSONLAW.COM

DANIEL R. ZMIJEWSKI
DRZ LAW FIRM
9229 WARD PARKWAY, STE. 370
KANSAS CITY, MO 64114
DAN@DRZLAWFIRM.COM

SHANNON FISK, ATTORNEY
EARTHJUSTICE
1617 JOHN F. KENNEDY BLVD.
SUITE 1675
PHILADELPHIA, PA 19103
SFISK@EARTHJUSTICE.ORG

SARAH STEELE
GILMORE & BELL, P.C.
ONE MAIN PLACE
100 NORTH MAIN, STE. 800
WICHITA, KS 67202
SSTEELE@GILMOREBELL.COM

DOUGLAS L. HEALY, ATTORNEY AT LAW
HEALY LAW OFFICES, LLC
3010 E. BATTLEFIELD, STE. A
SPRINGFIELD, MO 65804
DOUG@HEALYLAWOFFICES.COM

TERRY M. JARRETT, ATTORNEY AT LAW
HEALY LAW OFFICES, LLC
3010 E. BATTLEFIELD, STE. A
SPRINGFIELD, MO 65804
TERRY@HEALYLAWOFFICES.COM

RICHARD S. HARPER
JENNINGS, STROUSS & SALMON, P.LC.
1350 I STREET, NW
SUITE 810
WASHINGTON, DC 20005
RHARPER@JSSLAW.COM

ALAN I. ROBBINS, ATTORNEY
JENNINGS, STROUSS & SALMON, P.L.C.
1350 I STREET, NW
SUITE 810
WASHINGTON, DC 20005
AROBBINS@JSSLAW.COM

DEBRA D. ROBY, ATTORNEY
JENNINGS, STROUSS & SALMON, P.L.C.
1350 I STREET, NW
SUITE 810
WASHINGTON, DC 20005
DROBY@JSSLAW.COM

SUSAN ALIG, ASSISTANT COUNSEL
KANSAS CITY KANSAS BOARD OF PUBLIC UTILITIES
701 N. 7TH STREET
KANSAS CITY, KS 66101
SALIG@WYCOKCK.ORG

ANDREW FRENCH, SENIOR LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD.
TOPEKA, KS 66604-4027
A.FRENCH@KCC.KS.GOV

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

SUNIL BECTOR, ATTORNEY
SIERRA CLUB
2101 WEBSTER, SUITE 1300
OAKLAND, CA 94312-3011
SUNIL.BECTOR@SIERRACLUB.ORG

HOLLY BENDER
SIERRA CLUB
133 S. BUTLER, STE. 106
MADISON, WI 53703
HOLLY.BENDER@SIERRACLUB.ORG