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

DIRECT TESTIMONY OF

DARRIN R. IVES

**ON BEHALF OF
WESTAR ENERGY, INC. AND KANSAS GAS AND ELECTRIC COMPANY**

**IN THE MATTER OF THE APPLICATION OF
MIDWEST POWER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO TRANSACT THE BUSINESS OF A PUBLIC UTILITY IN THE STATE OF KANSAS**

DOCKET NO. 19-MPCE-064-COC

I. INTRODUCTION

Q: Please state your name and business address.

A: My name is Darrin R. Ives. My business address is 1200 Main Street, Kansas City, Missouri 64105.

Q: By whom and in what capacity are you employed?

A: I serve as Vice President – Regulatory Affairs for all of Evergy, Inc.'s utility subsidiaries, including Westar Energy, Inc. and Kansas Gas and Electric Company (together as "Westar").

Q: What are your responsibilities?

A: My responsibilities include oversight of the company's Regulatory Affairs Department, as well as all aspects of regulatory activities including cost of service, rate design, revenue requirements, regulatory reporting and tariff administration. My responsibilities also specifically include rate and other regulatory matters pertaining to Westar's ownership and current leasehold interest in the Jeffrey Energy Center (the "JEC").

Q: Please describe your education, experience and employment history.

A: I graduated from Kansas State University in 1992 with a Bachelor of Science in Business Administration with majors in Accounting and Marketing. I received my Master of Business Administration degree from the University of Missouri-Kansas City in 2001. I am a Certified Public Accountant. From 1992 to 1996, I performed audit services for the public accounting firm Coopers & Lybrand L.L.P. I was first employed by KCP&L in 1996 and held positions of progressive responsibility in Accounting Services and was named Assistant Controller in 2007. I served as Assistant Controller until I was named Senior Director – Regulatory Affairs in April 2011. I became Vice President – Regulatory Affairs in August 2013. With the closing of the merger between Westar and Great Plains Energy, Inc. (Great Plains) to create Evergy, I assumed my current role as Vice-President – Regulatory Affairs for all of Evergy's utility subsidiaries.

Q: Have you previously testified in a proceeding before the Kansas Corporation Commission ("Commission" or "KCC") or before any other utility regulatory agency?

A: Yes, I have testified a number of times before the KCC and the Missouri Public Service Commission. I have also provided written testimony before the Federal Energy Regulatory Commission and have testified before legislative committees in Missouri.

Q: What is the purpose of your testimony?

A: The purpose of my testimony is to provide Westar's position regarding Midwest Power Company ("MWP") Application for a certificate of convenience and necessity ("CCN").

Ultimately, so long as the Commission imposes appropriate conditions that will protect the public interest, Westar would not oppose the granting of a CCN to MWP. Because MWP has not met the financial component of the Commission's standard for approval to operate as a Kansas utility under a CCN, Westar recommends that the Commission impose several conditions on the certificate approval in order to protect Westar's Kansas retail customers and Westar itself – a Kansas public utility – and ensure that approval of the CCN meets the public interest.

II. BACKGROUND

Q: Please describe Westar's interest in MWP's CCN Application.

A: Westar is the owner of an 84% interest in Jeffrey Energy Center ("JEC") and is also the operator of JEC pursuant to an Operation Agreement executed by the co-owners. MWP holds an 8% undivided interest in JEC, which it holds as the sole participant and beneficiary in a Trust for which Wilmington Trust Company ("WTC") is the owner and trustee (the "Trust"). Currently, the 8% ownership interest in JEC owned by the Trust is leased to Westar under a Lease Agreement, which expires on January 3, 2019.

In his Direct Testimony, Staff witness Chad Unrein provided a detailed summary of the ownership history of the 8% interest in JEC currently held by the Trust, which resulted from the sale and leaseback of the interest involving UtiliCorp and WTC. That lease and UtiliCorp's related obligations were ultimately assumed by Westar, a transaction which was approved by the Commission in Docket No. 91-UCUE-226-MER.

As the operator of JEC, Westar incurs all of the operating and maintenance expense associated with operating the plant, as well as all of the capital costs necessary to keep the plant running. Then, Westar bills the co-owners – KCP&L Greater Missouri

Operations and, after expiration of the lease, WTC – for their share of those costs. JEC is the largest power plant in Kansas and its operation is important to Westar's ability to provide electric service to Kansas customers. As such, Westar and its customers have an interest in ensuring that MWP is able to cover the financial obligations associated with its ownership of 8% of JEC.

Q: Please describe the position taken by MWP in its initial application and supporting testimony regarding how it would meet the financial component of the Commission's standard for approving CCNs.

A: In its application, MWP recognized that one element of the Commission's standard for approving a certificate application is demonstration that the applicant has the financial wherewithal to act as a utility in the state, recognizing that "[h]istorically, the Commission has required applicants seeking a CCN to demonstrate that they have the necessary technical, managerial and financial resources to conduct the business of a public utility."[1] When discussing how MWP meets the financial component of the Commission's standard, in her verified testimony, MWP witness Amy Paine states:

> **Q. PLEASE DESCRIBE THE FINANCIAL RESOURCES OF MWP.**
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> A. The sole asset of MWP is the 8% undivided interest in the JEC. Until it is certificated as a public utility and can establish a revenue stream through the sale of energy and capacity in the wholesale market, it will have no cash flow. However, MWP is supported financially by its parent, Key, via a 2007 corporate Guaranty. KeyCorp is one of the nation's largest bank-based financial service companies, with $137.7 billion in total consolidated assets as of December 31, 2017 and $6.3 billion in revenue for the 12 months ended December 31, 2017.

[1] MWP Application, ¶ 24.

> **Q. IF MWP DOES NOT HAVE SUFFICIENT CASH FLOWS TO FULFILL ITS OBLIGATIONS UNDER THE OPERATION AGREEMENT, WILL KEYCORP FULFILL THOSE OBLIGATIONS?**
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> A. Yes. The Guaranty provided to MWP by KeyCorp ensures that any obligation undertaken by MWP shall be fully discharged. To the extent required, KeyCorp will modify the Guaranty to ensure that any operations, maintenance or capital expenses required to be paid by MWP pursuant to the Operation Agreement will be paid.[2]

In its application and supporting testimony, MWP clearly recognizes the need to establish financial wherewithal as a prerequisite to satisfying the financial component of the Commission's standards for securing a CCN. MWP makes a representation to the Commission that it intends to meet this requirement by relying on the financial wherewithal of its parent company, KeyCorp, and by amending the KeyCorp Guaranty as necessary to meet the Commission's requirements. In fact, MWP expressly states that KeyCorp will cover the obligations under the Operation Agreement if MWP does not have sufficient cash flows.[3]

Q: Has MWP's position regarding the financial component of the Commission's standard changed?

A: Yes. In response to data requests issued by Westar, MWP provided an entirely new and directly contrary position, completely reversing the position taken in its application that had been supported with sworn testimony, with respect to its reliance on KeyCorp and the KeyCorp Guaranty to meet the Commission's financial component standard.[4] Instead, MWP cited to the "non-recourse" provisions that are contained in several of the

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[2] Direct Testimony of Amy Paine, at 11.
[3] *Id*.
[4] *See* MWP's Responses to Westar's Data Requests 2.02 and 2.03, attached hereto.

contracts associated with the sale and leaseback of the 8% interest in JEC to argue that Westar is required to cover any shortfalls that occur within the Trust for payment of the 8% share of O&M and capital costs at JEC and that it is therefore not necessary for KeyCorp to provide a guaranty to cover those expenses. As the Commission recognized in the Order it issued on November 15, 2018, MWP's statement regarding its willingness to modify the KeyCorp guaranty in its Application and supporting testimony is irreconcilable with its statements regarding the guaranty made in response to Westar's data requests:

> MWP has asserted that 'KeyCorp will modify the Guaranty to ensure that any operations, maintenance or capital expenses *required to be paid* by MWP pursuant to the Operation Agreement will be paid,' but also that MWP 'is not required to pay any [expenses]' that must be 'paid . . . pursuant to the Operating Agreement.' Presumably based on the second assertion, MWP further stated that 'KeyCorp is not willing to provide a new or amended guaranty that would make KeyCorp responsible for such costs.' The Commission finds the assertions that KeyCorp *will* modify the guaranty and that KeyCorp is *not willing* to provide an amended guaranty impossible to reconcile.[5]

These inconsistencies in MWP's position regarding the KeyCorp guaranty have created a situation where – as the Commission indicated – "the ultimate facts" are "somewhat confused."[6]

Although Westar agrees that there are certain "non-recourse" provisions in the contracts related to the sale and leaseback transaction, we do not agree that those provisions leave Westar with no remedy whatsoever in the event MWP and WTC take 8% of the capacity and power produced by JEC without paying for their share of the

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[5] Order on Westar's Motion for Refiling of Application and Restarting of 180-Day Clock and on Westar's Motion for Leave to File Testimony Out of Time, Docket No. 19-MPCE-064-COC, ¶ 12 (Nov. 15, 2018).

costs. As discussed in more detail below, failure of MWP and WTC to pay their share of JEC costs would allow Westar to, in essence, foreclose on MWP's interest in JEC.[7]

Since MWP has not filed any testimony describing its position regarding Westar's responsibility to cover the Trust's shortfalls, my understanding of MWP's position is based solely on the responses MWP provided to Westar's data requests.

Q: Do you agree with MWP's interpretation of the impact of the non-recourse provisions?

A: No, its responses do not tell the whole story as to what would likely happen if MWP failed to fully pay its share of allocable JEC costs. The non-recourse provisions ensure that neither WTC nor MWP can be forced into covering the operating and capital expenses for JEC with respect to the 8% interest held by the Trust in the event that the assets held in the Trust Estate are insufficient to fully cover such costs. However, WTC's and MWP's underlying obligation to make payments with respect to the 8% interest held by the Trust would not be eliminated in such event; that is, I do not believe that MWP can simply rely on Westar to bear the burden of a shortfall in revenues vs. operating expenses and capex with no consequences as MWP seems to suggest. Regardless, these issues are a potential contractual dispute between Westar and KeyCorp and should have no bearing on KeyCorp's and its affiliates' responsibility to satisfy this Commission that they should be allowed to operate as a public utility in Kansas under a CCN and that such a determination is in the public interest of Kansas.

In the event the assets of the Trust Estate are insufficient, MWP apparently believes it can simply employ squatter's rights and fail to fund the payment of operating

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[6] *Id*. at ¶ 13.

and other costs allocable to its interest in JEC, but continue to be entitled to the associated capacity and energy and that Westar has no remedy available in that event. This "heads I win, tails you lose" position is nonsensical, is unsupported by the applicable agreements, and is an example of MWP's unjustifiable attempts to shift its responsibility to cover the operating and other costs allocable to the 8% interest in JEC held by the Trust on to Westar and its customers while still benefiting from the capacity and energy generated associated with the 8% interest indefinitely. As Staff witness Unrein testified, MWP's position and its "reliance on Westar as a financial resource to cover any shortfalls between its operating revenue and its financial obligation to cover the full operating, maintenance, and capital expenditures is not in the public interest."[8]

Q: Please explain your view of the effect of the non-recourse provisions and how that view differs from that of MWP.

A: We believe the non-recourse provisions have a much narrower effect than MWP suggests. By way of analogy, essentially MWP is in a similar position from a legal perspective as a homeowner who owns a home subject to a non-recourse mortgage. If the homeowner fails to make his or her monthly mortgage payment the bank may not be able to sue to force the homeowner to continue making the required scheduled payments under the mortgage, but the bank can exercise its right to foreclose on the house due to the homeowner's payment default. Thus, in this situation, the homeowner has a choice: he or she can continue to make payments on the mortgage and preserve the right to continue to occupy the home even though the bank cannot bring a claim against the homeowner in his or her individual capacity, or it can let the bank exercise its remedies

[7] *See* Section 16 of the Ownership Agreement.

for nonpayment of the mortgage and the homeowner will be out looking for a place to live.

That choice is essentially the same one that MWP may face in the event that the funds in the Trust Estate are not sufficient to cover its share of JEC costs and capital expenditures. It can dip into its own pocket (or that of KeyCorp) to cover any shortfall in funds needed to pay its allocable share of JEC expenses or, alternatively, it can run the risk that the other Owners in the JEC can exercise remedies against it for non-payment (similar to a foreclosure), ultimately taking over ownership of the Trust's 8% interest.

Apparently, by analogy, the view of MWP would be that the homeowner can fail to make its required mortgage payments indefinitely and stay in the house, leaving the mortgage holder with no remedy. This is a patently ridiculous and self-serving position that would force the other Owners to fund MWP's ownership interest by the simple act of MWP failing to pay its allocable share of the JEC costs.

Q: How should the Commission view MWP's arguments regarding the non-recourse provisions?

A: MWP's arguments regarding the non-recourse provisions are a distraction from the real issues to be decided by the Commission in this docket – whether MWP meets the standard for approval of a CCN. The applicability and impact of the non-recourse provisions are legal issues that will ultimately be resolved either through negotiations among the parties or through litigation.

MWP's approach is to ask the Commission to give it a CCN without requiring it to take responsibility for its share of costs at JEC. Apparently, once MWP obtains the

[8] Unrein Direct Testimony, at 25.

CCN, it will refuse to pay its share of costs – relying on its interpretation of the non-recourse provisions – and force Westar to go through a time-consuming and expensive litigation process in order to take over ownership of the 8% interest held by the Trust. This approach is detrimental to Kansas and Kansas customers, is not in the public interest and is not consistent with the Commission's standard for allowing a company to become a public utility in Kansas, which requires the company requesting the CCN to demonstrate that it possesses the financial, technical and managerial resources necessary to conduct utility operations in the state.

When the Commission approved Westar's assumption of the Lease for the 8% share of JEC in 2007, it clearly found that the Trust and Trustee were not public utilities because all of the output from the 8% share of JEC held by the Trust was being leased to Westar. Now, circumstances have changed entirely and MWP wants to become a public utility in order to make sales into the market and earn revenue for those sales for its 8% share of the power produced by the largest power plant in the state. It is reasonable, appropriate and necessary for the Commission, in order to protect the public interest, to require MWP to demonstrate the ability and intent to pay – and KeyCorp to guarantee payment of – its share of JEC costs in order to obtain approval of its application for a CCN.

III. <u>MWP DOES NOT MEET THE COMMISSION STANDARD FOR APPROVAL OF A CCN WITHOUT APPLICATION OF CERTAIN CONDITIONS.</u>

Q: Do you object generally to the Commission granting a CCN to MWP?

A: No, we are not fundamentally opposed to having MWP as a partner in the JEC provided it covers the costs allocable to its 8% interest in JEC and meets the Commission's financial requirements to qualify for a CCN. At this point, it is clear that additional

Commission oversight of KeyCorp and its affiliates as a public utility operating in Kansas and additional credit support must be required for MWP to demonstrate sufficient financial wherewithal to cover the costs of its 8% interest in JEC.

In addition, in its Application, MWP has admitted that it has no assets other than the 8% interest in JEC held by the Trust and interest in related agreements. From time to time, the JEC is expected to operate at losses, based solely on SPP revenues, in given years. At such times, MWP would need credit support or WTC would fail to pay its share of the costs allocable to its 8% interest of JEC. Although MWP previously told the Commission, among other things, that it would modify the KeyCorp Guaranty to cover operations, maintenance and capital expenses related to the 8% interest of JEC, it now has stated unequivocally that it has no intention to do so, asserting that it can foist any shortfall on Westar and yet continue to receive capacity and energy from JEC.

Perhaps most fundamentally, MWP has essentially indicated in its response to DR No. 2.02, that during all years with negative cash flow, it has no intention of paying for the share of operating and capital costs allocable to its interest in JEC. In support of this position, MWP now hides behind a nonsensical reading of the non-recourse provisions to reach the conclusion, essentially, that during years where the JEC operates at a loss, MWP is entitled to have Westar pay operating costs on behalf of MWP on an indefinite basis without any consequences to MWP or its ownership of the 8% interest in JEC.

Based on the foregoing, MWP has not at this time met the statutory requirements for the granting of a CCN and granting MWP a CCN without further Commission oversight and credit support would not be in the public interest.

Q: Are there conditions that the Commission could include with an approval of MWP's Application that would alleviate Westar's concerns?

A: Yes. The conditions that Westar recommends are similar to and consistent with those proposed by Staff witness Chad Unrein. Specifically, Westar requests that the Commission include the following conditions in any approval of a CCN for MWP:

1. MWP and KeyCorp accept that KeyCorp, MWP, and WTC, not in its individual capacity but solely as Owner Trustee, are all subject to the Commission's jurisdiction for purposes of Kansas utility operations related to the 8% undivided interest in JEC that is held in a trust, of which MWP is the sole participant and beneficiary, and of which WTC is the Owner Trustee, including but not limited to the enforcement of financial obligations related to capital investments, operating and maintenance expenses, fuel expenses and other expenses associated with the ownership and operation of the 8% interest of JEC held by WTC.

2. Because MWP is relying on the financial resources of KeyCorp to meet the threshold requirements for MWP obtaining a utility certificate in Kansas, KeyCorp accepts it will retain ultimate responsibility for the financial obligations related to the 8% interest of JEC held by WTC.

3. Commission denial of MWP's request for exemption from certain Kansas statutes in paragraph 41 of its Application, consistent with Commission precedent in Docket No. 07-ITCE-380-COC, where the Commission specifically stated it would not issue an exemption or make a finding of inapplicability and that Kansas utilities are responsible for determining their own compliance with applicable laws.

4. MWP and KeyCorp agree that KeyCorp represents an "Affiliated Interest" under K.S.A. 66-1401, 66-1402, and 66-1403, statutes that confer certain jurisdiction to the Commission regarding access to documents including but not limited to books and records, submission of contracts, and review of affiliate transactions detail.

5. KeyCorp agrees to modify its existing guaranty of payment and performance obligations (as MWP offered to do so in its Application) to make it clear that such guaranty applies to both MWP's and WTC's obligations under the JEC Ownership Agreement and JEC Operation Agreement.

6. KeyCorp agrees that Westar, and its successors and assigns, in its capacity as Owner and/or Operator of JEC, is and will be a direct beneficiary of KeyCorp's

guaranty of payment and performance obligations of WTC and MWP under the JEC Ownership Agreement and JEC Operation Agreement.

Q: Is there precedent in Kansas for such required conditions for an entity to receive a CCN?

A: Yes, Staff made similar recommendations in the docket addressing Fortis, Inc.'s acquisition of ITC Great Plains, LLC and ITC Holdings Corp., Docket No. 16-ITCW-512-ACQ, and in the Joint Application of Southwestern Public Service Company and Xcel Southwestern Transmission, LLC, Docket No. 16-SWPE-209-COC. Staff's proposed conditions were incorporated in the Commission's order in the Fortis/ITC docket and the application in the Xcel docket was ultimately withdrawn. As Staff witness Chad Unrein explained, the reason that Staff recommended these conditions in the Fortis/ITC docket and the Xcel docket was "the reliance on the financial resources of the parent company of the entity requesting the Certificate."[9]

In this case, Westar agrees with Staff that similar circumstances exist – where MWP is relying on the financial resources of its parent company – because "the revenue produced from the sale of energy and capacity will not meet its current projected operating costs, and MWP's financial model shows significant cash shortfalls throughout its first two years of operation."[10] Thus, "explicit recognition" of the Commission's jurisdiction over KeyCorp and KeyCorp's obligation to provide the financial resources necessary to cover MWP's and WTC's obligations under the Ownership and Operation Agreements is necessary to "meet the requirements of K.S.A. 66-131."[11]

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[9] Unrein Direct Testimony, at 28.
[10] *Id*.
[11] *Id*.

Q: Why does Westar believe these conditions are appropriate?

A: These conditions would ensure that MWP actually meets the financial component of the Commission's CCN standard by requiring KeyCorp to guarantee payment of 8% of the expenses and capital expenditures at JEC, since WTC and MWP may not have the financial resources to make such payments themselves. The conditions would also ensure that the Commission retains the necessary jurisdiction over WTC, MWP and KeyCorp in order to enforce the conditions and those parties' obligations as the co-owner of the largest power plant in the state. The conditions will also help to protect Westar's Kansas retail customers and Westar itself from having to fund MWP's obligations as a co-owner of JEC.

A: If Westar has the ability to take over ownership of the 8% interest of JEC in the event WTC and MWP do not pay their bills, why is it necessary for the Commission to impose conditions that require WTC, MWP and KeyCorp to be responsible for their share of expenses?

A: As I discussed above, while it is true that Westar would be able to exercise legal remedies to take over ownership of the 8% of JEC held by the Trust if WTC and MWP do not pay their bills, such a process would involve time-consuming and expensive litigation and would likely be drawn out over an extended period of time, all of which would negatively impact Westar and our customers and not be in the public interest. If MWP wants the Commission to approve a CCN for it to operate as a utility in Kansas and allow it to sell power into the market, it should be required to commit to cover its share of expenses and capital expenditures without forcing Westar to wade through what could potentially be years of litigation in order to exercise legal remedies and force MWP out.

Q: **Thank you.**

Westar Energy
Midwest Power Certificate of Public Convenience
Docket No. 19-MPCE-064-COC
2nd Set of Data Request

Data Request No: 2.02

Submitted to: Midwest Power Company

Request Date: October 18, 2018

Date Information Needed: November 1, 2018

Please provide the following:

2.02) Please (a) identify the respective responsibilities and obligations of each of MPC and the Owner Trustee with respect to the costs of operation, maintenance, capital additions and improvements, fuel and other expenses allocable to the 8% interest in the JEC referenced in the Application under the Operation Agreement after the expiration of the lease in January 2019, and (b) confirm that all of such expenses will be subject to and covered by KeyCorp pursuant to the KeyCorp Guaranty, including in the event the funds in the trust estate are insufficient to fully discharge the obligations of MPC and the Owner Trustee with respect to the expenses allocable to the 8% interest in the JEC. In the case of each of clause (a) and (b), please provide citations or references to the applicable contractual agreements and specific provisions supporting your response. If your response to (b) with respect to any of the identified expenses is that the KeyCorp Guaranty does not cover those expenses, please indicate whether KeyCorp is willing to provide a new or amended guaranty as a condition of obtaining its CCN in this proceeding that does cover such expenses.

Submitted by: Cathy Dinges

Objection: Midwest Power objects to subpart (a) of this data request on the grounds that subpart (a) of the question is not designed to elicit material facts within the Company's personal knowledge, and it requires a conclusion of law in violation of paragraph 16 of the Protective and Discovery Order. Similarly, Midwest Power objects to this data request on the grounds that all subparts of the question require the Company to (1) make a legal conclusion in violation of paragraph 16 of the Discovery and Protective Order; and (2) analyze and prepare data that Westar is able to prepare on its own.

Without waiving the foregoing objection, Midwest Power responds as follows:

Part (a):

In each agreement regarding Jeffrey Energy Center to which Wilmington Trust Company ("WTC") is a party, there is language stating that WTC is executing the agreement solely in its capacity as Owner Trustee under the powers expressly conferred upon it by the Trust Agreement. This language makes it clear that no personal liability or responsibility is assumed by WTC, and any person making a claim under the various agreements, including the Operating Agreement, must look solely to the Trust Estate for satisfaction of such claim. *E.g.*, Centel Assignment Agreement, § 11 (Aug. 15, 1991); Participation Agreement, § 19.10 (Aug. 15, 1991); Lease Agreement, § 20.9 (Aug. 15, 1991).

Likewise, Midwest Power is not personally liable for any amounts payable by Owner Trustee under the Ownership Agreement or the Operating Agreement, pursuant to Section 4 of the Consent & Assumption Agreement (Aug. 15, 1991), which states:

> Owner Participant shall have no liability, obligation, responsibility or duty to any of the undersigned whatsoever for or with respect to any of the transactions contemplated by the Ownership Agreement or (after termination of the Lease) the Operating Agreement, whether as a result of the negligence or willful misconduct of the Owner Trustee in its individual capacity or otherwise.

Accordingly, the Trust Estate has sole responsibility for the all operating costs allocable to the 8% interest in the JEC. Neither WTC nor Midwest Power has responsibility for such costs in their personal capacities. If there are shortfalls between the revenues generated by the 8% interest and the allocable operating costs, Westar's predecessor in interest (UtiliCorp) agreed to cover such shortfalls. Consent & Assumption Agreement, § 3.3. Westar agreed to assume all obligations and liabilities of UtiliCorp pursuant to the JEC Transfer Agreement (Aug. 11, 2006) and the JEC Consent & Agreement (Feb. 2007).

The KCC approved the Consent & Assumption Agreement in Docket No. 175-456-U (Sept. 27, 1991) and the JEC Transfer Agreement in Docket No. 06-MKEE-524-ACQ (Feb. 23, 2007).

Part (b):

It is not necessary for KeyCorp to guarantee any operating costs required to be paid by Midwest Power pursuant to the Operating Agreement, because as discussed above, Midwest Power is not required to pay any such costs. KeyCorp is not willing to provide a new or amended guaranty that would make KeyCorp responsible for such costs, because to do so would abrogate the contractual rights described above.

Westar Energy
Midwest Power Certificate of Public Convenience
Docket No. 19-MPCE-064-COC
2^{nd} Set of Data Request

Verification of Response

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: Amy Fain

Date: 11/01/2018

Westar Energy
Midwest Power Certificate of Public Convenience
Docket No. 19-MPCE-064-COC
2nd Set of Data Request

Data Request No: 2.03

Submitted to: Midwest Power Company

Request Date: October 18, 2018

Date Information Needed: November 1, 2018

Please provide the following:

2.03) Please confirm that the KeyCorp Guaranty will, absent a permitted transfer by MPC of the 8% JEC interest to another party, remain in effect until the complete retirement of the JEC and that the guaranty will guarantee the payment of all costs associated with the dismantlement of the plant, including closure and monitoring of the related landfill and other retirement costs allocable to the 8% JEC interest including any future environmental liability. Please provide citations or references to the applicable contractual agreements and specific provisions supporting your response. If your response is that the KeyCorp Guaranty will not remain in effect until the complete retirement of JEC and/or that it will not guarantee payment of any of the costs listed above, please indicate whether KeyCorp is willing to provide a new or amended guaranty as a condition of obtaining its CCN in this proceeding that does remain in effect until the complete retirement of JEC and does guarantee payment of all of the costs listed above.

Submitted by: Cathy Dinges

Objection: Midwest Power objects to this data request on the grounds that request is not designed to elicit material facts within the Company's personal knowledge, and/or that the request requires a conclusion of law. Midwest Power further objects on the grounds that the question is designed to require the Company to analyze and prepare data that Westar is able to prepare on its own.

Response:

Without waiving the foregoing objection, Midwest Power responds as follows:

The KeyCorp Guaranty does not guarantee the payment of costs associated with the dismantlement of the plant, closure and monitoring of the related landfill, other retirement costs, or future environmental liability allocable to the 8% interest. It appears such costs are addressed by Section 10 of the Operating Agreement. The Operating Agreement is not one of the "Guaranteed Agreements" under the KeyCorp Guaranty.

For the same reasons as discussed in Westar Data Request 2.02, KeyCorp is not willing to provide a new or amended guaranty that would make KeyCorp responsible for such costs.

Verification of Response

I have read the foregoing Information Request and answer(s) thereto and find answer(s) to be true, accurate, full and complete and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: Amy Paine

Date: 11/01/2018