BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

TESTIMONY IN SUPPORT OF NON-UNANIMOUS STIPULATION AND AGREEMENT

GREG A. GREENWOOD

WESTAR ENERGY, INC.

IN THE MATTER OF THE 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

Q: Please state your name and business address and on whose behalf you are testifying.

A: My name is Greg A. Greenwood. My business address is 818 South Kansas Avenue, Topeka, Kansas 66612. I am testifying on behalf of Westar Energy, Inc. and Kansas Gas and Electric Company (collectively referred to herein as "Westar") in this proceeding requesting Kansas Corporation Commission ("Commission") approval of the amended transaction providing for the merger of Westar and Great Plains Energy Incorporated ("GPE") ("Merger"). Kansas City Power & Light Company ("KCP&L") is also an applicant and together with Westar and GPE, they are collectively referred to herein as "Applicants." In this testimony, the company formed by the Merger will be referred to as "the combined company" or "Holdco."

Q: Are you the same Greg A. Greenwood who filed Direct and Rebuttal Testimony in this proceeding?

A: Yes, I am.

Q: What is the purpose of this testimony?

A: The purpose of my testimony is to provide support on behalf of Applicants of the Non-Unanimous Stipulation and Agreement ("Stipulation") submitted jointly by the signatory parties for approval to the State Corporation Commission of the State of Kansas ("Commission") on March 7, 2018, in this docket. I will do so by:

- Describing the issues presented in this docket;
- Describing the terms of the Stipulation;
- Discussing how the Merger will comply with the Commission's Merger Standards as modified by the terms of the Stipulation; and
- Addressing the standards under which the Commission reviews a non-unanimous settlement agreement.

Applicants' witness Darrin Ives addresses the provisions of the Stipulation that I do not address including agreed-upon changes to the Commitments and Conditions he sponsored in his direct and rebuttal testimony. Mr. Ives identifies which of the Commitments and Conditions pertain to the Stipulation provisions related to Quality of Service and other operational metrics, agreements concerning advance notice of power generation unit retirements, and certain financial rate provisions agreed to by the signatories, and also highlights a few other key Commitments and Conditions modified and agreed to as part of the Stipulation.

I. <u>BACKGROUND</u>

Q: Please provide a description of the opportunities leading to the filing of this docket.

A: As was discussed in the direct testimonies of Applicants' witnesses Terry Bassham and Mark Ruelle, the application in this proceeding reflects significant work undertaken by both GPE and Westar to craft a merger in a form that would address the concerns that led the Commission to reject the initial transaction. As Mr. Bassham discussed in his Rebuttal Testimony, most of the parties appreciate how different this Merger of Equals ("MOE") is from the initial transaction, and Staff and CURB, in particular, recognized that the Merger will create benefits that can be shared between customers and shareholders. With that recognition, the negotiation of the Stipulation centered around how to equitably share those benefits between customers and shareholders and how to ensure that the combined companies have the best opportunity to achieve savings while continuing to deliver high quality, reliable electric service. We believe that those goals are achieved in the Stipulation.

II. STIPULATION

Q: Have the parties to this docket submitted a Stipulation to the Commission for consideration?

A: Yes. We filed the Stipulation with the Commission on March 7, 2018.

Q: Does the Stipulation address all of the issues between the signatory parties?

A: Yes. The Stipulation addresses and resolves all issues that were in dispute between the signatories. It was the result of multiple days of negotiations and concessions made by all signatory parties. The terms are not based on any specific party's filed position on the issues resolved by the Stipulation although Staff's framework for a proposed Earnings Report and Sharing Plan is foundational to the Stipulation.

Q: Is the Stipulation unanimous?

A: No. However, the Stipulation was signed by numerous parties including the Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission" respectively), the Citizens' Utility Ratepayer Board ("CURB"), Sunflower Electric Power Corporation, Inc. ("Sunflower"), Mid-Kansas Electric Company, LLC ("Mid-Kansas"), Midwest Energy, Inc. ("Midwest"), Kansas Power Pool ("KPP") and Brightergy, LLC ("Brightergy"). Wal-mart Stores, Inc. ("Wal-mart") is not a signatory to this Stipulation, however, they have indicated that they will not object. In addition to these signatories, on March 8, 2018, the International Brotherhood of Electrical Workers, Local Union No. 404, 412, 1464 and 1613 ("Unions") filed its motion supporting approval of the Stipulation.

Q: Do Applicants believe the Stipulation is a reasonable resolution of the identified issues involved in this proceeding?

A: Yes. Taken in its entirety, the Stipulation provides a reasonable resolution of the issues in the proceeding. The final outcomes are acceptably aligned within the range of positions taken by the parties for each of the issues and supported by their respective testimonies.

Q: You stated that the Stipulation settles all of the issues between the signatories. What about issues raised by parties that did not sign the Stipulation?

A: We believe that the Stipulation addresses many of the issues raised by non-signatory parties. For instance, the Stipulation more than adequately addresses concerns about the financial integrity of the combined companies and reliability concerns related to generation plant retirements raised by Kansas Electric Power Cooperative, Inc. ("KEPCo"). We also believe that the bill credits, the agreed-upon merger savings to be included in the 2018 rate reviews, the five-year rate case moratorium, and the Earnings Review and Sharing Plan ("ERSP") provided for in the Stipulation address rate concerns raised by Kansas Industrial Consumers, Inc. ("KIC") to the extent such concerns are relevant to this proceeding or have any validity. Additionally, as we indicated in our rebuttal testimonies, a number of parties that are not supporting the Stipulation raised issues that are beyond the scope of this proceeding and the Merger Standards but rather relate to their own special interests. The Stipulation does not resolve those issues but the resolution of those issues is not necessary for the Commission to easily conclude that the Stipulation is reasonable and that the Merger, subject to the Conditions agreed to in the Stipulation, meets the requirements of the Commission's Merger Standards and is in the public interest.

Q: Please summarize the major provisions of the Stipulation.

A: Under the Stipulation, Applicants will provide bill credits of $50 million to their retail customers across Kansas and Missouri with such amount allocated based upon 2016 FERC Form 1 data. The resulting allocations are $23.07 million to Westar customers and $7.51 million to KCP&L Kansas customers.

Applicants will provide guaranteed annual bill credits totaling $45.87 million to Kansas customers with $34.6 million going to Westar customers and $11.27 million going to KCP&L-Kansas customers. These bill credits will be paid in annual installments from 2019 through 2022 in the amounts of $8.65 million annually to Westar customers and $2.82 million annually to KCP&L Kansas customers.

The signatories agree to recommend and support various aspects of the Applicants' 2018 Kansas general rate reviews of Westar and KCP&L including:

- Inclusion of all merger-related savings achieved at the update date (update date to be 60 days after the filing of each respective rate case), with an additional amount imputed into retail rates such that the merger related savings shall achieve a total benefit equal to $22.5 million annually for Westar customers and $7.5 million annually for KCP&L.

- Recovery of the effects of an expiring wholesale contract with Mid-Kansas through the Retail Energy Cost Adjustment ("RECA") and the expiration of production tax credits related to Central Plains and Flat Ridge Wind Farms in base rates effective in February 2019.

- Recommendation of a 9.3% ROE to be utilized in the 2018 cases, and if including a range; testimony will not recommend greater than 20 basis points below or above the 9.3% recommended ROE.

- Not to seek further imputation of benefits related to the merger or announced power plant retirements beyond the benefits identified above.

- Applicants agree to forego their ability to demonstrate under-earning at the time of the federal tax law change as an offset to benefits otherwise due to customers from January 1, 2018 through the effective date of new retail rates as a result of the 2018 rate cases.

The Stipulation limits recovery of transition costs to $50 million on a total company basis with the Kansas jurisdictional portion being be deferred and recoverable through amortization over ten years beginning when the 2018 Kansas base rate review rates become effective.

The Stipulation implements a five-year moratorium on base rates which will expire, for Westar and KCP&L-KS, five years from the final order date of KCP&L's 2018 base rate review. In the event the ROE authorized in either company's 2018 rate case is below 9.3%, the moratorium period shall be reduced to three years for that company.

During the moratorium period, Westar or KCP&L will be allowed to change rates or tariffs to recover appropriate costs under its RECA, Annual Cost Adjustment ("ACA"), Transmission Delivery Charge ("TDC"), Property Tax Surcharge ("PTS") and Energy Efficiency Rider ("EER") tariffs. During the moratorium, Westar and KCP&L are also allowed to make tariff filings to comply with new Commission rules or policies, including revenue neutral changes to rate design, and Westar and/or KCP&L may propose methods to recover the cost of furnishing new voluntary services such as, but not limited to, providing energy efficiency measures to customers.

Westar and KCP&L will make a mandatory base rate review filing so that rates become effective the day after the expiration of the moratorium period. In the event that the moratorium period is three years for either company as a result of the effect of other provisions of this agreement, such mandatory rate review for that company shall be two years after the end of its rate moratorium. However, Applicants can delay their mandatory base rate review filings with the approval of Staff.

Staff, CURB, and the Applicants will initiate a Capital Plan Reporting ("CPR") Compliance Docket to provide capital plan reports substantially similar to Attachment 6 of the Stipulation.

Quality of Service reporting shall be required annually by Westar Energy and KCP&L-KS consistent with the thresholds and penalty provisions included in Applicants BA-1, BA-2 and BA-3 of Bruce Akin's direct testimony and annual reporting shall be substantially similar to BA-4 and BA-5 and is reproduced here as Attachment 4 to the Stipulation. Penalties incurred, if any shall be used by the Applicants to invest in items intended to improve quality of service and shall not be recoverable from customers in the cost of service.

Other field service metrics will be reported annually to the Commission for purposes of data gathering and analysis by the Commission and its Staff and be reported in substantially similar form as Attachment 5 of the Stipulation. Changes to future reporting can be made, as mutually agreed upon by Applicants, Staff and CURB.

Staff, CURB, and the Applicants will jointly recommend that the Commission open a compliance docket related to service quality and reliability reporting, the outcome of which is meant to replace current reporting requirements under Docket No. 02-GIME-365-GIE and provide timely reports of ongoing operations and maintenance activities related to customer quality of service.

Applicants agree to provide 90 days written notice to Staff and CURB related to any power generation unit retirements in excess of 20 MW of capacity during the moratorium period for any retirements not already contemplated in this docket. Notice will also be required if the timing of any planned generating unit retirement is expected to change by more than six months. This condition sunsets upon new reporting requirements resulting from an order in the capital plan compliance docket, or by an order closing the docket.

Applicants agree to add Holdco to Condition 16 related to providing Commission notice of a Holdco credit downgrade below investment grade, and related reporting to the Commission on actions to restore such investment grade ratings.

Signatories agree that the limitation on consolidated debt capitalization of HoldCo shall be 65% of total capitalization (excluding short-term debt and long-term debt due within one year) and limitation on debt capitalization of Westar and KCP&L shall be 60% of total capitalization (excluding short-term debt and long-term debt due within one year).

Signatories agree that Westar and KCP&L shall not make dividend payments to HoldCo, or other upstream cash payments, to the extent that the cash payment would result in an increase in either utilities debt level above 60% of its total capitalization (excluding short-term debt and long-term debt due within one year), unless the Commission authorizes otherwise.

Applicants further agree to the Merger Commitments and Conditions included as **Attachment 1** to the Stipulation**.** These Commitments and Conditions are discussed in the testimony of Applicants witness Darrin Ives in support of the Stipulation.

The signatories also agreed to an ERSP based on the proposal sponsored by Staff witness Justin Grady. Under the ERSP, Westar and KCP&L will file annual reports for each of the years from 2019 through 2022 in agreed-upon formats which are attached to the Stipulation as Attachments 2 and 3. For each such calendar year, the KCC-jurisdictional earned Return on Equity (ROE) of KCP&L-Kansas and Westar, as reported in the ERSP reports, may be subject to sharing with retail electric customers as provided in the ERSP.

In all events, the ERSP shall terminate after the 2022 calendar year reporting is complete in 2023. However, if the rate moratorium for KCP&L or Westar is three years instead of five years as a result of other provisions in this agreement, the ERSP shall continue for that company through the calendar year in which a new rate case is filed.

III. THE STIPULATION ENSURES THAT THE MERGER COMPORTS WITH THE COMMISSION'S MERGER STANDARDS

Q: If the Commission approves the Stipulation, will the Merger meet the requirements of the Commission's Merger Standards?

A: Yes.

Q: Please explain.

A: The Stipulation addresses each of the Commission's Merger Standards and ensures that the Merger will meet the public interest under those standards. I will address each of the standards in turn.

Q: How does the Stipulation address Merger Standards a.i. – the effect of the transaction on consumers, including: (i) the effect of the proposed transaction on the financial condition of the newly created entity as compared to the financial condition of the stand-alone entities if the transaction did not occur?

A: The record presented by Applicants and supported by Staff and CURB is that the Merger will result in financially stronger utilities than would exist on a standalone basis. Additionally, the Stipulation places limits on debt that can be incurred at the Holdco level and limits on dividend payments by the utilities to Holdco.

Q: How does the Stipulation address Merger Standards a.ii, a.iii and a.iv – the effect of the transaction on consumers, including: (ii) reasonableness of the purchase price, including whether the purchase price was reasonable in light of the savings that can be demonstrated from the merger and whether the purchase price is within a reasonable range, (iii) whether ratepayer benefits resulting from the transaction can be quantified and (iv) whether there are operational synergies that justify payment of a premium in excess of book value?

A: Because the transaction involves a stock-for-stock exchange, there is no explicit purchase price for the stock. However, the signatories to the Stipulation agree that the Merger has the likelihood of generating significant savings and the Stipulation provides millions of dollars of guaranteed savings to customers in the form of upfront bill credits, annual bill credits during the moratorium period and guaranteed levels of Merger savings included in Westar and KCP&L's 2018 rate reviews for the benefit of customers. Additionally, the Stipulation – through adoption of Staff's ERSP proposal – holds out the possibility of even more savings being paid to customers during the first four years after the Merger in the event the combined companies' earnings exceed the amounts specified in the ERSP. Finally, over the long-term, customers are expected to receive permanent savings resulting from the economies of scale and increased financial strength of the utilities that are expected to result in lower operating costs and less expensive financing than would be available to the companies on a standalone basis.

Q. How does the Stipulation address Merger Standard b. – the effect of the transaction on the environment?

A: The Stipulation will allow the combined companies to continue to expand their use of renewable generation and will result in the accelerated closing of several older fossil-fueled generating stations. Additionally, the Stipulation provides that Westar will be included in a combined analysis with KCP&L and GMO in their 2019 integrated resource plan updates, thereby assisting in the environmentally sound development of generation projects when needed for the combined companies.

Q. How does the Stipulation address Merger Standard c. – whether the proposed transaction will be beneficial on an overall basis to state and local economies and to communities in the area served by the resulting public utility operations in the state and whether the proposed transaction will likely create labor dislocations that may be particularly harmful to local communities, or the state generally, and whether measures can be taken to mitigate the harm?

A: The Stipulation addresses this standard with provisions that agree to no involuntary separations of employees related to the merger and requires a significant continued presence in Topeka by Westar for ten years after closing.

Q. How does the Stipulation address Merger Standard d. – whether the proposed transaction will preserve the jurisdiction of the KCC and the capacity of the KCC to effectively regulate and audit public utility operations in the state?

A: The Stipulation includes multiple commitments by Applicants that will ensure the Commission has access to their books and records and the same ability to regulate the operating utilities and their relationship to Holdco as exists in the current GPE holding company structure.

Q. How does the Stipulation address Merger Standard e. – the effect of the transaction on affected public utility shareholders?

A: The rate moratorium and rate-related provisions of the Stipulation are designed to allow the utilities to retain a portion of the savings generated by the Merger. Further, each respective company's shareholders had an opportunity to vote for, or against the transaction and overwhelmingly voted in favor of the transaction.

Q. How does the Stipulation address Merger Standards f. and g. – whether the transaction maximizes the use of Kansas energy resources and whether the transaction will reduce the possibility of economic waste?

A: The Stipulation will allow Westar to continue to rely principally on Kansas energy resources, and it will allow KCP&L to rely substantially on Kansas energy resources. The combined companies will be a national leader and have the largest commitment to Kansas renewable energy of any company. The Merger will reduce the possibility of economic waste by enabling the combined Company to obtain savings unattainable by the companies individually on a stand-alone basis.

Q. How does the Stipulation address Merger Standard h. – what impact, if any, the transaction has on the public safety?

A: The Stipulation addresses Merger Standard h. by putting in place a reporting and penalty regime designed to ensure that the quality of service provided by the combined companies will not deteriorate after closing of the transaction and by proposing a new docket to address improved reporting requirements for the future.

IV. COMMISSION'S REVIEW STANDARD FOR STIPULATIONS

Q: Are you familiar with the factors the Commission considers when reviewing a proposed stipulation?

A: Yes, I am. Since this is a non-unanimous agreement and although I am not an attorney, it is my understanding that all of the five factors traditionally used by the Commission to evaluate non-unanimous settlements are applicable. I will address those applicable factors below.

(1) Each Party Has Had an Opportunity to be Heard on its Reasons for Opposing the Stipulation

Q: Has party had an opportunity to be heard on its reasons, if any, for opposing the Stipulation?

A: Yes. The Commission provided an opportunity for all parties to file testimony both in favor of and in opposition to the settlement, to appear before the Commission and make opening statements at hearing, cross-examine witnesses and to file briefs explaining and supporting their positions.

(2) The Stipulation is Supported by Substantial Competent Evidence

Q: Is there substantial competent evidence in the record of this docket to support the Stipulation submitted by the parties?

A: Yes. All items agreed to and included in this Stipulation are supported by substantial competent evidence in the record as a whole. Ten Applicant witnesses filed direct and/or rebuttal testimony in support of its Application. Staff, CURB and intervenors have filed the testimony of 18 witnesses, comprising direct and cross-answering testimony. The terms of the Stipulation reflect a compromise of the positions taken by the various signatory parties in their pre-filed testimony.

Q: Are the terms of the Stipulation consistent with the testimony filed in the docket?

A: Yes. The terms of the Stipulation fall within the range of positions taken by the signatory parties in this case.

(3) <u>The Stipulation Conforms to Applicable Law</u>

Q: Does the Stipulation conform to all applicable law?

A: Yes. The Stipulation conforms to Kansas law and assists the Commission and parties in their efforts to ensure that the Merger meets the requirements of the Commission's Merger Standards. The fact that the Stipulation was achieved by collaboration of the diverse parties involved in this docket also supports the finding that the Stipulation is in the public interest.

Q: Were any parties to the proceeding excluded from the settlement discussions?

A: No. Some parties decided not to participate in the discussions but none were excluded.

(4) <u>The Stipulation Results in Just and Reasonable Rates</u>

Q: Does the Stipulation result in just and reasonable rates for Applicants' customers?

A: Yes. The Stipulation will allow the Merger to close under conditions that are fair to customers and shareholders and will ensure that rates will be lower than they would have been in the absence of the Merger. Kansas customers will receive significant reductions in their rates through the payment of upfront bill credits and annual payments amounting to more than $75 million as well as guaranteed levels of Merger savings included in Westar and KCP&L's 2018 rate reviews for the benefit of customers. A rate moratorium will promote rate stability by ensuring that the base rates of Westar and KCP&L will remain unchanged for a period of several years and savings generated by the Merger will keep rates lower than they would have been in the absence of the Merger. Consequently, there is no doubt that approval of the Stipulation with result in rates that are just and reasonable.

Q: Please discuss the fact that this Stipulation is non-unanimous.

A: The parties to this docket represent a variety of interests, including investors, large commercial customers, small commercial customers, residential customers and the public generally. The fact that there is agreement between the signatory parties representing a wide variety of customers regarding the terms of this Stipulation indicates the Stipulation is balanced and fair. This Stipulation is structured so that the terms are within the range of the original positions of the parties.

Moreover, as I stated above, we have largely addressed the concerns of KIC and KEPCo with regard to rates, financial risk and reliability. Issues raised by other non-signatory parties are generally outside the scope of this proceeding. Sierra Club and CEP seek to advance their agendas in areas that are best addressed in rate cases or an industry-wide proceeding.

(5) <u>The Results of the Stipulation are in the Public Interest</u>

Q: Is the Stipulation in the public interest?

A: Yes. As I have discussed, the Merger addresses the Commission's Merger Standards which are designed to ensure that a proposed transaction promotes the public interest. Additionally, each signatory has a duty to protect the interests of the party it represents. Staff has a duty to represent the public generally. CURB represents the interests of residential and small commercial customers. Applicants have a duty to both their customers and their shareholders. Sunflower, Mid-Kansas, KPP and Midwest represent the interests of Kansas electric consumers across a large portion of the state. Brightergy represents its own interests and those of its customers in energy efficiency, energy management and distributed generation. Wal-Mart represents the interests of a large commercial enterprise that is a valued customer of both companies. The Unions are labor organizations and represent the interests of approximately 1100 bargaining unit employees of Westar[1] in Kansas and approximately 1,720 employees of KCP&L in Missouri.[2] The total effect of the terms of the Stipulation will promote the public interest and represents an equitable balancing of the interests of all the signatories.

Q: Does the Stipulation allow Applicants the opportunity to meet their obligations to their shareholders and creditors?

A: Yes.

Q: Does that conclude your testimony?

A: Yes, it does.

[1] Petition to Intervene of International Brotherhood of Electrical Workers, Local Union No. 304, at ¶ 3 (February 2, 2018).

[2] Petition to Intervene of International Brotherhood of Electrical Workers, Local Unions No. 412, 1464 and 1613, at ¶ 1 (September 5, 2017). As noted in its Petition, members of the unions reside in communities in both Kansas and Missouri. *Id*. at ¶ 6.