

<sup>2</sup> See Order Allowing Kansas Electric Cooperative, Inc. To Submit Post-Work Study Comments, at ¶ 8, *In re Capital Plan Compliance Docket for Kansas City Power & Light Co. and Westar Energy, Inc. Pursuant to the Commission's Order in Docket No. 18-KCPE-095-MER*, Docket No. 19-KCPE-096-CPL (issued June 25, 2019).

the application by Order issued on April 19, 2017. Among the Commission's reasons for rejection was the finding that the utilities had not provided a comprehensive Integrated Resource Plan ("IRP") to support their claims that the acquisition provided benefits to Kansas customers.<sup>3</sup>

2. On August 25, 2017, the utilities filed a second merger application, this time presenting the transaction as a "merger-of-equals" between Westar and GPE. KEPCo again participated fully in the proceedings. KEPCo highlighted for the Commission its concerns that the merging utilities had not provided the promised IRP or otherwise performed a reliable evaluation of their accelerated generation retirement plan. A properly performed IRP would have shown how the merged company would combine the separate power supply resource portfolios of the utilities into a single, cost effective, and optimal power supply for customers served by the combined company. Instead, the companies presented a study designed to justify their preferred course of action – the accelerated retirement of 777 MW of Westar generation by the end of 2018.<sup>4</sup>

3. Kansas is one of few states with vertically integrated utilities that does not have IRP or long-term planning requirements, according to a survey performed by the Regulatory Assistance Project.<sup>5</sup> KEPCo therefore urged the Commission to require the merging companies to commit to a transparent, inclusive, and Kansas-focused IRP process.<sup>6</sup> KEPCo pointed out that the settlement agreement supported by Staff, CURB, the merging companies, and others would

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<sup>3</sup> See, e.g., Order, at ¶¶ 56, 72, 81, 86, *In re Joint Application of Great Plains Energy Inc., Kansas City Power & Light Co. and Westar Energy, Inc. for Approval of the Acquisition of Westar Energy, Inc. by Great Plains Energy Inc.*, Docket No. 16-KCPE-593-ACQ (issued Apr. 19, 2017).

<sup>4</sup> See Kansas Electric Power Cooperative, Inc.'s Post-Hearing Brief at 19-24, *In re Joint Application of Great Plains Energy Inc., Kansas City Power & Light Co. and Westar Energy, Inc. for Approval of the Merger of Westar Energy, Inc. and Great Plains Energy Inc.*, Docket No. 18-KCPE-095-MER (filed Apr. 20, 2018).

<sup>5</sup> See Regulatory Assistance Project, Best Practices in Electric Utility Integrated Resource Planning: Examples of State Regulations and Recent Utility Plans (June 2013), available at <https://www.raponline.org/wp-content/uploads/2016/05/rapsynapse-wilsonbiewald-bestpracticesinirp-2013-jun-21.pdf> ("RAP Best Practices Whitepaper"), Figure 2 at 5.

<sup>6</sup> See KEPCo's Post-Hearing Br., *supra* n.4, at 24-41.

not provide sufficient transparency into the merging companies' resource planning decisions.

Transparency would be important because the merged company would be the largest provider of electric power in the state.

4. On May 24, 2018, the Commission approved the non-unanimous settlement agreement and sought to remedy concerns about the lack of an IRP process by ordering the companies to develop and submit for Commission approval a reporting format for a Kansas-specific IRP process as part of the Capital Resource Plan.<sup>7</sup> The later-issued rehearing order limited participation in the development of the "initial IRP reporting format and process" to Staff, CURB, and the merged companies.<sup>8</sup> Others would be allowed to comment on the proposal after the IRP had already been "developed and proposed to the Commission."<sup>9</sup>

5. On September 4, 2018, the Filing Parties submitted a one-page outline of a "conceptual agreement" about what they thought should be included in the Capital Plan and IRP and pledged to submit a status update filing within 45 days that "outline[d] the progress being made."<sup>10</sup> On March 1, 2019, the Filing Parties filed the finalized, short Framework document.<sup>11</sup>

6. On June 4, 2019, the Commission issued a Scheduling Order, explaining that it favored holding a work study on June 18, 2019, for the Filing Parties to present the Framework

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<sup>7</sup> Order Approving Merger, at ¶¶ 65-67, *In re Joint Application of Great Plains Energy Inc., Kansas City Power & Light Co. and Westar Energy, Inc. for Approval of the Merger of Westar Energy, Inc. and Great Plains Energy Inc.*, Docket No. 18-KCPE-095-MER (issued May 24, 2018) (footnotes omitted).

<sup>8</sup> Order Denying Petitions for Reconsideration from the Sierra Club and Kansas Industrial Consumers, at ¶ 23, *In re Joint Application of Great Plains Energy Inc., Kansas City Power & Light Co. and Westar Energy, Inc. for Approval of the Merger of Westar Energy, Inc. and Great Plains Energy Inc.*, Docket No. 18-KCPE-095-MER, (issued June 28, 2018).

<sup>9</sup> *Id.* The Signatories were not able to meet their deadline for various reasons.

<sup>10</sup> Joint Filing Regarding Capital Plan and Integrated Resource Plan Reporting Format, at ¶ 3, *In re Capital Plan Compliance Docket for Kansas City Power & Light Co. and Westar Energy, Inc. Pursuant to the Commission's Order in Docket No. 18-KCPE-095-MER*, Docket No. 19-KCPE-096-CPL (filed Sept. 4, 2018).

<sup>11</sup> Notice of Compliance Filing, *In re Capital Plan Compliance Docket for Kansas City Power & Light Co. and Westar Energy, Inc. Pursuant to the Commission's Order in Docket No. 18-KCPE-095-MER*, Docket No. 19-KCPE-096-CPL (issued Mar. 1, 2019) ("Compliance Filing"). The Capital Plan Reporting & IRP Process Framework ("Framework") was attached to the Notice of Compliance Filing. Due to an oversight, the Compliance Filing and Framework was not served on all parties to the merger docket until March 27, 2019.

to the Commission and to allow the Commission to ask questions to the Filing Parties.<sup>12</sup> The Scheduling Order also provided that named entities would have the opportunity to file comments in response to the work study.<sup>13</sup>

7. On June 5, 2019, KEPCo submitted its Petition to Intervene in this docket.<sup>14</sup> On June 25, 2019, the Commission issued its Order addressing KEPCo's Petition to Intervene. The Commission did not grant KEPCo's intervention, but instead treated KEPCo's petition as a request to file post-work study comments, and amended its Scheduling Order to allow KEPCo to file comments in response to the work study.<sup>15</sup>

8. On June 18, 2019, KEPCo filed post-work study comments.<sup>16</sup> KEPCo explained that it supported the Commission's goal to develop an IRP process that focuses on the needs of Kansas customers,<sup>17</sup> and to that end, urged the Commission to implement a framework that embodies best practices including transparency and opportunity for meaningful stakeholder participation.<sup>18</sup> KEPCo offered five points for consideration by the Commission, the Filing Parties, and other interested participants, and suggested that once the Filing Parties had the opportunity to digest the discussions at the work study and the post-work study comments from

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<sup>12</sup> Scheduling Order, at ¶ 7, *In re Capital Plan Compliance Docket for Kansas City Power & Light Co. and Westar Energy, Inc. Pursuant to the Commission's Order in Docket No. 18-KCPE-095-MER*, Docket No. 19-KCPE-096-CPL (issued June 4, 2019).

<sup>13</sup> *Id.* at ¶ 8.

<sup>14</sup> Petition of Kansas Electric Power Cooperative, Inc. to Intervene, *In re Capital Plan Compliance Docket for Kansas City Power & Light Co. and Westar Energy, Inc. Pursuant to the Commission's Order in Docket No. 18-KCPE-095-MER*, Docket No. 19-KCPE-096-CPL (filed June 5, 2019).

<sup>15</sup> June 25 Order, *supra* n.2.

<sup>16</sup> Post-Work Study Comments of Kansas Electric Power Cooperative, Inc., *In re Capital Plan Compliance Docket for Kansas City Power & Light Co. and Westar Energy, Inc. Pursuant to the Commission's Order in Docket No. 18-KCPE-095-MER*, Docket No. 19-KCPE-096-CPL (filed June 18, 2019).

<sup>17</sup> Docket No. 18-KCPE-095-MER, Tr. Vol. 3, 525:18-526:19 (Comm'r Feist Albrecht).

<sup>18</sup> *See, e.g.*, RAP Best Practices Whitepaper, *supra* n.5, at 2 ("For an IRP process to be deemed successful, it should include both a meaningful stakeholder process and oversight from an engaged public utilities commission."); *id.* at 26 ("Prudent integrated resource planning involves both the process of creating and sharing the resource plan with stakeholders, and the elements that are analyzed and included in the plan itself.").

interested parties, they should supplement the proposed Framework in a further compliance filing.

9. On September 9, 2019, the Filing Parties submitted the Joint Supplement and Clarification that modifies the previously filed Framework and proposes to (i) categorically exempt certain resource decisions from the “continual and unbiased assessment” of the Integrated Resource Plan (“IRP”) process,<sup>19</sup> and (ii) make certain changes and clarifications to the proposed filing schedule in response to KEPCo’s post-work study comments.

## **II. COMMENTS ON FILING PARTIES’ JOINT SUPPLEMENT AND CLARIFICATION**

### **A. Revisions to the Capital Plan Framework**

10. The Filing Parties explain that, in response to a Commission request, new language has been added to the Framework’s provisions governing Staff and CURB’s review of Evergy’s IRP submittals. As KEPCo understands the intent of the agreement in this section, the “IRP process will include a review of major capital investment decisions during their implementation to determine if the planned course of action remains prudent.”<sup>20</sup> The new language sets out threshold criteria for deciding whether a project qualifies as a “major [planned or in-progress] capital investment”: (1) “any new generation resource greater than 100 MW and any directly related transmission and distribution investments to such new generation,” and (2) “any retrofit or modification to an existing generation facility that exceeds \$300 million within a three-year period[.]”<sup>21</sup> The purpose of this new language appears to establish that if Evergy makes a major capital investment (as defined by the thresholds), customers would get the benefit

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<sup>19</sup> Joint Supplement and Clarification, *supra* n.1, at ¶ 7.

<sup>20</sup> Framework (redlined) (attached to the Joint Supplement and Clarification), *supra* n.1, at 2.

<sup>21</sup> *Id.* at 2.

of a “continual and unbiased assessment” of that resource throughout the IRP Process.<sup>22</sup> The IRP Process does not obligate Evergy to “re-evaluate decisions” for all other non-major investments, suggesting that these resource decisions might be treated as “hardwired” inputs in the IRP model.

11. KEPCo urges the Commission satisfy itself that the proposed thresholds are reasonable and are not so high as to cast doubt as to the promised “flexibility and robustness” of the resource portfolio.<sup>23</sup> For instance, a \$100 million retrofit or an 80 MW solar facility would not qualify for ongoing review, but these are major capital investment decisions with significant rate impacts on Kansas customers. The Filing Parties have not provided any reason supporting these proposed thresholds, and a detailed explanation of the underlying rationales would be useful to the Commission and stakeholders. Furthermore, instead of utilizing high thresholds from the start, the more prudent approach would be to utilize lower thresholds until the Commission has sufficient information to decide that higher thresholds would not materially alter the information or analyses.

12. With respect to the other changes in this section, KEPCo assumes that the purpose of redlined changes in the fifth and six bullets in this section providing for Staff and CURB review would be also to provide “protect[ions]” from “a future argument by Evergy,”<sup>24</sup> as described in paragraph six of the Joint Supplement and Clarification, and would not pre-determine the scope of review or otherwise impact the independence of Staff or CURB.

13. Finally, KEPCo appreciates the Filing Parties’ new subsections (a)-(e) under the fourth bullet in this section, which specify additional information to be provided as part of the

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<sup>22</sup> Joint Supplement and Clarification, at ¶ 7.

<sup>23</sup> Framework (redlined), at 1 (Purpose of IRP Process), 2 (Commission Staff and CURB Review of Capital Plan Reporting and IRP Process).

<sup>24</sup> Joint Supplement and Clarification, at ¶ 9.

review of major capital investment decisions. The additional language appropriately recognizes the importance of this information and provides much-needed clarity as to the type of information that Evergy will provide.

#### **B. Clarification of the IRP and Capital Plan Framework**

14. KEPCo appreciates the Filing Parties' clarifications on issues raised in KEPCo's post-work study comments. As those comments make clear, KEPCo supports expanding opportunities for stakeholder participation and collaboration. While KEPCo believes that the IRP process would be measurably improved with meaningful opportunities to provide stakeholder feedback prior to Evergy's selection of its preferred plan, KEPCo also recognizes the informational meeting provides an opportunity for dialogue and therefore may incrementally improve the process. KEPCo requests clarification on the timing of the informational meeting, specifically, whether Evergy's commitment to host the meeting "within 30 days of making its IRP filing" means that the company intends to host the meeting within 30 days *after* filing the IRP. KEPCo prefers that Evergy host the meeting after filing the IRP, as that order of events would allow stakeholders to review the IRP in their preparations for the meeting.

15. KEPCo requests that Evergy provide a minimum of ten business days' notice of the informational meeting. By providing sufficient advance notice, stakeholders are more likely to participate and, therefore, Evergy is more likely to benefit from the stakeholder questions and feedback. Because Evergy will provide notice of the meeting only to "any parties who have been granted intervention in the IRP compliance docket,"<sup>25</sup> KEPCo is simultaneously resubmitting a petition for intervention in this docket and requests that the Commission grant

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<sup>25</sup> Joint Supplement and Clarification, at ¶ 11.

KEPCo party status in this case so that KEPCo is able to receive Evergy's notice of its first and subsequent informational meetings.

16. Finally, the Commission should direct Evergy to modify the sixth paragraph of the IRP Process (as revised) to retain *all* documentation (instead of limiting retention to documentation that supports Evergy's preferred plan). KEPCo previously explained that the Filing Parties' record-retention proposal might later be interpreted as requiring Evergy to retain for record-keeping purposes only documentation "supporting" the preferred resource portfolio filed with the Commission. KEPCo explained that the document retention policy should apply to *all* documentation developed in connection with the IRP process, including documentation that does not support the Evergy's preferred approach or that supports a different approach not filed with the Commission. Joint Parties' response confirms that Evergy would not retain all documentation.<sup>26</sup> A complete retention policy would be appropriate because Commission Staff and CURB must "consider allowing recovery" for abandoned or in-progress investments,<sup>27</sup> and such consideration may require review of plans other than Evergy's preferred plan.

WHEREFORE, KEPCo prays that the Commission consider these comments on the Joint Supplement and Clarification, direct Filing Parties to revise the Framework as suggested herein, and for all other relief that the Commission deems just and proper.

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<sup>26</sup> Joint Supplement and Clarification, at ¶ 13. Filing Parties have not revised the Framework to address document retention concerns.

<sup>27</sup> Framework (redlined), at 2.



Respectfully submitted,

*/s/ Susan B. Cunningham*

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Susan B. Cunningham, KS#14083  
General Counsel  
Kansas Electric Power Cooperative, Inc.  
600 SW Corporate View  
Topeka, KS 66615  
O: 785.271.4833  
M: 785.817.1864  
E-mail: [scunningham@kepco.org](mailto:scunningham@kepco.org)

*Attorney for Kansas Electric Power Cooperative,  
Inc.*

September 19, 2019

**VERIFICATION**  
**(K.S.A. 53-601)**

STATE OF KANSAS            )  
  ) ss.  
COUNTY OF SHAWNEE    )

I, Susan B. Cunningham, verify under penalty of perjury that I have caused the foregoing Comments of Kansas Electric Power Cooperative, Inc. on Joint Supplement and Clarification to Compliance Filing to be prepared on behalf of Kansas Electric Power Cooperative, Inc.; that I have read and reviewed the Comments; and that the contents thereof are true and correct to the best of my information, knowledge, and belief.

*/s/ Susan B. Cunningham*

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Susan B. Cunningham

Executed on this 19th day of September, 2019.

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Comments of Kansas Electric Power Cooperative, Inc. on Joint Supplement and Clarification to Compliance Filing was electronically served on this 19<sup>th</sup> day of September, 2019, to the following named persons appearing on the Commission's service list as last modified on September 10, 2019, with correction.

Michael Neeley, Litigation Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Rd.  
Topeka, KS 66604  
[m.neeley@kcc.ks.gov](mailto:m.neeley@kcc.ks.gov)

Brian G. Fedotin, Deputy General Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Rd.  
Topeka, KS 66604  
[b.fedotin@kcc.ks.gov](mailto:b.fedotin@kcc.ks.gov)

Joseph R. Astrab  
Citizens' Utility Ratepayer Board  
1500 SW Arrowhead Rd.  
Topeka, KS 66604  
[j.astrab@curb.kansas.gov](mailto:j.astrab@curb.kansas.gov)

Todd E. Love  
Citizens' Utility Ratepayer Board  
1500 SW Arrowhead Rd.  
Topeka, KS 66604  
[t.love@curb.kansas.gov](mailto:t.love@curb.kansas.gov)

David W. Nickel, Consumer Counsel  
Citizens' Utility Ratepayer Board  
1500 SW Arrowhead Rd.  
Topeka, KS 66604  
[d.nickel@curb.kansas.gov](mailto:d.nickel@curb.kansas.gov)

Shonda Rabb  
Citizens' Utility Ratepayer Board  
1500 SW Arrowhead Rd.  
Topeka, KS 66604  
[s.rabb@curb.kansas.gov](mailto:s.rabb@curb.kansas.gov)

Della Smith  
Citizens' Utility Ratepayer Board  
1500 SW Arrowhead Rd.  
Topeka, KS 66604  
[d.smith@curb.kansas.gov](mailto:d.smith@curb.kansas.gov)

Robert J. Hack, Lead Regulatory Counsel  
Kansas City Power & Light Company  
One Kansas City Place, 19<sup>th</sup> Floor  
1200 Main St.  
Kansas City, MO 64105  
[rob.hack@evergy.com](mailto:rob.hack@evergy.com)

Roger W. Steiner, Corporate Counsel  
Kansas City Power & Light Company  
One Kansas City Place, 19<sup>th</sup> Floor  
1200 Main St.  
Kansas City, MO 64105  
[roger.steiner@evergy.com](mailto:roger.steiner@evergy.com)

Robert V. Eye, Attorney at Law  
Kauffman & Eye  
4840 Bob Billings Pkwy., Ste 1010  
Lawrence, KS 66049  
[bob@kauffmaneye.com](mailto:bob@kauffmaneye.com)

Cathryn J. Dinges, Corporate Counsel  
Westar Energy, Inc.  
818 S. Kansas Ave.  
P.O. Box 889  
Topeka, KS 66601-0889  
[cathy.dinges@evergy.com](mailto:cathy.dinges@evergy.com)

Kimberly Brickell Frank  
McCarter & English, LLP  
1301 K Street, NW  
Suite 1000 West  
Washington, DC 20005  
[kfrank@mccarter.com](mailto:kfrank@mccarter.com)

Mark Doljac, Exec. Director, Regulatory  
Affairs and Planning  
Kansas Electric Power Cooperative, Inc.  
600 SW Corporate View  
Topeka, KS 66615  
[mdoljac@kepco.org](mailto:mdoljac@kepco.org)

*/s/ Susan B. Cunningham*

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Susan B. Cunningham