

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

In the Matter of the 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

**KANSAS ELECTRIC POWER
COOPERATIVE, INC.'S LIST OF CONTESTED ISSUES**

Kansas Electric Power Cooperative, Inc. ("KEPCo") submits this list of contested issues in compliance with the Order Setting Procedural Schedule issued by the Commission on November 21, 2017 ("Procedural Order"), which set the due date for the filing of the contested issues lists. KEPCo states as follows:

I. Background

1. On August 25, 2017, Applicants filed an application requesting approval of a proposed merger-of-equals between Westar and GPE. The details of the transaction are described by Commission orders issued in the docket, including the Procedural Order.

2. On November 21, 2017, the Commission issued the Procedural Order setting March 5, 2018, as the deadline for submitting a contested issues list.

II. Contested Issues

3. **Public Interest.** The contested legal question in this proceeding is whether the transaction proposed by Applicants promotes the public convenience and necessity, which is the legal standard set out in K.S.A. 66-131. This legal standard is interpreted by the Commission as

being consistent with the public interest standard. KEPCo believes that the transaction, as proposed, would not promote the public interest.

4. **Merger Standards.** The Commission has established merger standards as the yardstick to help evaluate whether the transaction promotes the public interest. KEPCo's list of contested issued addresses the following merger standards:

- *Merger Standard (a)(i)—The effect of the transaction on consumers, including the effect of the proposed transaction on the financial condition of the newly created entity as compared to the financial condition of the standalone entities if the transaction did not occur.*

5. KEPCo believes that the initial failed transaction has left GPE in a weaker financial condition than it would be had it not proposed to acquire Westar, and that those risks have not been fully addressed and shall continue to have impacts if the Commission approves the proposed merger-of-equals transaction. Applicants admit risks exist. KEPCo believes that the financial conditions offered by Applicants are inadequate to protect customers from the risks that would persist even after the two companies combine. The Commission should condition approval on additional financial protections for customers as recommended by KEPCo's expert.

- *Merger Standard (a)(ii)—The effect of the transaction on consumers, including the 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.*

6. KEPCo believes that the form of transaction proposed by Applicants includes an implied purchase price for each company in this merger-of-equals form of transaction. This type of transaction is unusual and has not been considered by the Commission before. Even though there is an implied purchase price for each company (as opposed to the previous acquisition attempt with cash and share price to Westar shareholders that included a large control premium) the fact is unchanged that the Applicants' ability to actually achieve savings shall be critical if customers are to realize benefits from the transaction.

7. In particular, Applicants have failed to demonstrate that early retirements of certain Westar generation facilities will produce actual efficiencies and savings for customers because that retirement decision is not the product of a robust Integrated Resource Planning (“IRP”) process. The Commission should deny Applicants’ plan to achieve savings by retiring generation capacity, direct Applicants to withdraw their deficient IRP and refile, and also direct Applicants to comply with other requirements to ensure that the expected savings are legitimate and permanent, as described by KEPCo experts.

- *Merger Standard (a)(iii)—The effect of the transaction on consumers, including whether ratepayer benefits resulting from the transaction can be quantified.*

8. KEPCo believes that customer benefits with respect to claimed savings, synergies, and efficiencies in connection with the early retirement of Westar generating facilities are speculative. Applicants have failed to show that the early retirement of these resources are in the best interests of customers; to the contrary, the documents show that the retirements are engineered for the sole purpose of generating savings that Applicants can claim as a merger synergy and savings.

- *Merger Standard (a)(iv)—The effect of the transaction on consumers, including whether there are operational synergies that justify payment of a premium in excess of book value.*

9. KEPCo believes that Applicants’ form of proposed transaction creates tangible and substantial value for shareholders, which the Commission should consider when evaluating whether the transaction is in the public interest and whether a fair share of the expected financial benefits are likely to be realized by customers. As described above, KEPCo believes that the savings created through the early retirement of generation resources are speculative, and that the decision to retire generation resources prematurely is based on a flawed IRP.




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VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

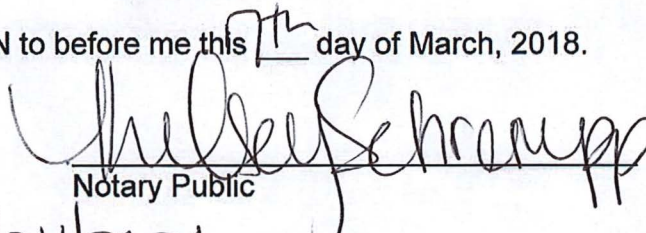
William G. Riggins, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the above named petitioner, that he has read the above and foregoing and upon information and belief, states that the matters therein appearing are true and correct.



William Riggins

SUBSCRIBED AND SWORN to before me this 7th day of March, 2018.



Notary Public

My Commission expires 2/24/2021

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing was electronically served or placed in the United States mail, postage prepaid, this 7th day of March, 2018, addressed to the following:

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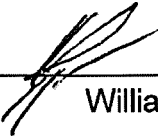
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