

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

In the Matter of the Joint Application of)
Great Plains Energy Incorporation, Kansas)
City Power & Light Company and Westar) Docket No. 16-KCPE-593-ACQ
Energy, Inc. for Approval of the Acquisition)
of Westar Energy, Inc. by Great Plains)
Energy Incorporated.)

SIERRA CLUB'S POST-HEARING BRIEF

The Kansas Corporation Commission's ("Commission") central charge in this case is to discern whether the proposed acquisition ("the Proposed Transaction") of Westar Energy, Inc. ("Westar") by Great Plains Energy Incorporated ("GPE") (collectively, with Kansas City Power & Light Company ("KCP&L"), the "Joint Applicants") will promote the public interest. An array of intervenors and interests have demonstrated that the Proposed Transaction does not promote the public interest, and thus the Commission should reject it.

I. Introduction

Per the Commission's order granting Sierra Club's limited intervention in the docket, this brief is limited to only two of the factors relevant to this proceeding: (1) whether the Proposed Transaction maximizes the use of Kansas' energy resources, and (2) the effect of the Proposed Transaction on the environment. Order Granting Limited Intervention to the Sierra Club, November 29, 2016. On both, the Joint Applicants have failed to establish that the Proposed Transaction would promote the public interest by either maximizing the use of Kansas' energy resources or having a positive effect on the environment.

The crux of the matter regarding these two factors is whether the Proposed Transaction will advance or hinder the development of Kansas' wind resources and energy efficiency. While

almost entirely failing to address these factors in their application, the Joint Applicants belatedly suggest that because a company – GPE – that acquires only 1% of its generation capacity from wind resources would be acquiring a company – Westar – that acquires 9% of its capacity from wind resources, the Proposed Transaction would advance wind energy development in Kansas. As Sierra Club witness Chang explained, however, the opposite effect of the lower wind-resourced utility holding back further development of wind is just as likely to be true, especially given that: (1) GPE would be taking on significant levels of debt to carry out the transaction, (2) the Joint Applicants have failed to even identify, much less commit to, any plans for additional wind energy development, and (3) the Joint Applicants have not completed an integrated resource plan that could provide an assessment of what the resource mix for the combined company would look like in the future. Without such information and commitments, the Joint Applicants have simply failed to demonstrate that the Proposed Transaction would maximize the use of Kansas’ energy resources or provide a positive benefit to the environment. As such, the Commission should reject the Proposed Transaction, for the reasons more fully explained below.

II. The Joint Applicants Have Offered No Compelling Evidence to Suggest that the Proposed Transaction Maximizes Kansas’ Energy Resources.

The Joint Applicants presented a merger application and testimony with aspirational claims of maximizing Kansas’ energy resources that, unfortunately, are entirely lacking in substance. In support of the contention that the Proposed Transaction maximizes Kansas’ energy resources, proposed GPE CEO Terry Bassham testified that the merger "presents a greater opportunity to maximize the use of Kansas energy resources, representing both an economic development opportunity and an environmental benefit opportunity for Kansas resulting from the [Proposed] Transaction." Bassham Direct, 14:9-12. When Sierra Club sought justification for this statement, GPE responded that:

The State of Kansas is one of the premier locations for wind generation in the country. The addition of wind as a resource to any given utility portfolio is a function of generation planning and the base resource portfolio in place. Evaluation of resource additions under a combined company rather than as stand-alone companies may result in additional wind resources as the overall portfolio composition will change. Additionally, the combined companies will have additional capital investment resources in considering future wind investments than either company would have had on a stand-alone basis as well as more readily available joint ownership opportunities for the regulated subsidiaries under Great Plains Energy (GPE) thereby potentially making utility scale wind investment more accessible at the operating utility level than would have been available had the companies remained stand alone. In addition, all other factors remaining equal, larger wind generating projects can cost less than smaller projects on a per MW or MWh basis. Additionally, environmental benefit is achieved simultaneously with the additional energy benefit from the combined company. That additional energy benefit can offset the emissions from other, fossil generation.

Sierra Club Exhibit 1.

Two threads emerge from this response—(1) resource planning is critical, as it governs portfolio decisions, and (2) additional capital to invest in wind would purportedly become available with a combined company than with stand-alone entities. Other Joint Applicant witnesses testifying on the issue strike similar themes to witness Bassham. Witness Heidtbrink discusses the efficiencies that could be created from the Proposed Transaction, Heidtbrink Direct, 8:2-19, and witness Ives mentions that Kansas “is one of the premiere locations for the siting of wind power,” Ives Direct, 11:11, and that “[i]t is likely that the combined company will be in a better position to take further advantage of those resources in the future.” Ives Direct, 13:20-22.

A. Joint Applicants Failed to Conduct Any Portfolio Analyses to Substantiate Their Claims Regarding the Proposed Transaction’s Effect on Kansas’ Energy Resources.

Joint Applicants state that they intend to complete an integrated resource plan (“IRP”) for the combined entity in July 2017, and that GPE will provide such IRP to Commission Staff. *See*

Joint Applicants' Initial Post-Hearing Brief ("JA Initial Brief") at 113, 127.¹ Critically, such a post-hoc analysis does nothing to ensure that the Proposed Transaction satisfies the public interest standards set forth by the Commission. Indeed, without the results of such planning, it is impossible for the Joint Applicants to state with any certainty that the Proposed Transaction will positively affect the environment and maximize Kansas' energy resources. That is, the Joint Applicants' claims in this regard are pure conjecture.

To provide the evidence needed to substantiate its claims, the Joint Applicants should have included in their application or via supplemental testimony a thorough economic analysis of the combined company's generating portfolio. Sierra Club agrees with the Joint Applicants that Kansas has abundant wind resources. Still, the Joint Applicants' repeated factual statements about wind availability are conspicuously divorced from the proposed procurement of any additional wind generation. Put simply, Joint Applicants have not provided any analyses of the combined company's plan or ability to obtain wind generation or commence meaningful energy efficiency programs.

B. Joint Applicants Will Not Likely Be Better Positioned to Maximize Kansas' Energy Resources.

Joint Applicants testify that, upon closing, GPE will have one of the largest portfolios of wind generation in the United States. Heidtbrink Direct, 8:12-15; JA Initial Brief at 112. This would be due, in large part, to Westar's wind resources rather than GPE's, given that Westar's portfolio has nine times the wind capacity of GPE. *See* Chang Direct, 4:17-19, 13:1-6. That is, GPE has been more reticent to invest in wind than Westar, and the combined company would be

¹ "With respect to Sierra Club's recommendation that the Commission require GPE to perform IRP analysis, GPE fully intends to continue performing IRP analyses to assist in long-term resource planning *when* it owns Westar as it has in the past." JA Initial Brief at 113 (emphasis added).

run by GPE, logically leading to the inference that GPE will be less likely to invest in wind moving forward. GPE further stated that the combined company “may enable the future construction of additional wind generation in Kansas.” Ives Direct, 11:11-12. Yet, the best available evidence indicates otherwise. Indeed, KCP&L has stated that its planning reserve capacity requirements for 2017 through 2020 would be lower than its adequate 2016 reserve capacity, and Westar has no plans for new generation in the next decade. *See* Chang Direct, 13:15-23. Simply put, the Joint Applicants’ lofty claims do not comport with the facts.

Further concerns are raised by the significant levels of debt that GPE issued to fund the Proposed Transaction. This is not an idle concern—on March 6, 2017, Moody’s Investors Service (“Moody’s”) downgraded GPE’s existing debt and similarly rated the billions in new debt issued to finance the Proposed Transaction. Commission Staff’s Response to Joint Applicants’ Motion to Reopen the Record, March 13, 2017, at 2.² Specifically, Moody’s indicated that the downgrade was due to “the significant amount of additional parent debt, [which leaves] very little financial flexibility, and [Moody’s] view that [GPE] management has a higher tolerance for financial risk.” *Id.* at Attachment A. Prominent investor ratings and common sense indicate that a financially strapped utility would not be better positioned to take advantage of Kansas’ abundant wind resources. Accordingly, the Joint Applicants’ suggestion that the Proposed Transaction could put the combined entity in a better position to pursue wind resources in the future is aspirational at best and does not represent a commitment to take any further steps to pursue Kansas’ wind resources.

² Pursuant to K.A.R. 82-1-230(f) and K.S.A. 82-1-230(k), Joint Applicants sought to reopen the record for the limited purpose of supplementing certain debt information regarding the Proposed Transaction. Joint Applicants’ Motion to Reopen the Record, March 8, 2017. In response to this motion, Staff requested that the Commission receive both Joint Applicants’ information and also evidence of GPE’s credit downgrade by Moody’s. Commission Staff’s Response to Joint Applicants’ Motion to Reopen the Record, March 13, 2017, at 2-3. Sierra Club supports Staff’s motion to reopen the record to receive both sets of evidence.

In their post-hearing brief, Joint Applicants simply reiterated that the Proposed Transaction maximizes Kansas' energy resources because: (a) the stand-alone companies have themselves committed to significant Kansas wind energy, and (b) the combined company will be better positioned to take advantage of Kansas' wind resources. JA Initial Brief at 127. As stated above, these claims are completely unsubstantiated, and the Commission should reject them.

III. The Proposed Transaction May Have a Negative Effect on the Environment, and Joint Applicants Have Advanced No Substantive Reason to Believe Otherwise.

In direct testimony supporting the Proposed Transaction, Joint Applicants testify that, not only will the Proposed Transaction *not* detrimentally affect the environment, but it would in fact *positively* impact the environment. *See* Ives Direct, 11:8-14; *see also* JA Initial Brief at 112.

Again, Joint Applicants offer all flash and no substance. In their response to Sierra Club's questions about this claim, Joint Applicants state that there will be a positive impact on the environment:

because KCP&L and Westar are in compliance with existing environmental requirements in the State of Kansas, intend to continue meeting or exceeding such requirements and may be able to construct additional wind generation in Kansas in the future. Additionally, the combined company will have a larger footprint for environmentally sustainable programs which may include employee/community programs or product re-use for beneficial use in other industries.

Sierra Club Exhibit 2.

Simply stating that the Joint Applicants intend to comply with applicable law, or that a larger company may provide bigger programs, does not end the inquiry. Joint Applicants must always comply with the law, and GPE is taking on significant economic and portfolio risks via the Proposed Transaction that outweigh the purported benefits. As discussed below, Sierra Club presented evidence indicating that there are serious concerns regarding the combined company's fossil-fuel fleet as a result of the Proposed Transaction, and Joint Applicants offered no evidence

whatsoever to counter Sierra Club's claims. Further, Sierra Club put forth evidence that the Joint Applicants barely utilize energy efficiency as stand-alone companies, which Joint Applicants also failed to rebut. Accordingly, the Commission should determine that the Proposed Transaction does not advance the public interest with respect to the environment.

A. Continuing to Operate Uneconomic Coal-Fired Power Plants Poses Economic and Environmental Risks to the Combined Company's Portfolio.

While GPE holds up the combined company as a national leader of environmental sustainability, largely due to Westar's wind capacity, it wholly ignores the risks from acquiring Westar's aging coal-fired power plants. As witness Chang testified for Sierra Club, Westar's coal fleet presents more risks to GPE's portfolio than the Proposed Transaction will mitigate. *See* Chang Direct, 20:25-26. Because Joint Applicants did not conduct a detailed economic analysis about the future of their combined fleet, they failed to address the serious risks to the continued operation of their fleet, which include low Southwest Power Pool market prices, high fixed and capital costs, and the age of select units. *Id.* at 20:25-21:7. Accordingly, there has been no discussion of whether early retirement of fossil-fuel generation would benefit ratepayers and the environment. To the contrary, Sierra Club offered compelling evidence to indicate that the Proposed Acquisition will not benefit ratepayers and the environment.

The failure to conduct a pre-Proposed Transaction IRP is striking. Contrary to Joint Applicants' claims that the Proposed Transaction will benefit the environment, Joint Applicants failed to provide analyses of the combined company to demonstrate that the existing fossil generation units would be dispatched less because of the Proposed Transaction. In fact, as Sierra Club witness Chang testified, "should the Proposed Transaction result in increased generation from the combined entity's fossil generation units, which burn out-of-state coal, then the Proposed Transaction would be detrimental to the environment and not maximize Kansas energy

resources.” Chang Direct, 7:28-31. To illustrate the problem, in rebuttal testimony, Joint Applicants’ witness Ives set forth the retirement schedules of several units at the Lake Road, Montrose, and Sibley power plants, indicating that some had already shuttered while “the retirement timing of the remaining units is under review.” Ives Rebuttal, 55:5-6. In response to Sierra Club’s questions regarding this timing, Mr. Ives stated that “[t]he timing ... is under review as part of the integrated company planning anticipated to be completed by July 2017.” Sierra Club Exhibits 5, 6. It is unclear why a post-merger IRP is helpful to the parties in this case. By not presenting the typical IRP analyses as part of its merger application, Joint Applicants have effectively prevented the Commission, intervenors, and general public from knowing what the combined company’s resource portfolio will look like if the Proposed Transaction is approved. This failure is a fatal flaw as it means that the Joint Applicants have failed to demonstrate that the Proposed Transaction would not have a negative impact on the environment or that it would maximize the use of Kansas’ energy resources.

B. Joint Applicants’ Unsubstantiated Claims About Wind Power Are Unavailing.

In their post-hearing brief, Joint Applicants state that “nothing in Joint Applicants’ testimony suggests any diminishment of support for Kansas wind resources.” JA Initial Brief at 113-14. While this may be true, nothing in Joint Applicants’ testimony suggests any ongoing support for Kansas’ wind resources either. As discussed in Section II above, merely stating that the stand-alone companies have each committed to significant Kansas wind energy is misleading. Westar has invested in nine times the amount of wind capacity that GPE has procured. Moreover, there is no evidence whatsoever to support the notion that the combined company would be better positioned to take advantage of Kansas’ wind resources. Not only have the Joint Applicants not yet conducted any analyses regarding joint resource planning, the stand-

alone companies do not expect to need additional capacity for the foreseeable future, and the sheer amount of debt that GPE would have to take on to complete the Proposed Transaction would likely hinder future wind development.

C. Joint Applicants Do Not Participate Meaningfully in Energy Efficiency Programs in Kansas, and Have Not Provided Any Analysis Indicating That Will Change.

GPE has held itself out as a leader in energy efficiency efforts, stating in direct testimony that GPE “has extensive experience in customer programs such as energy efficiency ... that ... can benefit Westar customers.” Bassham Direct, 11:23-12:2. GPE’s justification for this statement is “based on Mr. Bassham’s understanding of the experience Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company have obtained regarding such programs in Missouri.” Sierra Club Exhibit 4.

Yet, in the State of Kansas—the relevant venue for this proceeding—neither KCP&L nor Westar have invested much in energy efficiency. For example, in 2015, Westar reported a total of 24 MWh of savings attributed to its residential energy efficiency programs while KCP&L reported zero savings in Kansas. Chang Direct, 32:19-21. The relative amount that Westar spends annually on energy efficiency is less than the change in control agreement for the CEO of Westar, who could receive a severance package of \$10.74 million via the Proposed Transaction. *Id.* at 32:13-16. Accordingly, GPE’s lofty claims about energy efficiency are indefensible, which has real-world ramifications because cost-effective energy efficiency benefits ratepayers through lower bills and investments within the Kansas economy.

In their Post-Hearing brief, Joint Applicants mischaracterize Sierra Club’s testimony, stating that Sierra Club would “prefer ... that GPE increase energy efficiency efforts and wind resources” and that Sierra Club’s allegations about GPE’s energy efficiency claims are “unfounded ... [and] in direct conflict with the facts.” JA Initial Brief at 113. Joint Applicants

further state that “KCP&L has the largest energy efficiency program by dollar spent per customer” in Missouri. *Id.* at 114. Joint Applicants essentially ask the Commission to trust them—GPE has energy efficiency experience in Missouri and will translate that experience to Kansas. Yet, KCP&L and Westar have had ample opportunity to engage in energy efficiency programs in the State of Kansas and have failed to do so. There is no evidence that the Proposed Transaction will somehow compel the utilities to start.

IV. Conclusion

Rather than resolving the deficiencies in the Proposed Transaction’s application, Joint Applicants insist that Sierra Club is somehow at fault, stating “nowhere does the Sierra Club offer evidence that this Transaction will hurt the use of Kansas energy resources or the environment. JA Initial Brief at 128. As evinced by its Direct Testimony and this post-hearing brief, Sierra Club has indeed supported its contentions with evidence, and the Commission should reject the Proposed Transaction because the Joint Applicants have failed to meet their burden of demonstrating that the Proposed Transaction would satisfy clearly articulated public interest standards.

If, however, the Commission would prefer to propose reasonable modifications to ensure that the Proposed Transaction is in the public interest, Sierra Club recommends the following:

1. The Joint Applicants should be required to commit to pursuing additional Kansas wind resources. Such a commitment would maximize the use of Kansas’ energy resources, improve the environment, and promote the public interest.
2. The Joint Applicants should be required to commit to accelerated deployment of energy efficiency.

3. The Joint Applicants should be required to complete and disclose prior to any approval of the Proposed Transaction a detailed analysis of the future economics of the generating units that would be owned and operated by the combined entity so as to identify opportunities for the economic retirement of fossil generating units.
4. The Joint Applicants should be required to initiate a contested case docket before the Commission in order to establish a rigorous review of their integrated resource plan in Kansas.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 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 Sierra Club Post-Hearing Brief with a copy emailed to all parties of record.

/s/ Sunil Bector
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