

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

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

**KANSAS INDUSTRIAL CONSUMERS GROUP'S**  
**POST HEARING BRIEF**

Kansas Industrial Consumers Group, Inc. ("KIC")<sup>1</sup> respectfully files this Post Hearing Brief. In support of its Brief, KIC states to the State Corporation Commission of the State of Kansas ("KCC" or "Commission") as follows:

**I. Introduction**

The issue for determination by the Commission is very straightforward:

- (1) The Commission can approve the Application, giving Great Plains Energy Incorporated ("GPE") the financial tools - - never before granted by the KCC to any entity - - to pay a \$4.8 billion premium to the shareholders of Westar Energy, Inc. ("Westar"), while providing no benefit to Kansas ratepayers for at least the next three (3) years, and no assured ratepayer benefits beyond the initial three (3) years; or
- (2) The Commission can reject the Application as "not in the public interest" because no demonstrable, material ratepayer benefits are provided; or
- (3) The Commission can approve the Application with "conditions" that assure demonstrable, material ratepayer benefits are provided, i.e. a reasonable sharing between the ratepayers and the electric utilities - - in the form of a rate moratorium,

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<sup>1</sup> The individual entities participating in this Docket by and through KIC are: Occidental Chemical Corporation; CCPS Transportation, LLC; Spirit AeroSystems, Inc.; The Goodyear Tire & Rubber Company; Coffeyville Resources Refining & Marketing, LLC; Cargill Incorporated; and HollyFrontier El Dorado Refining LLC.

cash payments to ratepayers, and/or credits to ratepayers - - that directly address the extremely high electric rates in Kansas – rates that have accelerated far more than any measure of inflation, and which have caused Kansas electric rates for the residential, commercial, and industrial customers to be the highest in the mid-continent region.

Westar shareholders are being paid \$4.8 billion more than the depreciated book value of those Westar assets that are “used and useful” in the provision of public utility services in Kansas. GPE contends that this \$4.8 billion premium is not an “acquisition premium,” the recovery of which is sought from Kansas ratepayers. Taking advantage of historically low interest rates and low dividend payout rates, the GPE offer for Westar is \$12.2 billion, which includes \$3.6 billion in existing Westar debt. The remaining \$8.6 billion of the Transaction price will be financed by GPE with approximately 50% debt, and 50% equity.

Simply stated, the Application as proposed by the Joint Applicants, and as conditioned in the Rebuttal testimony of Mr. Darrin Ives, fails to provide any demonstrable, material benefits to Kansas ratepayers, does not promote the public interest, and should be rejected by the Commission.

The Commission should only approve GPE’s acquisition of Westar if such approval is expressly conditioned upon the Joint Applicants providing a demonstrable, material benefit to Kansas ratepayers – either in the form of a rate moratorium, cash payments to ratepayers, and/or credits to ratepayers. An appropriate sharing of benefits from the combination of Westar, KCP&L, and GPE, would be 50% to ratepayers, and 50% to GPE, for the initial 3.5 years after any approval of the Application by the KCC - - an amount of \$213 million, thereafter savings would flow through as a part of the cost of service in future rate cases. Approximately two-thirds of this \$213 million should go to Kansas ratepayers.

## **II. Procedural History**

On June 28, 2016, Westar Energy, Inc. (“Westar”), Great Plains Energy Incorporated (“GPE”) and Kansas City Power & Light Company (“KCP&L”) (collectively “Joint Applicants”) filed a Joint Application (“Application”) for the approval of the acquisition of Westar by GPE. As part of the acquisition, GPE agreed to acquire 100% of the stock of Westar in a transaction valued at approximately \$12.2 billion, including Westar debt, which will be assumed by GPE. The agreed upon purchase price represents an approximately \$4.8 billion premium above Westar’s book value.

As part of its Application, as conditioned, Joint Applicants requested a predetermination that the capital structure of GPE would not be utilized in future KCC rate cases of Westar and KCP&L Kansas, to set the electric rates of those utilities. Any KCC ruling that would forego a “consolidated company capital structure” would benefit GPE in the amount of \$130 million per year as compared to the current capital structures of the Joint Applicants, and by an unknown amount in years subsequent to closing the Transaction. *See* Tr. Vol. 3, Bryant, p. 783.

The Application did not provide for any rate moratorium, cash payments, or bill credits to ratepayers. Instead, the Application alleged Kansas ratepayers would receive, not yet finally quantified, future savings.

On December 2, 2016, KIC filed an Application for Intervention on behalf of several business entities that purchase large volumes of electric energy for their operations and activities<sup>2</sup>. These businesses were: Occidental Chemical Corporation; CCPS Transportation, LLC; Spirit AeroSystems, Inc.; The Goodyear Tire & Rubber Company; Coffeyville Resources Refining & Marketing, LLC; and Cargill Incorporated. The Intervention of these listed

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<sup>2</sup> Application for Intervention, Dec. 2, 2016, ¶2.

companies had previously been consolidated by the KCC into the Large Industrial Consumer Group.

On December 15, 2016, the Commission recognized KIC, ordered that the Large Industrial Consumer Group will be represented by KIC, and granted intervention to HollyFrontier El Dorado Refining LLC as part of KIC<sup>3</sup>. The entities herein that consolidate their activities and participation in this Docket through KIC are all ratepayers of Westar.

Commencing on Monday, January 30, 2017, and concluding on Tuesday, February 7, 2017, the Commission held an Evidentiary Hearing in this Docket.

**III. The Application, as proposed and conditioned by the Joint Applicants, does not promote the public interest and must be rejected.**

For the Application, and thereby GPE's acquisition of Westar, to be approved, the Joint Applicants must show that the proposed Acquisition promotes the public interest. Docket No. 97-WSRE-676-MER, Order on Merger Application, at ¶ 18 (September 28, 1999) (herein after referred to as the "1999 Merger Order"); Docket No. 16-ITCE-512-ACQ, Order on Merger Standards, at ¶ 5 (August 9, 2016). The Joint Applicants bear the burden of proving that the Merger Standards are met and, ultimately, that the proposed acquisition of Westar by GPE promotes the public interest. *See* 1999 Merger Order, at ¶ 18. The Joint applicants must demonstrate, through the evidence in the record, a sufficient basis upon which to approve the Joint Application. *Id.*

The Joint Applicants have failed to demonstrate, through evidence in the record, that the Joint Application, as proposed and conditioned, promotes the public interest for, at a minimum, the following reasons: (1) the savings estimates proffered by the Joint Applicants as a ratepayer benefit are (i) unverifiable and wholly insufficient in their "estimated" amount to show that the

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<sup>3</sup> Order Granting Intervention to HollyFrontier El Dorado Refining, Inc. and Recognizing the Kansas Industrial Consumers Group, Inc., Dec. 15, 2016, at p. 4.

Transaction promotes the public interest, (ii) do not inure to ratepayers in any material amount in the initial three years subsequent to the close of the Transaction, and (iii) it is uncertain when – or if – the ratepayers will receive any benefits from the Transaction; (2) the Joint Applicants have failed to show that the acquisition debt will not harm ratepayers; (3) the Joint Applicants have not only failed to show material savings for ratepayers in the initial three year period, but also failed to show that estimated savings will lower rates at any time in the future; and (4) the Joint Applicants inappropriately and unlawfully condition the capital structure to be used in future rate setting proceedings. The Joint Applicants have failed to provide material evidence that savings will occur, or that any ratepayer benefits will inure - - but rather, unlawfully requests the KCC to look into the future – perhaps 3 to 6 years – for any possible benefit to the Kansas public ratepayers. Accordingly, the Joint Applicants have failed to meet their burden, and their Application – as proposed and conditioned by the Joint Applicants – must be denied by the Commission.

A. The savings estimates offered by the Joint Applicants are insufficient to show that the proposed Transaction promotes the public interest.

- i. *The purported savings are estimates only, and Joint Applicants refuse to guarantee any level of actual savings and ratepayer benefit.*

In an attempt to show that the Transaction promotes the public interest, the Joint Applicants purport to offer a range of “potential” benefits – from a short term commitment to maintain Westar facilities in Topeka, to a promise to maintain existing collective bargaining agreements, to a claim that GPE’s status as a “local” company (as opposed to a “distant corporation”) somehow, in and of itself, provides a benefit over other potential purchasers. Despite being touted by the Joint Applicants as benefits that promote the public interest, these

“benefits” do nothing more than maintain the “status quo” – absent the Transaction – and, accordingly, do not promote the public interest. There is no added public benefit.

The only “potentially” demonstrable, material benefit to ratepayers championed by Joint Applicants that goes above the “status quo” and, therefore, would serve to, perhaps, promote the public interest - - is possible savings created by purported synergies and efficiencies resulting from merging Westar, GPE, and GPE’s subsidiary regulated utilities, together. *See e.g.* Basham Direct Testimony, p. 13; Ruelle Direct Testimony, p. 24. Upon review, however, it becomes apparent that these “potential” savings are insufficient to show that the proposed Transaction promotes the public interest, because any “potential” savings are kept by GPE for the foreseeable future (to pay the acquisition premium), and are not in any equitable manner shared with ratepayers for many years into the future.

The Joint Applicants estimate that savings in the first 3.5 years post-transaction will be approximately \$426 million. Kemp Direct Testimony, WJK-3, as updated in Kemp Rebuttal, WJK-3R. At least half of these savings - \$213 million – should reasonably be shared with ratepayers, with approximately two-thirds of that \$213 million going to Kansas ratepayers.

However, these estimated savings – the only ratepayer benefit offered by the Joint Applicants – are clearly speculative, and the Joint Applicants refuse to guarantee the existence of any level of savings. These “estimated” savings only occur post-transaction, and the Joint Applicants refuse to guarantee any level of savings prior to closing. *See* Tr. Vol. 5, Busser, p. 1236; Joint Applicants’ Initial Post-Hearing Brief, February 28, 2017, at pp. 4-5. Accordingly, there is no way to look at the estimated savings other than as speculative in nature, as well as wholly unquantifiable.



Despite this uncertainty, the Joint Applicants continue to claim that these benefits are “sizable and undeniable.” *Id.* at p. 15. Yet, the Joint Applicants refuse to guarantee any level of savings, which makes their claim of “sizable and undeniable” savings, unquestionably, “mere conjecture.”

- ii. *Certainty of material public benefit is essential to Kansas ratepayers, because Joint Applicants' retail electric rates are the highest in the mid-continent region.*

The Joint Applicants largely base their estimated savings on GPE's ability to produce extensive cost reductions at the subsidiary utility level that the subsidiaries could not produce absent the transaction. This should not be a particularly difficult task, since Westar and KCP&L Kansas have, as a starting point, rates that are among the very highest in the mid-continent region. Gorman Direct Testimony, p. 32; Gorman Direct, Schedules MPG-1 and MPG-2; KIC Exhibit 5 (KIC Exhibit 5 attached hereto as Post Hearing Brief Exhibit A).

Of the 37 utilities listed in Industrial Rate Comparison of the Edison Electric Institute mid-continent survey, **KCP&L Kansas** has higher priced retail electric rates than all but 2 utilities. Of the 38 utilities listed in the Commercial and Residential Rate Comparison of the survey, KCP&L Kansas has higher rates than all but 4 for the Commercial Rate, and all but 5 for Residential Rate. KIC Exhibit 5, pp. 1-3. This places KCP&L squarely in the 4th Quartile for each of these three categories – the Quartile with the highest price electric rates.

Of the 37 utilities listed in Industrial Rate Comparison of the Edison Electric Institute mid-continent survey, **Westar (KPL)** has the eleventh highest rates (27 out of 37 – bottom of 3rd Quartile)<sup>4</sup>. Of the 38 utilities listed in the Commercial and Residential Rate Comparison of

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<sup>4</sup> The Large Power Tariffs of Westar and KCP&L Kansas are utilized by several hundred business and industrial customers throughout Kansas. Two members of KIC have contracts that are somewhat different than the Large Power Tariff and reflect a different service level provided by Westar to those companies; these contracts have been reviewed and approved by the KCC.

the survey, Westar (KPL) has higher rates than all but 10 for the Commercial Rate (4th Quartile), and all but 10 for Residential Rate (4th Quartile). KIC Exhibit 5, pp. 1-3.

Of the 37 utilities listed in Industrial Rate Comparison of the Edison Electric Institute mid-continent survey, Westar (KGE) has the twelfth highest rates (26 out of 37 – bottom of 3rd Quartile). Of the 38 utilities listed in the Commercial and Residential Rate Comparison of the survey, Westar (KGE) has higher rates than all but 11 for the Commercial Rate (bottom of the 3rd Quartile), and all but 8 for Residential Rate (4th Quartile). KIC Exhibit 5, pp. 1-3.

The extremely high electric rate levels paid by Kansas ratepayers require not only that “public benefit” be confirmed by a Rate Moratorium and either a Cash Refund or Bill Credit to Kansas ratepayers - - but also that the KCC promptly initiate a new proceeding, the focus of which is to take all necessary and appropriate actions to reduce the electric rates of Joint Applicants.

- iii. *No measurable and demonstrable public benefit has been shown, and all of any realized savings in the 3.5 years after the Transaction flow to and are kept by GPE.*

In support of their savings projections, the Joint Applicants state that they expect that significant savings opportunities will be available soon after close of the Transaction, related to combined operations of Westar and KCP&L, Bassham Direct Testimony, p. 10 (emphasis added) – an expectation that is, at least partially, based on the assumption that utilities with contiguous service territories tend to produce higher operating cost synergies. Bryant Rebuttal Testimony, pp. 24-25 (emphasis added).

Regardless of how confident the Joint Applicants are in the process utilized to reach these estimates, and regardless of how “measurable” the Joint Applicants claim these potential savings



to be, the fact remains that they are, still, just estimates – estimates that represent the only benefit to ratepayers that are advanced by Joint Applicants.

Of course, “measurable,” in terms of savings estimates, does not equate to “realized” savings post-closing, and lower Kansas post-closing rates – a fact that the Joint Applicants recognize. Post Transaction, customer electric rates will remain the same, and the subsidiary regulated utilities will continue to file rate cases.

**There is no Rate Moratorium, or Cash Payments to ratepayers, or Bill Credits to ratepayers. Kansas ratepayers receive nothing – zero – upon the closing of the Transaction, but an “estimated claim” of future “possible” savings.**

If the KCC grants the Application, GPE receives approval of financing tools to repay and earn on a \$12 billion investment, and Kansas ratepayers receive a possible non-measurable “benefit” that will “possibly” occur more than three (3) years after the Transaction closes.

iv. *Joint Applicants “no harm” standard should be rejected by the KCC.*

The only difference post-acquisition – and the primary benefit to ratepayers proffered by the Joint Applicants – is that future rates for Westar and KCP&L will be reduced by Merger Savings – **if any**. Joint Applicants’ Exhibit 19 (**emphasis added**).

Essentially, then, the Joint Applicants are stating that the merger will not harm ratepayers. However, the absence of harm to ratepayers is not the standard that the Joint Applicants must meet – rather, the Joint Applicants must prove that the Transaction will promote the public interest, i.e. benefit ratepayers. Put another way, the Joint Applicants must show the presence of benefit, not the absence of harm.

Since the Joint Applicants cannot prove these savings prior to the Transaction closing, and have refused to guarantee any level of savings, they argue to the Commission that the Joint

Applicants will present evidence of actual savings during the first two (already planned) post-transaction Rate Increase Cases. As part of these next rate increase cases, the Joint Applicants “commit” that they will show savings sufficient to recover transition costs. Ives Rebuttal, Schedule DRI-3, Merger Condition 19. The “commitment” to recover transition costs of the utilities and GPE is not providing “public benefit” or “ratepayer benefit” to Kansas ratepayers.

This commitment, in essence, amounts to an inappropriate attempt by the Joint Applicants to lower the burden of proof that they must meet in this proceeding. This condition simply puts off – until after the Transaction is approved and completed – the necessity for the Joint Applicants to prove that the Transaction promotes the public interest.

Rather than offer proof now that the Transaction promotes the public interest, the Joint Applicants are asking to be allowed to demonstrate such proof in the future. Furthermore, the amount of savings that the Joint Applicants are committing to show – enough to justify recovery of the transition costs – is of absolutely no benefit to Kansas ratepayers.

Without an absolutely firm commitment by the Joint Applicants to prove savings above and beyond transition costs - - i.e. Kansas ratepayer benefits - - the most that the Joint Applicants can conceivably prove is that the Transaction did not harm ratepayers.

- v. *Joint Applicants argument that the KCC can hold GPE “accountable” in the future, or demand “efficiencies,” are both after the fact, and ineffective.*

The Joint Applicants attempt to further assuage potential concerns regarding the accuracy of their savings “estimates” – and their ability to meet other conditions – by noting that failing to meet the proposed conditions could result in the Commission “hav[ing] questions” for GPE in the future. *See* Tr. Vol. 2, Ives, pp. 419-22. Executives responsible for helping to forecast these savings, notes GPE, will be the same executives responsible for ensuring that these savings are

realized – executives which, if the savings are not realized, could face professional consequences. *See generally* Busser Rebuttal Testimony, pp. 12-13.

These statements are immaterial to the issue of whether the Transaction promotes the public interest, as they provide no actual benefit to customers of Westar and KCP&L. If savings – the primary, demonstrable, material benefit promised to ratepayers as the result of this Transaction – fail to materialize, the fact that a GPE executive will possibly face professional consequences will provide little comfort, and no benefit, to ratepayers whose rates continue to increase.

In a further attempt to provide additional justification for their savings estimates, the Joint Applicants note that, if the Commission wishes further assurances with regard to “efficiencies,” the Commission retains the authority to seek updates on progress and performance from GPE. Joint Applicants’ Initial Post-Hearing Brief, February 28, 2017, at p. 94. Again, this results in an unacceptable deflection of the burden of proof that the Joint Applicants are required to meet in this proceeding, to sometime in the future, “post-transaction.”

- vi. *The Joint Applicants’ business plan is to increase rates, after the Transaction closes.*

The savings proffered by the Joint Applicants are insufficient – in fact, of no value – to reduce Westar and KCP&L’s, already very high, rates. Quite to the contrary, the Joint Applicants have clearly stated that both Westar and KCP&L Kansas will continue to increase rates – already promising to seek the next round of rate increases no later than January 1, 2019.

So, the existing, very high, electric rates will continue to increase - - perhaps just not as fast or as high as if the Transaction does not close. As GPE’s Chief Executive Officer stated, “[t]hese savings – unattainable for GPE and Westar on a stand-alone basis – ensure that customers will receive substantial benefits in the form of lower future rate increases than would

be possible in the absence of the Transaction.” Bassham Direct Testimony, p. 11. This statement offers no comfort to Kansas ratepayers already paying among the very highest electric rates in the mid-continent region.

**B. The Joint Applicants have not demonstrated that GPE’s acquisition related debt will not impose additional risks on operating utilities and, ultimately, ratepayers.**

Throughout this proceeding, the Joint Applicants have continued to proclaim that a highly leveraged GPE will not negatively affect the credit ratings of its utility subsidiaries. In fact, GPE will increase holding company debt from a current negligible 2%, to 35% at Transaction closing. While it is true that S&P and Moody’s both have opined that the credit ratings of the utility subsidiaries will remain stable, the Joint Applicants are focusing on only one side of the coin – i.e. the possibility of a credit downgrade – while neglecting to discuss the potential of a credit upgrade, or lack thereof, at the subsidiary utilities.

Indeed, Moody’s notes that, while the credit rating outlooks for the utility subsidiaries remains stable, the acquisition will “constrain upgrades” to the credit rating of the operating utility subsidiaries. Gorman Direct Testimony, p. 10 (citing *Moody’s Investors Service*: “Great Plains Energy Incorporated,” June 1, 2016). As Mr. Gorman states:

    this is a significant finding, because both the credit rating agencies and Joint Applicant witness Bryant recognize that the utilities’ cash flows are expected to improve with a scale down of capital expenditures, which may have caused an increase in the credit rating for the operating utilities absent the Transaction.

Gorman Direct Testimony, p. 10.

Undoubtedly, increasing a utility’s financial risk frequently translates into higher costs of debt and equity. *See* Hevert Rebuttal Testimony, p. 22. Any potential negative impact to the subsidiary utilities’ credit ratings – including restrained improvement – brings with it the

potential for higher cost of capital at the subsidiary utility level and, potentially, higher rates for utility ratepayers.

Despite this, the Joint Applicants continue to claim that, because the utilities will continue to issue their own debt and maintain their own credit ratings, the Commission should not be concerned about a potential GPE credit downgrade. *See* Joint Applicants' Initial Post-Hearing Brief, February 28, 2017, at p. 38. However, the subsidiary utilities are the primary source of cash flow available to GPE to service its debt, and the only way that GPE can pay its debt and dividends to shareholders, is by using cash-flow from its subsidiary utilities. Accordingly, GPE's approach fails to give appropriate weight to the fact that a potential downgrade of GPE could restrain the credit ratings of subsidiary utilities.

In fact, Dr. John Reed – while offering testimony on behalf of the Joint Applicants – discussed this potential link between GPE's credit ratings and the credit ratings of the subsidiary utilities, stating:

each rating agency has their own criteria for what's called credit ratings linkage. Under Standard and Poor's methodology, it is my opinion that they will be linked . . . It doesn't mean that they are the same. It doesn't mean that they are identical and there's only one rating. They each have their own ratings. They can be up or down from each other, but the degree of that being up or down is a product of the fact that they are considered to be part of the same group and that credit rating linkage reduces the independence, if you will, of those two ratings.

Tr. Vol. 3, Reed, pp. 589-90.

While this linkage is not always negative, as Dr. Reed went on to explain, it does open the door to the possibility that the subsidiary utilities' credit ratings could be restrained by the lower credit rating of GPE. This, in turn, presents the potential for a higher cost of capital at the subsidiary level, which, in turn leads to potentially higher electric rates for ratepayers. Despite the Joint Applicants' assurances to the contrary, this potential risk cannot be discounted, and

must be considered when evaluating whether the proposed Transaction promotes the public interest.

In any event, the level of debt of GPE will put tremendous upward pressure on the subsidiary utility rates, for many years into the future. A significant material fact in this proceeding is this: the \$12 billion Transaction can only be paid by cash flow from the regulated utilities. This bodes ill for Kansas ratepayers which are already experiencing some of the highest electric rates in the mid-continent region.

C. The Joint Applicants have failed to show that the Transaction will lower rates.

Since 2005, GPE's rates have increased approximately 50%. Tr. Vol. 1, Bassham, p. 84. In the past 5 years, alone, the residential rates for KCP&L Kansas have increased 26.42%, and the residential rates for Westar have increased 18.294%. Meanwhile, over the same 5 year period, the national average residential rate has decreased 1.65%. KIC Exhibit 8. By contrast, in the most recent decade, the Consumer Price Index ("CPI") increased 1.6% per year, or 16.6% over the past decade – not the 50% increase of KCP&L Kansas rates. In the past five years, the CPI increased 0.6%, per year, or 3% over the past five years – not the 26.42% increase of KCP&L Kansas rates.

Despite the current extremely high rates, and despite the savings that the Joint Applicants claim will be realized as a result of the Transaction, both Westar and KCP&L Kansas, as previously discussed, intend to file rate cases at the KCC no later than January 1, 2019. Westar will seek a rate increase of approximately \$100 million, and KCP&L Kansas will seek a rate increase of approximately \$40 million. Tr. Vol. 4, Ives, p. 1036.

GPE estimates that it will realize savings revenue of \$426.3 million, through 2020, that it will keep almost in its entirety. The claimed "savings offset" for Kansas ratepayers



**in the 2019, \$100 million, Westar rate case will be \$0 in calendar year 2018, which is likely to be the test year for the rate case, and potentially a savings offset of \$20.4 million in calendar year 2019, which would be outside the test year and unlikely to be included. See Staff Exhibit 19.**

**The claimed “savings offset” for Kansas ratepayers in the 2019, \$40 million, KCP&L Kansas rate case will be \$1.3 million in calendar year 2018, which is likely to be the test year for the rate case, and potentially a savings offset of \$7.8 million in calendar year 2019, which would be outside the test year and unlikely to be included. See Staff Exhibit 19.**

**D. The Joint Applicants’ condition that the capital structure of the subsidiary utilities must be used for rate setting purposes, attempts to unlawfully constrain the Commission.**

When determining just, reasonable, and lawful rates in a Kansas rate setting proceeding, the Commission must consider all applicable facts, and make decisions based on those facts, as they exist at the time. Just as the Joint Applicants argue that Staff’s “least cost of capital approach” is incorrect and inappropriate, so too is the Joint Applicants’ argument that the Commission must always use the capital structure of the subsidiary regulated utility.

The Commission would inappropriately limit future KCC Commissioners, if it determines that the Joint Applicants can continue to utilize the capital structure of the existing subsidiary utilities – Westar and KCP&L Kansas – in future rate setting proceedings in Kansas. Not only would such action be “bad policy,” it would be unlawful.

Of course, it is clear why the Joint Applicants request the use of existing utility company subsidiaries, when setting rates in the future for electric service in Kansas. In setting rates, a Kansas electric utility is permitted to recover prudent operating costs, depreciation, taxes, and a

“return on capital invested.” Return is compensation due investors for the capital they invest in the electric utility.

To determine the return – or profit – an overall rate of return on the capital (both debt and equity) invested is determined. This overall rate of return (for example, 9%) is multiplied by the value of assets used in public utility service. An additional amount is then added so that the utility can pay income taxes on this return/profit.

To determine the amount to be permitted as a return on capital, the Commission must decide the “capital structure” of the utility - - what amount of the utility facilities are financed by “debt,” and what amount is financed by “equity.” For “debt” the Commission looks at the dollar amount of the bonds or notes. For “equity” the Commission looks at how much money has been, or will be, contributed by investors. Almost without exception, the cost of “debt” is materially less than the cost of “equity.”

The appropriate “rate of return” is frequently disputed by experts in utility rate cases. Since the percentage rate is to reflect “risks” associated with the investment, setting the percentage rate is the result of judgment and estimation. Often times this judgment and estimation is based on the application of a Discounted Cash Flow (“DCF”) formula, the expected rate of return for a representative group of publicly traded companies.

**In this case, the Joint Applicants argue that the capital structure of the utility subsidiaries should be used – and not the capital structure of the holding company. This approach of the Joint Applicants yields an annual revenue increase, in excess of the revenue amount that would be generated by application of the holding company capital structure, in the amount of \$130 million. See Tr. Vol. 3, Bryant, p. 783. The requested**

**capital structure of GPE, yields electric rates for the subsidiary electric utilities that are \$130 million more per year.**

Joint Applicants argue that it is the norm that public service commissions and the Federal Energy Regulatory Commission (“FERC”) generally use a utility’s actual capital structure in developing the rate of return for retail rates. However, in those cases wherein a subsidiary utility’s capital structure is utilized for rate setting, such decision is always subject to conditions to be examined in such rate setting proceeding.

The Commission (FERC) uses the pipeline’s (utility) own capital structure unless the pipeline’s capital structure (a) is not representative of the pipeline’s risk profile, or (b) where the capital structure would create anomalous results. *Transcontinental Gas Pipeline Corp.*, 90 FERC P 61,279 (2000). By anomalous results, FERC means whether the actual capital structure is atypical when compared with the capital structures approved by FERC for other pipelines, as well as those of the proxy pipelines.

If there is evidence that non-utility activities are being financed by the utility – either now or in the future – the risks are different than for a utility operation. Typically the risks – and return – for a utility operation would be materially lower than for a utility operation. After all, Kansas statutes create a retail supplier monopoly for electric utility service areas in Kansas.

Likewise, if the utility subsidiary contained a different level of equity in its capital structure than those other utilities in the proxy group, a different capital structure may be appropriate.

In any event, these capital structure determinations by the KCC can only be made at the time of any future rate filing - - and since they must be made on the basis of relevant facts at the time of the rate filing, an advance determination of capital structure would be unlawful.

*Enbridge Pipelines (KPC)*, FERC Docket No. CP-96-152-030, Order on Remand (October 8, 2004).

Because the Commission must consider all applicable facts, as they exist at the time, when considering the proper capital structure to use for rate setting purposes, the Commission must reject the Joint Applicants' condition that would result in the subsidiary utility capital structure always being used in rate setting proceedings.

**IV. The Commission should only approve the Joint Application with additional conditions.**

The Joint Applicants contend that the Transaction leaves GPE in a financially strong position. Bassham Direct Testimony, p. 3. Making GPE strong, however, is not the same as providing material public benefits to Kansas ratepayers.

The only measurable benefit that the Joint Applicants offer as evidence to show that the Transaction promotes the public interest, beyond what the subsidiary utilities already offer on a standalone basis, are savings that cannot be verified prior to the close of the Transaction, and which are "estimates" only.

Because the Joint Applicants have failed to show, through evidence included as part of the record, that the Transaction promotes the public interest, the Commission should only approve the Joint Application if it places further, extensive, conditions on the Joint Applicants that guarantee public benefit to Kansas ratepayers.

If the Commission does approve the Joint Application – in order to produce a net customer benefit, and, therefore, promote the public interest – the Commission should order a Moratorium on Rate Changes. Gorman Direct Testimony, p. 7. During such Moratorium, the Joint Applicants should be restricted from filing an increase in any tariff rates or riders charged to retail customers, unless a subsidiary utility can demonstrate a financial emergency that is

caused by inadequate utility rates to fully recover its regulated cost of service at the subsidiary utility. *Id.* Such Moratorium should be in place for, at a minimum, 5 years post-Transaction.

In combination with such a Moratorium, the Commission should order that the Joint Applicants provide other demonstrable, material benefits to ratepayers – \$223 million of Cash Refunds or Bill Credits in the 3.5 years subsequent to closing. Approximately two-thirds of this amount should be paid to Kansas ratepayers.

If the Commission does approve the Joint Application, it must reject the Joint Applicants’ “blanket” condition to always use the subsidiary utility capital structure for rate setting purposes. Instead, the Commission should reserve the right to make appropriate capital structure decisions during any subsequent rate setting proceeding.

Given the uncertainty surrounding the Joint Applicants’ projected savings – the only real benefit to ratepayers that the Joint Applicants offer as a result of the Transaction – the Commission should only approve the Joint Application if it imposes additional conditions on the Joint Applicants, beyond those conditions contained in the Rebuttal Testimony of Mr. Ives. Such conditions should include a Rate Moratorium, Cash Payments to ratepayers and/or Bill Credits to ratepayers.

## **VI. Conclusion**

The Application as proposed by the Joint Applicants, and as conditioned in the Rebuttal testimony of Mr. Darrin Ives, fails to provide any demonstrable, material benefits to Kansas ratepayers, and does not promote the public interest. Accordingly, KIC respectfully requests that the Commission reject the Application.

Alternatively, if the Commission approves the Application, KIC respectfully requests that it do so only if such approval is expressly conditioned upon the Joint Applicants providing a

demonstrable, material, benefit to Kansas ratepayers –in the form of a Rate Moratorium, Cash Payments to ratepayers, and/or Bill Credits to Kansas ratepayers, as outlined above.

Respectfully submitted,

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ATTORNEYS FOR THE KANSAS INDUSTRIAL  
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# **Post Hearing Brief Exhibit A**

**(Evidentiary Hearing Exhibit  
“KIC 5” - 3 pages)**

## Great Plains Energy / Westar Energy

### Industrial Rate Comparison

2016 Firm Power Rates  
for a Customer using  
50,000 kW Demand and 68% LF

Quartile	Line	Utility	State	Cost ¢/kWh
1st	1	Public Service Company of Oklahoma	OK	3.66
	2	MidAmerican Energy	SD	3.74
	3	OG&E Electric Services	OK	3.81
	4	MidAmerican Energy	IA	4.63
	5	Entergy Louisiana, LLC (formerly Entergy Gulf States, Inc.)	LA	5.18
	6	Southwestern Electric Power Company	AR	5.38
	7	OG&E Electric Services	AR	5.66
	8	Black Hills Power, Inc. d/b/a Black Hills Energy	SD	5.67
	9	Southwestern Electric Power Company	LA	5.68
2nd	10	Interstate Power & Light	IA	6.12
	11	Entergy Louisiana, Inc.	LA	6.19
	12	Entergy Arkansas, Inc.	AR	6.25
	13	Otter Tail Power Company	SD	6.30
	14	Superior Water, Light & Power Company	WI	6.33
	15	Ameren Missouri	MO	6.39
	16	<b>KCPL Greater Missouri Operations - MPS</b>	<b>MO</b>	<b>6.53</b>
	17	Northwestern Energy	SD	6.64
	18	Otter Tail Power Company	ND	6.70
	19	Wisconsin Public Service Corporation	WI	6.87
3rd	20	Montana-Dakota Utilities Company	SD	6.99
	21	Entergy New Orleans, Inc.	LA	7.17
	22	Montana-Dakota Utilities Company	ND	7.20
	23	Northern States Power Company	WI	7.24
	24	<b>KCPL Greater Missouri Operations - L&amp;P</b>	<b>MO</b>	<b>7.27</b>
	25	Otter Tail Power Company	MN	7.33
	26	<b>Westar Energy-KGE</b>	<b>KS</b>	<b>7.36</b>
	27	<b>Westar Energy-KPL</b>	<b>KS</b>	<b>7.36</b>
4th	28	Northern States Power Company	ND	7.40
	29	Minnesota Power Company	MN	7.57
	30	CLECO Power LLC	LA	7.65
	31	<b>Kansas City Power &amp; Light Company</b>	<b>MO</b>	<b>7.69</b>
	32	Northern States Power Company	SD	8.28
	33	Northern States Power Company	MN	8.32
	34	Northwestern Wisconsin Electric Company	WI	8.35
	35	<b>Kansas City Power &amp; Light Company</b>	<b>KS</b>	<b>8.37</b>
	36	We Energies (formerly Wisconsin Electric)	WI	9.04
	37	Madison Gas & Electric Company	WI	9.44
	38	U.S. Average		6.47

Source: Prepared by Brubaker & Associates, Inc. using Edison Electric Institute  
Typical Bills and Average Rates Report

## Great Plains Energy / Westar Energy

### Commercial Rate Comparison

2016 Firm Power Rates  
for a Customer using  
500 kW Demand and 41% LF

Quartile	Line	Utility	State	Cost ¢/kWh
1st	1	MidAmerican Energy	SD	4.76
	2	Public Service Company of Oklahoma	OK	5.47
	3	Southwestern Electric Power Company	AR	5.50
	4	MidAmerican Energy	IA	6.40
	5	OG&E Electric Services	OK	6.88
	6	Entergy Louisiana, LLC (formerly Entergy Gulf States, Inc.)	LA	7.32
	7	OG&E Electric Services	AR	7.36
	8	Entergy Louisiana, Inc.	LA	7.79
	9	Montana-Dakota Utilities Company	SD	7.86
2nd	10	Southwestern Electric Power Company	LA	8.15
	11	Otter Tail Power Company	SD	8.28
	12	<b>KCPL Greater Missouri Operations - MPS</b>	<b>MO</b>	<b>8.34</b>
	13	Superior Water, Light & Power Company	WI	8.40
	14	Ameren Missouri	MO	8.48
	15	Entergy Arkansas, Inc.	AR	8.48
	16	Entergy New Orleans, Inc.	LA	8.50
	17	Montana-Dakota Utilities Company	ND	8.60
	18	Minnesota Power Company	MN	8.89
	19	Wisconsin Public Service Corporation	WI	9.04
3rd	20	Otter Tail Power Company	ND	9.06
	21	Northwestern Energy	SD	9.14
	22	Otter Tail Power Company	MN	9.22
	23	Northern States Power Company	ND	9.37
	24	Northwestern Wisconsin Electric Company	WI	9.39
	25	<b>KCPL Greater Missouri Operations - L&amp;P</b>	<b>MO</b>	<b>9.44</b>
	26	WP&L	WI	10.10
	27	<b>Westar Energy-KGE</b>	<b>KS</b>	<b>10.19</b>
4th	28	<b>Westar Energy-KPL</b>	<b>KS</b>	<b>10.19</b>
	29	Northern States Power Company	SD	10.23
	30	Interstate Power & Light	IA	10.24
	31	CLECO Power LLC	LA	10.24
	32	Northern States Power Company	WI	10.54
	33	Northern States Power Company	MN	10.68
	34	<b>Kansas City Power &amp; Light Company</b>	<b>KS</b>	<b>10.75</b>
	35	<b>Kansas City Power &amp; Light Company</b>	<b>MO</b>	<b>10.87</b>
	36	Black Hills Power, Inc. d/b/a Black Hills Energy	SD	11.49
	37	We Energies (formerly Wisconsin Electric)	WI	11.78
	38	Madison Gas & Electric Company	WI	12.20
		39	U.S. Average	

Source: Prepared by Brubaker & Associates, Inc. using Edison Electric Institute  
Typical Bills and Average Rates Report

## Great Plains Energy / Westar Energy

### Residential Rate Comparison

2016 Firm Power Rates  
for a Customer using  
1,000 kWh

Quartile	Line	Utility	State	Cost ¢/kWh
1st	1	OG&E Electric Services	AR	7.99
	2	Entergy Louisiana, LLC (formerly Entergy Gulf States, Inc.)	LA	8.75
	3	Southwestern Electric Power Company	AR	8.77
	4	MidAmerican Energy	SD	9.05
	5	Montana-Dakota Utilities Company	ND	9.11
	6	Public Service Company of Oklahoma	OK	9.27
	7	Southwestern Electric Power Company	LA	9.28
	8	Entergy Louisiana, Inc.	LA	9.34
	9	OG&E Electric Services	OK	9.68
2nd	10	Entergy New Orleans, Inc.	LA	9.71
	11	Otter Tail Power Company	SD	9.72
	12	Northern States Power Company	ND	10.11
	13	Otter Tail Power Company	ND	10.13
	14	Entergy Arkansas, Inc.	AR	10.19
	15	MidAmerican Energy	IA	10.28
	16	Superior Water, Light & Power Company	WI	10.46
	17	Minnesota Power Company	MN	10.47
	18	Otter Tail Power Company	MN	10.58
19	Ameren Missouri	MO	10.88	
3rd	20	Montana-Dakota Utilities Company	SD	11.53
	21	CLECO Power LLC	LA	11.86
	22	<b>KCPL Greater Missouri Operations - L&amp;P</b>	<b>MO</b>	<b>11.94</b>
	23	<b>KCPL Greater Missouri Operations - MPS</b>	<b>MO</b>	<b>11.97</b>
	24	Northwestern Energy	SD	12.00
	25	Black Hills Power, Inc. d/b/a Black Hills Energy	SD	12.00
	26	Wisconsin Public Service Corporation	WI	12.05
	27	Northern States Power Company	SD	12.22
4th	28	<b>Kansas City Power &amp; Light Company</b>	<b>MO</b>	<b>12.57</b>
	29	<b>Westar Energy-KPL</b>	<b>KS</b>	<b>12.57</b>
	30	<b>Westar Energy-KGE</b>	<b>KS</b>	<b>12.57</b>
	31	Northwestern Wisconsin Electric Company	WI	12.74
	32	Northern States Power Company	WI	12.87
	33	<b>Kansas City Power &amp; Light Company</b>	<b>KS</b>	<b>12.88</b>
	34	WP&L	WI	12.89
	35	Northern States Power Company	MN	13.29
	36	Interstate Power & Light	IA	13.40
	37	We Energies (formerly Wisconsin Electric)	WI	14.64
	38	Madison Gas & Electric Company	WI	15.02
	39	U.S. Average		12.65

Source: Prepared by Brubaker & Associates, Inc. using Edison Electric Institute  
Typical Bills and Average Rates Report



**VERIFICATION**

STATE OF KANSAS        )  
                                  )    ss:  
COUNTY OF JOHNSON    )

James P. Zakoura, of lawful age, being first duly sworn, upon oath states:

That he is the attorney for the Kansas Industrial Consumers Group, Inc., that he has read the above and foregoing Kansas Industrial Consumer Group's Post Hearing Brief, knows the contents thereof, and knows that all of the statements made therein are true.

  
\_\_\_\_\_  
James P. Zakoura

SUBSCRIBED AND SWORN to before me this 13th day of March, 2017.

  
\_\_\_\_\_  
Notary Public

My Appointment Expires:



**CERTIFICATE OF SERVICE**

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or regular U.S. mail (unless otherwise noted), the 13th day of March, 2017, to the parties below:

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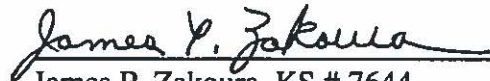
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