

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

In the Matter of the Application of Great)
Plains Energy Incorporated, Kansas City)
Power & Light Company and Westar) Docket No. 18-KCPE-095-MER
Energy, Inc. for Approval of the Merger)
of Westar Energy, Inc. and Great Plains)
Energy Incorporated.)

**CURB'S MOTION TO COMPEL APPLICANTS TO PROVIDE A RESPONSE TO
CURB DATA REQUEST NUMBER 77**

COMES NOW, The Citizens' Utility Ratepayer Board ("CURB") submits its Motion to Compel ("Motion") Great Plains Energy Incorporated ("GPE"), Kansas City Power & Light Company ("KCP&L") and Westar Energy, Inc. (collectively referred to as "Applicants") to provide a response to CURB Data Request Number 77 ("DR 77"). In support of its Motion, CURB states the following:

I. BACKGROUND

1. On August 25, 2017, Applicants filed an Application seeking approval of the merger of Westar and GPE, parent company of KCP&L.¹
2. On August 28, 2017, CURB filed its Petition to Intervene and Motion for Protective Order and Discovery Order, explaining that the proposed merger of Westar and GPE may substantially affect the rates paid and services received by residential and small commercial ratepayers.² Additionally, CURB requested the Commission issue a Protective Order and Discovery Order in this docket.³

¹ Great Plains Energy Incorporated, Kansas City Power & Light Company, and Westar Energy, Inc.'s Joint Application, p. 1(Application) (August 25, 2017).

² CURB's Petition to Intervene and Motion for Protective Order and Discovery Order, ¶5 (August 28, 2017).

³ *Id.* at ¶11.

3. On September 12, 2017, the Commission issued its Order Designating Prehearing Officers; Granting Intervention to CURB; and Protective and Discovery Order.⁴ In its Order the Commission formalized discovery procedures and clarified the obligations of the parties to ensure “a full and efficient investigation of the issues in this docket.”⁵ The Commission made clear that the Discovery Order would govern the conduct of discovery in this docket, until further order of the Commission.⁶

4. On December 4, 2017, CURB sent out a series of data requests, which included DR 77, to be answered by Applicants.⁷ In DR 77, CURB asked Applicants to provide, “a Base Case model assuming a) a \$100 million bill credit paid over two years, and b) a \$150 million bill credit paid over three years.”⁸

5. On December 11, 2017, Applicants notified CURB of their objection to CURB DR 77. KCP&L’s response states:

Applicants object to this data request because it is asking Applicants to perform calculations and create documents that do not presently exist.⁹

6. On December 12, 2017, CURB contacted Applicants in good faith to negotiate and resolve this discovery dispute as required by the Discovery Order.¹⁰ On December 12, 2017, Applicants informed CURB that they would not provide the information requested in CURB DR 77. Instead, Joint Applicants provided CURB with a series of steps, for CURB to perform, that would allegedly answer DR 77. CURB informed Applicants counsel that it would seek a motion to compel.

⁴ Order Designating Prehearing Officers; Granting Intervention to CURB; and Protective and Discovery Order (Order) (September 12, 2017).

⁵ *Id.* at ¶19.

⁶ *See id.*

⁷ *See* CURB DR’s 77, attached as Exhibit 1.

⁸ CURB DR 77.

⁹ *See* Objection to CURB DR 77, attached as Exhibit 2.

¹⁰ Order, ¶22.

II. CURB'S DR 77 IS REASONABLE AND SHOULD BE PROVIDED BY APPLICANTS

7. In this docket, CURB is trying to assess whether the merger between Westar and GPE is in the public interest, according to the Commission's Merger Standards.¹¹ Joint Applicants are not providing a response to DR 77 because they allege that the information does not exist. CURB respectfully requests that the Commission issue an Order requiring Applicants to perform the calculations requested in DR 77 because: A) The information requested in DR 77 is not limited by the Commission's Discovery Order; and B) CURB's request is more efficient and the least burdensome option.

8. The purpose of discovery is to allow parties to determine for themselves whether other parties' allegations are supported by evidence. The Kansas Supreme Court has held that, "[t]he purpose of the pretrial conference and discovery is to eliminate the element of surprise from trials and to simplify the issues and procedure by full disclosure to all parties of the anticipated evidence, and factual and legal issues, and to consider '[s]uch other matters as may aid in the disposition of the action.'"¹² Statutorily, the Commission has wide discretion over discovery.¹³ The Commission's Order clearly establishes discovery procedures and clarifies the discovery obligations of the parties in this docket.¹⁴

9. According to K.A.R. § 82-1-234a, and reiterated in the Order, "Discovery shall be limited to matters that are clearly relevant to the proceeding involved. Discovery may be further limited by the commission or presiding officer based on the discovering party's interest and participation in the proceeding."¹⁵ In addition, the Commission "may limit discovery to protect a

¹¹ Docket No.16-KCPE-593-ACQ, Order on Merger Standards (August 9, 2016).

¹² *Burkhart by Meeks v. Philsco Prod. Co.*, 241 Kan. 562, 570, 738 P.2d 433, 440 (1987).

¹³ K.S.A. § 77-552a; K.A.R. § 82-1-234a.

¹⁴ Order, pp. 8-11.

¹⁵ K.A.R. § 82-1-234a.

party against unreasonable, cumulative, or duplicative discovery requests; to prevent undue delay in the proceeding; to avoid unnecessary burden, expense, or harassment; or to otherwise maintain the orderly and efficient progress of the proceeding.

A. Applicants should provide a response to CURB DR 77 because the information requested from the Applicants is not limited by the Commission's Discovery Order.

10. CURB has specific statutory authority to "represent residential and small commercial ratepayers before the state corporation commission" and to "function as an *official intervenor in cases* filed with the state corporation commission."¹⁶ In this case, CURB needs to be able to assess whether the merger of Westar and GPE is in the public interest. Additionally, CURB needs to assess whether this transaction is in the interests of residential and small commercial ratepayers. To be able to do so CURB needs the Applicants to perform the calculations requested in DR 77. These calculations are integral to a proper evaluation of the proposed merger.

11. The merger standards adopted by the Commission include, but are not limited to the following: (a)(ii) reasonableness of the purchase price, including whether the purchase price was reasonable in light of the savings that can be demonstrated from the merger and whether the purchase price is within a reasonable range; (a)(iii) whether ratepayer benefits from the transaction can be quantified; and (a)(iv) whether there are operational synergies that justify payment of a premium in excess of book value.¹⁷

12. Analyzing whether or not the \$50 million in upfront bill credits that the Applicants are proposing across all rate jurisdictions, or some other proposed bill credits, are reasonable in light of merger standards (a)(ii), (a)(iii), and (a)(iv) is clearly relevant to this proceeding and will

¹⁶ See K.S.A. 66-1223.

¹⁷ Order on Merger Standards, ¶5.

have a direct impact on whether or not this merger meets the public interest.¹⁸

13. Applicants do not object to DR 77's relevancy.¹⁹ Furthermore, Applicants' objection does not state that it will cause an unnecessary burden, expense, provide undue delay, or is limited by any other provision in the Commission's Discovery Order. Applicants simply object because "it is asking Applicants to perform calculations and create documents that do not presently exist."²⁰ Applicants perform calculations and create documents that do not exist, for the purposes of discovery, in nearly every docket they are involved in. To argue that they simply won't run these calculations because they do not "exist" is clearly unreasonable and violates the basic purpose of discovery. The Applicants have the burden of proof in this docket. CURB is simply requesting the Applicants run these calculations to better understand whether or not certain ranges of proposed bill credits are reasonable and the impact those ranges of bill credits may have on the public interest. CURB's request is legitimate, proper, and essential in determining what impacts, if any, bill credits will have in relation to this transaction, and how that will effect residential and small commercial ratepayers moving forward. This analysis is essential in determining whether or not this transaction is in the public interest; therefore Applicants should be required to provide the information requested in DR 77.

B. Applicants should provide a response to CURB DR 77 in that it is more efficient and the least burdensome option.

14. In addition to the arguments raised above, it would be an unnecessary burden and grossly inefficient for CURB to run the calculations it has requested in DR 77. The financial model that the Applicants use is very complicated, which makes it sensitive to error. Requiring CURB's consultants, who do not have as much experience with the model, as the Applicants, would

¹⁸ See Application, pp. 18-20.

¹⁹ Order, ¶23.

²⁰ Objection to CURB DR 77.

unnecessarily require an immense amount of time and administrative resources. The Applicants developed the model, understand it, know the steps, and can perform those steps with greater efficiency than CURB. In addition, having the Applicants perform these calculations would likely reduce the likelihood of error which may mitigate future disputes over the results of those calculations. Disputes over these calculations could unnecessarily hinder the Commission's decision making ability regarding proper bill credits for ratepayers.

15. From CURB's prospective, it is confusing as to why the Applicants are truly refusing to run the calculations that CURB is requesting in DR 77. Applicants objection is that those calculations and documents CURB is requesting "...do not presently exist"; however, Applicants provided CURB, in their supplemented objection, a detailed list of steps to calculate the base models CURB is requesting in DR 77.²¹ If those calculations didn't exist, then one could not logically provide a series of steps, or inputs, to perform those calculations, to reach the answers that CURB is requesting. In this case, a series of inputs were provided to perform those calculations; therefore, those calculations do exist. In other words, the calculations "exist", they just have not been performed up to this point. The Applicants clearly have greater expertise with using the model and can perform what CURB is requesting in DR 77 much more efficiently. In CURB's view, Applicants are just simply attempting to make CURB's discovery very burdensome.

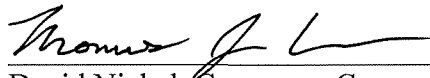
16. Applicants may argue that they are not limiting access to information because they have provided a list of steps to reach the answers CURB is requesting in DR 77. This potential argument would have the Commission disregard the reality that the model is very complicated and would require an unreasonable amount of time for CURB's consultants to come up with the

²¹ Objection to DR 77.

answers requested in DR 77. This limitation is clearly an undue burden.

17. **WHEREFORE**, CURB, respectively requests that the Commission issue an Order compelling Applicants to provide a response to CURB DR 77, which requires the Applicants to perform the calculations and provide the models that CURB has requested.

Respectfully submitted,




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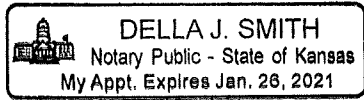
VERIFICATION


STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, Thomas J. Connors, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.


Thomas J. Connors

SUBSCRIBED AND SWORN to before me this 14th day of December, 2017.




Notary Public

My Commission expires: 1/26/2021

EXHIBIT 1

CURB DATA REQUEST 77

REDACTED VERSION

Data Requests to Westar Energy, Inc. and Kansas City Power & Light Company
 From the Citizens' Utility Ratepayer Board
 KCC Docket No. 18-KCPE-095-MER

- CURB-70. **CONFIDENTIAL: REDACTED ****
- CURB-71. Provide the merger closing date assumed by the Applicants in their financial analysis.
- CURB-72. **CONFIDENTIAL: REDACTED ****
- CURB-73. **CONFIDENTIAL: REDACTED ****
- CURB-74. **CONFIDENTIAL: REDACTED ****
- CURB-75. In comparing the Base Case with the Lower case please explain why the additional \$50 million paid in bill credits is not reflected as a difference in Income on Line 27 in 2018.
- CURB-76. **CONFIDENTIAL: REDACTED****
- CURB-77. Please provide a Base Case model assuming a) a \$100 million bill credit paid over two years, and b) a \$150 million bill credit paid over three years.
- CURB-78. Regarding the response to CURB-56, concerning employee severance, please:
- a. Provide the amount and timing of severance expense included in transition costs in the filing for Westar's voluntary employee severance program.
 - b. Provide an updated amount and timing for the revised transition costs for the severance program based on the 130 participants.
 - c. Provide the updated amount of labor savings in each year 2018-2022 associated with the voluntary severance program based on 130 participants.
 - d. Are the labor savings provided in the original response and in part c. above fully loaded savings? If not, please provide the savings based on fully loaded employee costs.
 - e. Are savings for Westar expected to be roughly linear based on the ratio 130/91 participating employees in the original vs revised severance program? If not, explain why not.
- CURB-79. Regarding the response to CURB-55, concerning the voluntary severance program at KCP&L, please:
- a. Provide an updated estimate of severance expenses and savings by year.
 - b. Provide the original and updated number of participants.
 - c. Provide an annual comparison between the updated information provided above and the savings, expenses and number of participants included in the Base Case analysis.

EXHIBIT 2

OBJECTIONS TO DATA REQUESTS

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

In the Matter of the Application of Great Plains)	
Energy Incorporated, Kansas City Power & Light)	
Company and Westar Energy, Inc. for approval of)	Docket No. 18-KCPE-095-MER
the Merger of Westar Energy, Inc. and Great Plains)	
Energy Incorporated.)	

OBJECTIONS TO DATA REQUESTS

Pursuant to the Commission's Discovery Order issued in this docket on September 12, 2017, Great Plains Energy Incorporated, Kansas City Power & Light Company and Westar Energy, Inc. ("Applicants") hereby notify CURB of their objection to the following data request issued by CURB on December 4, 2017:

DR 77. *Applicants object to this data request because it is asking Applicants to perform calculations and create documents that do not presently exist.*

KCPL KS
Case Name: Westar Merger
Case Number: 18-KCPE-095-MER

Response to Smith Della Interrogatories - CURB_20171204
Date of Response: 12/14/2017

Question:CURB-77

Please provide a Base Case model assuming a) a \$100 million bill credit paid over two years, and
b) a \$150 million bill credit paid over three years.

Response:

Applicants object to this data request on the following basis:

Applicants object to this data request because it is asking Applicants to perform calculations and create documents that do not presently exist and are not consistent with its application.

Without waiving that objection, however, Applicants provide the following response.

- a) See attachment QCURB-77_a which is based in the BASE combined financial model adjusted to reflect a \$100 million bill credit paid over two years.
- b) See attachment QCURB-77_b which is based in the BASE combined financial model adjusted to reflect a \$150 million bill credit paid over three years.

The following considerations and observations should be noted:

- 1. The data request does not consider how the incremental bill credits will be funded which may have an additional impact on the financial results. By default, the additional bill credits, when compared to the BASE financial mode, are funded with short term debt which could create other financial concerns.
- 2. Applicants have provided a “working” copy of the combined financial model as part of its application that can be used to self-perform this request.
- 3. Applicants have not considered these scenarios prior to this request and are only submitting these scenarios based on this request.

Information provided by: Michael Meyer

Attachments:
QCURB-77_a.xlsx
QCURB-77_b.xlsx

QCURB-77_Objection.pdf
QCURB-77_Verification.pdf

Verification of Response

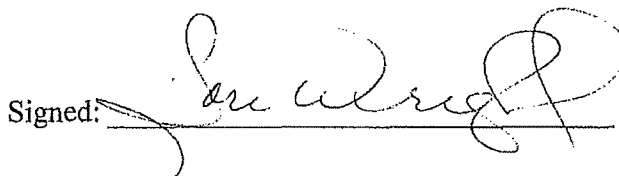
Kansas City Power & Light Company

Docket No. 18-KCPE-095-MER

The response to CURB Data Request# CURB-77, submitted by KCP&L, is covered by this Verification of Response:

I have read the foregoing Information Request(s) and answer(s) thereto and find answer(s) to be true, accurate, full and complete, and contain no material misrepresentations or omissions to the best of my knowledge and belief; and I will disclose to the Commission Staff any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request(s).

Signed: _____



Title: VP Corp PIng, Investor Relations & Treasury

Date: December 05, 2017

CERTIFICATE OF SERVICE

18-KCPE-095-MER

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 14th day of December, 2017, to the following:

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