

**BEFORE THE KANSAS 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) Docket No.: 16-KCPE-593-ACQ
Energy, Inc. for Approval of the Acquisition)
of Westar Energy, Inc. by Great Plains)
Energy Incorporated.)

BRIEF OF THE KANSAS POWER POOL ("KPP"),
A MUNICIPAL ENERGY AGENCY

COMES NOW the Kansas Power Pool ("KPP"), a Municipal Energy Agency which shall be referred to throughout this Brief as "KPP" and respectfully files this Brief in support of KPP's positions advocated before the Commission during this hearing.

KPP submits that its position is quite clear. KPP filed Direct Pre-filed Testimony by its witness, Larry W. Holloway, which remained unrefuted throughout the record in this proceeding.

The Commission should, therefore, adopt the positions advocated by Mr. Holloway for KPP and direct that they be incorporated into any final Order in this proceeding.

In support of its position, KPP allege and state as follows:

I. STATEMENT OF FACTS

1. On June 28, 2016, Kansas City Power & Light Company, ("KCPL") and ("KCP&L") and Westar Energy, Inc. and Kansas Gas and Electric Company ("Westar") filed a Joint Application seeking approval for Great Plains Energy's Acquisition of Westar. Great Plains Energy is the parent company of Kansas City Power & Light.

2. On July 14, 2016, the Commission issued an Order Designating Pre-Hearing Officer, Granting Intervention to CURB; a Protective and Discovery Order was also filed in the docket.

3. On July 28, 2016, Great Plains, Inc., KCP&L, Westar, Commission Staff, and CURB filed a Joint Motion for an Order Establishing a Procedural Schedule for the Commission's review and approval.

4. On the 16th day of December, 2016, KPP filed the Testimony and Exhibits of its witness, Larry W. Holloway.

5. Finding that a Pre-Hearing Conference was necessary to address any pending matters and to establish procedures to use during the Evidentiary Hearing, and to consider any other Pre-Hearing issues that would promote the orderly and prompt conduct of this proceeding, the Commission scheduled a Pre-Hearing Conference for January 18, 2017, beginning at 9:00 a.m. in the Commission's Third Floor Hearing Room, 1500 S.W. Arrowhead Road, Topeka, Kansas. The Pre-Hearing Officers presided. Any party who fails to attend or participate in the Pre-Hearing Conference or in any other stage of this proceeding may be held in default under the Kansas Administrative Procedure Act (KAPA).

6. On the 11th day of January, 2017, a Settlement Conference was held at the Kansas Corporation Commission Offices with the results being that no settlement was effectuated.

7. On January 18, 2017, at 9:00 o'clock a.m. a Pre-Hearing Conference was held at the Commission's Offices which resulted in a Pre-Hearing Conference Order.

8. The matter was called for hearing on January 30, 2017, at 9:00 o'clock a.m. and the hearings ran through February 7, 2017.

II. POSITION OF THE KANSAS POWER POOL

9. The Kansas Power Pool filed Pre-filed Direct Testimony with Exhibits consisting of 24 pages.

10. In volume 1, page 13, lines 19-25 and page 14, lines 1-5 of the Transcript, David Nickel, on behalf of the Citizens' Utility Ratepayer Board, as a preliminary matter, requested the Commission refer into the record several witnesses for whom all parties had waived cross-examination and did not have any corrections to make in their Pre-filed Testimony. Mr. Nickel stated "In the interest of administrative efficiency there appears to be reason not to require these witnesses to be sworn in to spread on the record their verified testimony. Therefore, on the behalf of the various parties, I would move the Commission to waive in the direct testimony and rebuttal testimony of the following witnesses:

... Larry W. Holloway..." Mr. Holloway was included in this group of witnesses.

The Commission file in volume 1, page 14, lines 15-19 stated "Seeing no objection, the testimony of those witnesses will be admitted, and I understand we have another preliminary matter which is the PFR that was filed Friday afternoon".

11. On page 73, counsel for KPP, Curtis M. Irby, made his opening statement in the proceedings. Mr. Irby stated "KPP has filed the testimony from Larry Holloway identifying 12 particular areas that KPP is concerned about and that we ask be considered if the Commission issues an order approving this transaction": (See volume 1, page 74, lines 17-21, Transcript of Opening Statement). Mr. Irby goes on to state in his argument "Likewise, they (referring to the areas of Mr. Holloway's Testimony) were in the contested issues that were filed on January 11, 2017...".

12. Finally, Mr. Irby pointed out at volume 1, page 75, lines 2-7, "There's been no rebuttal testimony filed that opposes the points that we raise in our testimony and our witness is not to be cross-examined, so we believe the record is clear that those points should be incorporated by the Commission in any order it issues in this case".

III. ARGUMENT AND REQUEST FOR RELIEF

13. Since the record in this proceeding reveals no party presented rebuttal testimony or cross-examines to KPP's witness or took issue with the request for relief requested by KPP's witness, the same should be adopted by the Commission.

14. This transcript of testimony reflects at page 6 of 27, lines 17-26, that Article VII.1 of the 2013 KPP and Westar Energy Participation Power Agreement for 59 MW had been approved under FERC Docket No. ER-13-994

"Neither party shall assign, pledge or otherwise transfer this Agreement or any right or obligation under this Agreement without first obtaining the other Party's written consent; provided, however, that Westar Energy may, without Customer's prior written consent (and without relieving itself from liability hereunder) (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements; or (ii) transfer or assign this Agreement to any person or entity succeeding by merger or by acquisition to all or substantially all of the assets of Westar Energy, where such person's or entity's creditworthiness is equal to or higher than that of Westar Energy; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof."

15. Additionally, Mr. Holloway believes that GPE's creditworthiness is not equal or higher than that of Westar Energy (See Page 7, lines 2-7, Mr. Holloway's Testimony). Finally, Mr. Holloway concludes on pages 6-8 of his Pre-filed Testimony, that GPE appears to be less creditworthy than Westar, that the combined company capital structure will dramatically increase the debt/equity ratio. It appears that "acquirer" will certainly have far less "creditworthiness" than Westar. (See page 7, lines 9-11, Mr. Holloway's Testimony).

¹ See Participation Power Contract filed with the FERC on February 27, 2013, and FERC Docket No. ER13-994.

16. Finally, Mr. Holloway concludes that Westar has not met its obligations under the terms of the Purchase Power Agreement by obtaining KPP's consent to the acquisition. (See page 7, lines 13, 14, Mr. Holloway's Testimony).

17. Finally, Mr. Holloway states that he believes that "Midwest, Sunflower Electric Power Corporation ("Sunflower") and MKEC have similar arrangements for power from Westar". (See page 8, lines 5 and 6, Mr. Holloway's Testimony).

**IV. MR. HOLLOWAY'S TESTIMONY REGARDING WESTAR'S
TRANSMISSION SERVICE UNDER THE SPP OATT – WESTAR SHOULD
CONTINUE ITS 34.5 kV CLASSIFICATION AS A TRANSMISSION FACILITY**

18. Mr. Holloway points out on page 10, lines 5 and 6 of his Testimony that Westar considers 34.5 kV facilities to be transmission facilities and KCPL considers these facilities as distribution facilities. Mr. Holloway recommends that the Commission should adopt a finding that the approval of the acquisition is conditioned upon Westar's current classification of the 34.5 kV facilities as transmission facilities under the SPP OATT being continued. Specifically, under Attachment AI of the SPP OATT. (See page 10, lines 10-13, Mr. Holloway's Testimony).

**V. CONTINUATION OF MEETINGS WITH
TRANSMISSION-DEPENDENT UTILITIES**

19. KPP further requests in their testimony that the joint applicants be required to meet with the transmission dependent utilities on Westar's system, specifically, KPP and other municipalities, utilities, and cooperatives and develop a 10-year plan for improvement on Westar's 34.5 and 69 kV system. While this does nothing to provide those benefits, it would help to ensure the acquisition does no harm to Kansas communities. (See page 11, lines 9-13, Mr. Holloway's Testimony).

VI. REMOVAL OF IMPORT LIMITS

20. KPP seeks through its Testimony an Order from the Commission that assures KPP that this acquisition, at the very least, does not harm KPP member cities and KPP's effort to study and remove import limits on its member cities. GPE should be required to continue Westar's efforts to remove the import limits from KPP's NITSA. (See page 14, lines 1-4, Mr. Holloway's Testimony).

21. KPP asserts the above as a transmission owner, as a result of the City of Winfield having approximately 26 miles of 69 kV loop transmission which KPP administers, that KPP is a participant on Westar's transmission system in South Central Kansas. In 2011, the City of Winfield assigned functional control of this transmission to KPP and KPP subsequently assigned control to SPP to place it under the SPP OATT. (Page 14, lines 7-11, Mr. Holloway Testimony).

VII. KPP AND KANSAS MUNICIPALS TRANSMISSION OWNERSHIP

22. Both KCPL and Westar and many other parties signed a Stipulation and Agreement filed with the Commission on July 14, 2006, in KCC Docket No. 06-SPPE-202-COC. One of the terms that all parties agreed to, including KCPL and Westar, was paragraph 15 which included the following language:

"... The parties additionally recognize the right of Kansas municipals and/or Kansas municipal energy agencies to become transmission owners. ..."

(See page 16, lines 1-4, Mr. Holloway's Testimony).

However, since signing that Agreement KCPL has since attempted to change or revise the SPP OATT in such a way as to circumvent this commitment. Since

that time, KCPL has attempted to change the tariff which would have the effect of potentially removing this language. (See page 16, lines 10-13, Mr. Holloway's Testimony). KPP requests that the Commission's Order in this docket reaffirm the Stipulation Agreement in the 06-202 Stipulation and Agreement regarding Kansas Municipal's rights to co-ownership in projects within the service territory Westar Energy, Inc. (See page 15 of the 06-202 Stipulation and Agreement).

23. KPP seeks to assure that this acquisition will not harm Kansas Municipal Electric Utility communities and, therefore, the commission should require GPE and its affiliates to meet their 06-202 commitments. (See page 17, lines 23-25, Mr. Holloway's Testimony).

VIII. WHOLESALE DISTRIBUTION SERVICE

24. KPP asserts that wholesale distribution service for Westar's transmission customers following the acquisition by GPE should have lower or equal carrying charges in the future and that the same method should be used to allocate wholesale distribution costs. (See page 19, lines 7-16, Mr. Holloway's Testimony).

25. KPP's member cities in which Westar owns the distribution substations that serve KPP members recommend that the Commission impose as a condition of this merger that require Westar (or GPE) to continue to work with municipal electric utilities who desire to purchase local Westar distribution substation serving those communities. (See page 20, lines 11-16, Mr. Holloway's Testimony).

**IX. TRANSFER OF RETAIL ELECTRIC SERVICE AND ALLOWING
MUNICIPAL ELECTRIC UTILITIES TO PURCHASE LOCAL WESTAR
DISTRIBUTION SUBSTATIONS**

26. Regarding current issues of KPP members' acquisition of distribution facilities under RESA, KPP recommends the retail service issues related to Mulvane and Hillsboro can be resolved through the normal process with ongoing discussions with Westar. KPP and its members are concerned that after Westar is acquired by GPE there will be a change in this relationship. KPP therefore requests that the Commission ensure that this acquisition create no harm for local communities by requiring that the Westar (or GPE) continue to work with Kansas communities involved in the transfer of retail service or franchise agreements. (See page 21, line 19 through page 22, line 2, Mr. Holloway's Testimony).

X. WESTAR METER AGENT AGREEMENT SERVICES

27. KPP simply requests that the Commission affirm its previous policy and the agreement of Westar that, "As a result, the wholesale load pays for its metering and Westar retail customers do not have to pay for additional distribution substation metering, but Westar does not charge for MAA services for its wholesale customers. To ensure that Kansas Communities are not harmed, KPP requests that the Commission require Westar (or GPE) to continue Westar's current MAA service without charge." (See page 23, line 16 through page 23, line 10, Mr. Holloway's Testimony).

XI. ANNUAL PLANNING MEETINGS

28. KPP requested after acquisition approval that the Commission require that Westar (or GPE) continue Westar's transmission annual joint planning meetings. (See page 23, line 13 through page 24, line 2, Mr. Holloway's Testimony).

XII. ENERGY MANAGEMENT SERVICES, DOGWOOD

29. Westar provides energy management services for Dogwood under the Energy Management Agreement ("EMA"). These services include daily day-ahead market offers for the Dogwood facility in the SPP IM, real time offer updates in the SPP IM, monthly settlements and billings to all Dogwood participants, fuel nominations and other short term, real Dogwood market participation obligations and needs. (See page 24, lines 4-10, Mr. Holloway's Testimony).

30. In 2015, Dogwood and Westar extended the EMA until December 31, 2018. That extension included an additional further provision regarding "Change of Control". The definition of this term is:

"Change of Control" means a transaction involving the sale, merger, assignment or other direct or other transfer of direct or indirect ownership interests in Energy Manager".

(See page 24, lines 15 and 16, Mr. Holloway's Testimony).

What is KPP requesting? KPP would like assurances from GMO that Westar's capability to perform its duties as Energy Manager under the EMA will not be compromised by the acquisition. KPP believes that the Commission must make this determination in order to conclude that this acquisition will create no harm to KPP and the communities it serves. To this end, KPP recommends the Commission require

Westar (or GPE) to maintain its ability to provide services under the Dogwood EMA. (See page 25, lines 12-14, Mr. Holloway's Testimony).

**XIII. WESTAR'S FACILITY AT 777 WEST CENTRAL,
WICHITA, KANSAS SHOULD NOT BE ABANDONED**

31. Mr. Holloway describes how KPP currently delivers meter data to Westar. KPP installed a wireless, private data network that has reduced its costs to about \$20.00 a month for each location. KPP imports all of the data to its SCADA system. KPP's SCADA system is in a secure data collocation facility within a few blocks of Westar's data facility at 777 West Central Avenue in Wichita, Kansas. KPP then pays for the fiber optic links between the facilities. If, for some reason, the Westar 777 West Central location is changed KPP believes it will have a significant financial impact on KPP. KPP requests that neither Westar (nor GPE) will abandon Westar's 777 West Central Avenue, Wichita, Kansas data facility. (See page 25, lines 18-22 and page 26, lines 1-10, Mr. Holloway's Testimony).

32. To summarize, the Commission can find a distinct and clear summary of recommendations which has been provided in Appendix A for your easy reference. This is, in essence, a testimony summary of Larry Holloway's recommendations to the Commission which were prepared and filed in his Testimony as found at page 26, lines 13-20 and page 27, lines 1-21 respectively.

33. KPP respectfully requests that the Commission consider the Testimony of Mr. Holloway admitted in the record without objection, and for which no rebuttal testimony was filed, and which in fact provides a clear path for KPP's continuing operations with no harm or detriment under either Westar or GPE.

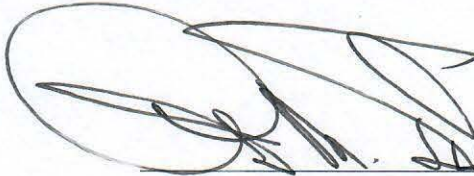
Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Curtis M. Irby, hereby certify that on the 13th day of March, 2017, a true and correct copy of the above and foregoing Brief of the Kansas Power Pool ("KPP"), a Municipal Energy Agency, was electronically served upon all parties on the Commission's electronic service list, a copy of which is attached hereto.



Curtis M. Irby, #07274
Counsel for Kansas Power Pool

APPENDIX "A"

KPP's summarized conditions to approval of the GPE acquisition points 1-12 of Mr. Holloway's Testimony filed in this docket:

1. Westar meets its obligations under the creditworthiness provisions of the KPP/Westar Jeffrey Energy Center participation agreement;
2. Westar continue classification of its 34.5 kV facilities as transmission facilities under the SPP OATT;
3. Require Joint Applicants to meet with transmission dependent utilities on Westar's system, specifically municipal electric utilities and cooperatives, and develop a 10-year plan for improvements on Westar's 34.5 and 69 kV system;
4. GPE (or Westar) to continue Westar's efforts to remove the import limits from KPP's NITSA;
5. Require GPE and its affiliates to meet their 06-202 commitments regarding Kansas municipal's ownership of transmission;
6. Wholesale Distribution Service for Westar transmission customers following the Acquisition will have lower or equal carrying charges in the future and that the same method should be used to allocate wholesale distribution costs;
7. Require the acquired Westar to continue to work with municipal electric utilities that desire to purchase the local Westar distribution substations serving those communities;
8. Require that Westar (or GPE) continue to work with Kansas communities involved in the transfer of retail service or franchise agreements;
9. Require Westar (or GPE) to continue Westar's current MAA service without charge;
10. Require Westar (or GPE) to continue Westar transmission annual joint planning meetings;
11. Require Westar (or GPE) to maintain its ability to provide services under the Dogwood EMA; and
12. Westar (or GPE) should not abandon Westar's 777 West Central, Wichita, Kansas data facility.

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Last modified Mar 13, 2017

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