

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Capital Plan Compliance       )  
Docket for Kansas City Power & Light       )  
Company and Westar Energy, Inc. Pursuant to       ) Docket No. 19-KCPE-096-CPL  
the Commission's Order in Docket No. 18-       )  
KCPE-095-MER.       )

**COMMENTS OF KANSAS INDUSTRIAL CONSUMERS GROUP IN RESPONSE TO  
COMMISSION WORK STUDY SESSION**

The Kansas Industrial Consumers Group, Inc. ("KIC"), respectfully files the below *Comments* in response to the Work Study Session of the State Corporation Commission of the state of Kansas ("Commission" or "KCC") regarding the Compliance Filing of the Staff of the State Corporation Commission ("Staff"), Citizens' Utility Ratepayer Board ("CURB"), Kansas City Power & Light Company ("KCP&L"), Westar Energy, Inc. and Kansas Gas and Electric Company ("Westar")(collectively, the "Joint Parties"), and pursuant to paragraph 8 of the Commission's Scheduling Order dated June 4, 2019. In support of its Comments, KIC states to the Commission as follows:

**I. Background**

1. On August 25, 2017, Westar Energy, Inc., and Kansas Gas & Electric Company ("Westar"), Great Plains Energy Incorporated ("GPE"), and Kansas City Power & Light Company ("KCP&L") (collectively referred to herein as Applicants) filed an Application with the Commission in Docket No. 18-KCPE-095-MER ("merger docket") seeking approval of a merger of Westar and GPE.

2. On September 19, 2017, the Kansas Industrial Consumers Group, Inc. ("KIC"), was granted intervention in the merger docket.<sup>1</sup> KIC was granted intervention without limitation and was an active participant throughout the proceeding.

3. On May 24, 2018, the Commission issued an Order Approving Merger, in which it approved a Non-Unanimous Settlement Agreement ("Settlement"). In the Settlement, the signatories agreed to institute a capital plan reporting process ("CPRP") to "provide Staff and the Commission with the information and data necessary to understand forecasted capital expenditures over a five-year period."<sup>2</sup> The parties further agreed to create a "Capital Plan Reporting compliance docket" to determine the appropriate information and data to report and the format of such reporting."<sup>3</sup>

4. In its Order Approving Merger, the Commission further required the signatories to develop and submit an Integrated Resource Plan ("IRP") reporting framework and submit such process for approval.<sup>4</sup> The Commission Ordered that only the Joint Parties would be allowed to develop the initial proposal. However, the Commission stated after the filing had been "developed and proposed," other parties to the merger docket would be allowed to comment on the proposal.<sup>5</sup>

5. On March 1, 2019, the Joint Parties filed their Compliance Filing, which included the CPRP and IRP Framework. Staff served the Compliance Filing on all parties to the merger docket on March 27, 2019.

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<sup>1</sup> Order Granting Intervention to Kansas Industrial Consumers Group, Incorporated, September 19, 2017. The following Westar customers participated in the merger docket through KIC: Occidental Chemical Corporation; CCPS Transportation, LLC; Spirit AeroSystems, Inc.; The Goodyear Tire & Rubber Company; Coffeyville Resources Refining & Marketing, LLC; Cargill Incorporated; and Learjet Inc.

<sup>2</sup> Docket No. 18-KCPE-095-MER, Order Approving Merger, May 24, 2018, Attachment A, ¶ 50.iv. (Order Approving Merger, Attachment A, ¶ 50.iv.)

<sup>3</sup> Order Approving Merger, Attachment A, ¶ 50.iv.)

<sup>4</sup> Order Approving Merger, ¶¶ 67, 94.

<sup>5</sup> Docket No. 18-KCPE-095-MER, Order Denying Petitions for Reconsideration from the Sierra Club and Kansas Industrial Consumers, June 28, 2018.

6. On April 8, 2019, KIC filed brief comments regarding the CPRP and IRP Framework ("Initial Comments"). In its Initial Comments, KIC noted its general support for the proposals.<sup>6</sup> In addition, KIC suggested the public interest objective of achieving and sustaining competitive retail electric rates should be expressly identified as a goal in the CPRP and IRP Framework documents. Finally, KIC noted certain language in the document should be clarified or removed to confirm the Joint Parties are not seeking to modify the traditional regulatory compact or Kansas ratemaking principles.

7. On June 4, 2019, the Commission issued an Order scheduling a "work study" session, which was held June 18, 2019. In its Order, the Commission authorized KIC and the Sierra Club to submit additional comments in response to the work study by July 18, 2019.

## **II. KIC Comments in Response to "Work Study" Session on Capital Plan Reporting Process ("CPRP") and IRP Framework.**

8. KIC attended the Commission's work study session and observed the comments of Commissioners, Staff, and Evergy, Inc. ("Evergy").<sup>7</sup> KIC continues to support its Initial Comments and requests the Commission carefully consider these comments in deciding the final form of the CPRP and IRP Framework. However, KIC will briefly address certain discussion from the work study session.

### **A. The public interest objective of achieving and sustaining competitive retail electric rates, should be expressly identified as a goal in the CPRP and IRP Framework.**

9. As detailed in KIC's Initial Comments, the Commission should expressly include the goal of achieving and sustaining regionally-competitive retail rates in both the CPRP and IRP

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<sup>6</sup> Comments of Kansas Industrial Consumers Group on Capital Plan Reporting Process and Integrated Resource Plan Framework, April 8, 2019, ¶¶ 6, 12. (KIC Comments, ¶¶ 6, 12.)

<sup>7</sup> Evergy, Inc. is the parent company of Westar and KCP&L, and its representative made comments on behalf of both utilities during the Commission's work study session.

Frameworks. Different parties may place varying emphasis on this goal, but it is unquestionably an important public interest objective to consider in long-term utility planning decisions.

10. During the work study session, Staff and Evergy both briefly addressed KIC's proposal. Both parties were concerned this goal may reduce the flexibility of parties to look at alternative planning scenarios and the ability of the utility to select a "robust" plan.

11. To clarify KIC's proposal, it was not KIC's intent for the goal of achieving competitive retail rates to be a rigid standard controlling the planning process. KIC is proposing this goal be *included* as one factor of the framework – a broad policy objective to be considered among other factors. As noted in KIC's initial comments, the goal of achieving and maintaining regionally-competitive rates must be considered "*along with* reliable service."<sup>8</sup>

12. In addition, Evergy expressed a concern that it does not have "visibility" into other utilities' rates (or the trajectories of other utilities rates). Therefore, Westar and KCP&L won't know what rates they should be building toward to achieve and sustain competitive rates.

13. From KIC's perspective, this appears to be a relatively immaterial concern. KIC's proposal was not for the Evergy utilities to exactly match the pricing of other regional suppliers. The goal is only for the Evergy companies to generally move their pricing toward regionally competitive levels.

14. There is significant data available to Evergy and other parties to inform these rate level comparisons. Reliable and independent data on the current retail rates of electric utilities, including average rates across different states, is available from sources such as the United States Energy Information Administration, Edison Electric Institute, and Federal Energy Regulatory Commission, among other sources.

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<sup>8</sup> KIC Comments, ¶ 9. Emphasis added.

15. One of the Commission's primary functions is to set just and reasonable retail utility rates. And the Commission is the sole entity is authorized to carry out this function. Because retail utility prices have a very significant impact on consumers and the Kansas economy, the achievement of regionally-competitive pricing is unquestionably an important public interest objective to consider in long-term utility planning and spending decisions. KIC respectfully requests this goal be expressly recognized in the final CPRP and IRP Framework.

**B. Certain language in the IRP Framework should be clarified or eliminated to confirm the Joint Parties are not seeking to modify the traditional regulatory compact or Kansas ratemaking principles.**

16. As noted in its Initial Comments, KIC is generally supportive of the Joint Parties' filing, with the exception of one specific section. The following language appears at page 2 of the filing:

When Staff and CURB agree that the utility's initial decision for a major capital investment was prudent, but current events require the utility to adjust or abandon planned or in-progress investments as a result of unexpected developments, *Staff and CURB will not seek to financially penalize the utility and will not apply hindsight judgement in evaluating the utility's initial decisions.* In such instances, Staff and CURB will consider recovery of investments that should be adjusted or abandoned in order to pursue an alternative investment or option that benefits customers in the long-term.<sup>9</sup>

17. The meaning of this section was the subject of extensive discussion during the Commission's work study session. As predicted in KIC's Initial Comments, it became clear during the session that the meaning of this section is ambiguous, and it is unclear how such language may affect current ratemaking practices.

18. To address this discussion, KIC requests the Commission carefully consider KIC's Initial Comments, which detail the problematic legal aspects of this section of the filing. KIC does not wish to belabor or significantly repeat its Initial Comments, which remain applicable and

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<sup>9</sup> Compliance Filing Capital Plan Reporting & IRP Process Framework, p. 2. (Emphasis added.)

worthy of adoption. However, in response to Commissioner discussion and questions, KIC believes it is extremely important to emphasize the CPRP and IRP processes are not intended to confer statutory "predetermination" of ratemaking principles or to determine the "prudence" of utility investments. It is KIC's understanding the process is only intended to address whether Evergy's filings demonstrate compliance with the requirements of the IRP and CPRP frameworks.<sup>10</sup>

19. As recommended in KIC's Initial Comments, the Commission should simply remove the cited paragraph. Alternatively, if the cited language is not removed, the Commission should include the following clarifying language in the CPRP and IRP Framework: "No investment shall be automatically insulated from investment risk, including the risk of non-recovery in rates, solely as a result of its inclusion in the Capital Plan Reporting or IRP Process. No language in this framework shall be construed to modify the traditional regulatory compact or established Kansas ratemaking principles."

**C. A Commission order "approving" the IRP and CPRP filings should clearly state the order is not predetermining any ratemaking principles or determining the prudence of utility investments.**

20. During the work study session, there was also extensive discussion from Commissioners regarding the legal effect of any order "approving" Evergy's CPRP and IRP filings. As noted above, the stated purpose of a Commission order is only to certify the utility's procedural compliance with the reporting frameworks.<sup>11</sup> Therefore, similar to the suggested language above, KIC recommends such orders clearly state they are not intended to predetermine

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<sup>10</sup> See, Compliance Filing Capital Plan Reporting & IRP Process Framework, pp. 4, 6.

<sup>11</sup> However, KIC believes the Commission does have authority, following review, to reject or otherwise require changes to the utility's proposed course of action. This could be based on stakeholder comments or the Commission's own investigation or policy positions. Such potential action is consistent with the Commission's broad statutory authority to regulate and supervise Kansas public utilities.

ratemaking principles or to determine the prudence of utility investments. The Commission may also wish to include the same language suggested above: "No investment shall be automatically insulated from investment risk, including the risk of non-recovery in rates, solely as a result of its inclusion in the Capital Plan Reporting or IRP Process. No language in this Order shall be construed to modify the traditional regulatory compact or established Kansas ratemaking principles."

21. KIC thanks the Commission for the opportunity to submit comments on the CPRP and IRP Framework. KIC strongly supports the implementation of these processes, especially with the important improvements suggested above. With these additions, the CPRP and IRP Processes can improve the transparency of utility planning decisions. And, more importantly, expressly including a goal of achieving regionally-competitive rates will allow the Commission to more proactively address a major policy objective to benefit the public interest of the state of Kansas.

WHEREFORE, KIC respectfully requests the Commission accept and consider its Initial and Responsive Comments and modify the CPRP and IRP Framework consistent with the comments above.

Respectfully submitted,

/s/ **Andrew J. French**

James P. Zakoura, KS Bar #07644  
Andrew J. French, KS Bar # 24680  
Smithyman & Zakoura, Chartered  
750 Commerce Plaza II  
7400 West 110th Street  
Overland Park, KS 66210  
Phone: (913) 661-9800  
Fax: (913) 661-9863  
Email: jim@smizak-law.com  
andrew@smizak-law.com

**Attorneys for Kansas Industrial Consumers  
Group, Inc.**



**VERIFICATION**

STATE OF KANSAS        )  
                                  )   ss:  
COUNTY OF JOHNSON    )

Andrew J. French, being duly sworn upon his oath, deposes and states that he is the Attorney for the Kansas Industrial Consumers Group, Inc., that he has read and is familiar with the foregoing *Comments of Kansas Industrial Consumers Group in Response to Commission Work Study Session*, and the statements therein are true to the best of his knowledge, information, and belief.



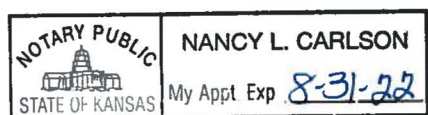
\_\_\_\_\_  
Andrew J. French

SUBSCRIBED AND SWORN to before me this 18<sup>th</sup> day of July, 2019.



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Nancy L. Carlson  
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 18<sup>th</sup> day of July, 2019, to the parties below:

BRIAN G. FEDOTIN KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604 <a href="mailto:b.fedotin@kcc.ks.gov">b.fedotin@kcc.ks.gov</a>	JOSEPH R. ASTRAB CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604 <a href="mailto:j.astrab@curb.kansas.gov">j.astrab@curb.kansas.gov</a>
TODD E. LOVE CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 <a href="mailto:t.love@curb.kansas.gov">t.love@curb.kansas.gov</a>	DAVID W. NICKEL CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 <a href="mailto:d.nickel@curb.kansas.gov">d.nickel@curb.kansas.gov</a>
DELLA SMITH CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 <a href="mailto:d.smith@curb.kansas.gov">d.smith@curb.kansas.gov</a>	SHONDA RABB CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 <a href="mailto:s.rabb@curb.kansas.gov">s.rabb@curb.kansas.gov</a>
ROBERT J. HACK KANSAS CITY POWER & LIGHT COMPANY ONE KANSAS CITY PL 1200 MAIN ST 31ST FLOOR PO BOX 418679 KANSAS CITY, MO 64141-9679 <a href="mailto:rob.hack@kcpl.com">rob.hack@kcpl.com</a>	MICHAEL NEELEY KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 <a href="mailto:m.neeley@kcc.ks.gov">m.neeley@kcc.ks.gov</a>
ROGER W. STEINER KANSAS CITY POWER & LIGHT COMPANY ONE KANSAS CITY PL 1200 MAIN ST 31ST FLOOR PO BOX 418679 KANSAS CITY, MO 64141-9679 <a href="mailto:roger.steiner@kcpl.com">roger.steiner@kcpl.com</a>	CATHRYN J. DINGES WESTAR ENERGY, INC. 818 S KANSAS AVE PO BOX 889 TOPEKA, KS 66601-0889 <a href="mailto:cathy.dinges@westarenergy.com">cathy.dinges@westarenergy.com</a>
SUSAN B. CUNNINGHAM KANSAS ELECTRIC POWER CO-OP, INC. 600 SW CORPORATE VIEW TOPEKA, KS 66615 <a href="mailto:scunningham@kepc.org">scunningham@kepc.org</a>	MARK DOLJAC KANSAS ELECTRIC POWER CO-OP, INC. 600 SW CORPORATE VIEW PO BOX 4877 TOPEKA, KS 66604-0877 <a href="mailto:mdoljac@kepc.org">mdoljac@kepc.org</a>

KIMBERLY BRICKELL FRANK MCCARTER ENGLISH, LLP 1301 K Street, NW Suite 1000 West WASHINGTON, DC 20005 <a href="mailto:kfrank@mccarter.com">kfrank@mccarter.com</a>	ROBERT V. EYE KAUFFMAN & EYE 4840 Bob Billings Pkwy, Ste. 1010 Lawrence, KS 66049-3862 <a href="mailto:BOB@KAUFFMANEYE.COM">BOB@KAUFFMANEYE.COM</a>

/s/ **Andrew J. French**  
James P. Zakoura  
Andrew J. French  
SMITHYMAN & ZAKOURA, CHARTERED