

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

MAY 08 2008

**In the Matter of the Application of )  
ITC Great Plains, LLC to Amend its )  
Certificate of Public Convenience and Authority )  
To Transact the Business of an Electric Public )  
Utility in the State of Kansas. )**

*Susan K. Duffu* Docket  
Record

**Docket No.: 08-ITCE-936-COC**

**RESPONSE OF ITC GREAT PLAINS, LLC TO MOTION OF  
WESTAR ENERGY, INC. AND KANSAS GAS AND ELECTRIC  
COMPANY TO INTERVENE, TO CONSOLIDATE AND TO DISMISS**

COMES NOW ITC Great Plains, LLC (ITC Great Plains) and for its response to the motion of Westar Energy, Inc. and Kansas Gas and Electric Company (collectively, Westar) to intervene, consolidate and dismiss states as follows:

**I. Introduction.**

1. In a clear attempt to discourage the construction of needed transmission in Kansas by an independent transmission company, Westar seeks to consolidate and dismiss the Applications of ITC Great Plains in this and two other cases that are intended to facilitate the Kansas portion of the long-awaited Southwest Power Pool's (SPP) X-Plan. The Kansas portion of the X-Plan, known as the V-Plan, is comprised of three segments and ultimately runs from the Spearville substation near Dodge City to Comanche County and from Comanche County to Wichita.

2. The three Applications of ITC Great Plains filed on April 11, 2008 – Docket Nos. 08- ITCE-936-COC, 08-ITCE-937-COC and 08-ITCE-938-COC (hereinafter referred to as the 936, 937 and 938 Cases, respectively) – reflect logical interconnection points. The transmission line in the 936 Case runs from the Spearville substation to the switchyard that ITC Great Plains intends to construct in Comanche County or Clark County. The transmission line in the 937 Case runs from this new switchyard to a new substation that Mid-Kansas Electric Company (MKEC) and/or ITC Great Plains intends to construct in the Medicine Lodge area of Barber

County. Finally, the transmission line in the 938 Case runs from the Medicine Lodge substation to the Wichita substation.

3. Westar should not be permitted to obstruct these plans through procedural maneuvers. Any issues related to the certificate of convenience held by ITC Great Plains, the Stipulation and Agreement that led to Commission approval, and ITC Great Plains' proposal to construct the V-Plan should be heard by the Commission as it considers all relevant factors, legal and factual, related to these important projects.

## **II. Background of ITC Great Plains and the Kansas V-Plan.**

4. ITC Great Plains received a Certificate of Public Convenience and Authority (Certificate) pursuant to the Commission's Order Approving Stipulation and Agreement and Addressing Application of Statutes, In re Application of ITC Great Plains, LLC for a Limited Certificate of Public Convenience to Transact the Business of an Electric Public Utility in the State of Kansas, Docket No. 07-ITCE-380-COC, June 5, 2007. (380 Order.) The Stipulation and Agreement (Stipulation) approved by the Commission in the 380 Order requires ITC Great Plains to seek approval of the Commission to amend ITC Great Plains' Certificate in order for it to build proposed SPP transmission projects.

5. ITC Great Plains first sought to amend its Certificate in Docket No. 08-ITCE-544-COC, requesting authority to construct a 345 kilovolt (kV) line from the Spearville substation located northeast of Dodge City to Axtell, Nebraska (KETA Project). In that docket, ITC Great Plains' Application indicated that neither of the Affected Incumbent Transmission Owners,<sup>1</sup> Sunflower Electric Power Corporation (Sunflower) and Midwest Energy, Inc. (Midwest), had any interest in building the KETA Project. The Commission Staff (Staff)

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<sup>1</sup> "Affected Incumbent Transmission Owner" is defined on page 2 of the Stipulation approved in the 380 Order. It is defined as an Incumbent Transmission Owner that has facilities that would interconnect with an SPP Transmission Project.

verified that neither Affected Incumbent Transmission Owner intended to exercise its right of first refusal as provided in the Stipulation approved in the 380 Order to build the KETA Project and concluded that ITC Great Plains met all the requirements to amend its certificate for purposes of constructing, owning and operating the KETA Project. Docket No. 08-ITCE-544-COC, Order Granting Application to Amend Certificate of Public Convenience, March 12, 2008, at ¶ 8. (544 Order.) With that experience in mind, ITC Great Plains next filed the instant set of Applications to further amend its Certificate for purposes of constructing, owning and operating the transmission project known as the Kansas V-Plan.

6. The Kansas V-Plan has its origins in a broader expansion plan developed by the SPP, known as the X-Plan. The SPP X-Plan was formally introduced at a public workshop in Wichita, Kansas, on February 17, 2004. The purpose of the workshop was to discuss transmission expansion alternatives in the Kansas/Panhandle sub-region of SPP. The X-Plan was the clear economic choice amongst the alternatives.

7. On July 16, 2007, ITC Great Plains advised the SPP that it intended to construct, own and operate the Kansas portion of the project now known as the V-Plan, which has been identified as an economic upgrade to the transmission systems of south central Kansas and north central Oklahoma. See Exhibit 1 to ITC Great Plains' Application. The SPP Board of Directors endorsed placing the V-Plan in the SPP Transmission Expansion Plan (STEP) following an analysis by the SPP Staff which determined there were no detrimental impacts on the transmission system from the V-Plan. See Exhibit 2 to ITC Great Plains' Application.

8. With the SPP's analysis complete, the V-Plan was officially included in the SPP STEP on January 29, 2008 as an economic upgrade project. Prior to ITC Great Plains' commitment, Westar had not informed SPP of any plans to build any portion of the V-Plan.

9. ITC Great Plains has had discussions with Sunflower regarding Sunflower's interest in constructing its portion of the V-Plan. Sunflower indicated that it did not have an interest in constructing its portion of the V-Plan and supported ITC Great Plains' Application filed herein.

10. ITC Great Plains has had discussions with MKEC<sup>2</sup> regarding MKEC's interest in constructing its portion of the V-Plan. MKEC indicated that it did not have an interest in constructing its portion of the V-Plan and supported ITC Great Plains' Application filed herein.

11. ITC Great Plains had preliminary discussions (phone calls) with Westar to discuss Westar's interest in constructing the portion of the V-Plan. ITC Great Plains was told by Westar that it would make its position known once ITC Great Plains filed its Application to amend its certificate.

12. Based on the aforementioned contacts made by ITC Great Plains, and consistent with its practice in the KETA Project case, ITC Great Plains filed the instant set of Applications to amend its Certificate to include authority to construct, own and operate Sunflower's and MKEC's portions of the V-Plan.

### **III. Legal Standard for Motion to Dismiss.**

13. Dismissal for failure to state a claim is only justified when the allegations of a petition clearly demonstrate plaintiff does not have a claim. Grinstead Products, Inc. v. KCC, 937 P.2d. 1, 7 (Kan. 1997).

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<sup>2</sup> Westar questioned ITC Great Plains' identification of MKEC as an Affected Incumbent Transmission Owner in its motion to intervene, consolidate and dismiss. Westar Motion at ¶ 22. MKEC, a limited liability company, is a coalition of five Kansas consumer-owned cooperatives and one corporation wholly owned by a sixth Kansas consumer-owned cooperative who collectively organized MKEC for the express purpose of acquiring Aquila, Inc., d/b/a Aquila Networks - WPK's, Kansas electric utility business and operations. The members of MKEC, except in the case of Southern Pioneer Electric Company, in which case its parent company, also own Sunflower. Docket No. 06-MKEE-524-ACQ, Joint Application, November 16, 2005, at ¶ 1. Out of an abundance of caution given the corporate relationship between Sunflower and MKEC, ITC Great Plains identified MKEC as an Affected Incumbent Transmission Owner, thereby ensuring proper notice to MKEC of ITC Great Plains' desire to construct the portion of the V-Plan which traverses MKEC's certificated territory, to the extent such notice was required.

**IV. The Commission Should Deny the Motion to Dismiss As ITC Great Plains' Application States a Claim for Decision.**

14. Westar's Motion to Dismiss is based on its own interpretation of the Stipulation approved in the 380 Order. Westar makes two arguments for dismissal. First, it contends that each of the three separate Applications do not "relate[] to a line that would be electrically connected to the grid,..." and thus that none of the Applications states a basis for amending the Certificate. Westar Motion at ¶ 19. Second, Westar argues that that it has a right of first refusal to construct the entire V-Plan, that ITC Great Plains failed to follow the conditions in the Certificate, and that therefore ITC Great Plains' Application must be dismissed for failure to state a claim. The Commission should reject Westar's drastic remedy of dismissal since Westar's interpretation of the Stipulation is not controlling and over-reaches the language and intent of the Stipulation.

15. Westar cannot meet the burden to demonstrate that ITC Great Plains does not have a claim on the facts presented here. As to its first argument, all the transmission facilities proposed in each Application are network upgrades to the SPP system, and there are cogent reasons why three Applications are appropriate. (See ¶¶ 21-23 and 29-30, below.)

16. The second argument for dismissal also fails because neither the facts nor the findings in the Commission's 380 Order approving the Stipulation support Westar's assertions. Westar claims that ITC Great Plains failed to wait for it to decline to build the V-Plan before making these filings, in violation of the Stipulation, which merits dismissal. First, as noted above, ITC Great Plains attempted to discuss these issues with Westar and was rebuffed. Further, Westar has failed to read the Commission's 380 Order clearly. In discussing the Stipulation, the Commission recited at length from the Staff Memo outlining the features of the Stipulation. In describing the requirement for ITC Great Plains to file to amend its Certificate, it states that "[t]hrough this provision, parties to the [Stipulation] will receive notice of ITC [Great

Plains’] intent to build a particular project.” (380 Order at ¶ 23.) Westar received the notice the Commission expected when it approved the Stipulation.

17. Finally, it is plain that nowhere in the Stipulation does it state that where multiple Affected Incumbent Transmission Owners are impacted by a proposed SPP project that one provider has the right to construct the *entire* transmission project. To the contrary, the Stipulation explicitly provides that in the case of multiple affected owners, each owner will have the right of first refusal to construct “*its portion* of the SPP transmission project that connects to its transmission system.” (Stipulation, 380 Docket, at ¶ 12(c) (emphasis supplied).) Thus, based on the facts alleged in ITC Great Plains’ Application, at a minimum, both Sunflower and Westar would have the right to construct a portion of the V-Plan transmission line. Westar does not dispute this fact. Westar Motion at ¶ 23 (“As a result, Sunflower and Westar are the Affected Incumbent Transmission Owners for the project.”). Because Sunflower and MKEC support ITC Great Plains’ Application, the only issue for the Commission’s consideration is how to determine which portion of the line accrues to ITC Great Plains via Sunflower and MKEC and which portion of the line accrues to Westar. Because there is no right for Westar to build the entire V-Plan, and because the Commission must determine for the parties the relative extent of “its portion” each company will build, Westar’s allegation that ITC Great Plains failed to state a claim is therefore without merit and Westar’s Motion to Dismiss must be denied.

18. It is clear from Westar’s motion that Westar’s definition of “its portion” vastly differs from ITC Great Plains’ understanding of “its portion” when it negotiated the Stipulation approved in the 380 Docket. It is now clear that Westar’s interpretation of “its portion” includes anywhere in the state, regardless of the remoteness of the interconnection point to Westar’s system, or whether the project facilities are even located in Westar’s certificated territory. Westar Motion at ¶ 8 (“...Westar actually has a right of first refusal as to the entire project.”).

Such an interpretation is overly broad, over-reaching and should not be countenanced by the Commission. Rather, the Commission should reasonably construe the “its portions” language of the Stipulation, where Westar is an Affected Incumbent Transmission Owner, to mean the portion of a proposed SPP transmission project that lies within Westar’s existing certificated area.

**V. Westar’s Interpretation of the Stipulation Conflicts with Its Past Actions.**

19. ITC Great Plains also notes that Westar's interpretation of the Stipulation is not consistent with its past practices in the construction of transmission lines which it shares with other utilities. In the following transmission projects undertaken by Westar and another utility, Westar only built to the edge of its certificated territory or the nearest county line.

- Manhattan (KP&L) to Concordia (MKEC) 230 kV
- Summit (KP&L) to Knoll (MWE) 230 kV
- Spring Hill (KP&L) to Lackman (KCPL) 161 kV
- Knob Hill (KP&L) to Greenleaf (MKEC) 115 kV
- Murray Gill (KG&E) to Milan (MKEC) 138 kV

While not an exhaustive list, these examples of Westar’s past practice demonstrate that prior to ITC Great Plains’ involvement in Kansas, Westar routinely built only to the edge of its certificated territory (or the nearest county line) when building a transmission line interconnected with another utility. It was against this backdrop that the terms of the Stipulation were drafted and agreed to by ITC Great Plains. The Stipulation does not provide Westar any greater rights to build outside its territory simply because of ITC Great Plains’ status as an independent transmission company.

**VI. Motion to Intervene.**

16. ITC Great Plains opposes Westar's Motion to Intervene in the above docket. Westar does not have an interest to protect in this docket as it does not have the authority to build transmission facilities in Ford, Kiowa, Clark and Comanche Counties. In those areas, Westar has neither certificated service territory nor required interconnections. Furthermore, under the terms of the Stipulation, Westar is not an Affected Incumbent Transmission Owner for purposes of this Application. As such, Westar's interests will not be substantially affected by the outcome of this proceeding. K.A.R. 82-1-225(a)(2). Because Westar does not qualify for intervener status pursuant to the Commission's regulation, its Motion to Intervene should be denied. If its Motion to Intervene is denied, Westar's motions to consolidate and dismiss should likewise be denied due to Westar's lack of standing to bring such motions before the Commission.

**VII. Motion to Consolidate.**

21. The above docket should not be consolidated with ITC Great Plains' other Applications to amend its certificate as they are separate and distinct portions of the V-Plan. ITC Great Plains made three distinct filings for technical and logistical reasons and informed Staff and the Commission of its intention to make three separate filings before making the filings. The first filing (936 Case) involves the portion of the V-Plan that begins with an interconnection at the Sunflower substation and ends in a new substation in either Clark or Comanche County. ITC Great Plains made this filing separately as it reflects the initial portion of the V-Plan that will be interconnected with Oklahoma transmission resources and as it is necessary for the promotion of wind energy development in this portion of the state. This section is identified separately in the STEP as part of a larger regional plan that includes additional lines to Oklahoma and Texas. The STEP recognizes that the Spearville to Comanche line is distinct from the other portions of the



line. Appendix A to the 2008-2017 STEP divides the V-Plan into two segments in year 2012: Spearville to Comanche and Comanche to Wichita.<sup>3</sup>

22. The second filing (937 Case) was made separately to reflect the fact that a portion of the V-Plan would connect with a new MKEC and/or ITC Great Plains substation located in the Medicine Lodge area which would interconnect with MKEC transmission facilities. MKEC has expressed interest in this interconnection and such an interconnection is within the meaning of a “network upgrade” under Section 1.26 of the SPP tariff.<sup>4</sup> The Medicine Lodge interconnection will also interconnect wind farms under development in this area, such as the Flat Ridge Wind Farm, which is permitted for up to 250 MW of generation.

23. The third filing (938 Case) was made separately because there are two Affected Incumbent Transmission Owners under the Stipulation for this portion of the V-Plan, and because ITC Great Plains had not received direction from Westar with respect to the V-Plan transmission facilities that will interconnect with or be built in Westar’s certificated territory. Rather than delay implementation of the SPP expansion plans, ITC Great Plains filed this Application in order to determine Westar’s intentions regarding construction of the V-Plan facilities, and if it desires to build some of the facilities, to reach agreement on the portions of the facilities to be built by ITC Great Plains on behalf of MKEC and by Westar.

**VIII. ITC Great Plains Followed Its Certificate Conditions in Its Filing the Applications, and also followed the same procedures used for the KETA Project.**

24. Westar alleges that as an Affected Incumbent Transmission Owner, it has a right of first refusal to build the entire V-Plan. Westar Motion at ¶¶ 8, 21. Westar does not provide any authority to support that assertion. ITC Great Plains maintains that because Westar, MKEC

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<sup>3</sup> Appendix A can be accessed at p. 83, at [http://www.spp.org/publications/2007%20SPP%20Transmission%20Expansion%20Plan%2020080131\\_BOD\\_Public.pdf](http://www.spp.org/publications/2007%20SPP%20Transmission%20Expansion%20Plan%2020080131_BOD_Public.pdf)

<sup>4</sup> The SPP tariff can be accessed at <http://www.spp.org/section.asp?group=215&pageID=27>.

and Sunflower are Affected Incumbent Transmission Owners, all three companies have a right to build its portion of the V-Plan.

25. ITC Great Plains' position is supported by Staff's memorandum in Docket No. 07-ITCE-380-COC where Staff stated:

The third condition clarified the first condition, in that ITC agreed that in the case of multiple "Affected Incumbent Transmission Owners" each "Affected Incumbent Transmission Owner" has a right of first refusal to construct its portion of the SPP Transmission Project. Using the previous example of an SPP Transmission Project to construct a line from a KCPL substation to a Westar substation, traditionally both KCPL and Westar would reach an agreement whereby each utility might construct and maintain roughly one half of the interconnecting line. **With this condition, if Westar agreed to construct its half, but KCPL did not exercise its right of first refusal to construct its half of the line, ITC would be able to propose constructing and maintaining KCPL's portion of the project.** (Emphasis supplied.) Staff's Memorandum in Support at pp. 4-5.

26. ITC Great Plains' Applications are consistent with the Stipulation and the KETA Project amendment in that Staff can verify if any of the Affected Incumbent Transmission Owners wish to build their portion of the V-Plan. ITC Great Plains filed the 936 and 937 Applications indicating that Sunflower and MKEC were not interested in constructing their portion of the V-Plan. ITC Great Plains also filed the 938 Application acknowledging that Westar had right of first refusal to build that portion of the V-Plan in its certificated territory that connects to its transmission system.

27. ITC Great Plains disputes that Westar indicated to ITC Great Plains that it was interested in building all or a part of the V-Plan. (See Westar Motion at ¶ 21.) ITC Great Plains did attempt to have discussions with Westar about the V-Plan, but Westar simply indicated that it would make its position known after ITC Great Plains filed its Application for amendment of its Certificate.

28. Since ITC Great Plains followed the same procedure used for the KETA Project with respect to Sunflower and MKEC, and attempted to determine Westar's intent before making this filing, the Application should not be dismissed for failure to follow the conditions of ITC Great Plains' Certificate. ITC Great Plains' Applications are consistent with the Stipulation in the 380 docket.

**IX. Westar's 'Line to Nowhere' Argument Should be Rejected.**

29. ITC Great Plains disputes Westar's contention that the three individual segments of the V-Plan cannot operate without connection to the other two segments. Westar Motion at ¶ 15. The Spearville to Comanche substation line will interconnect with Oklahoma transmission facilities after the Oklahoma facilities are built. The Comanche substation will be located in an area with abundant wind potential where wind farms under development will be able to interconnect. The timing of the V-Plan is critical to these and future wind developments since they cannot move their power onto the grid until the V-Plan is constructed. The state of Kansas alone is expected to have 600 megawatts of new wind energy production go online this year<sup>5</sup> with almost 2,000 megawatts currently in the SPP Generation Interconnection Queue at the Spearville Substation. The Medicine Lodge substation will interconnect with the MKEC system. It is envisioned that this interconnection will be a key addition for mitigating the SPP constraint that occurs when the Medicine Lodge 138/115 kV transformer overloads. Additionally, this interconnection will provide a means to interconnect wind farms under development in this area, such as the Flat Ridge Wind Farm, which is permitted for up to 250 MW of generation.

30. Westar's argument also ignores the reality that transmission grids are usually built in sections. The Commission recognized this fact in Westar's own siting permit application for the Rose Hill to Sooner transmission line. (Docket No. 08-WSEE-609-MIS.) Westar is building

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<sup>5</sup> Sarah Kessinger, Westar Wants Job of Building Out West, Hutchinson Daily News, May 2, 2008. This article can be viewed at <http://www.hutchnews.com/Localregional/tar>.

the first section of that line from the Rose Hill substation to the Sumner/Cowley County line. Oklahoma Gas & Electric is constructing the second segment of the line from the Kansas/Oklahoma border to the Sooner substation southwest of Ponca City, Oklahoma. Just as in Westar's Rose Hill to Sooner line, ITC Great Plains' proposed segments will be interconnected at the Oklahoma border with the southern section of the X-Plan. ITC Great Plains and Oklahoma Gas & Electric have commitment letters pending before the SPP to construct the Oklahoma portions of the SPP X-Plan.

**X. Granting the Motion to Dismiss Serves no Purpose but to Discourage an Independent Transmission Company from Building Needed Transmission Infrastructure such as the V-Plan.**

31. Westar is asking the Commission to dismiss ITC Great Plains' Applications so that it can "review the plan and consider its potential benefits to Westar and its customers." Westar Motion at ¶ 23. ITC Great Plains submits that dismissal would unnecessarily delay construction of the V-Plan as Sunflower and MKEC have already indicated that they have no interest in building any portion of the V-Plan facilities and ITC Great Plains is willing to build those portions of the V-Plan that connect to Sunflower's Spearville substation and MKEC's transmission facilities.

32. The Commission should not allow Westar to delay ITC Great Plains' efforts to go forward with the Sunflower and MKEC portions of the V-Plan while Westar further reviews the V-Plan. The SPP has completed all the necessary planning work for the project. Westar had every opportunity to participate in the process at SPP. The possible benefits of the project to Westar — as determined by Westar — are not relevant. By its own admission, Westar seeks to apply its parochial view to what is actually a regional project, with effects and benefits that accrue throughout the entire state of Kansas and the SPP region generally. From a transmission policy perspective, having system planning performed on a regional basis by the independent

RTO is much more likely to achieve those broad-based types of benefits than having Westar study and plan transmission projects looking only for benefits to itself and its customers. The narrow view advocated by Westar is precisely what has held back the development of region-wide solutions that can produce reliability benefits, eliminate system constraints and provide better access to markets for both power buyers and sellers. Rather than being allowed to delay these benefits to the Kansas system while it performs an indeterminate amount of further study, Westar must determine in the context of this proceeding if it is going to exercise its authority to build that portion of the V-Plan that connects to its facilities.

**XI. Conclusion.**

33. ITC Great Plains filed this Application as a critical step in its plan to build the final segment of the V-Plan from the new Medicine Lodge substation through Barber, Harper, Kingman and Sumner Counties into Sedgwick County near Wichita, which ultimately leads to the construction of the entire V-Plan, as authorized by the SPP. ITC Great Plains' Application is consistent with its previously issued Certificate and relates to a segment of the V-Plan which will individually, and as a whole, provide benefits to the public. Granting any portion of Westar's motion would only serve to delay the construction of needed transmission in Kansas, delay the construction and interconnection of Kansas wind farms and delay transmission facilities recognized by the SPP as necessary for the state and the region.

Respectfully submitted,

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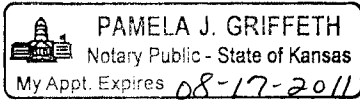
VERIFICATION

STATE OF KANSAS            )  
  ) ss.  
COUNTY OF SHAWNEE    )

Susan B. Cunningham, being of lawful age and duly sworn, states that she has caused the foregoing Response to Motion of Westar Energy, Inc. and Kansas Gas and Electric Company to Intervene, to Consolidate and to Dismiss to be prepared, that she has read and reviewed the Response, and that the contents thereof are true and correct to the best of her knowledge and belief.

*Susan B. Cunningham*  
Susan B. Cunningham

Sworn to and subscribed before me this 8th day of May, 2008.



*Pamela J. Griffeth*  
Notary Public

My commission expires: *August 17, 2011*

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing was served via U.S. Mail on this 8<sup>th</sup> day of May, 2008

as indicated to the following persons:

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