

**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 THE MERGER OF) DOCKET No. 18-KCPE-095-MER
WESTAR ENERGY, INC. AND GREAT PLAINS)
ENERGY INCORPORATED.)

**TESTIMONY IN SUPPORT OF
NON-UNANIMOUS STIPULATION AND AGREEMENT**

PREPARED BY

JEFFREY D. McCLANAHAN

UTILITIES DIVISION

KANSAS CORPORATION COMMISSION STAFF

March 12, 2018

1 **Q. Please state your name and business address.**

2 A. Jeffrey D. McClanahan, 1500 SW Arrowhead Road, Topeka, Kansas.

3 **Q. Are you the same Jeffrey D. McClanahan that filed direct testimony in this**
4 **Docket on January 29, 2018?**

5 A. Yes.

6 **Q. What is the purpose of your testimony?**

7 A. I am testifying on behalf of the Staff of the Kansas Corporation Commission
8 (Staff and Commission, respectively) in support of the comprehensive non-
9 unanimous settlement of the issues outlined in the Non-Unanimous Settlement
10 Agreement (Agreement) between Westar Energy, Inc. and Kansas Gas and Electric
11 Company (collectively Westar), Great Plains Energy Incorporated (GPE), Kansas
12 City Power & Light Company (KCP&L) (Westar, KCP&L, and GPE collectively
13 referred to herein as Applicants), Staff, the Citizens' Utility Ratepayer Board
14 (CURB), Sunflower Electric Power Corporation (Sunflower), Mid-Kansas Electric
15 Company, Inc. (Mid-Kansas), Kansas Power Pool (KPP), Midwest Energy, Inc.
16 (Midwest), and Brightergy, LLC (Brightergy) (Applicants, Staff, and the above-
17 named intervenors are collectively referred to herein as the "Signatories" or,
18 individually, as a Signatory). I also note that Wal-mart Stores, Inc. (Walmart) has
19 indicated it does not oppose the terms of this Agreement, while the remaining
20 intervenors are either opposed or undecided as of the drafting of this testimony.

21 My testimony will also introduce the other Staff witnesses providing
22 testimony in support of the Agreement, provide a broad overview of the Agreement,
23 discuss why Staff believes the Agreement is in the public interest, and discuss the

1 five-element test the Commission uses to aid in the review of settlement
2 agreements.¹

3
4 **I. INTRODUCTION OF STAFF’S WITNESSES**

5
6 **Q. Who will be offering testimony on behalf of Staff?**

7 A. I will introduce Staff’s witnesses testifying in support of the Agreement
8 along with a brief description of their testimony and the specific Merger Standard(s)
9 each witness will address. The witnesses are as follows:

10 **Justin Grady:** Mr. Grady provides testimony in support of Merger Standards (a)
11 (i), (a) (ii), (a) (iii), (a) (iv), (c), (d), and (e). Mr. Grady’s testimony discusses the
12 financial aspects of the merger, the Earnings Review and Sharing Plan, and the
13 Topeka headquarters commitment.

14 **Leo Haynos:** Mr. Haynos provides testimony in support of Merger Standards (a)
15 (iii), (b), (c), (f), and (h). Mr. Haynos’ testimony discusses the safety, reliability,
16 and service quality commitments included in the Agreement. Mr. Haynos’
17 testimony also discusses the Capital Reporting Plan.

18 **Robert Glass, Ph.D.:** Dr. Glass provides testimony in support of Merger Standards
19 (a) (v), (c), and (g). Dr. Glass’ testimony addresses the economic impact of the
20 proposed merger and the impact on competition.

21

¹ Order Approving Contested Settlement Agreement at 5-6, Application of Atmos Energy for Adjustment of Its Natural Gas Rates in the State of Kansas, Docket No. 08-ATMG-280-RTS (May 12, 2008).

II. OVERVIEW OF THE NON-UNANIMOUS SETTLEMENT AGREEMENT

Q. Please provide an overview of the Agreement.

A. The Agreement reflects in large part the recommendations and conditions outlined in Staff's Direct Testimony, so much so that Staff's Direct Testimony provides much of the support for this Agreement. That being said, Staff witnesses Mr. Grady, Mr. Haynos, and Dr. Glass all provide additional testimony in support of the Agreement and will describe how the Agreement meets each of the Commission's Merger Standards.

The Agreement is extensive so I will not attempt to provide a detailed summary. However, a high-level overview is as follows:

1) The Agreement provides upfront bill credits of \$50 million allocated across all jurisdictions. The allocation is based upon twelve months of FERC energy data ended December 31, 2016. The jurisdictional allocations are:

- a. Westar \$23.07 million
- b. KCP&L-KS \$ 7.51 million
- c. KCP&L-MO \$ 9.95 million
- d. GMO \$ 9.47 million

2) The Agreement provides guaranteed annual bill credits for each year 2019 through 2022 based on an incremental Kansas share of \$75 million as described below and allocated based upon twelve months ended December 31, 2016 FERC energy data as follows:

- a. Westar \$34.60 million, which is \$8.65 million annually

1 b. KCP&L-KS \$11.27 million, which is \$2.82 million annually

2 3) Signatories agree to recommend and support in the Applicants' 2018 Kansas
3 general rate reviews of Westar and KCP&L the following:

4 a. Inclusion of all merger-related savings achieved at the update date with
5 such update date to occur 60 days after the filing of each respective rate
6 case. If it is determined to be a shortfall from the amounts below, then
7 an additional adjustment will be made at the update date to impute into
8 retail rates the shortfall to achieve a total (some such savings are/will be
9 already reflected in the Applicants rate review filing) of merger related
10 savings benefiting Kansas retail rates as follows:

11 i. Westar: \$22.5 million

12 ii. KCP&L-KS: \$ 7.5 million

13 b. Westar second step rate increases in February 2019 related to an
14 expiring wholesale contract with Mid-Kansas Electric Company, LLC
15 (MKEC) recovered through the Retail Energy Cost Adjustment as
16 proposed in the direct testimony of Westar witness Fowler in Docket
17 18-WSEE-328-RTS; Exhibit RAF-1 and the expiration of production
18 tax credits related to Central Plains and Flat Ridge Wind Farms.

19 c. Signatories will agree to recommend a 9.3% ROE to be utilized in the
20 2018 cases, and if including a range, testimony will not recommend
21 greater than 20bps below or above the 9.3% recommended ROE.

22 d. Applicants agree to forego their ability to demonstrate underearning at
23 the time of the federal tax law change as an offset to benefits otherwise

1 due to customers from January 1, 2018, through the effective date of
2 new retail rates as a result of the 2018 rate cases. Such gross benefits
3 will be distributed to customers as determined in each respective rate
4 case.

5 4) Signatories agree that recovery of transition costs shall be limited to \$50 million
6 on a total company basis and the Kansas jurisdiction portion shall be deferred
7 and recoverable through amortization over ten years beginning when the 2018
8 Kansas base rate review rates become effective.

9 a. Westar: \$23.2 million, which is \$2.32 million annually

10 b. KCP&L-KS \$7.7 million, which is \$0.77 million annually

11 5) The moratorium period will expire, for Westar and KCP&L-KS, five years from
12 the final order date of KCP&L's 2018 base rate review. Any base rate review
13 filing cannot change rates until after that date, but a filing or show cause may
14 be commenced as long as the resulting base rate adjustment becomes effective
15 after the moratorium date. In the event the ROE authorized in either 2018 rate
16 case is below 9.3%, the moratorium period shall be reduced to three years for
17 the respective company.

18 6) The moratorium period does not preclude the Applicants from changing rates
19 and tariffs under their respective riders and surcharges. The Agreement also
20 allows the Applicants to file an application with the Commission in the event
21 of changes in law or regulations or the occurrence of events outside the control
22 of Westar or KCP&L that result in a material adverse impact to Westar or

1 KCP&L. If such occurs, Westar and KCP&L, as applicable, may file an
2 application with the Commission proposing methods to address the impact of
3 the events, including the possibility of changes in base rates.

4 7) Westar and KCP&L will make a mandatory base rate review filing so that rates
5 become effective the day after the expiration of the moratorium period. In the
6 event that the moratorium period is three years for either company pursuant to
7 other provisions of this agreement, such mandatory rate review for that
8 company shall be two years after the end of its rate moratorium. However,
9 Applicants can delay their mandatory base rate review filings with the approval
10 of Staff.

11 8) The Agreement includes the Earnings Review and Sharing Plan (ERSP)
12 recommended by Staff and specifically addressed by Mr. Grady in both his
13 Direct Testimony and Testimony in Support.

14 9) The Agreement includes Quality of Service reporting, minimum reliability
15 performance metrics, penalties for failure to perform, and a requirement that the
16 Applicants, CURB, and Staff participate in a compliance docket that will jointly
17 develop an update of the reliability reporting requirements outlined in Docket
18 No. 02-GIME-365-GIE. The compliance docket will also evaluate setting
19 permanent reliability standards for the post-merger operating areas.

20 10) The Agreement includes a Capital Plan Reporting compliance docket to be
21 created to provide capital plan reports similar to the template included as
22 Attachment 6 to the Agreement. The primary purpose of the Capital Plan
23 Report is to provide Staff and the Commission with the information and data

1 necessary to understand forecasted capital expenditures over a five-year period.
2 The capital expenditures to be reviewed include generation, environmental,
3 transmission, distribution, and information technology. The compliance docket
4 will include the Applicants, CURB, and Staff and will also determine if or when
5 the reporting will sunset.

6 11) The Agreement extends the five-year operating headquarters for Westar to ten
7 years, with certain additional conditions relating to a possible change in the
8 location in Topeka of the operating headquarters after five years and the level
9 of employees in the headquarters.

10 12) The Agreement also address the following broad categories:

- 11 a. Financing Conditions;
- 12 b. Ratemaking, Accounting, and Related Conditions;
- 13 c. Affiliate Transactions and Cost Allocation Manual Conditions;
- 14 d. Notice Regarding Generation Plant Retirements;
- 15 e. Reporting and Access to Records;
- 16 f. Financial Conditions Remaining From Docket No. 01-KCPE-701-MIS;
- 17 and
- 18 g. Other Parent Company Conditions.

**III. THE AGREEMENT MEETS THE COMMISSION’S ESTABLISHED MERGER
STANDARDS AND IS IN THE PUBLIC INTEREST**

Q. What is the Public Interest Standard and how is it applied in merger dockets?

A. I discuss the Public Interest Standard and how it is applied in merger dockets in my Direct Testimony at pages 5 through 8 where I conclude on pages 7 and 8 that:

Based on the above statements, it is clear that the merger standards are entrenched as “...the beginning criteria to be used when evaluating a merger application, and are to be supplemented by any other considerations that are relevant given the circumstances existing at the time of the merger proposal.”² Moreover, the Commission confirmed that the merger standards are the primary determination of whether a proposed merger promotes the public interest when it stated, “The Commission adopts the following list of factors [merger standards] it will weigh and consider in determining whether the proposed Transaction promotes the public interest.”³

It is also clear that whether the public interest is promoted is based on “...whether the public interest is served by approving the merger as determined by the specific facts and circumstances of each case.”⁴

Q. Does the Agreement promote the public interest?

A. In my Direct Testimony at page 8, I stated:

So long as the Commission orders, and the Applicants accept, additional conditions, then Staff believes this MOE is in the public interest. A review of each Staff witnesses’ testimony will indicate that every merger standard has been either met based on case specific facts or can be met with additional merger conditions.

² Docket No. 97-WSRE-676-MER, Order on Merger Application at ¶ 18.

³ Docket Nos. 172,745-U and 174,155-U, Order at p. 35.

⁴ Docket No. 97-WSRE-676-MER, Order on Merger Application at ¶ 18.

1 Because the Commission uses the merger standards as guidance as
2 to whether a transaction promotes the public interest, successfully
3 meeting all of the merger standards is a strong indication that the
4 public interest will be promoted by approving the Transaction.
5

6 A review of the Agreement will show that the Applicants have accepted
7 the majority of Staff's recommended conditions, which were recommended in
8 order to address deficiencies in meeting the Merger Standards. This fact, coupled
9 with additional conditions the Applicants have accepted, is a strong indication that
10 the Agreement is in the Public Interest. Staff witnesses Mr. Grady, Mr. Haynos,
11 and Dr. Glass provide the details of how the Agreement meets each specific
12 Merger Standard.
13

14 **IV. DISCUSSION ON THE FIVE ELEMENT TEST USED BY THE COMMISSION TO**
15 **AID IN THE REVIEW OF SETTLEMENT AGREEMENTS**
16

17 **Q. Has the Commission previously addressed the elements it uses to review**
18 **Settlement Agreements?**

19 A. Yes. The Commission's Order in Docket No. 08-ATMG-280-RTS discusses
20 these five elements for reviewing Stipulation and Agreements⁵. These five
21 elements are as follows:

- 22 1. Whether there was an opportunity for the opposing party to be heard on
23 their reasons for opposition to the stipulation and agreement;

⁵ See Order Approving Contested Settlement Agreement, p. 5, Docket No. 08-ATMG-280-RTS (May 12, 2008).

- 1 2. Whether the stipulation and agreement is supported by substantial
- 2 competent evidence in the record as a whole;
- 3 3. Whether the stipulation and agreement conforms with applicable law;
- 4 4. Whether the stipulation and agreement results in just and reasonable rates;
- 5 and
- 6 5. Whether the results of the stipulation and agreement are in the public
- 7 interest, including the interest of the customers represented by the parties
- 8 not consenting to the agreement.

9 Each of these five elements is discussed individually below.

10

11 **Q. Please address whether each party had an opportunity to be heard on its**
12 **reasons for opposing the Agreement.**

13 A. There are several intervenors who directly oppose this Agreement. These
14 intervenors include Kansas Industrial Consumer Group (KIC) and Kansas Electric
15 Power Cooperative, Inc. (KEPCo) and may include other parties. All parties that
16 were granted full intervention status were notified of the starting time of the formal
17 settlement negotiations that began on February 27, 2018, in accordance with the
18 Procedural Schedule Order in this Docket. An open conference call number was
19 provided to any intervenors who did not wish to attend in person. Detailed
20 conversations and negotiations began at 9:00 A.M. on Tuesday, February 27th and
21 continued off and on daily through Friday, March 2nd when an agreement was
22 reached. At the conclusion of each negotiating session, a time was provided for the
23 next session to all parties in attendance, including those participating by phone. A

1 roll call was taken of each party participating in each negotiating session and in any
2 given session, it was apparent that there were several parties choosing not to
3 participate.

4 Negotiations were tough, thorough, and included substantive discussion of
5 the issues and a number of offers and counter-offers. In the end, each participating
6 party recognized that there were areas of compromise that each was willing to
7 accept in order to achieve a resolution of the issues in this case.

8 Regardless of whether any of the intervenors granted full participation in
9 this Docket choose to participate in settlement negotiations or not, they will have
10 an opportunity to oppose the Agreement and file testimony in opposition on March
11 12th, as well as participate in the evidentiary hearing scheduled for the week of
12 March 19th.

13
14 **Q. Please address whether the Stipulation is supported by substantial competent**
15 **evidence in the record as a whole.**

16 A. The Agreement is supported by substantial competent evidence in the
17 record as a whole. The Agreement is also supported by the Applicants'
18 Application, including direct and rebuttal testimony. Staff thoroughly analyzed the
19 Application and presented its recommendations in direct testimony. In addition,
20 CURB, KIC, KEPCo, and other intervenors reviewed the filing and stated their
21 positions in direct testimony. These filed positions constitute the body of evidence
22 that the Commission would rely on to make a determination of the issues presented
23 by this case, if the case were to go to a full hearing. The parties also relied on this

1 evidence in negotiations and eventually arrived at an agreed upon resolution of the
2 issues. It is Staff's position that the terms of this Agreement, taken as a whole, are
3 comparable with what one could expect if the case were to be fully litigated.

4
5 **Q. Please address whether the Stipulation conforms to applicable law.**

6 A. I am not an attorney, but Staff did negotiate this Agreement consistent with
7 its understanding of applicable laws. Part of Staff's understanding is based on the
8 Commission's citation of case law that, generally, the law favors compromise and
9 settlement of disputes when parties enter into an agreement intelligently and in
10 good faith.⁶ In addition, Staff was represented throughout the settlement process
11 by Litigation Counsel, which helps ensure that the Stipulation conforms to
12 applicable laws. Staff counsel will be available at the hearing to address any
13 specific issues or questions that the Commission may have regarding the
14 Stipulation's conformity to applicable law.

15
16 **Q. Does Staff believe that the Stipulation will result in just and reasonable rates?**

17 A. This Docket is directly related to approving a merger of equals between
18 Westar and KCP&L. However, the approval of this merger will have a long-term
19 impact on the future rates of both entities. The Applicants estimate that there will
20 be in excess of \$500 million in merger-related savings and approximately \$250
21 million in non-merger related savings from plant closures in KCP&L's generation

⁶ In Commission Orders approving numerous prior settlements, the Commission has often cited *Bright v. LSI Corp.*, Kan. 853, 858, 869 P. 2d 686 (1994).

1 portfolio. These savings will reduce or offset future rate requests. Moreover, the
2 Agreement provides upfront guaranteed bill credits that will offset the overall rates
3 paid by customers during the five-year moratorium period. In addition, paragraph
4 9 of the Agreement states:

5 The Signatories are convinced that combining these two companies
6 under the proper terms will be beneficial to stabilizing electric prices
7 in Kansas after experiencing significant price increases in Kansas,
8 similar to those experienced across the country, over the last decade.
9 Many surrounding states have already taken this step and
10 experienced cost benefits for their states as a result. To this end,
11 Applicants and Staff have decided to conduct a review (either jointly
12 or individually) to identify the major differences between
13 surrounding states' rates and the Applicants' rates in order to better
14 understand and document the major contributors to any
15 differences...
16

17 Based on the above, it is Staff's opinion that approval of this Agreement
18 will have a high probability of achieving lower future base rates for the Applicants'
19 customers and providing the Commission and customers a better understanding of
20 how Kansas' rates compare to those of the Region.
21

22 **Q. Does Staff believe the results of the Agreement are in the public interest,**
23 **including the interest of the customers represented by the parties not**
24 **consenting to the Agreement?**

25 A. Yes. I have previously addressed the public interest standard and the fact
26 that the merger standards have either been met by case specific facts or acceptance
27 of additional conditions, which is a strong indication that the Agreement is in the
28 public interest.

1 Regarding the interest of customers represented by the parties not
2 consenting to the Agreement, Staff asserts:

- 3 ➤ The Agreement results in a combined entity that is at least as financially strong,
4 if not stronger, post-merger;
- 5 ➤ The Agreement provides immediate rate relief through the pending rate cases
6 and through future bill credits;
- 7 ➤ The Agreement provides a high probability of achieving lower future base rates
8 for the Applicant's customers post-moratorium and it will provide the
9 Commission and customers a better understanding of how Kansas' rates
10 compare to those of the Region; and
- 11 ➤ As discussed previously in the overview of the Agreement, there are a wide
12 range of protections through conditions covering multiple areas.

13 Based on these assertions, Staff believes the Agreement is in the public interest for
14 all of the Applicants customers.

15

16 **Q. Should the Commission accept the Agreement as a reasonable resolution of**
17 **the issues in this Docket?**

18 A. Yes. The Agreement represents a resolution that meets the Commission's
19 Merger Standards, is supported by substantial competent evidence, and meets the
20 public interest standard. Moreover, the Agreement, while not unanimous, resolves
21 a complex case through an agreement with a number of the parties to this case.

Testimony in Support of Non-Unanimous Settlement Agreement of Jeffrey D. McClanahan
Docket No. 18-KCPE-095-ACQ

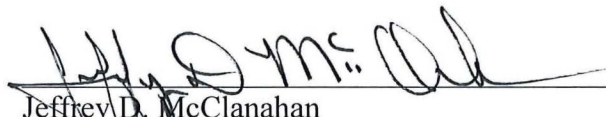
1 **Q.** **Does this conclude your testimony?**

2 **A.** Yes.

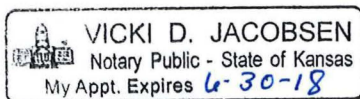
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)


VERIFICATION

Jeffrey D. McClanahan, being duly sworn upon his oath deposes and states that he is the Director of Utilities for the Kansas Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Staff Testimony in Support of Non-Unanimous Settlement Agreement*, and attests that the statements contained therein are true and correct to the best of his knowledge, information and belief.


Jeffrey D. McClanahan
Director of Utilities
State Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 12th day of March, 2018.




Notary Public

My Appointment Expires:

June 30, 2018

CERTIFICATE OF SERVICE

18-KCPE-095-MER

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff Jeff McClanahan's Testimony in Support of Non-Unanimous Settlement Agreement was served via electronic service this 12th day of March, 2018, to the following:

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