

**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 ) Docket No. 18-KCPE-095-MER  
Merger of Westar Energy, Inc. and Great Plains )  
Energy Incorporated. )

**MOTION TO COMPEL**

COME NOW Great Plains Energy Incorporated (“Great Plains Energy” or “GPE”), Kansas City Power & Light Company (“KCP&L”), and Westar Energy, Inc. and Kansas Gas and Electric Company (referred to herein as “Westar”) (all parties collectively referred to herein as “Applicants”), and file this Motion to Compel (“Motion”).

**Introduction**

1. On August 25, 2017, Applicants filed their Application seeking approval of the merger of Westar and Great Plains Energy, parent company of KCP&L. On September 12, 2017, the Commission issued its Order Designating Prehearing Officers; Granting Intervention to The Citizens' Utility Ratepayer Board; and Protective and Discovery Order. (“Discovery Order”). The merger proposal presented in the Application is the result of extensive efforts by the Applicants to craft an agreement that would address the Commission’s concerns regarding the initial proposal by which GPE would acquire Westar that the Commission rejected in Docket No. 16-KCPE-593-ACQ. The merger of equals presented in this case would result in the same realignment of the companies as in the initial proposal but with no transaction debt and no exchange of cash for the acquisition of stockholders’ equity.

2. Since issuance of the Discovery Order, several parties have commenced discovery in this matter including KEPCo, which recently issued its ninth set of data requests to the Applicants.

3. On November 1, 2017, Applicants issued their first set of data requests to KEPCo consisting of eight data requests, one of which (Request No. GPE-8) merely requested that KEPCo provide Applicants all responses to data requests provided to any other party to this proceeding. Applicants requested answers to their data requests by November 15, 2017.

4. On November 8, 2017, KEPCo served its Objections to Data Requests (“Objections”) on Applicants. In its Objections, KEPCo objected to all seven of Applicants’ substantive data requests contained in its first set of data requests. KEPCo provided “General Objections” which KEPCo incorporated by reference into its objections to each and every one of the seven data requests to which KEPCo objected and specific individual objections to each of such data requests. Applicants’ data requests GPE-1 through GPE-7 and KEPCo’s objections are attached hereto as **Attachment A**.

5. On November 15, 2017, Applicants issued their second set of data requests to KEPCo consisting of 20 data requests numbered GPE-8 through GPE-29. On November 22, 2017, KEPCo served objections to Applicants’ data requests GPE-9 through GPE-19 which included the same General Objections as had been made in response to Applicants’ first set of data requests. Applicants’ data requests GPE-9 through GPE-19 and KEPCo’s objections are attached hereto as **Attachment B**.

6. In response to KEPCo’s objections counsel for Westar and GPE contacted counsel for KEPCo in an effort to resolve the objections without resort to a motion to compel. However, after telephone conferences with KEPCo’s counsel, except as to data requests GPE-5 and GPE-6,

which Applicants agreed to withdraw, the Applicants were unable to reach agreement with KEPCo concerning the objections.

7. Applicants contest the validity of KEPCo's "General Objections,"<sup>1</sup> because the procedure KEPCo has employed requires Applicants and the Commission to guess which of the General Objections are meant to apply to any individual data request. The fact that KEPCo repeated exactly the same "General Objections" with its objections to Applicants' second set of data requests underscores the fact that the General Objections do not meet the requirement that objections be specific. Nevertheless, Applicants will respond to each General and specific KEPCo objection below.

8. It should also be noted that under the procedural schedule announced by the Commission in its Order Setting Procedural Schedule, Applicants will only have three weeks from the filing of the direct testimony of Staff and Intervenors in which to review the testimony of Staff and Intervenors, prepare and – hopefully – receive answers to discovery, and to draft their rebuttal testimony. Given the compressed time frame under which Applicants must respond to the other parties and the fact that parties have two weeks to respond to data requests, it is clear that Applicants will not have time to conduct meaningful discovery in the interval between the filing of Staff and Intervenor Direct Testimony and Applicants' Rebuttal. In order for Applicants to have an opportunity for meaningful discovery into KEPCo's case, Applicants' right to conduct legitimate and proper discovery of KEPCo must be recognized and enforced by the Commission

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<sup>1</sup> The Discovery Order states that if "a party objects to answering a particular data request, the party shall object in writing to the party which issued the data request within five days of the data request.... The written objection shall **specifically explain** all grounds relied upon for objecting to each data request." Discovery Order, at ¶ 22 (emphasis supplied). General objections applied indiscriminately to multiple data requests do not meet this requirement. *See also*, K.S.A. 60-233(a)(4) "Objections. The grounds for objecting to an interrogatory must be **stated with specificity.**" (emphasis supplied)

sustaining this motion to compel. Discovery designed to enable Applicants to better understand KEPCo's interests in a GPE-Westar merger – whether the initial transaction or the proposed merger for which approval is sought in this proceeding – is legitimate and proper and essential both to the protection of Applicants' due process rights and to ensuring that the Commission has access to all relevant facts as it makes its decision in this matter. In part, Applicants seek to determine the extent to which KEPCo merely seeks to use this proceeding as a way to reduce the level of its GFR purchases from Westar<sup>2</sup> and the rates it pays Westar under KEPCo's existing agreements with Westar.<sup>3</sup> Such information is essential to an understanding of the impact of the transaction on the public interest since savings to KEPCo under its GFR agreements with Westar would translate into reduced credits to Westar's retail cost of service and increased rates paid by Westar's retail customers. In any event, Applicants' discovery requests are quite limited, especially when compared to the magnitude of discovery requests issued to Applicants by KEPCo.<sup>4</sup>

**Data request GPE-1**

- a) Please list all interests of KEPCo or its members that KEPCo believes may be impacted by the consummation of the merger proposed in this docket.
- b) Please state whether such interests are regulated and by whom, and provide all documents in your possession for the period beginning January 1, 2016 to date,

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<sup>2</sup> In its Protest filed in FERC proceedings related to the proposed MOE, KEPCo has requested that the Applicants "commit to negotiate with KEPCo and to file with the Commission amendments to the GFR Agreement that will permit KEPCo to reduce the level of its GFR Agreement purchases upon appropriate notice or based on agreed upon triggers and to replace those purchases with other resources." Protest of Kansas Power Cooperative, Inc., at 3, FERC Docket No. EC17-171-000 (October 31, 2017).

<sup>3</sup> As noted in KEPCo's Brief in the prior proceeding (and in the testimony of KEPCo witness Mark Doljac), KEPCo takes service from Westar under "Westar's Generation Formula Rate [and] Westar's Transmission Formula Rate ('TFR')." KEPCo Post-Hearing Brief, at 4, Docket No. 16-KCPE-593-ACQ (March 13, 2017).

<sup>4</sup> To date, KEPCo alone has issued nine sets of data requests consisting of 213 data requests, many of which contain multiple subparts. In addition to the data requests issued by KEPCo, Staff and other parties have issued 246 data requests to Applicants. Out of the 459 total data requests issued to Applicants to date, Applicants have objected to only three data requests.

discussing, analyzing, or otherwise addressing these interests, including correspondences and any consultants' reports, studies, or other analysis or opinions related to such interests.

9. At the outset, Applicants would note that KEPCo did provide a response to subpart a of the data request GPE-1. However, KEPCo response to subpart b, as set for in **Attachment C**, is deficient in a number of ways. First, the response does not indicate whether or not KEPCo's interests are regulated and, if so, by whom. Second, the response does not include any documents prior to July 10, 2017. Third, the response does not include any correspondence or any consultants' reports, studies, or other analyses or opinions related to such interests or indicate whether or not they exist.

**Response to KEPCo General Objections as applied to data request GPE-1**

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).

10. As noted above, one problem with KEPCo's use of "General Objections" is lack of clarity of how such an objection applies to a particular question. This is a good example. The questions are straight-forward and merely request KEPCo to provide a list of the issues affecting it and its members and to provide documents in their possession discussing, analyzing or otherwise addressing those issues. Such a request is clearly within the scope of discovery contemplated by the Discovery Order and does not request or require that KEPCo create any new study or do anything but search its files and produce the responsive documents. Data Request GPE-1 does not seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order.

- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.

11. KEPCo certainly has the right to withhold documents that are protected by attorney/client privilege or the attorney work product doctrine. Applicants are not, however, aware of any other constitutional, statutory or common-law privilege or doctrine that might apply to materials sought in this proceeding. If such other privileges or doctrines apply, it is up to KEPCo to state and assert them explicitly; Applicants and the Commission are not required to guess at the basis for KEPCo's claims of privilege. KEPCo has exercised that right – without explanation in its response to Applicants – by redacting portions of certain documents as protected. Applicants will address claims of privilege below in a separate section of this pleading.

- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

12. Data request GPE-1 seeks information and documentation concerning KEPCo's interests in this proceeding. Given that KEPCo was required to (and did) state its interests in its Petition to Intervene,<sup>5</sup> Applicants' inquiry into the nature of KEPCo's interests and analysis concerning how its interests might be affected by the proposed transaction is clearly relevant and within the scope of discovery before the Commission.

13. Credibility of the testimony of a party to a proceeding is always an area of appropriate inquiry. There are many ways to impeach testimony, one of which is to show partiality

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<sup>5</sup> Petition of Kansas Electric Power Cooperative, Inc. to Intervene, at ¶¶ 4-7 (August 28, 2017).

through bias, motive or a personal interest in the outcome of the decision.<sup>6</sup> Motivation is directly related to credibility. Thus, discovery intended to explore a party's motivation behind its participation in a Commission proceeding is relevant. In this case, KEPCo has stated that its interests concern wholesale power purchase and transmission issues<sup>7</sup>, and in its protest in the GPE-Westar merger docket at FERC, KEPCo has requested that it be permitted to reduce the level of its GFR Agreement purchases with Westar as a condition for FERC approval of the merger.<sup>8</sup> If KEPCo presents testimony in these proceedings expressing negative opinions about the effect of the merger on the public interest in Kansas – as KEPCo did in the first transaction – the credibility of that testimony should be substantially questioned if KEPCo's primary objective – which appears to be very clear based on its FERC protest – is to reduce the level of its GFR Agreement purchases from Westar, an objective intended to exclusively benefit KEPCo and which is adverse to the broader public interest in Kansas. Evidence substantiating KEPCo's use of this proceeding as a means of gaining leverage to obtain modification of KEPCo's GFR Agreements with Westar would undermine the credibility of KEPCo testimony opining that the proposed merger does not promote the public interest. "Bias, interest or improper motive may always be shown in order to place the witness' testimony in proper perspective."<sup>9</sup> The motives and biases of a party presenting testimony are relevant to this proceeding, admissible at hearing, and Applicants should be allowed the opportunity to conduct discovery intended to ascertain the extent of such motives and biases.<sup>10</sup>

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<sup>6</sup> *Kansas Rules of Evidence with Evidence Objections and Evidentiary Foundations*, Michael A. Barbara, Fourth Edition, p. 3-2.

<sup>7</sup> Petition of KEPCo to Intervene, p. 2.

<sup>8</sup> FERC Docket No. EC17-171-000, KEPCo Protest filed October 31, 2017, pages 3, 24-30.

<sup>9</sup> *State v. Montanez*, 215 Kan. 67, 72 (1994).

<sup>10</sup> "The cross-examiner should have wide latitude in establishing partiality, bias, motive or interest. ... If the matter of

14. As to the breadth of discovery, the Commission has stated:

Discovery should reflect the breadth of the Commission's investigation. K.A.R. 82-1-234a provides that "discovery shall be limited to matters that are clearly relevant to the proceeding involved." K.A.R. 82-1-234a. Discovery is not limited to specific documents that are relevant and admissible at an evidentiary hearing. Rather, discovery is limited by the subject matter under investigation in a Commission proceeding. Discovery often allows the requesting party to find out what documents do exist.<sup>11</sup>

Here, Applicants have merely sought documents from KEPCo for a limited time period dating from January 1, 2016 to date, and discussing, analyzing, or otherwise addressing KEPCo's interests relating to Applicants' acquisition and subsequent merger discussions, including correspondences and any consultants' reports, studies, or other analysis or opinions related to such interests. Applicants have intentionally limited the breadth of discovery to cover the subject matter under investigation.

D. KEPCo objects to the Requests to the extent they call for the production of documents that are publicly available or that are already in the possession, custody, or control of GPE.

15. Applicants do not seek to have KEPCo produce documents that are in the public record or in possession of Applicants. However, KEPCo should be required to identify any documents in the public record that are responsive to Applicants' discovery and where they may be found.

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inquiry is material to an issue in the case or is relevant to the witness' credibility apart from contradiction, the matter is considered to be non-collateral and thus extrinsic evidence will be permitted." (*Kansas Rules of Evidence with Evidence Objections and Evidentiary Foundations*, Michael A. Barbara, Fourth Edition, p. 3-3.)

<sup>11</sup> *In the Matter of the Investigation of Actions of Western Resources, Inc. to Separate its Jurisdictional Electric Public Utility Business from its Unregulated Businesses*, Docket No. 01-WSRE-949-GIE, at ¶ 16 (K.C.C. 2002).



E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

16. Applicants are not seeking any documents that are not in KEPCo's possession, custody or control so this objection is irrelevant.

F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

17. To date, Applicants have issued 29 data requests to KEPCo compared to the 213 data requests (not counting the multiple sub-parts often contained within individual data requests) issued by KEPCo to Applicants.<sup>12</sup> KEPCo objects to this limited amount of discovery as "overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance," without stating any basis for its assertion. It is well-established that "[o]nce a party has requested discovery, the burden is on the party objecting to show that responding to the discovery is unduly burdensome."<sup>13</sup> KEPCo has made no such showing or even attempted to do so.

#### **Response to KEPCo Specific Objections to data request GPE-1.**

##### KEPCo objections:

KEPCo objects to subpart (a) "due to the vagueness and uncertainty of the term 'interests,'" on the ground that it calls for speculation and to the extent that responsive documents are part of the public record. KEPCo also objects to subpart (b) "due to the vagueness and uncertainty of the terms 'interests' and 'for the period,'" (as in "for the period beginning January 1, 2016 to date"). KEPCo also objects to the production of any documents related to the period beginning on January 1, 2016 through July 9, 2017, because the proposal under consideration in this docket was not announced until July 10, 2017. KEPCo objects because the request "calls for a legal conclusion as to whether 'interests' are 'regulated' and

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<sup>12</sup> Applicants have answered every data request issued by KEPCo by the date requested and have objected to only three. By contrast, KEPCo has objected to 18 of the 28 data requests issued by Applicants.

<sup>13</sup> *Snowden v. Connaught Laboratories, Inc.*, 137 F.R.D. 325 (D. Kan. 1991) citing *Zucker v. Sable*, 72 F.R.D. 1 (S.D.N.Y. 1975).

“by whom.”” Finally, KEPCo objects on the ground that the data requests seek voluminous documents that are neither relevant nor reasonably calculated to lead to discovery of admissible evidence.

18. Having made the above objections, KEPCo provided a response to subpart (a) of data request GPE-1. However, KEPCo provided no narrative response to subpart (b) and, in its production of documents, KEPCo did not provide any for the period prior to July 10, 2017.

19. KEPCo’s objections are ill-founded and should be overruled.<sup>14</sup>

20. First, on its face, KEPCo’s objection that subpart (b) is vague and uncertain due to the use of the terms “interests” and “for the period” is ill-founded. KEPCo itself used the term “interests” in its Petition to Intervene to establish a basis for intervention in this proceeding.<sup>15</sup> The term “for the period [beginning January 1, 2016]” is also clear and stated in standard English that KEPCo surely understands. That it limited its production to materials dated after July 10, 2017, indicates that KEPCo understands this concept. The objection is inappropriate and should be rejected.

21. Second, KEPCo’s objection to documents prior to July 10, 2017 is ill-founded. While KEPCo objects to the production of documents related to its interests in the period before July 10, 2017, it does not – and cannot credibly – argue that no such documents are relevant to this proceeding. Admittedly, the current proposal by GPE and Westar was not announced until July 10, 2017. However, the present transaction would affect all of the interests enunciated by KEPCo in both the current docket and the proceedings related to the initial transaction. The statements of

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<sup>14</sup> Because KEPCo appears to have fully responded to subpart (a), the discussion here will be limited to the objections to subpart (b).

<sup>15</sup> Petition of Kansas Electric Power Cooperative, Inc. to Intervene, at ¶¶ 4-7 (August 28, 2017).

interest in KEPCo's interventions in the earlier proceeding and this docket are identical.<sup>16</sup>

Moreover, in his July 2017 Report, KEPCo's Executive Vice President stated \*\* [REDACTED]

[REDACTED] <sup>17</sup>\*\* Given this statement by KEPCo's Executive Vice President, documents and materials related to KEPCo's interests in a GPE-Westar merger in the period from January 1, 2016 through the present are all equally relevant to this proceeding.

22. The objection that the request concerning whether KEPCo's interests are regulated and by whom calls for a legal conclusion is also ill-founded. KEPCo participates in proceedings at this Commission, at the Federal Energy Regulatory Commission and elsewhere. Certainly its management understands the concept of regulation and which of its interests – whether in transmission service, generation service, nuclear generation or other activities impacting its business – are regulated. The question can easily be answered by a non-lawyer member of KEPCo's management. A legal conclusion is not requested.

23. KEPCo's objection that the data requests seek "voluminous documentation" is not a proper objection. The Discovery Order provides procedures for the production of voluminous

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<sup>16</sup> Compare ¶¶ 4-7 of KEPCo's Petition to Intervene in Docket No. 16-KCPE-593-ACQ with ¶¶ 4-7 of KEPCo's Petition to Intervene in Docket No. 18-KCPE-095-MER.

<sup>17</sup> \*\* [REDACTED] \*\* KEPCo classified the referenced material as confidential along with all of the other documents it provided. The materials provided by KEPCo are minutes of its Board of Trustees, agendas of such meetings and reports to the Board from KEPCo's Executive Vice President, its Regulatory Department and its General Counsel. KEPCo has maintained that all portions of these materials without exception are confidential but in its initial response did not comply with K.A.R. 82-1-221a or the Discovery Order by explaining why the material is confidential or the harm that public disclosure would cause. In an amended response to Applicants data request GPE-2, KEPCo asserted that all of its Board materials "constitute confidential commercial information pursuant to K.A.R. 82-1-221a and if disclosed or otherwise placed in the public domain would result in irreparable harm to KEPCo's economic and competitive interests." However, KEPCo did not, as required by the Discovery Order, indicate which portions of the documents, if any, fall within the seven categories of confidential information enumerated in paragraph 11 of the Discovery Order.

documents.<sup>18</sup> KEPCo has not identified any documents that are voluminous. If Applicants' discovery requires production of voluminous documents, KEPCo has the option of identifying those documents and requiring the Applicants to follow the provisions of the Discovery Order.

24. Finally, as to data request GPE-1(b), all of the material requested by the Applicants is relevant. Discovery into the interests of KEPCo in this proceeding whether stated in its Petition or not, is appropriate. And, given the assertion by KEPCo's Executive Vice President that \*\* [REDACTED] \*\* it is clear that discovery related to the period from January 1, 2016 to July 9, 2017 is as appropriate as inquiry into KEPCo's actions since July 10, 2017.

**Data request GPE-2**

a) Please list the date, time, and location of each meeting of the KEPCo Board of Trustees held since January 2016 at which discussions were had regarding a merger or acquisition between Westar and GPE. For each such meeting, please provide the following:

1. All documents, including meeting agendas, reports, presentations, and meeting minutes in your possession distributed to or viewed by KEPCo's trustees at or in connection with the meetings identified in your response to subpart a).
2. All correspondences, including emails, between KEPCo's trustees, staff or outside consultants going back to January 2016, related to the merger or acquisition transactions proposed by Applicants in Docket No. 16-KCPE-593-ACQ or Docket No. 18-KCPE-095-MER.

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<sup>18</sup> Discovery Order, at ¶ 12.

**Response to KEPCo General Objections as applied to data request GPE-2.**

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).

25. Similar to data request GPE-1, in GPE-2, the questions are straight-forward and merely request KEPCo to provide information and documents in their possession related to meetings of the KEPCo Board of Trustees at which a merger or acquisition between Westar and GPE was discussed. Such a request is clearly within the scope of discovery contemplated by the Discovery Order and does not request or require that KEPCo create any new study or do anything but search its files and produce the responsive documents. Data Request GPE-2 does not seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order.

- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.

26. See discussion at ¶ 11 above.

- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

27. Data request GPE-2 seeks information and documentation related to meetings at which a merger or acquisition involving Westar and GPE was discussed. This is clearly within the scope of legitimate discovery especially given the statement of KEPCo's Executive Vice President that \*\* [REDACTED]

[REDACTED] \*\* as discussed at ¶ 12 above.

- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publicly available or that are already in the possession, custody, or control of GPE.

28. Applicants do not seek to have KEPCo produce documents that are in the public record. However, KEPCo should be required to identify any documents in the public record that are responsive to Applicants' discovery and where they may be found.

- E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

29. Applicants are not seeking any documents that are not in KEPCo's possession, custody or control so this objection is irrelevant.

- F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

30. See the discussion of this General Objection at ¶ 17 above.

**Response to KEPCo Specific Objections to data request GPE-2.**

KEPCo objections:

KEPCo objects to subpart (a) "due to the vagueness and uncertainty of the term 'meetings,' 'since January 2016' and 'discussions were held.'" KEPCo also objects to the production of any documents related to the period beginning on January 1, 2016 because the proposal under consideration in this docket was not announced until July 10, 2017. Related to that objection (and to be discussed together below), KEPCo objects to the request "to the extent it asks for information about an acquisition that is not the subject of this proceeding and that will never occur, and is not calculated to lead to the discovery of admissible evidence."

31. KEPCo objects to subpart (a)(1) on the grounds that it seeks all documents reviewed at meetings at which the merger was discussed including documents not related to the merger, that it is burdensome and seeks voluminous documents that are not relevant or calculated to lead to

discovery of admissible evidence and to the extent it seeks information related to meetings that occurred prior to July 10, 2017.

32. KEPCo objects to subpart (a)(2) based on “vagueness and uncertainty of the undefined term ‘staff,’” on the ground that it is overly broad and burdensome “because it seeks correspondence that is in any way ‘related to’ the merger, that it seeks correspondence related to the initial merger proposal and that it seeks documents not in the possession, custody or control of KEPCo.

33. Having made the above objections, KEPCo provided a response to subparts (a) and (a)(1) of data request GPE-2. However, KEPCo provided no narrative response to subpart (a)(2) and, in its production of documents, KEPCo did not provide any documents for the period prior to July 10, 2017. (See **Attachment C**).

34. KEPCo’s objections are ill-founded and should be overruled.

35. As with KEPCo’s objection to “vagueness” related to data request GPE-1, on its face, KEPCo’s objection that subpart (a) is vague and uncertain due to the use of the terms “meetings,” “since January 2016” and “discussions were held” and that subpart (a)(2) is vague and uncertain due to the use of the term “staff” is ill-founded. The terms used in the data request clear and stated in standard English that KEPCo surely understands. The objection is inappropriate and should be overruled.

36. Second, KEPCo’s objection to documents prior to July 10, 2017 and that discovery concerning meeting related to the prior merger are irrelevant is also ill-founded. For the same reason as was discussed above at ¶ 21 above, and given the statement by KEPCo’s Executive Vice President that \*\* [REDACTED]

[REDACTED] \*\* such meetings and discussion are relevant to this docket.

37. As to KEPCo's objection that Applicants seek materials reviewed at meetings where the merger was discussed but that did not relate to the merger, Applicants do not seek such information. However, it is proper discovery for Applicants to seek any materials reviewed at KEPCo Board meetings that were related to the merger. As was stated above, if such materials are "voluminous," the Discovery Order provides a mechanism for dealing with such documents.

38. Applicants do not seek any materials that are not in the possession, custody or control of KEPCo. However, it is completely reasonable and appropriate for KEPCo to be required to conduct a reasonable search in its own records, including KEPCo's computer files and those of its employees, *i.e.*, its staff, for documents related to the proposed merger or the initial merger.

**Data request GPE-3**

a) Please list the date, time, and location of all meetings between KEPCo employees, members or consultants related to the merger transaction proposed in this docket or the merger transaction for which approval was sought in Docket No. 16-KCPE-593-MER. For each such meeting, provide the following documents or information:

1. All documents, including meeting agendas, reports, presentations, and meeting minutes in your possession distributed to or viewed by the parties involved in the meeting.
2. All correspondences, including emails, between any of the parties to the meeting(s) addressing the merger transaction proposed in this docket or the merger transaction for which approval was sought in Docket No. 16-KCPE-593-MER.
3. Copies of any notes taken by anyone in attendance at such meetings.



**Response to KEPCo General Objections as applied to data request GPE-3.**

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).

39. Similar to prior data requests, the questions in data request GPE-3 are straightforward and merely request KEPCo to provide information and documents in their possession related to meetings between KEPCo employees, member or consultants at which a merger or acquisition between Westar and GPE was discussed. Such a request is clearly within the scope of discovery contemplated by the Discovery Order and does not request or require that KEPCo create any new study or do anything but search its files and produce the responsive documents. Data Request GPE-3 does not seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order.

- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.

40. See discussion at ¶ 11 above.

- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

41. Data request GPE-3 seeks information and documentation related to meetings at which a merger or acquisition involving Westar and GPE was discussed. This is clearly within the scope of legitimate discovery as discussed at ¶¶ 12 and 21 above.

D. KEPCo objects to the Requests to the extent they call for the production of documents that are publicly available or that are already in the possession, custody, or control of GPE.

42. Applicants do not seek to have KEPCo produce documents that are in the public record. However, KEPCo should be required to identify any documents in the public record that are responsive to Applicants' discovery and where they may be found.

E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

43. Applicants are not seeking any documents that are not in KEPCo's possession, custody or control so this objection is irrelevant.

F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

44. See the discussion of this General Objection at ¶ 17 above.

### **Response to KEPCo Specific Objections to data request GPE-3.**

#### KEPCo Objections:

KEPCo objects to the data request in part based on the erroneous reference to Docket No. 16-KCPE-593-MER rather than to Docket No. 16-KCPE-593-ACQ and then proceeds to object to discovery related to the transaction proposed in Docket No. 16-KCPE-593-ACQ. Applicants agree that its reference to Docket No. 16-KCPE-593-MER was in error and amends the data request to request information related to Docket No. 16-KCPE-593-ACQ. Applicants also agree to limit the request to the period from January 1, 2016 to present. However, Applicants do not agree that with such modifications, the data request seeks information that is irrelevant to this proceeding.

45. KEPCo's objection to discovery concerning meetings related to the prior merger as irrelevant is ill-founded. For the same reason as was discussed above at ¶ 21 above, and given the statement by KEPCo's Executive Vice President that \*\* [REDACTED]

[REDACTED] \*\* such meetings and discussion are relevant to  
this docket.

46. Applicants' agreement to limit the data request to the period from January 1, 2016 to present adequately addresses KEPCo's contention that the data request is overly broad and unduly burdensome because it is not limited in time.

47. Further, Applicants do not seek any materials that are not in the possession, custody or control of KEPCo. However, it is completely reasonable and appropriate for KEPCo to be required to conduct a reasonable search in its own records, including KEPCo's computer files and those of its employees, *i.e.*, its staff, for documents related to the proposed merger or the initial merger.

## Data request GPE-4

a) Please list the date, time, and location of each meeting of the KEPCo Board of Trustees held since January 2014 at which discussions were had regarding KEPCo's Wholesale Generation Formula Based Rate Contract with Westar and/or Westar's Transmission Formula Rate. For each such meeting, please provide the following:

1. All documents, including meeting agendas, reports, presentations, and meeting minutes in your possession distributed to or viewed by KEPCo's trustees at or in connection with the meetings identified in your response to subpart a).
2. All correspondences, including emails, between KEPCo's trustees, staff or outside consultants going back to January 2014, related to KEPCo's Wholesale Generation Formula Based Rate Contract with Westar and/or Westar's Transmission Formula Rate.

## Response to KEPCo General Objections as applied to data request GPE-4

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).

48. Similar to prior data requests, the questions in data request GPE-4 are straightforward and merely request KEPCo to provide information and documents in its possession related

to meetings between KEPCo employees, member or consultants at which a merger or acquisition between Westar and GPE was discussed. Such a request is clearly within the scope of discovery contemplated by the Discovery Order and does not request or require that KEPCo create any new study or do anything but search its files and produce the responsive documents. Data Request GPE-4 does not seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order.

- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.

49. See discussion at ¶ 11 above.

- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

50. Data request GPE-4 seeks information and documentation related to meetings at which the GFR and TFR with Westar was discussed. This is clearly within the scope of legitimate discovery as discussed at ¶¶ 12, 13 and 21 above and given the statement by KEPCo's Executive Vice President that \*\*

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- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publicly available or that are already in the possession, custody, or control of GPE.

51. Applicants do not seek to have KEPCo produce documents that are in the public record. However, KEPCo should be required to identify any documents in the public record that are responsive to Applicants' discovery and where they may be found.

E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

52. Applicants are not seeking any documents that are not in KEPCo's possession, custody or control so this objection is irrelevant.

F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

53. See the discussion of this General Objection at ¶ 17 above.

#### **Response to KEPCo Specific Objections to data request GPE-4**

##### KEPCo objections:

KEPCo objects on grounds of vagueness and uncertainty of the commonly used terms “discussions were had” and “January 2016.” It also objects on the grounds that the terms “Wholesale Generation Formula Based Rate Contract” – a clear reference to the “Cost-Based Rate Agreement for Full Requirements Electric Service between Westar and KEPCo” under which KEPCo purchases approximately 33% of its power supply needs from Westar<sup>19</sup> – and “Transmission Formula Rate” – both of which were discussed by KEPCo witness Mark F. Doljac in his testimony in Docket No. 16-KCPE-593-ACQ<sup>20</sup> and which KEPCo referenced in its protest in the FERC proceedings related to the proposed merger<sup>21</sup> – are vague and uncertain. KEPCo also objects to Applicants' requests for “voluminous documents spanning a period of nearly four years” that it claims are not relevant or calculated to lead to discovery of admissible evidence. Finally, KEPCo objects on the ground that the data request seeks material not in its possession, custody or control.

54. First, KEPCo's objections of vagueness and uncertainty are absurd. It objects to the use of common terms – “discussions were held” and “January 2016” – and to terms that are

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<sup>19</sup> Direct Testimony of Mark F. Doljac on behalf of KEPCo, at 3, Docket No. 16-KCPE-593-ACQ (December 16, 2016).

<sup>20</sup> See, e.g., *id.* at 3-5.

<sup>21</sup> E.g., Protest of Kansas Electric Power Cooperative, Inc., FERC Docket No. EC17-171-000, at 3, 9, 10 (October 31, 2017).

used by KEPCo and others to refer to existing supply and transmission agreements under which service is provided to it.

55. Second, the data requests clearly are designed to elicit information that is relevant to these proceedings. In its Petition to Intervene in this matter, KEPCo specifically cited its dependence on Westar's generation fleet – which it accesses through purchases pursuant to the Wholesale Generation Formula Based Rate Contract – and on Westar's transmission system – the use of which KEPCo pays for under Westar's Transmission Formula Rate. Having brought issues related to those service into the case,<sup>22</sup> KEPCo cannot credibly argue that discovery into its discussions of the related contracts are irrelevant to this proceeding. Proposals by KEPCo that would reduce the revenue received by Westar from KEPCo under its GFR Agreements with KEPCo and that are presently credited to the benefit of Westar's Kansas retail customers through its RECA are clearly relevant to this proceeding.<sup>23</sup>

56. Applicants do not seek discovery of any materials not in KEPCo's possession, custody or control.

#### **Data request GPE-7**

Please provide the bus bar cost (per MWH) for each of KEPCO's owned generating stations and for all of KEPCo's purchased power agreements. For each, please identify whether these are own, full requirement, partial requirements, etc.

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<sup>22</sup> In proceedings related to the initial merger proposal, in Docket No. 16-KCPE-593-ACQ, in his pre-filed testimony, at pages 5-6, KEPCo witness Doljac testified as follows in response to a question concerning the purpose of his testimony:

The future financial condition of GPE and Westar and the potential for the recovery of other post-merger costs are of great concern to KEPCo, its member distribution cooperatives, and their retail electric consumers. I am sponsoring testimony to discuss how changes in costs resulting from Joint Applicants' proposed transaction could impact the rates KEPCo pays under its GFR Agreement with Westar and under the TFRs assessed by SPP for Network service in the Westar and KCP&L transmission zones.

<sup>23</sup> See also discussion of credibility and bias at ¶ 13 above.

**Response to KEPCo General Objections as applied to data request GPE-7.**

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).

57. Similar to prior data requests, the question in GPE-7 is straight-forward and merely requests KEPCo to state the bus bar cost of its generation resources and state whether they are owned resources or purchased under a full or partial requirements contract. Such a request is clearly within the scope of discovery contemplated by the Discovery Order and does not request or require that KEPCo create any new study. This is information that should be readily available to KEPCo. Data Request GPE-7 does not seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order.

- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.

58. See discussion at ¶ 11 above.

- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

59. KEPCo based its intervention in part on its reliance on Westar's generation. In its testimony related to the initial transaction, KEPCo's witness, Mark Doljac expressed concerns about the effect of the transaction on the rates KEPCo pays under its GFR Agreement with Westar.<sup>24</sup> Given the high likelihood that KEPCo will raise such concerns again in this proceeding – as evidenced by its Executive Vice President's assertion that \*\* [REDACTED]

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<sup>24</sup> See footnote 22.

[REDACTED] \*\* – the costs of KEPCo’s other generation resources is highly relevant to the issues in this proceeding because such information is essential to understanding the impact of any changes to KEPCo’s generation mix on its members and their Kansas retail customers.

- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publicly available or that are already in the possession, custody, or control of GPE.

60. Applicants do not seek to have KEPCo produce documents that are in the public record. However, KEPCo should be required to identify any documents in the public record that are responsive to Applicants’ discovery and where they may be found.

- E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo’s possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

61. Applicants are not seeking any documents that are not in KEPCo’s possession, custody or control so this objection is irrelevant.

- F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

62. See the discussion of this General Objection at ¶ 17 above.

#### **Response to KEPCo Specific Objections to data request GPE-7**

##### KEPCo Objections:

KEPCo objects to the vagueness and uncertainty of the terms “bus bar” and “these,” on the ground that the request is burdensome because it is not limited in time, and on the ground that the data requests information that is not relevant to this proceeding.

63. First, the terms used in the question are not vague. “Bus bar” is defined in the Merriam-Webster dictionary as “a conductor or an assembly of conductors for collecting electric



currents and distributing them to outgoing feeders.” It is a commonly used term in the electric industry to define the point at which a generation source is attached to the transmission system and at which the price of generation is assessed. The word “these” clearly references the KEPCo-owned generation stations and purchased power agreements addressed in the preceding sentence.

64. Second, the question is clearly limited in time. It seeks the current cost to KEPCo of its generation resources. The suggestion that it is an opened question unlimited as to time is disingenuous.

65. Finally, as was stated above in ¶ 59 above, KEPCo introduced this issue by its reference to its reliance on Westar’s generation. A determination whether effects of the merger on the costs to KEPCo under its GFR Agreement with Westar cannot be made without an understanding of the cost to KEPCo of its existing generation resources.

**Data request GPE-9**

With regard to KEPCo’s relationship with its member cooperatives, please provide the following:

- (a) Any and all governing documents.
- (b) Any and all documents setting forth KEPCo’s cost and savings allocation procedures to its members. Such request should include an explanation as to the type of cost allocated and the percentage of allocation. For example, for General & Administrative (G&A) and Legal Fees please explain how, and on what percentage basis, these costs are allocated to KEPCo members.

**Response to KEPCo General Objections as applied to data request GPE-9**

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).

66. Similar to prior data requests, the question in GPE-9 is straight-forward and merely requests KEPCo to provide KEPCo's governing documents and its cost and savings allocation procedures. Such a request is clearly within the scope of discovery contemplated by the Discovery Order and does not request or require that KEPCo create any new study. This is information that should be readily available to KEPCo. Data Request GPE-9 does not seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order.

- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.

67. *See* discussion at ¶ 11 above.

- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

68. KEPCo's intervention is based on the potential impact of the proposed merger on KEPCo's costs and rates, the resulting rates of its members and, consequently, on the public interest. The effect of any changes to the rates under which Westar provides generation and transmission services to KEPCo or its members cannot be understood without an understanding of how such costs are to be allocated among KEPCo's members. Additionally, KEPCo expended substantial resources in opposing the initial transaction and continues to expend substantial resources in opposing the merger transaction presented in this matter. Presumably, such costs will be passed on to KEPCo's members. The effect of KEPCo's substantial investment in dockets

related to these transactions on its members and their customers cannot be understood without an understanding of how such costs are to be allocated among KEPCo's members.

- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publicly available or that are already in the possession, custody, or control of GPE.

69. Applicants do not seek to have KEPCo produce documents that are in the public record. However, KEPCo should be required to identify any documents in the public record that are responsive to Applicants' discovery and where they may be found.

- E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

70. Applicants are not seeking any documents that are not in KEPCo's possession, custody or control so this objection is irrelevant.

- F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

71. See the discussion of this General Objection at ¶ 17 above.

#### **Response to KEPCo Specific Objections to data request GPE-9**

##### KEPCo objections:

KEPCo objects to this request because it seeks documents and information about "KEPCo's relationship with its member cooperatives" that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. KEPCo further objects to this request because it seeks information about the cost of services that KEPCo provides to members that is highly sensitive commercial information. KEPCo objects to this request due to the vagueness and uncertainty of the phrases "governing documents," "cost and savings allocation procedures," and "such request." KEPCo also objects to this request because it is overly broad and unduly burdensome because it seeks production of "any and all" documents and is not limited in time. KEPCo objects to the request to the extent "such request" seeks KEPCo to perform calculations and /or create documents that do not presently exist.

KEPCo further objects to this response to the extent certain responsive documents are part of the public record and are on file with the Kansas Secretary of State.

72. First, the data request is relevant to issues in this proceeding. In its petition to intervene, KEPCo asserts that it “and, ultimately, its members will or may be bound by” the results of this proceeding.<sup>25</sup> And, in his testimony in the prior proceeding, KEPCo witness Doljac stated that “Any change in costs that are input into Westar’s Generation Formula Rate (GFR), Westar’s Transmission Formula Rate (TFR) or KCP&L’s TFR resulting from the Joint Applicants’ proposed transaction could have a significant impact on the delivered power costs borne by KEPCo – costs which would then be required to be recovered from its members and ultimately its members’ retail customers.”<sup>26</sup> The effects of potential changes in rates to KEPCo and of the costs incurred by KEPCo in this proceeding on its members and their retail customers cannot be understood without an understanding of the relationship between KEPCo and its members and the manner in which such costs are allocated. By intervening in this docket and raising the interests of its members, KEPCo has opened the door to discovery into the nature of its relationships with its members making the inquiry in data request GPE-9 relevant to this proceeding.

73. Second, KEPCo’s objection that the materials sought constitute “highly sensitive commercial information” is not an appropriate objection. If any materials responsive to the data request are, in fact, commercially sensitive, KEPCo has the option of providing them as confidential documents. Clearly, KEPCo knows that is an option having designated all of its production to date as confidential. However, merely because materials are “commercially sensitive” or confidential does not place them beyond the reach of discovery.

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<sup>25</sup> KEPCo Petition to Intervene, at ¶ 6.

<sup>26</sup> Direct Testimony of Mark F. Doljac on behalf of KEPCo, at 5, Docket No. 16-KCPE-593-ACQ (December 16, 2016).

74. As it has over and over in response to Applicants' data requests, KEPCo objects on the basis of alleged vagueness of commonly used words and phrases. The terms "governing documents," "cost and savings allocation procedures" and "such request" are phrases commonly used in business, regulation and everyday speech. KEPCo's suggestion that the use of such phrases is objectionable is unfounded.

75. KEPCo objects that the request is "not limited in time." It should be clear from the context that Applicants are seeking responsive documents that currently address the relationship between KEPCo and its members. Thus, the request seeks the **currently effective** governing documents and allocation procedures. To the extent that is not clear from the data request, Applicants agree that they only seek documents that currently affect the relationship between KEPCo and its members.

**Data request GPE-10**

Please provide copies of any and all invoices issued to the KEPCo members, going back to January 2016, related to:

- (a) Docket No. 16-KCPE-593-ACQ
- (b) Docket No. 18-KCPE-095-MER
- (c) General and Administrative expenses
- (d) Power cost expenses
- (e) Transmission expenses
- (f) any other costs and savings allocated to the KEPCo members for the referenced time period not included in the above list.

**Response to KEPCo General Objections as applied to data request GPE-10**

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).

76. Similar to prior data requests, the question in GPE-10 is straight-forward and merely requests KEPCo to provide copies of invoices issued by KEPCo to its members for the period from January 2016 to present. Such a request is clearly within the scope of discovery contemplated by the Discovery Order because it relates to the relationship between KEPCo and its members – an issue raised by KEPCo in its intervention and its testimony in the docket addressing the initial merger proposal. The data request does not request or require that KEPCo create any new study. This is information that should be readily available to KEPCo. Data Request GPE-10 does not seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order.

- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.

77. *See discussion at ¶ 11 above.*

- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

78. KEPCo's intervention is based on the potential impact of the proposed merger on KEPCo's costs and rates, the resulting rates of its members and, consequently, on the public interest. The effect of any changes to the rates under which Westar provides generation and transmission services to KEPCo on its members cannot be understood without an understanding of how KEPCo has recovered its costs from its members in the recent past. The data request is

reasonably limited in time and scope and seeks materials relevant to the interests KEPCo purports to represent in this proceeding.

- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publicly available or that are already in the possession, custody, or control of GPE.

79. Applicants do not seek to have KEPCo produce documents that are in the public record. However, KEPCo should be required to identify any documents in the public record that are responsive to Applicants' discovery and where they may be found.

- E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

80. Applicants are not seeking any documents that are not in KEPCo's possession, custody or control so this objection is irrelevant.

- F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

81. See the discussion of this General Objection at ¶ 17 above.

### **Response to KEPCo Specific Objections to data request GPE-10**

#### KEPCo objections:

KEPCo objects to this request because it seeks "invoices issued to the KEPCo members, going back to January 2016" that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. KEPCo objects to this request due to the vagueness and uncertainty of the phrase "any other cost and savings allocated." KEPCo further objects to this request because it seeks information about the cost of services that KEPCo provides to members that is highly sensitive commercial information. KEPCo further objects to this request because it is overly broad and unduly burdensome because it seeks production of "any and all" invoices over a 22 month period, months before Westar and GPE publicly announced the denied acquisition that is not the subject of this proceeding or the presently proposed merger-of-equals. KEPCo objects to this request because it is duplicative of GPE-19.

82. Data request GPE-10 is basically a companion to GPE-9 and is appropriate and relevant for the same reasons. As was stated above, KEPCo asserts that it “and, ultimately, its members will or may be bound by” the results of this proceeding.<sup>27</sup> And, in his testimony in the prior proceeding, KEPCo witness Doljac stated that changes to Westar’s wholesale rates will affect KEPCo and its members.<sup>28</sup> Again, Mr. Doljac’s prior testimony is relevant because as noted by KEPCo’s Executive Vice President \*\* [REDACTED]

[REDACTED]\*\* The effects of potential changes in rates to KEPCo and of the costs incurred by KEPCo in this proceeding on its members and their retail customers cannot be understood without an understanding of the manner in which KEPCo recovers its costs from its members. By intervening in this docket and raising the interests of its members, KEPCo has opened the door to discovery into the nature of its relationships with its members making the inquiry in data request GPE-9 relevant to this proceeding.

83. Second, KEPCo’s objection that the materials sought constitute “highly sensitive commercial information” is not an appropriate objection. As was stated above, the Commission has provided a mechanism for the protection of commercially sensitive information and KEPCo knows this option is available and has used it to declare all of its previously provided documents as “confidential.”

84. Once more in response to Applicants’ data requests, KEPCo objects on the basis of alleged vagueness of commonly used words and phrases. In this case, KEPCo claims the phrase “any other cost and savings allocated” is vague and uncertain. Again, however, the term is a

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<sup>27</sup> KEPCo Petition to Intervene, at ¶ 6.

<sup>28</sup> Direct Testimony of Mark F. Doljac on behalf of KEPCo, at 5, Docket No. 16-KCPE-593-ACQ (December 16, 2016).



simple, commonly used phrase that KEPCo should have no problem interpreting. KEPCo's suggestion that the use of such phrases is objectionable is unfounded.

85. KEPCo objects that the request is overly broad and burdensome because it seeks "any and all invoices" over a 22-month period that in part predates the announcement of the transaction at issue in this proceeding. Data request GPE-10 seeks information that will allow Applicants (and the Commission) to better understand how rates charged to KEPCo and costs incurred by KEPCo affect KEPCo's members – an issue which KEPCo has brought into this matter. A request that seeks production of records relevant to an issue raised by KEPCo, that are in KEPCo's possession and cover a relatively short period of time – less than two years – is narrowly focused and far from excessively burdensome.

86. KEPCo's objection that this data request is duplicative of GPE-19 is not a proper objection. To the extent responses to the questions overlap, KEPCo may so indicate in its response.

#### **Data request GPE-11**

With regard to the GFR Agreement between KEPCo and Westar dated effective September 9, 2009, please provide any and all documents created by KEPCo or its consultants that are in KEPCo's possession or control concerning the negotiation and entering into of the GFR Agreement.

#### **Response to KEPCo General Objections as applied to data request GPE-11**

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).

87. Similar to prior data requests, the question in GPE-11 is straight-forward and merely requests KEPCo to provide copies of documents in KEPCo's possession or control concerning the negotiation and entering into of the GFR Agreement between KEPCo and Westar. Such a request is clearly within the scope of discovery contemplated by the Discovery Order because it relates to the establishment of a contractual relationship that KEPCo states may be

affected by the outcome of the merger – an issue raised by KEPCo in its intervention and its testimony in the docket addressing the initial merger proposal – and which it seeks to have modified. The data request does not request or require that KEPCo create any new study. Data Request GPE-11 does not seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission’s Discovery Order.

- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.

88. *See* discussion at ¶ 11 above.<sup>29</sup>

- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

89. KEPCo’s intervention is based on the potential impact of the proposed merger on its costs of receiving generation service from Westar under the GFR Agreement. And KEPCo seeks changes to the GFR Agreement in the proceeding at FERC. Given the centrality of the GFR Agreement to the relationship between KEPCo and Westar and the effect of changes in the GFR Agreement rates on KEPCo, data requests concerning the origins of that relationship and KEPCo’s expectations for service such under a long-term contract are clearly relevant to the issues in this proceeding.

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<sup>29</sup> Unlike its claims as to other data requests that there may be other unidentified privileges or doctrines that protect documents from discovery, in the case of data request GPE-11, KEPCo has referenced protection under FERC Rules of Procedure, specifically, those codified at “18 C.F.R. pt. 385(F).” Applicants will respond to this objection in its response to specific objections to data request GPE-11 below.

- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publicly available or that are already in the possession, custody, or control of GPE.

90. Applicants do not seek to have KEPCo produce documents that are in the public record. However, KEPCo should be required to identify any documents in the public record that are responsive to Applicants' discovery and where they may be found.

- E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

91. Applicants are not seeking any documents that are not in KEPCo's possession, custody or control so this objection is irrelevant.

- F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

92. See the discussion of this General Objection at ¶ 17 above.

### **Response to KEPCo Specific Objections to data request GPE-11**

#### KEPCo objections:

KEPCo objects to this request as misrepresenting the GFR Agreement to be "dated effective September 9, 2009" because FERC made the agreement effective on September 1, 2009. KEPCo objects to this request because it seeks "all documents . . . concerning the negotiation and entering into of the GFR Agreement" that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. KEPCo objects to this request as overly broad and unduly burdensome because it requests "all documents" from more than ten years ago. KEPCo further objects to the request because it specifically seeks production of documents that Westar knows to be protected from disclosure pursuant to federal regulation, 18 C.F.R. pt. 385(F), and protected by attorney-client privilege and the work product doctrine, and to which Applicants know, or should know, they are not entitled to in this proceeding. KEPCo objects to this request because it is intended to create unnecessary burdens and expense, and harass KEPCo.

93. Applicants admit that they misstated the effective date of the GFR Agreement and apologize for the error. In the course of the discussion with counsel for KEPCo, Applicants agreed that data request GPE-11 should be amended to reference the agreement “dated effective September 1, 2009.”

94. KEPCo asserts that its intervention in this proceeding is based on the potential impact of the proposed merger on its costs of receiving generation service from Westar under the GFR Agreement. And, in the merger approval proceeding at FERC, KEPCo seeks reductions to its level of purchases under the GFR Agreement that was voluntarily executed by KEPCo and Westar years ago. Given the centrality of the GFR Agreement to the relationship between KEPCo and Westar and the fact that reductions in the level of KEPCo purchases under the GFR Agreement will increase rates paid by Westar’s retail customers, data requests concerning the origins of that relationship and KEPCo’s expectations for service under that long-term contract are clearly relevant to the issues in this proceeding.

95. Additionally, KEPCo bases its intervention in this docket, in part, upon the fact that it is a co-owner of Wolf Creek with Westar and KCP&L<sup>30</sup>, and expresses concerns that the merger “will fundamentally change the governance, management, and operation of Wolf Creek’s operating company ... rendering KEPCo powerless to protect itself from actions or decisions of the post-merge entity.”<sup>31</sup> This indicates that KEPCo is claiming that its decision to enter into a long-term GFR with Westar did not contemplate the possibility that its co-owners of Wolf Creek

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<sup>30</sup> Petition of KEPCo to Intervene, p. 2,4.

<sup>31</sup> FERC Docket No. EC17-171-000, *Great Plains Energy Incorporated Westar Energy, Inc.*, Protect of Kansas Electric Power Cooperative, Inc. filed October 31, 2017, p. 10.

could merge during the term of the GFR. Applicants are entitled to engage in discovery of documents that would show whether such a claim is consistent with the facts. “A witness may be impeached by contradiction on a non-collateral matter by introducing conflicting evidence including the witness’ own testimony or conduct.”<sup>32</sup>

96. Additionally, KEPCo bases its intervention in this docket, in part, upon the fact that it is a co-owner of Wolf Creek with Westar and KCP&L<sup>33</sup>, and expresses concerns that the merger “will fundamentally change the governance, management, and operation of Wolf Creek’s operating company ... rendering KEPCo powerless to protect itself from actions or decisions of the post-merge entity.”<sup>34</sup> This indicates that KEPCo is claiming that its decision to enter into a long-term GFR with Westar did not contemplate the possibility that its co-owners of Wolf Creek could merge during the tenure of the GFR. Applicants are entitled to engage in discovery of documents that would show whether such a claim is consistent with the facts. “A witness may be impeached by contradiction on a non-collateral matter by introducing conflicting evidence including the witness’ own testimony or conduct.”<sup>35</sup>

97. If documents are relevant to the issues in this matter – as Applicants contend they are – it is not a proper objection that the documents are “from more than 10 years ago.” The GFR Agreement – which was willingly and voluntarily executed by both KEPCo and Westar – has a

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<sup>32</sup> *Kansas Rules of Evidence with Evidence Objections and Evidentiary Foundations*, Michael A. Barbara, Fourth Edition, p. 3-4.

<sup>33</sup> Petition of KEPCo to Intervene, p. 2,4.

<sup>34</sup> FERC Docket No. EC17-171-000, *Great Plains Energy Incorporated Westar Energy, Inc.*, Protect of Kansas Electric Power Cooperative, Inc. filed October 31, 2017, p. 10.

<sup>35</sup> *Kansas Rules of Evidence with Evidence Objections and Evidentiary Foundations*, Michael A. Barbara, Fourth Edition, p. 3-4.

38-year term, with approximately 28 years remaining. KEPCo's expectations and understandings concerning the effect of entering into such a long-term agreement are clearly relevant where, as in this case, KEPCo complains about potential effects of the proposed merger on that agreement and seeks reductions in the level of purchases under it. If KEPCo is unable to locate responsive materials after a diligent search, it may so indicate. However, the mere fact that the documents are from a period around 10 years ago does not excuse KEPCo from the obligation to search for such documents.

98. KEPCo claims that some documents may be protected from discovery under federal regulation, namely "18 C.F.R. pt. 385(F)." Based on a review of the FERC rules of Practice and Procedure and discussions with counsel for KEPCo, counsel for Applicants understand that to be an intended reference to 18 C.F.R. Part 385, Subpart F – FERC's rules on conferences, settlements and stipulations.<sup>36</sup> Those rules generally apply to settlement proceedings at FERC and settlements submitted thereunder. The rules do provide, for instance, that offers of settlement that are not accepted by the Commission and discussions of parties with respect to an offer of settlement are not subject to discovery or admissible in evidence.<sup>37</sup> Applicants agree that any materials that are covered by such rules are not subject to discovery.

#### **Data request GPE-12**

Please reference the Protest of KEPCo addressing the proposed merger at issue in this docket and filed in FERC Docket No. EC17-171-000, dated October 31, 2017, page three (3), fourth bullet, requesting Applicants be required to "*commit to negotiate with KEPCo and to file with the Commission amendments to the GFR Agreement that will permit KEPCo to reduce the level of its GFR Agreement purchases upon appropriate notice or based on agreed upon triggers and to replace those purchases with other resources.*" With regard to this recommended merger condition, please answer the following:

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<sup>36</sup> Subpart F consists of 18 C.F.R. §§385.601 through 385.606.

<sup>37</sup> 18 C.F.R. 385.602 (e)(1) and (e)(2).

- (a) What aspects of the Merger transaction support KEPCo's belief that it is appropriate to modify its existing GFR contract with Westar as a condition of approving the Merger?
- (b) To what level does KEPCo propose to reduce its GFR Agreement purchases under this condition?
- (c) Please describe KEPCo's understanding of how revenue reductions experienced by Westar as a result of the reduced KEPCo GFR Agreement purchases proposed by KEPCo in its response to subpart (b) would be treated for purposes of setting rates for Westar's retail customers.
- (d) Please describe what is the "appropriate notice" that KEPCo proposes before it could reduce the level of its GFR Agreement purchases?
- (e) Please describe what are the "triggers" KEPCo proposes before it could reduce the level of its GFR Agreement purchases?
- (f) Please explain what KEPCo intends by the phrase "and to replace those purchases with other resources" and, specifically, what "other resources" are contemplated by KEPCo.

**Response to KEPCo General Objections as applied to data request GPE-12**

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).

99. Similar to prior data requests, the question in GPE-12 is straight-forward and merely requests KEPCo to explain the relief it has requested in the FERC proceeding and its explanation of how the requested reductions in the level of its purchases under its GFR Agreement with Westar would affect Westar's retail customers. Such a request is clearly within the scope of discovery contemplated by the Discovery Order and does not request or require that KEPCo create any new study. This is information that should be readily available to KEPCo. Data Request GPE-12 does not seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order.

- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.

100. See discussion at ¶ 11 above.

- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

101. KEPCo's intervention is based on the potential impact of the proposed merger on KEPCo's costs and rates, the resulting rates of its members and, consequently, on the public interest. However, because revenue from the GFR Agreement paid by KEPCo to Westar is credited to Westar's Retail Energy Cost Adjustment ("RECA") – to the benefit of Westar's retail customers – any reductions in the level of purchases under that agreement KEPCo obtains in the FERC proceedings related to the proposed transaction would harm Westar's Kansas retail customers. As has been noted, in its protest in the current proceedings at FERC, KEPCo has asked for renegotiation of the GFR Agreement in several regards as a condition of allowing the proposed merger to go forward.<sup>38</sup> Because reductions in the level of KEPCo purchases under its GFR Agreement with Westar would detrimentally affect Westar retail customers, the details concerning KEPCo's request and its potential effect on Westar customers are relevant to this Kansas merger approval proceeding.

- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publicly available or that are already in the possession, custody, or control of GPE.

102. Applicants do not seek to have KEPCo produce documents that are in the public record. However, KEPCo should be required to identify any documents in the public record that are responsive to Applicants' discovery and where they may be found.

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<sup>38</sup> See footnote 3 above.



- E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

103. Applicants are not seeking any documents that are not in KEPCo's possession, custody or control so this objection is irrelevant.

- F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

104. See the discussion of this General Objection at ¶ 17 above.

### **Response to KEPCo Specific Objections to data request GPE-12**

#### KEPCO Objection:

KEPCo objects to this request because it seeks information about statements in KEPCo's pleading in the Federal Energy Regulatory Commission ("FERC's") Docket No. EC17-171-000 that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Applicants' requests for discovery on issues raised in proceedings currently pending before FERC are appropriately addressed by Applicants through discovery in the settlement or hearing procedures available in that forum. Further, Applicants have twice taken a position on this issue, most recently in their answer filed on November 15, 2017, in FERC Docket No. EC17-171-000, without claiming a need for discovery in those proceedings. With respect to subpart (a), KEPCo objects to this request because it constitutes improper cross-examination and calls for a legal conclusion concerning the interpretation of section 203 of the Federal Power Act. With respect to subpart (c), KEPCo objects to this request because it calls for speculation about future events and requires a study based on information and assumptions that are not presently within KEPCo's possession.

105. As was stated above, inquiry into KEPCo's request for a renegotiation of its GFR Agreement is relevant here because any reduction in revenue received by Westar for services provided to KEPCo would harm Westar's retail customers by reducing the amount of money available to credit against Westar's RECA. In order to assess the impact of changes requested by KEPCo – which would directly increase rates for Westar's Kansas retail customers – it is necessary

for Applicants to be able to assess the likelihood of such relief being granted and to understand what amount of service reduction KEPCo seeks. Other aspects of the data request – for instance, the amount of notice Westar would receive before a reduction and what events might trigger a reduction – are also essential for Applicants to be able to assess the effect of any such reduction. The identity and cost of alternative resources that KEPCo may be contemplating are central to determining the cost impact to KEPCo and its members of any potential changes in the sources of energy providing service to them.

106. KEPCo raises the point that Applicants have responded to KEPCo request in FERC Docket No. EC17-171-000 without seeking discovery. That is neither an objection nor a basis for objection. The issue of how potential requested changes in KEPCo’s GFR Agreement may impact Westar’s Kansas retail customers is clearly relevant to this proceeding and Applicants should be allowed discovery into the issue in this proceeding.

107. Subpart (a) of data request GPE-12 does not constitute improper cross-examination. The question merely seeks information as to the KEPCo’s justification for its request to modify its GFR Agreement with Westar.

108. Given the effect of reductions in the level of KEPCo purchases under its GFR Agreement with Westar on Westar’s retail customers and the bearing of that effect on the broader public interest in Kansas, Subpart(c) appropriately asks for KEPCo to explain its understanding of the effect of its proposed modifications to the GFR Agreement on Westar’s retail customers. If KEPCo does not know the answer, it can so indicate.

### **Data request GPE-13**

Please reference the Protest of KEPCo filed in FERC Docket No. EC17-171-000 and dated October 31, 2017 , page three (3), sixth bullet, requesting Applicants be required to “*commit that, in the event of a premature shutdown of the Wolf Creek*

*facility prior to the end of its operating license, which may be made unilaterally by the post-merger combined company, KEPCo shall be permitted to replace its share of the lost Wolf Creek capacity through third-party purchases or resource acquisitions and not through additional purchases under the GFR Agreement.”* With regard to this recommended condition, please answer the following:

- (a) Please provide your definition of “premature shutdown”, as used in this condition. Under your definition, would it include any shutdown prior to the end of the Wolf Creek operating license regardless of cause or reason?
- (b) Is KEPCo in possession of any facts indicating that Applicants have considered, or are currently considering, shutting Wolf Creek down prior to its scheduled closing date of 2045?
- (c) If the answer to subpart (b) is yes, please provide such facts and associated documentation.

**Response to KEPCo General Objections as applied to data request GPE-13**

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission’s Discovery Order and K.A.R. 82-1-234a(a).

109. Similar to prior data requests, the question in GPE-13 is straight-forward and merely requests KEPCo to explain its request for a modification to its GFR Agreement with Westar. Such a request is clearly within the scope of discovery contemplated by the Discovery Order because it relates to the modification of an existing contractual relationship which, if granted, could affect rates paid by Westar’s retail customers. The data request does not request or require that KEPCo create any new study. Data Request GPE-13 does not seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission’s Discovery Order.

- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.

110. See discussion at ¶ 11 above.

- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

111. KEPCo's intervention in this proceeding is primarily based on the potential impact of the proposed merger on its costs of receiving generation service from Westar under the GFR Agreement. And KEPCo seeks changes to the GFR Agreement in the proceeding at FERC that relate specifically to Applicants' joint ownership with KEPCo of the Wolf Creek Nuclear Generating Station. Given the centrality of the GFR Agreement to the relationship between KEPCo and Westar, the significant investment of Applicants in Wolf Creek and the effect of changes in the GFR Agreement rates on KEPCo and, potentially, Westar customers, data requests concerning proposed changes in those relationships are relevant to this proceeding.

- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publicly available or that are already in the possession, custody, or control of GPE.

112. Applicants do not seek to have KEPCo produce documents that are in the public record. However, KEPCo should be required to identify any documents in the public record that are responsive to Applicants' discovery and where they may be found.

- E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

113. Applicants are not seeking any documents that are not in KEPCo's possession, custody or control so this objection is irrelevant.

- F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

114. See the discussion of this General Objection at ¶ 17 above.

**Response to KEPCo Specific Objections to data request GPE-13**

KEPCo objections:

KEPCo objects to this request because it seeks information about statements in KEPCo's pleading in FERC Docket No. EC17-171-000 that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Applicants' requests for discovery on issues raised in proceedings currently pending before FERC are appropriately addressed by Applicants through discovery in the settlement or hearing procedures available in that forum. Further, Applicants have twice taken a position on this issue, most recently in their answer filed on November 15, 2017, in FERC Docket No. EC17-171-000, without claiming a need for discovery in those proceedings. The answer filed by Applicants does not dispute that the GFR Agreement is subject to FERC's review pursuant to authorities delegated by the Federal Power Act. KEPCo objects to this request due to the vagueness and uncertainty of the imprecise phrase "scheduled closing date of 2045." KEPCo further objects to the extent the response requires production of information and documents that are already in the possession of Applicants.

115. KEPCo's request referenced in the data request GPE-13 is another request for a renegotiation of a portion of its GFR Agreement. That information is relevant because such an amendment could reduce revenue from KEPCo under the GFR Agreement resulting in a reduction of the credit the GFR Agreement generates in favor of Westar's Kansas retail customers. KEPCo tied the need to renegotiate the GFR with the potential premature shut-down of Wolf Creek, so Applicants are also entitled to inquire into the basis for any concern KEPCo may have concerning such a "premature shutdown."

116. KEPCo raises the point that Applicants have responded to KEPCo request in FERC Docket No, EC17-171-000 without seeking discovery. That is neither an objection nor a basis for objection. The issue of how potential requested changes in KEPCo's GFR Agreement may impact Westar's Kansas retail customers is clearly relevant to this proceeding and Applicants should be allowed discovery into the issue in this proceeding.

117. KEPCo's objection to the allegedly "imprecise phrase 'scheduled closing date of 2045'" is not well-founded. As KEPCo and the Commission are well-aware, Wolf Creek's operating license is set to expire in 2045 and its decommissioning funding is based on the assumption that decommission will commence in 2045. KEPCo suggestion that it does not understand the phrase is simply incomprehensible in light of its position as a partial owner of Wolf Creek and a participant in the Commission triennial decommission funding proceedings.

**Data request GPE-14**

Please reference the Protest of KEPCo filed in FERC Docket No. EC17-171-000 and dated October 31, 2017, page six (6), second full paragraph that states in part, "...the present application involves a more complex reorganization than the previous application in terms of corporate structure." With regard to this sentence, please explain in detail what KEPCo means by "a more complex reorganization than the previous application in terms of corporate structure." Specifically, what facts does KEPCo base this conclusion on?

**Response to KEPCo General Objections as applied to data request GPE-14**

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).

118. Similar to prior data requests, the question in GPE-14 is straight-forward and merely requests KEPCo to explain a term used in its FERC intervention which is likely to become an issue in this proceeding given that both docket deal with the same transaction. Such a request is clearly within the scope of discovery contemplated by the Discovery Order because it relates to issues that are likely to be addressed in these proceedings. The data request does not request or require that KEPCo create any new study. Data Request GPE-14 does not seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order.

- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.

119. See discussion at ¶ 11 above.

- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

120. The structure of the organization proposed by the Applicants is likely to be addressed in this proceeding. In testimony filed on behalf of KEPCo with regard to the prior proposed merger, KEPCo witness David E. Dismukes, addressed the proposed corporate structure at length and proposed conditions related to the proposed post-merger structure.<sup>39</sup> To the extent KEPCo believes “the present application involves a more complex reorganization than the previous application in terms of corporate structure,”<sup>40</sup> it is likely that KEPCo will again propose conditions on Applicants related to their corporate structure. Applicants are entitled to inquire into KEPCo’s expressed concerns regarding the merger proposed in this docket. Further, as discussed previously, the opportunity for Applicants to conduct meaningful discovery after the filing of Staff and Intervenor testimony is quite limited under the existing procedural schedule. Therefore, inquiry now into KEPCo’s expressed concerns is fair and appropriate.

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<sup>39</sup> See, e.g., Direct Testimony of David E. Dismukes, at 66-77, Docket No. 16-KCPE-593-ACQ (December 16, 2016).

<sup>40</sup> FERC Docket No. EC17-171-000, *Great Plains Energy Incorporated Westar Energy, Inc.*, Protest of Kansas Electric Power Cooperative, Inc. filed October 31, 2017, p. 6.

- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publicly available or that are already in the possession, custody, or control of GPE.

121. Applicants do not seek to have KEPCo produce documents that are in the public record. However, KEPCo should be required to identify any documents in the public record that are responsive to Applicants' discovery and where they may be found.

- E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

122. Applicants are not seeking any documents that are not in KEPCo's possession, custody or control so this objection is irrelevant.

- F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

123. See the discussion of this General Objection at ¶ 17 above.

#### **Response to KEPCo Specific Objections to data request GPE-14**

##### KEPCo objections:

KEPCo objects to this request because it seeks information about statements in KEPCo's pleading in FERC Docket No. EC17-171-000 that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Applicants' Answer in that proceeding does not address this statement and instead states (at 2-3) that KEPCo's arguments "raise no material concerns and result in no disputed issue of material fact." Applicants' requests for discovery on issues raised in proceedings currently pending before FERC are appropriately addressed by Applicants through discovery in the settlement or hearing procedures available in that forum.

124. The post-merger corporate structure of the merged entities is clearly an issue in this matter. That it is also an issue in the FERC proceedings does not provide a basis for objection. That is particularly true given the extensive testimony provided by KEPCo witness Dismukes in



the prior docket. If KEPCo agrees not to address this issue in its testimony in this proceeding, Applicants would withdraw this data request.

**Data request GPE-15**

Please provide any communications, discussions or analyses in KEPCo's possession or control going back to November 3, 2015, concerning analysis of or efforts by KEPCo or its members to acquire, trade or otherwise transact in regard to any assets or the certificated electric service territory certificated to either Westar or GPE.

**Response to KEPCo General Objections as applied to data request GPE-15**

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).

125. Similar to prior data requests, the question in GPE-15 is straight-forward and merely requests KEPCo to provide documents concerning communications, discussion or analyses of potential acquisitions by KEPCo of assets or service territories of Westar or GPE. This data request seeks information concerning KEPCo's motivation for participation in this docket. Given that bias and motive are always relevant,<sup>41</sup> such a request is clearly within the scope of discovery in this proceeding. The data request does not request or require that KEPCo create any new study. Data Request GPE-15 does not seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order.

- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.

126. See discussion at ¶ 11 above.

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<sup>41</sup> See discussion at ¶ 13 above.

- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

127. This data request seeks information concerning KEPCo's motivation for participation in this docket. Given that bias and motive of a party are always relevant,<sup>42</sup> such a request is clearly within the scope of discovery in this proceeding.

- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publicly available or that are already in the possession, custody, or control of GPE.

128. Applicants do not seek to have KEPCo produce documents that are in the public record. However, KEPCo should be required to identify any documents in the public record that are responsive to Applicants' discovery and where they may be found.

- E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

129. Applicants are not seeking any documents that are not in KEPCo's possession, custody or control so this objection is irrelevant.

- F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

130. See the discussion of this General Objection at ¶ 17 above.

### **Response to KEPCo Specific Objections to data request GPE-15**

#### KEPCo objections:

KEPCo objects to this request as incomprehensible because it seeks production of discussions. KEPCo objects to this request because it seeks information that is neither clearly relevant to the subject matter of this proceeding, nor reasonably

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<sup>42</sup> *Id.*

calculated to lead to the discovery of admissible evidence in this proceeding. The information requested is irrelevant to the question of whether the merger application in this case meets applicable law and the Commission's merger standards. KEPCo further objects to this request as overly broad and unduly burdensome because it seeks "any" communications, discussions or analyses since November 3, 2015, months before Westar and GPE publicly announced the denied acquisition or the presently proposed merger-of-equals. KEPCo also objects to this request to the extent it seeks "communications, discussions or analyses" that are protected by the attorney-client privilege, the attorney work-product doctrine, or common interest privilege. KEPCo objects to this request to the extent it is duplicative of GPE-16 and GPE-17.

131. The data request seeks information that relates to the interest of KEPCo in acquiring assets or territory of either Westar or GPE. The data request goes to the interest, motives and bias of KEPCo in this proceeding. To the extent KEPCo has an interest in acquiring assets or service territory of either of the Applicants, its impartiality, and thus its credibility, in this case is affected. As has been noted above, given that the bias and motive of a party are always relevant,<sup>43</sup> such a request is clearly within the scope of discovery in this proceeding.

132. It is also not a proper objection that data request GPE-15 seeks information in the period prior to announcement to the transaction that is the subject of this proceeding. To the extent that KEPCo has had a continuing interest in acquiring assets or territory of Westar or GPE, its interest in this matter is affected and discovery into such matters is relevant. The time frame of the request is quite limited and does not impose an unreasonable burden on KEPCo in searching for relevant documents.

133. KEPCo's objection "to the extent it is duplicative of GPE-16 and GPE-17" is not a proper objection. To the extent responses to the questions overlap, KEPCo may so indicate in its response.

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<sup>43</sup> *Id.*

**Data request GPE-16**

Please provide any communications, discussions or analyses in the possession or control of KEPCo going back to November 3, 2015, that were done by or involve KEPCo or its members, regarding interactions between KEPCo or any of its members and any third party that concern or address any interest of KEPCO, any of its members, or any such third party (or any such affiliation among the aforementioned) in acquiring, trading or otherwise transacting in regard to any asset or certificated electric service territory owned or controlled by either Westar or GPE.

**Response to KEPCo General Objections as applied to data request GPE-16**

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).

134. Similar to prior data requests, the question in GPE-16 is straight-forward and merely requests KEPCo to documentation concerning communications, discussion or analyses of potential acquisitions by KEPCo, its members or any third parties of which KEPCo has knowledge of assets or service territories of Westar or GPE. This data request seeks information concerning KEPCo's motivation for participation in this docket. Given that bias and motive are always relevant,<sup>44</sup> such a request is clearly within the scope of discovery in this proceeding. The data request does not request or require that KEPCo create any new study. Data Request GPE-16 does not seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order.

- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.

135. See discussion at ¶ 11 above.

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<sup>44</sup> See discussion at ¶ 13 above.

- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

136. This data request seeks information concerning KEPCo's motivation for participation in this docket. Given that bias and motive of a party are always relevant,<sup>45</sup> such a request is clearly within the scope of discovery in this proceeding.

- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publicly available or that are already in the possession, custody, or control of GPE.

137. Applicants do not seek to have KEPCo produce documents that are in the public record. However, KEPCo should be required to identify any documents in the public record that are responsive to Applicants' discovery and where they may be found.

- E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

138. Applicants are not seeking any documents that are not in KEPCo's possession, custody or control so this objection is irrelevant.

- F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

139. See the discussion of this General Objection at ¶ 17 above.

### **Response to KEPCo Specific Objections to data request GPE-16**

#### KEPCo objections:

KEPCo objects to this request due to the vagueness and uncertainty of the term "interactions." KEPCo further objects to this request as incomprehensible and/or impossible to comply to the extent it seeks production of "communications,

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<sup>45</sup> *Id.*

discussions . . . done by KEPCo.” KEPCo objects to this request because it seeks information that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. The information requested is irrelevant to the question of whether the merger application in this case meets applicable law and the Commission’s merger standards. KEPCo further objects to this request as overly broad and unduly burdensome because it seeks “any” communications, discussions or analyses since November 3, 2015, months before Westar and GPE publicly announced the denied acquisition or the presently proposed merger-of-equals. KEPCo also objects to this request to the extent it seeks “communications, discussions or analyses” that are protected by the attorney-client privilege or the attorney work-product doctrine. KEPCo objects to this request to the extent it is duplicative of GPE-15 and GPE-17.

140. Once again, KEPCo objects to the use of a common English word – in this case the word “interactions.” It should be obvious to KEPCo that the data request seeks information concerning meetings, discussion or correspondence with others concerning the identified subject matter – the acquisition of assets or service territory of Westar or GPE. The word and question are not vague or indefinite.

141. The data request seeks information that relates to the interest of KEPCo and its members in acquiring assets or territory of either Westar or GPE. The data request goes to the interest and bias of KEPCo in this proceeding. To the extent KEPCo has an interest in acquiring assets or service territory of either of the Applicants, either on its own or in concert with others, its interest in this case is affected. As has been noted above, given that bias and motive of a party are always relevant,<sup>46</sup> such a request is clearly within the scope of discovery in this proceeding.

142. It is also not a proper objection that data request GPE-16 seeks information in the period prior to announcement to the transaction that is the subject of this proceeding. To the extent that KEPCo has had a continuing interest in acquiring assets or territory of Westar or GPE, its

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<sup>46</sup> *Id.*

interest in this matter is affected and discovery into such matters is relevant. The time frame of the request is quite limited and does not impose an unreasonable burden on KEPCo in searching for relevant documents.

143. KEPCo's objection "to the extent it is duplicative of GPE-15 and GPE-17" is not a proper objection. To the extent responses to the questions overlap, KEPCo may so indicate in its response.

**Data request GPE-17**

Please provide copies of any communications or analyses or other documentation going back to November 3, 2015 that are in the possession or control of KEPCo or its members that concern or address KEPCO or any of its members interaction with any consultant, investment banker, financial institution or advisor relating to the subject matter of the proposed merger transaction between Westar and GPE in KCC Docket No. 16-KCPE-593-ACQ, 18-KCPE-095-MER and/or FERC Docket No. EC17-171-000. If there is a claim of privilege for withholding any such documents, please provide a privilege log consistent with K.S.A. 60-245(d)(2).

**Response to KEPCo General Objections as applied to data request GPE-17**

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).

144. Similar to prior data requests, the question in GPE-17 is straight-forward and merely requests KEPCo to documentation concerning communications, discussion or analyses with any consultant, investment banker, financial institution or advisor relating to the subject matter of the proposed merger transaction between Westar and GPE. This data request seeks information concerning KEPCo's motivation for participation in this docket. Given that bias and motive are always relevant,<sup>47</sup> such a request is clearly within the scope of discovery in this proceeding. The data request does not request or require that KEPCo create any new study. Data

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<sup>47</sup> See discussion at ¶ 13 above.

Request GPE-17 does not seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order.

- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.

145. See discussion at ¶ 11 above.

- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

146. This data request seeks information concerning KEPCo's motivation for participation in this docket. Given that bias and motive of a party are always relevant,<sup>48</sup> such a request is clearly within the scope of discovery in this proceeding.

- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publicly available or that are already in the possession, custody, or control of GPE.

147. Applicants do not seek to have KEPCo produce documents that are in the public record. However, KEPCo should be required to identify any documents in the public record that are responsive to Applicants' discovery and where they may be found.

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<sup>48</sup> *Id.*



- E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

148. Applicants are not seeking any documents that are not in KEPCo's possession, custody or control so this objection is irrelevant.

- F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

149. See the discussion of this General Objection at ¶ 17 above.

### **Response to KEPCo Specific Objections to data request GPE-17**

#### KEPCo objections:

KEPCo objects to this request due to the vagueness and uncertainty of the term "interaction" and the overbroad and vague phrase "subject matter of the proposed merger transaction." KEPCo further objects to this request to the extent it requests information about meetings related to a "merger transaction" in "Docket No. 16-KCPE-593-ACQ" because that transaction was structured as an acquisition, and is not the same transaction as proposed in Docket No. 18-KCPE-095-MER and FERC Docket No. EC17-171-000. KEPCo objects to this request because it requests information that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. The documents requested are irrelevant to the question of whether the merger application in this case meets applicable law and the Commission's merger standards. To the extent GPE is seeking information about "communications or analyses or other documentation" related to the "subject matter" of the denied acquisition transaction in Docket No. 16-KCPE-593-AQC, KEPCo objects to this request because it seeks information about meetings related to the denied acquisition that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. To the extent GPE is seeking information about "communications or analyses or other documentation" related to the FERC proceedings, KEPCo objects to this request because it seeks information in connection with the FERC proceedings that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. KEPCo further objects to this request as overly broad and unduly burdensome because it seeks "any" communications, discussions or analyses since November 3, 2015, months before Westar and GPE publicly announced the denied acquisition or the presently proposed merger-of-equals. KEPCo also objects to this request because it seeks documents that are not within KEPCo's possession, custody, or control. KEPCo also objects to this request to the extent it seeks "communications,

discussions or analyses” are protected by the attorney-client privilege or the attorney work-product doctrine. KEPCo objects to this request to the extent it is duplicative of GPE-16 and GPE-15.

150. Once again, KEPCo objects to the use of a common English words and phrases – in this case the word “interaction” and “subject matter of the proposed merger transaction.” It should be obvious to KEPCo that the data request seeks information concerning meetings, discussion or correspondence with consultants, investment bankers, financial institutions or other advisors concerning the proposed merger of Westar or GPE. The words, phrases and question are not vague or indefinite.

151. The data request seeks information that relates to the interest of KEPCo in the merger of Westar or GPE. The data request goes to the interest and bias of KEPCo in this proceeding. As has been noted above, given that bias and motive of a party are always relevant,<sup>49</sup> such a request is clearly within the scope of discovery in this proceeding.

152. It is also not a proper objection that data request GPE-17 seeks information related to the prior proposed transaction. To the extent that KEPCo has had a continuing interest in acquiring assets or territory of Westar or GPE, its interest in this matter is affected and discovery into such matters is relevant. It is apparent that KEPCo’s activities related to a proposed transaction between Westar and GPE have been continuous since the announcement of the first proposal. Data requests that seek information related to all of KEPCo’s efforts related to a proposed Westar/GPE merger – whether the currently proposed merger of equals or the prior transaction – probe appropriate areas of discovery related to KEPCo’s bias and motives.

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<sup>49</sup> *Id.*

153. KEPCo's objection "to the extent it is duplicative of GPE-15 and GPE-16" is not a proper objection. To the extent responses to the questions overlap, KEPCo may so indicate in its response.

**Data request GPE-18**

Please provide copies of any documents evidencing communications, discussions or analyses done by KEPCo, its members, representatives, consultants or others on behalf of KEPCo since November 3, 2015, in respect to any analysis or materials prepared in intervention, or contemplated intervention in proceedings concerning the present merger transaction at the FERC, NRC, MPSC and KCC. If there is a claim of privilege for withholding any such documents, please provide a privilege log consistent with K.S.A. 60-245(d)(2).

**Response to KEPCo General Objections as applied to data request GPE-18**

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).

154. Similar to prior data requests, the question in GPE-18 is straight-forward and merely requests KEPCo, to provide documents concerning communications, discussion or analyses done by KEPCo, its members, representatives, consultants or others on behalf of KEPCo since November 3, 2015 with respect to interventions or potential interventions in proceedings related to the proposed merger transaction between Westar and GPE at the FERC, NRC, MPSC and KCC. This data request seeks information concerning KEPCo's motivation for participation in this docket. Given that bias and motive are always relevant,<sup>50</sup> such a request is clearly within the scope of discovery in this proceeding. The data request does not request or require that KEPCo create any new study. Data Request GPE-18 does not seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order.

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<sup>50</sup> See discussion at ¶ 13 above.

- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.

155. See discussion at ¶ 11 above.

- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

156. To the extent research concerning the subject matter of these dockets is not protected by attorney/client privilege or attorney work product, they are relevant to the subject matter of this docket.

- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publically available or that are already in the possession, custody, or control of GPE.

157. Applicants do not seek to have KEPCo produce documents that are in the public record. However, KEPCo should be required to identify any documents in the public record that are responsive to Applicants' discovery and where they may be found.

- E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

158. Applicants are not seeking any documents that are not in KEPCo's possession, custody or control so this objection is irrelevant.

- F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

159. See the discussion of this General Objection at ¶ 17 above.

**Response to KEPCo Specific Objections to data request GPE-18**

KEPCo objections:

KEPCo objects to this request due to the vagueness and uncertainty of the term “evidencing,” “analysis,” “materials,” and the phrases “done by” and “in respect to,” and the incomprehensibility of this request. KEPCo objects to this request as overly broad and unduly burdensome to the extent it seeks “any documents” in connection with “any analysis or materials” related to KEPCo’s participation in two federal agency proceedings and two state agency proceedings for a 24 month period, i.e., since November 3, 2015. KEPCo objects to this request as nonsensical and defective because it requests KEPCo’s documents “concerning the present merger transaction” since November 3, 2015, even though Applicants know that the “present merger transaction” was not negotiated until after the KCC rejected the application and was not announced publicly by Applicants until July 10, 2017. KEPCo objects to this request because it requests information that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. The information requested is irrelevant to the question of whether the merger application in this case meets applicable law and the Commission’s merger standards. To the extent GPE is seeking “communications, discussions, or analyses” related to proceedings before FERC, the NRC, and the MPSC, KEPCo objects to this request because Applicants may seek discovery in the applicable forum. KEPCo also objects to this request to the extent it seeks “copies of any documents” that are protected by the attorney-client privilege or the attorney work-product doctrine. This request is specifically directed to materials that are protected by the attorney-client privilege and the attorney-work product doctrine and to which Applicants know, or should know, they are not entitled to in this proceeding. KEPCo objects to this request because it is intended solely to create unnecessary burdens and expense, and to harass KEPCo.

160. Once again, KEPCo objects to the use of a common English words and phrases – in this case the words “evidencing,” “analysis,” “materials,” and the phrases “done by” and “in respect to.” It should be obvious to KEPCo that the data request seeks information concerning work performed by or for KEPCo and its members related to actual or potential interventions in proceedings at various agencies related to the proposed merger of Westar and GPE. The words, phrases and question are not vague or indefinite.

161. The data request seeks information that relates to the interest of KEPCo in the merger of Westar or GPE. The data request goes to the interest and bias of KEPCo in this

proceeding. As has been noted above, given that bias and motive of a party are always relevant,<sup>51</sup> such a request is clearly within the scope of discovery in this proceeding.

162. It is also not a proper objection that data request GPE-18 seeks information related to the prior proposed transaction. To the extent that KEPCo has had a continuing interest in acquiring assets or territory of Westar or GPE, its interest in this matter is affected and discovery into such matters is relevant. It is apparent that KEPCo's activities related to a proposed transaction between Westar and GPE have been continuous since the announcement of the first proposal. Data requests that seek information related to all of KEPCo's efforts related to a proposed Westar/GPE merger – whether the currently proposed merger of equals or the prior transaction – probe appropriate areas of discovery related to KEPCo's bias and motives.

163. To the extent materials responsive to this data request are privileged or attorney work product, KEPCo may provide a privilege log consistent with K.S.A. 60-245(d)(2).

**Data request GPE-19**

What costs have KEPCo and/or its members incurred since January 1, 2016 related to KEPCo's involvement in the following proceedings:

- a. KCC Docket No. 16-KCPE-593-ACQ?
- b. KCC Docket No. 18-KCPE-095-MER?
- c. Missouri Public Service Commission File No. EC-2017-0107?
- d. Missouri Public Service Commission File No. EM-2018-0012?
- e. Missouri Public Service Commission File No. EE-2017-0113?
- f. Missouri Public Service Commission File No. EM-2017-0226?
- g. FERC Docket No. EC-16-146-000?

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<sup>51</sup> *Id.*

h. FERC Docket No. EC-17-171-000?

**Response to KEPCo General Objections as applied to data request GPE-19**

A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).

164. Similar to prior data requests, the question in GPE-19 is straight-forward and merely requests KEPCo to state the costs incurred by KEPCo related to its involvement in dockets related to the propose merger of Westar and GPE for the period from January 1, 2016 to present. Such a request is clearly within the scope of discovery contemplated by the Discovery Order because it relates to the lengths to which KEPCo is willing to do and the amounts it is willing to spend in efforts to block the merger or use it as leverage for modifications to its contracts with Westar and GPE. The data request goes to KEPCo's bias and motive in these proceedings. The data request does not request or require that KEPCo create any new study. This is information that should be readily available to KEPCo. Data Request GPE-10 does not seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order.

B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.

165. See discussion at ¶ 11 above.

C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.

166. The level of KEPCo's expenditures in these proceedings is relevant to an understanding of its motives and bias – matters which are always at issue. The data request is

reasonably limited in time and scope and seeks materials relevant to the interests KEPCo purports to represent in this proceeding.

- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publicly available or that are already in the possession, custody, or control of GPE.

167. Applicants do not seek to have KEPCo produce documents that are in the public record. However, KEPCo should be required to identify any documents in the public record that are responsive to Applicants' discovery and where they may be found.

- E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

168. Applicants are not seeking any documents that are not in KEPCo's possession, custody or control so this objection is irrelevant.

- F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

169. See the discussion of this General Objection at ¶ 17 above.

### **Response to KEPCo Specific Objections to data request GPE-19**

#### KEPCo objections:

KEPCo objects to this request because it seeks "costs [that] KEPCo and/or its members incurred since January 1, 2016 related to KEPCo's involvement" in eight proceedings before four state and federal agencies that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. The information requested is irrelevant to the question of whether the merger application in this case meets applicable law and the Commission's merger standards, and, for instance, requests information about costs incurred related to a proposed acquisition that is not the subject of this proceeding and that will never occur. KEPCo further objects to this request because it is overly broad and unduly burdensome because it seeks costs since January 1, 2016, over a 22 month period. KEPCo objects to this request due to the vagueness and uncertainty of the term "costs." KEPCo objects to this request to the extent that it requests "costs . . . [that] its members [have] incurred" in



connection with the referenced proceedings that are not within KEPCo's possession, custody, or control. KEPCo further objects to this request because it seeks information about the cost of services that KEPCo provides to members that is highly sensitive commercial information. KEPCo objects to this request because it is duplicative of GPE-10.

170. Once again, KEPCo objects to the use of common English word and phrases – in this case the word “costs.” It should be obvious to KEPCo that the data request seeks information concerning payments made by KEPCo for work performed for KEPCo and its members related to actual or potential interventions in proceedings at various agencies related to the proposed merger of Westar and GPE. The word cost is not vague or indefinite.

171. The data request seeks information that relates to the extent of the interest of KEPCo in the merger of Westar or GPE. The amount KEPCo has been willing to spend is indicative of the level of its interest in this matter. The data request goes to the interest and bias of KEPCo in this proceeding. As has been noted above, given that bias and motive of a party are always relevant,<sup>52</sup> such a request is clearly within the scope of discovery in this proceeding.

172. KEPCo objects that the request is overly broad and burdensome because it seeks “any and all invoices” over a 22-month period that in part predates the announcement of the transaction at issue in this proceeding. Data request GPE-19 seeks information that will allow Applicants (and the Commission) to better understand how rates charged to KEPCo and costs incurred by KEPCo affect KEPCo's members – an issue which KEPCo has brought into this matter. A request that seeks production of records relevant to an issue raised by KEPCo, that are in KEPCo's possession and cover a relatively short period of time – less than two years – is narrowly focused and far from excessively burdensome.

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<sup>52</sup> *Id.*

173. Second, KEPCo's objection that the materials sought constitute "highly sensitive commercial information" is not an appropriate objection. As was stated above, the Commission has provided a mechanism for the protection of commercially sensitive information and KEPCo knows this option is available and has used it to declare all of its previously provided documents as "confidential."

WHEREFORE, Applicants request that the Commission reject KEPCo's objections to their data requests and be directed to provide complete responses to all of such data requests within seven calendar days of the Commission's order.

Respectfully submitted,

/s/ Robert J. Hack

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**COUNSEL FOR WESTAR ENERGY, INC.**

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 6<sup>th</sup> day of December 2017, I electronically filed via the Kansas Corporation Commission's Electronic Filing System, a true and correct copy of the above and foregoing with a copy emailed to counsel for all parties of record.

*/s/ Robert J. Hack*

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**COUNSEL FOR GREAT PLAINS ENERGY  
AND KANSAS CITY POWER & LIGHT  
COMPANY**

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. )

**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-1

Submitted To: Kansas Electric Power Company (KEPCo)

Docket Number: 18-KCPE-095-MER

Request Date: November 1, 2017

Date Information Needed: November 15, 2017

**Please Provide the Following:**

- a) Please list all interests of KEPCo or its members that KEPCo believes may be impacted by the consummation of the merger proposed in this docket.
- b) Please state whether such interests are regulated and by whom, and provide all documents in your possession for the period beginning January 1, 2016 to date, discussing, analyzing, or otherwise addressing these interests, including correspondences and any consultants' reports, studies, or other analysis or opinions related to such interests.

**Objections**

GPE-1(a): KEPCo objects to this request due to the vagueness and uncertainty of the term "interests." KEPCo objects to this request as premature and calling for speculation, as KEPCo's investigation and development of all the facts and circumstances related to this proceeding are ongoing. KEPCo further objects to this request to the extent responsive documents are part of the public record. KEPCo incorporates the General Objections by reference.

GPE-1(b): KEPCo objects to this request due to the vagueness and uncertainty of the terms "interests" and "for the period." KEPCo objects as the request calls for documents related to "interests" that may be impacted by the consummation of the merger since the period beginning January 1, 2016, even though GPE did not publicly announce the merger that is the subject of this proceeding until July 10, 2017. KEPCo objects because the request calls for a legal conclusion as to whether "interests" are "regulated" and "by whom." KEPCo objects to this request because it is overly broad and unduly burdensome and seeks voluminous documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. KEPCo incorporates the General Objections by reference.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-2

Submitted To: Kansas Electric Power Company (KEPCo)

Docket Number: 18-KCPE-095-MER

Request Date: November 1, 2017

Date Information Needed: November 15, 2017

**Please Provide the Following:**

a) Please list the date, time, and location of each meeting of the KEPCo Board of Trustees held since January 2016 at which discussions were had regarding a merger or acquisition between Westar and GPE. For each such meeting, please provide the following:

1. All documents, including meeting agendas, reports, presentations, and meeting minutes in your possession distributed to or viewed by KEPCo's trustees at or in connection with the meetings identified in your response to subpart a).

2. All correspondences, including emails, between KEPCo's trustees, staff or outside consultants going back to January 2016, related to the merger or acquisition transactions proposed by Applicants in Docket No. 16-KCPE-593-ACQ or Docket No. 18-KCPE-095-MER.

**Objections**

GPE-2(a): KEPCo objects to this request due to the vagueness and uncertainty of the terms "meetings," "since January 2016" and "discussions were had." KEPCo objects to this request to the extent it requests information "since January 2016," but GPE did not announce the merger that is the subject of this proceeding until July 10, 2017. KEPCo further objects to this request to the extent it asks for information about an acquisition that is not the subject of this proceeding and that will never occur, and is not calculated to lead to the discovery of admissible evidence. KEPCo incorporates the General Objections by reference.

GPE did not announce the merger that is the subject of this proceeding until July 10, 2017. KEPCo will provide the information requested on meetings held on or after July 10, 2017.

GPE-2(a)(1): KEPCo objects to this request because it is overly broad in that it seeks discovery of "all documents . . . distributed to or viewed by" Trustees, even when those documents are not related to the denied acquisition or the merger (as is requested by GPE-2(a)). KEPCo objects because the request is unduly burdensome and seeks voluminous documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. KEPCo incorporates objections to GPE-2(a) and the General Objections by reference.

GPE did not announce the merger that is the subject of this proceeding until July 10, 2017. KEPCo will undertake a reasonable search for and produce relevant, non-privileged documents in connection with meetings after July 10, 2017, that contain reference to the merger, and that are in its possession, custody, or control.



GPE-2(a)(2): KEPCo objects to the vagueness and uncertainty of the undefined term “staff.” KEPCo objects to this request because it is overly broad and unduly burdensome because it seeks correspondence that is in any way “related to” the merger. KEPCo further objects to this request because it seeks correspondence “related to” the denied acquisition in Docket No 16-KPE-593-ACQ that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. KEPCo also objects to this request because it seeks documents that are not within KEPCo’s possession, custody, or control. KEPCo incorporates objections to GPE-2(a) and the General Objections by reference.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

#### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-3

Submitted To: Kansas Electric Power Company (KEPCo)

Docket Number: 18-KCPE-095-MER

Request Date: November 1, 2017

Date Information Needed: November 15, 2017

**Please Provide the Following:**

a) Please list the date, time, and location of all meetings between KEPCo employees, members or consultants related to the merger transaction proposed in this docket or the merger transaction for which approval was sought in Docket No. 16-KCPE-593-MER. For each such meeting, provide the following documents or information:

1. All documents, including meeting agendas, reports, presentations, and meeting minutes in your possession distributed to or viewed by the parties involved in the meeting.

2. All correspondences, including emails, between any of the parties to the meeting(s) addressing the merger transaction proposed in this docket or the merger transaction for which approval was sought in Docket No. 16-KCPE-593-MER.

3. Copies of any notes taken by anyone in attendance at such meetings.

**Objections**

KEPCo objects to this request to the extent it requests information about meetings related to a “merger transaction” in “Docket No. 16-KCPE-593-MER” that does not exist. KEPCo further objects to this request due to the vagueness and uncertainty of the term “meetings.” To the extent GPE is seeking information about “meetings” related to the acquisition transaction in Docket No. 16-KCPE-593-AQC, KEPCo objects to this request because it seeks information about meetings related to the denied acquisition that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. KEPCo further objects to this request because it seeks information that is irrelevant to the question of whether the merger application in this case meets applicable law and the Commission’s merger standards. KEPCo objects to the request as overly broad and unduly burdensome because the documentation requested is not limited in time. KEPCo also objects to GPE-3(a)(2) and GPE3(a)(3) because they seek documents that are not within KEPCo’s possession, custody, or control. KEPCo incorporates the General Objections by reference.

GPE did not announce the merger that is the subject of this proceeding until July 10, 2017. KEPCo will undertake a reasonable search for and produce relevant, non-privileged documents in its possession, custody, or control for meetings on or after July 10, 2017.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-4

Submitted To: Kansas Electric Power Company (KEPCo)

Docket Number: 18-KCPE-095-MER

Request Date: November 1, 2017

Date Information Needed: November 15, 2017

**Please Provide the Following:**

a) Please list the date, time, and location of each meeting of the KEPCo Board of Trustees held since January 2014 at which discussions were had regarding KEPCo's Wholesale Generation Formula Based Rate Contract with Westar and/or Westar's Transmission Formula Rate. For each such meeting, please provide the following:

1. All documents, including meeting agendas, reports, presentations, and meeting minutes in your possession distributed to or viewed by KEPCo's trustees at or in connection with the meetings identified in your response to subpart a).

2. All correspondences, including emails, between KEPCo's trustees, staff or outside consultants going back to January 2014, related to KEPCo's Wholesale Generation Formula Based Rate Contract with Westar and/or Westar's Transmission Formula Rate.

**Objections**

KEPCo objects to the vagueness and uncertainty of the undefined terms "discussions were had," and "January 2014," "Wholesale Generation Formula Based Rate Contract," and "Transmission Formula Rate." KEPCo objects to this request as overly broad and unduly burdensome in that it seeks anything "regarding" the "Wholesale Generation Formula Based Rate Contract" and/or the "Transmission Formula Rate" and seeking voluminous documents spanning a period of nearly four years that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. KEPCo also objects to GPE-4(a)(2) because it seeks documents that are not within KEPCo's possession, custody, or control. KEPCo incorporates the General Objections by reference.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-5

Submitted To: Kansas Electric Power Company (KEPCo)

Docket Number: 18-KCPE-095-MER

Request Date: November 1, 2017

Date Information Needed: November 15, 2017

**Please Provide the Following:**

- a) Please identify any power supply sources available to KEPCo to meet its demand between 2017 and 2035, other than the GFR contract with Westar. For each source, state how much power is available to KEPCo, the timing for when such power would be available to KEPCo, the emissions profile of each unit, and the estimated price for such power.
- b) Provide any documentation, including any studies or bids, in your possession evidencing or supporting your answer to subsection a), above.
- c) Provide a copy of any power supply contracts presently existing between KEPCo and any other entity, other than KEPCo's power supply contract with Westar.

**Objections**

KEPCo objects to the vagueness and uncertainty of the undefined terms "power supply sources," "available," "demand," "unit," "estimated price," "bids," "emissions profile," and "presently existing." KEPCo further objects to the request as it would require KEPCo to speculate as to each of KEPCo's "power supply sources" over a future 18-year period, requiring myriad assumptions and hypotheticals. KEPCo objects to the request because it appears to seek highly confidential, competitive information and documents (e.g., studies, "bids," and contracts) from competitors to Westar and GPE that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. The information requested is irrelevant to the question of whether the merger application in this case meets applicable law and the Commission's merger standards. KEPCo objects to GPE-5(b) as overly broad and unduly burdensome because the documentation requested is not limited in time. KEPCo incorporates the General Objections by reference.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-6

Submitted To: Kansas Electric Power Company (KEPCo)

Docket Number: 18-KCPE-095-MER

Request Date: November 1, 2017

Date Information Needed: November 15, 2017

**Please Provide the Following:**

What was the market price of full requirements power at the time KEPCo entered into its Cost-Based Formula Rate Agreement for Full Requirements Electric Service with Westar? Also, please list and describe the alternatives explored by KEPCo leading up to the decision to enter into the Cost-based Formula Rate Agreement with Westar.

**Objections**

KEPCo objects to the vagueness and uncertainty of the undefined terms “market price,” “at the time,” “alternatives,” “explored,” and “leading up to.” To the extent “at the time” is intended to mean August 7, 2007 (execution date) or possibly September 1, 2009 (effective date), KEPCo objects to this request as overly broad and unduly burdensome as requesting information from up to ten years ago, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The information requested is irrelevant to the question of whether the merger application in this case meets applicable law and the Commission’s merger standards. KEPCo incorporates the General Objections by reference.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.



### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-7

Submitted To: Kansas Electric Power Company (KEPCo)

Docket Number: 18-KCPE-095-MER

Request Date: November 1, 2017

Date Information Needed: November 15, 2017

**Please Provide the Following:**

Please provide the bus bar cost (per MWH) for each of KEPCO's owned generating stations and for all of KEPCO's purchased power agreements. For each, please identify whether these are own, full requirement, partial requirements, etc.

KEPCo objects to the vagueness and uncertainty of the undefined terms "bus bar cost" and "these." KEPCo objects to this request as vague, overly broad, and unduly burdensome because it is not limited in time. KEPCo further objects to the request because it seeks data that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding, but is cost data of sources that potentially compete with Westar and GPE. The data requested is irrelevant to the question of whether the merger application in this case meets applicable law and the Commission's merger standards. KEPCo incorporates the General Objections by reference.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

**Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**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 September 12, 2017, and the Commission's Rules of Practice and Procedure, Kansas Electric Power Cooperative, Inc. ("KEPCo") hereby objects to applicant Great Plains Energy Incorporated's ("GPE's") discovery or data requests ("Requests") served on November 15, 2017, and numbered GPE-9 through GPE-19:

General Objections.

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a). KEPCo's responses will comply with the Commission's Discovery Order and applicable Kansas law.
- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work-product doctrine, common interest privilege, or any other constitutional, statutory or common-law privilege or doctrine. KEPCo will produce information, communications, documents, and/or portions thereof, that are not protected by privilege or doctrine, and will provide a privilege log upon written request. KEPCo will not produce a privilege log in response to discovery that is principally designed to elicit a privilege log rather than designed to elicit material facts within the knowledge of the parties.
- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence. This would include, for instance, requests seeking documents or information from before July 10, 2017 that relate to the proposed acquisition that is not the subject of this proceeding and that will never occur.
- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publically available or that are already in the possession, custody, or control of GPE.
- E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.

F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance. KEPCo objects to the Requests designed to create unnecessary burdens, to harass, and to unnecessarily increase costs to KEPCo because of its participation in these proceedings.

In addition to the General Objections set forth above, KEPCo states other Specific Objections that are not generally applicable to all of the Requests. By setting forth Specific Objections, KEPCo does not limit or restrict the applicability of General Objections set forth above.

**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-9

Submitted To: Kansas Electric Power Company (KEPCo)

Docket Number: 18-KCPE-095-MER

Request Date: November 15, 2017

Date Information Needed: November 29, 2017

**Please Provide the Following:**

With regard to KEPCo's relationship with its member cooperatives, please provide the following:

- (a) Any and all governing documents.
- (b) Any and all documents setting forth KEPCo's cost and savings allocation procedures to its members. Such request should include an explanation as to the type of cost allocated and the percentage of allocation. For example, for General & Administrative (G&A) and Legal Fees please explain how, and on what percentage basis, these costs are allocated to KEPCo members.

**Objections**

KEPCo objects to this request because it seeks documents and information about "KEPCo's relationship with its member cooperatives" that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. For instance, subpart (b) requests "any and all documents" pertaining to KEPCo G&A and an explanation as to how these costs are allocated to members and on what percentage basis. The documents and information requested are irrelevant to the question of whether the merger application in this case meets applicable law and the Commission's merger standards. KEPCo further objects to this request because it seeks information about the cost of services that KEPCo provides to members that is highly sensitive commercial information. KEPCo objects to this request due to the vagueness and uncertainty of the phrases "governing documents," "cost and savings allocation procedures," and "such request." KEPCo also objects to this request because it is overly broad and unduly burdensome because it seeks production of "any and all" documents and is not limited in time. KEPCo objects to the request to the extent "such request" seeks KEPCo to perform calculations and /or create documents that do not presently exist. KEPCo further objects to this response to the extent certain responsive documents are part of the public record and are on file with the Kansas Secretary of State. KEPCo incorporates the General Objections by reference.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-10

Submitted To: Kansas Electric Power Company (KEPCo)

Docket Number: 18-KCPE-095-MER

Request Date: November 15, 2017

Date Information Needed: November 29, 2017

**Please Provide the Following:**

Please provide copies of any and all invoices issued to the KEPCo members, going back to January 2016, related to:

- (a) Docket No. 16-KCPE-593-ACQ
- (b) Docket No. 18-KCPE-095-MER
- (c) General and Administrative expenses
- (d) Power cost expenses
- (e) Transmission expenses
- (f) any other costs and savings allocated to the KEPCo members for the referenced time period not included in the above list.

**Objections**

KEPCo objects to this request because it seeks “invoices issued to the KEPCo members, going back to January 2016” that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. The documents requested are irrelevant to the question of whether the merger application in this case meets applicable law and the Commission’s merger standards. KEPCo objects to this request due to the vagueness and uncertainty of the phrase “any other cost and savings allocated.” KEPCo further objects to this request because it seeks information about the cost of services that KEPCo provides to members that is highly sensitive commercial information. KEPCo further objects to this request because it is overly broad and unduly burdensome because it seeks production of “any and all” invoices over a 22 month period, months before Westar and GPE publicly announced the denied acquisition that is not the subject of this proceeding or the presently proposed merger-of-equals. KEPCo objects to this request because it is duplicative of GPE-19. KEPCo incorporates the General Objections by reference.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_



**GPE/KCP&L/Westar  
Information Request**

Request No: GPE-11

Submitted To: Kansas Electric Power Company (KEPCo)  
Docket Number: 18-KCPE-095-MER  
Request Date: November 15, 2017  
Date Information Needed: November 29, 2017

**Please Provide the Following:**

With regard to the GFR Agreement between KEPCo and Westar dated effective September 9, 2009, please provide any and all documents created by KEPCo or its consultants that are in KEPCo's possession or control concerning the negotiation and entering into of the GFR Agreement.

**Objections**

KEPCo objects to this request as misrepresenting the GFR Agreement to be "dated effective September 9, 2009." On October 27, 2009, the Federal Energy Regulatory Commission accepted Westar Energy, Inc.'s compliance filing in Docket No. ER07-1344-002 that sets the effective date of the GFR Agreement as September 1, 2009. KEPCo objects to this request because it seeks "all documents . . . concerning the negotiation and entering into of the GFR Agreement" that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. The documents requested are irrelevant to the question of whether the merger application in this case meets applicable law and the Commission's merger standards. KEPCo objects to this request as overly broad and unduly burdensome because it requests "all documents" from more than ten years ago. KEPCo further objects to the request because it specifically seeks production of documents that Westar knows to be protected from disclosure pursuant to federal regulation, 18 C.F.R. pt. 385(F), and protected by attorney-client privilege and the work product doctrine, and to which Applicants know, or should know, they are not entitled to in this proceeding. KEPCo objects to this request because it is intended to create unnecessary burdens and expense, and harass KEPCo. KEPCo incorporates the General Objections by reference.

Submitted by: Applicants  
Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-12

Submitted To: Kansas Electric Power Company (KEPCo)

Docket Number: 18-KCPE-095-MER

Request Date: November 15, 2017

Date Information Needed: November 29, 2017

**Please Provide the Following:**

Please reference the Protest of KEPCo addressing the proposed merger at issue in this docket and filed in FERC Docket No. EC17-171-000, dated October 31, 2017, page three (3), fourth bullet, requesting Applicants be required to “*commit to negotiate with KEPCo and to file with the Commission amendments to the GFR Agreement that will permit KEPCo to reduce the level of its GFR Agreement purchases upon appropriate notice or based on agreed upon triggers and to replace those purchases with other resources.*” With regard to this recommended merger condition, please answer the following:

- (a) What aspects of the Merger transaction support KEPCo’s belief that it is appropriate to modify its existing GFR contract with Westar as a condition of approving the Merger?
- (b) To what level does KEPCo propose to reduce its GFR Agreement purchases under this condition?
- (c) Please describe KEPCo’s understanding of how revenue reductions experienced by Westar as a result of the reduced KEPCo GFR Agreement purchases proposed by KEPCo in its response to subpart (b) would be treated for purposes of setting rates for Westar’s retail customers.
- (d) Please describe what is the “appropriate notice” that KEPCo proposes before it could reduce the level of its GFR Agreement purchases?
- (e) Please describe what are the “triggers” KEPCo proposes before it could reduce the level of its GFR Agreement purchases?
- (f) Please explain what KEPCo intends by the phrase “and to replace those purchases with other resources” and, specifically, what “other resources” are contemplated by KEPCo.

**Objections**

KEPCo objects to this request because it seeks information about statements in KEPCo’s pleading in the Federal Energy Regulatory Commission (“FERC’s”) Docket No. EC17-171-000 that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Applicants’ requests for discovery on issues raised in proceedings currently pending before FERC are appropriately addressed by Applicants through discovery in the settlement or hearing procedures available in that forum. Further, Applicants have twice taken a position on this issue, most recently in their answer filed on November 15, 2017, in FERC Docket No. EC17-171-000, without claiming a need for discovery in those proceedings. The answer filed by Applicants does not dispute that the GFR Agreement is subject to FERC’s review pursuant to authorities delegated by the Federal Power Act. With respect to subpart (a), KEPCo objects to this request because it constitutes

improper cross-examination and calls for a legal conclusion concerning the interpretation of section 203 of the Federal Power Act. With respect to subpart (c), KEPCo objects to this request because it calls for speculation about future events and requires a study based on information and assumptions that are not presently within KEPCo's possession. KEPCo incorporates the General Objections by reference.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-13

Submitted To: Kansas Electric Power Company (KEPCo)

Docket Number: 18-KCPE-095-MER

Request Date: November 15, 2017

Date Information Needed: November 29, 2017

**Please Provide the Following:**

Please reference the Protest of KEPCo filed in FERC Docket No. EC17-171-000 and dated October 31, 2017, page three (3), sixth bullet, requesting Applicants be required to “*commit that, in the event of a premature shutdown of the Wolf Creek facility prior to the end of its operating license, which may be made unilaterally by the post-merger combined company, KEPCo shall be permitted to replace its share of the lost Wolf Creek capacity through third-party purchases or resource acquisitions and not through additional purchases under the GFR Agreement.*” With regard to this recommended condition, please answer the following:

- (a) Please provide your definition of “premature shutdown”, as used in this condition. Under your definition, would it include any shutdown prior to the end of the Wolf Creek operating license regardless of cause or reason?
- (b) Is KEPCo in possession of any facts indicating that Applicants have considered, or are currently considering, shutting Wolf Creek down prior to its scheduled closing date of 2045?
- (c) If the answer to subpart (b) is yes, please provide such facts and associated documentation.

**Objections**

KEPCo objects to this request because it seeks information about statements in KEPCo’s pleading in FERC Docket No. EC17-171-000 that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Applicants’ requests for discovery on issues raised in proceedings currently pending before FERC are appropriately addressed by Applicants through discovery in the settlement or hearing procedures available in that forum. Further, Applicants have twice taken a position on this issue, most recently in their answer filed on November 15, 2017, in FERC Docket No. EC17-171-000, without claiming a need for discovery in those proceedings. The answer filed by Applicants does not dispute that the GFR Agreement is subject to FERC’s review pursuant to authorities delegated by the Federal Power Act. KEPCo objects to this request due to the vagueness and uncertainty of the imprecise phrase “scheduled closing date of 2045.” KEPCo further objects to the extent the response requires production of information and documents that are already in the possession of Applicants. KEPCo incorporates the General Objections by reference.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-14

Submitted To: Kansas Electric Power Company (KEPCo)

Docket Number: 18-KCPE-095-MER

Request Date: November 15, 2017

Date Information Needed: November 29, 2017

**Please Provide the Following:**

Please reference the Protest of KEPCo filed in FERC Docket No. EC17-171-000 and dated October 31, 2017, page six (6), second full paragraph that states in part, “..the present application involves a more complex reorganization than the previous application in terms of corporate structure.” With regard to this sentence, please explain in detail what KEPCo means by “a more complex reorganization than the previous application in terms of corporate structure.” Specifically, what facts does KEPCo base this conclusion on?

**Objections**

KEPCo objects to this request because it seeks information about statements in KEPCo’s pleading in FERC Docket No. EC17-171-000 that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. Applicants’ Answer in that proceeding does not address this statement and instead states (at 2-3) that KEPCo’s arguments “raise no material concerns and result in no disputed issue of material fact.” Applicants’ requests for discovery on issues raised in proceedings currently pending before FERC are appropriately addressed by Applicants through discovery in the settlement or hearing procedures available in that forum. KEPCo incorporates the General Objections by reference.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_



**GPE/KCP&L/Westar  
Information Request**

Request No: GPE-15

Submitted To: Kansas Electric Power Company (KEPCo)  
Docket Number: 18-KCPE-095-MER  
Request Date: November 15, 2017  
Date Information Needed: November 29, 2017

**Please Provide the Following:**

Please provide any communications, discussions or analyses in KEPCo's possession or control going back to November 3, 2015, concerning analysis of or efforts by KEPCo or its members to acquire, trade or otherwise transact in regard to any assets or the certificated electric service territory certificated to either Westar or GPE.

**Objections**

KEPCo objects to this request as incomprehensible because it seeks production of discussions. KEPCo objects to this request because it seeks information that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. The information requested is irrelevant to the question of whether the merger application in this case meets applicable law and the Commission's merger standards. KEPCo further objects to this request as overly broad and unduly burdensome because it seeks "any" communications, discussions or analyses since November 3, 2015, months before Westar and GPE publicly announced the denied acquisition or the presently proposed merger-of-equals. KEPCo also objects to this request to the extent it seeks "communications, discussions or analyses" that are protected by the attorney-client privilege, the attorney work-product doctrine, or common interest privilege. KEPCo objects to this request to the extent it is duplicative of GPE-16 and GPE-17. KEPCo incorporates the General Objections by reference.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**GPE/KCP&L/Westar  
Information Request**

Request No: GPE-16

Submitted To: Kansas Electric Power Company (KEPCo)  
Docket Number: 18-KCPE-095-MER  
Request Date: November 15, 2017  
Date Information Needed: November 29, 2017

**Please Provide the Following:**

Please provide any communications, discussions or analyses in the possession or control of KEPCo going back to November 3, 2015, that were done by or involve KEPCo or its members, regarding interactions between KEPCo or any of its members and any third party that concern or address any interest of KEPCo, any of its members, or any such third party (or any such affiliation among the aforementioned) in acquiring, trading or otherwise transacting in regard to any asset or certificated electric service territory owned or controlled by either Westar or GPE.

**Objections**

KEPCo objects to this request due to the vagueness and uncertainty of the term “interactions.” KEPCo further objects to this request as incomprehensible and/or impossible to comply to the extent it seeks production of “communications, discussions . . . done by KEPCo.” KEPCo objects to this request because it seeks information that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. The information requested is irrelevant to the question of whether the merger application in this case meets applicable law and the Commission’s merger standards. KEPCo further objects to this request as overly broad and unduly burdensome because it seeks “any” communications, discussions or analyses since November 3, 2015, months before Westar and GPE publicly announced the denied acquisition or the presently proposed merger-of-equals. KEPCo also objects to this request to the extent it seeks “communications, discussions or analyses” that are protected by the attorney-client privilege or the attorney work-product doctrine. KEPCo objects to this request to the extent it is duplicative of GPE-15 and GPE-17. KEPCo incorporates the General Objections by reference.

Submitted by: Applicants  
Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**GPE/KCP&L/Westar**  
**Information Request**

Request No: GPE-17

Submitted To: Kansas Electric Power Company (KEPCo)

Docket Number: 18-KCPE-095-MER

Request Date: November 15, 2017

Date Information Needed: November 29, 2017

**Please Provide the Following:**

Please provide copies of any communications or analyses or other documentation going back to November 3, 2015 that are in the possession or control of KEPCo or its members that concern or address KEPCo or any of its members interaction with any consultant, investment banker, financial institution or advisor relating to the subject matter of the proposed merger transaction between Westar and GPE in KCC Docket No. 16-KCPE-593-ACQ, 18-KCPE-095-MER and/or FERC Docket No. EC17-171-000. If there is a claim of privilege for withholding any such documents, please provide a privilege log consistent with K.S.A. 60-245(d)(2).

**Objections**

KEPCo objects to this request due to the vagueness and uncertainty of the term “interaction” and the overbroad and vague phrase “subject matter of the proposed merger transaction.” KEPCo further objects to this request to the extent it requests information about meetings related to a “merger transaction” in “Docket No. 16-KCPE-593-ACQ” because that transaction was structured as an acquisition, and is not the same transaction as proposed in Docket No. 18-KCPE-095-MER and FERC Docket No. EC17-171-000. KEPCo objects to this request because it requests information that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. The documents requested are irrelevant to the question of whether the merger application in this case meets applicable law and the Commission’s merger standards. To the extent GPE is seeking information about “communications or analyses or other documentation” related to the “subject matter” of the denied acquisition transaction in Docket No. 16-KCPE-593-AQC, KEPCo objects to this request because it seeks information about meetings related to the denied acquisition that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. To the extent GPE is seeking information about “communications or analyses or other documentation” related to the FERC proceedings, KEPCo objects to this request because it seeks information in connection with the FERC proceedings that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. KEPCo further objects to this request as overly broad and unduly burdensome because it seeks “any” communications, discussions or analyses since November 3, 2015, months before Westar and GPE publicly announced the denied acquisition or the presently proposed merger-of-equals. KEPCo also objects to this request because it seeks documents that are not within KEPCo’s possession, custody, or control. KEPCo also objects to this request to the extent it seeks “communications, discussions or analyses” are protected by the attorney-client privilege or the attorney

work-product doctrine. KEPCo objects to this request to the extent it is duplicative of GPE-16 and GPE-15. KEPCo incorporates the General Objections by reference.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

#### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**GPE/KCP&L/Westar  
Information Request**

Request No: GPE-18

Submitted To: Kansas Electric Power Company (KEPCo)  
Docket Number: 18-KCPE-095-MER  
Request Date: November 15, 2017  
Date Information Needed: November 29, 2017

**Please Provide the Following:**

Please provide copies of any documents evidencing communications, discussions or analyses done by KEPCo, its members, representatives, consultants or others on behalf of KEPCo since November 3, 2015, in respect to any analysis or materials prepared in intervention, or contemplated intervention in proceedings concerning the present merger transaction at the FERC, NRC, MPSC and KCC. If there is a claim of privilege for withholding any such documents, please provide a privilege log consistent with K.S.A. 60-245(d)(2).

**Objections**

KEPCo objects to this request due to the vagueness and uncertainty of the term “evidencing,” “analysis,” “materials,” and the phrases “done by” and “in respect to,” and the incomprehensibility of this request. KEPCo objects to this request as overly broad and unduly burdensome to the extent it seeks “any documents” in connection with “any analysis or materials” related to KEPCo’s participation in two federal agency proceedings and two state agency proceedings for a 24 month period, i.e., since November 3, 2015. KEPCo objects to this request as nonsensical and defective because it requests KEPCo’s documents “concerning the present merger transaction” since November 3, 2015, even though Applicants know that the “present merger transaction” was not negotiated until after the KCC rejected the application and was not announced publicly by Applicants until July 10, 2017. KEPCo objects to this request because it requests information that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. The information requested is irrelevant to the question of whether the merger application in this case meets applicable law and the Commission’s merger standards. To the extent GPE is seeking “communications, discussions, or analyses” related to proceedings before FERC, the NRC, and the MPSC, KEPCo objects to this request because Applicants may seek discovery in the applicable forum. KEPCo also objects to this request to the extent it seeks “copies of any documents” that are protected by the attorney-client privilege or the attorney work-product doctrine. This request is specifically directed to materials that are protected by the attorney-client privilege and the attorney-work product doctrine and to which Applicants know, or should know, they are not entitled to in this proceeding. KEPCo objects to this request because it is intended solely to create unnecessary burdens and expense, and to harass KEPCo. KEPCo incorporates the General Objections by reference.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_



**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-19

Submitted To: Kansas Electric Power Company (KEPCo)

Docket Number: 18-KCPE-095-MER

Request Date: November 15, 2017

Date Information Needed: November 29, 2017

**Please Provide the Following:**

What costs have KEPCo and/or its members incurred since January 1, 2016 related to KEPCo's involvement in the following proceedings:

- a. KCC Docket No. 16-KCPE-593-ACQ?
- b. KCC Docket No. 18-KCPE-095-MER?
- c. Missouri Public Service Commission File No. EC-2017-0107?
- d. Missouri Public Service Commission File No. EM-2018-0012?
- e. Missouri Public Service Commission File No. EE-2017-0113?
- f. Missouri Public Service Commission File No. EM-2017-0226?
- g. FERC Docket No. EC-16-146-000?
- h. FERC Docket No. EC-17-171-000?

**Objections**

KEPCo objects to this request because it seeks "costs [that] KEPCo and/or its members incurred since January 1, 2016 related to KEPCo's involvement" in eight proceedings before four state and federal agencies that is neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. The information requested is irrelevant to the question of whether the merger application in this case meets applicable law and the Commission's merger standards, and, for instance, requests information about costs incurred related to a proposed acquisition that is not the subject of this proceeding and that will never occur. KEPCo further objects to this request because it is overly broad and unduly burdensome because it seeks costs since January 1, 2016, over a 22 month period. KEPCo objects to this request due to the vagueness and uncertainty of the term "costs." KEPCo objects to this request to the extent that it requests "costs . . . [that] its members [have] incurred" in connection with the referenced proceedings that are not within KEPCo's possession, custody, or control. KEPCo further objects to this request because it seeks information about the cost of services that KEPCo provides to members that is highly sensitive commercial information. KEPCo objects to this request because it is duplicative of GPE-10. KEPCo incorporates the General Objections by reference.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-1

Submitted To: Kansas Electric Power Company (KEPCo)  
Docket Number: 18-KCPE-095-MER  
Request Date: November 1, 2017  
Date Information Needed: November 15, 2017

**Please Provide the Following:**

- a) Please list all interests of KEPCo or its members that KEPCo believes may be impacted by the consummation of the merger proposed in this docket.
- b) Please state whether such interests are regulated and by whom, and provide all documents in your possession for the period beginning January 1, 2016 to date, discussing, analyzing, or otherwise addressing these interests, including correspondences and any consultants' reports, studies, or other analysis or opinions related to such interests.

**Objections**

GPE-1(a): KEPCo objects to this request due to the vagueness and uncertainty of the term "interests." KEPCo objects to this request as premature and calling for speculation, as KEPCo's investigation and development of all the facts and circumstances related to this proceeding are ongoing. KEPCo further objects to this request to the extent responsive documents are part of the public record. KEPCo incorporates the General Objections by reference.

GPE-1(b): KEPCo objects to this request due to the vagueness and uncertainty of the terms "interests" and "for the period." KEPCo objects as the request calls for documents related to "interests" that may be impacted by the consummation of the merger since the period beginning January 1, 2016, even though GPE did not publicly announce the merger that is the subject of this proceeding until July 10, 2017. KEPCo objects because the request calls for a legal conclusion as to whether "interests" are "regulated" and "by whom." KEPCo objects to this request because it is overly broad and unduly burdensome and seeks voluminous documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. KEPCo incorporates the General Objections by reference.

**Response**

Without waiving the forgoing general and specific objections to this request and its subparts, KEPCo states as follows:

GPE-1(a) KEPCo's August 28, 2017 petition to intervene filed in KCC Docket No 18-KCPE-095-MER, identifies KEPCo's interests in this proceeding based upon KEPCo's knowledge to date without the benefit of discovery: (1) KEPCo co-owns the Wolf Creek Generation Station with KCP&L and Westar, (2) KEPCo co-owns Iatan Generation Station Unit 2 with KCP&L; (3) KEPCo is dependent on Westar's

generation fleet and transmission system for a significant amount of its power supply; and (4) KEPCo may be bound or adversely affected by any Commission order or activity in this proceeding.

KEPCo's petition to intervene is available at

<http://estar.kcc.ks.gov/estar/ViewFile.aspx/S20170828111257.pdf?Id=97a76f19-3aff-4709-a873-60a0e141bf16>

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

#### Verification of Response

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-2

Submitted To: Kansas Electric Power Company (KEPCo)  
Docket Number: 18-KCPE-095-MER  
Request Date: November 1, 2017  
Date Information Needed: November 15, 2017

**Please Provide the Following:**

a) Please list the date, time, and location of each meeting of the KEPCo Board of Trustees held since January 2016 at which discussions were had regarding a merger or acquisition between Westar and GPE. For each such meeting, please provide the following:

1. All documents, including meeting agendas, reports, presentations, and meeting minutes in your possession distributed to or viewed by KEPCo's trustees at or in connection with the meetings identified in your response to subpart a).
2. All correspondences, including emails, between KEPCo's trustees, staff or outside consultants going back to January 2016, related to the merger or acquisition transactions proposed by Applicants in Docket No. 16-KCPE-593-ACQ or Docket No. 18-KCPE-095-MER.

**Objections**

GPE-2(a): KEPCo objects to this request due to the vagueness and uncertainty of the terms "meetings," "since January 2016" and "discussions were had." KEPCo objects to this request to the extent it requests information "since January 2016," but GPE did not announce the merger that is the subject of this proceeding until July 10, 2017. KEPCo further objects to this request to the extent it asks for information about an acquisition that is not the subject of this proceeding and that will never occur, and is not calculated to lead to the discovery of admissible evidence. KEPCo incorporates the General Objections by reference.

GPE did not announce the merger that is the subject of this proceeding until July 10, 2017. KEPCo will provide the information requested on meetings held on or after July 10, 2017.

GPE-2(a)(1): KEPCo objects to this request because it is overly broad in that it seeks discovery of "all documents . . . distributed to or viewed by" Trustees, even when those documents are not related to the denied acquisition or the merger (as is requested by GPE-2(a)). KEPCo objects because the request is unduly burdensome and seeks voluminous documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. KEPCo incorporates objections to GPE-2(a) and the General Objections by reference.

GPE did not announce the merger that is the subject of this proceeding until July 10, 2017. KEPCo will undertake a reasonable search for and produce relevant, non-privileged documents in connection with

meetings after July 10, 2017, that contain reference to the merger, and that are in its possession, custody, or control.

GPE-2(a)(2): KEPCo objects to the vagueness and uncertainty of the undefined term "staff." KEPCo objects to this request because it is overly broad and unduly burdensome because it seeks correspondence that is in any way "related to" the merger. KEPCo further objects to this request because it seeks correspondence "related to" the denied acquisition in Docket No 16-KPE-593-ACQ that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. KEPCo also objects to this request because it seeks documents that are not within KEPCo's possession, custody, or control. KEPCo incorporates objections to GPE-2(a) and the General Objections by reference.

### Response

Without waiving the forgoing general and specific objections to this request and its subparts, KEPCo states as follows:

GPE-2(a). The time, date, and location of each KEPCo Board of Trustee meetings at which Applicants' merger transaction was discussed are as follows:

1. July 19, 2017, from 2:00 PM to 5:00 PM, at 600 SW Corporate View, Topeka, Kansas.
2. August 16, 2017, from 2:00 PM to 5:00 PM, at 600 SW Corporate View, Topeka, Kansas.
3. Sept. 20, 2017, from 2:00 PM to 5:00 PM, at 600 SW Corporate View, Topeka, Kansas.
4. Oct. 11, 2017, from 2:00 PM to 5:00 PM, and Oct. 12, 2017, from 8:30 AM to about 9:15 AM, at 600 SW Corporate View, Topeka, Kansas.

GPE-2(a)(1). Please see attached.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

### Verification of Response

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed:  \_\_\_\_\_

Date: 11/15/17

**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-2

Submitted To: Kansas Electric Power Company (KEPCo)

Docket Number: 18-KCPE-095-MER

Request Date: November 1, 2017

Date Information Needed: November 15, 2017

**Please Provide the Following:**

a) Please list the date, time, and location of each meeting of the KEPCo Board of Trustees held since January 2016 at which discussions were had regarding a merger or acquisition between Westar and GPE. For each such meeting, please provide the following:

1. All documents, including meeting agendas, reports, presentations, and meeting minutes in your possession distributed to or viewed by KEPCo's trustees at or in connection with the meetings identified in your response to subpart a).

2. All correspondences, including emails, between KEPCo's trustees, staff or outside consultants going back to January 2016, related to the merger or acquisition transactions proposed by Applicants in Docket No. 16-KCPE-593-ACQ or Docket No. 18-KCPE-095-MER.

**Objections**

GPE-2(a): KEPCo objects to this request due to the vagueness and uncertainty of the terms "meetings," "since January 2016" and "discussions were had." KEPCo objects to this request to the extent it requests information "since January 2016," but GPE did not announce the merger that is the subject of this proceeding until July 10, 2017. KEPCo further objects to this request to the extent it asks for information about an acquisition that is not the subject of this proceeding and that will never occur, and is not calculated to lead to the discovery of admissible evidence. KEPCo incorporates the General Objections by reference.

GPE did not announce the merger that is the subject of this proceeding until July 10, 2017. KEPCo will provide the information requested on meetings held on or after July 10, 2017.

GPE-2(a)(1): KEPCo objects to this request because it is overly broad in that it seeks discovery of "all documents . . . distributed to or viewed by" Trustees, even when those documents are not related to the denied acquisition or the merger (as is requested by GPE-2(a)). KEPCo objects because the request is unduly burdensome and seeks voluminous documents that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. KEPCo incorporates objections to GPE-2(a) and the General Objections by reference.

GPE did not announce the merger that is the subject of this proceeding until July 10, 2017. KEPCo will undertake a reasonable search for and produce relevant, non-privileged documents in connection with meetings after July 10, 2017, that contain reference to the merger, and that are in its possession, custody, or control.



GPE-2(a)(2): KEPCo objects to the vagueness and uncertainty of the undefined term "staff." KEPCo objects to this request because it is overly broad and unduly burdensome because it seeks correspondence that is in any way "related to" the merger. KEPCo further objects to this request because it seeks correspondence "related to" the denied acquisition in Docket No 16-KPE-593-ACQ that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. KEPCo also objects to this request because it seeks documents that are not within KEPCo's possession, custody, or control. KEPCo incorporates objections to GPE-2(a) and the General Objections by reference.

### **Response (Amended)**

Without waiving the forgoing general and specific objections to this request and its subparts, KEPCo states as follows:

GPE-2(a). The time, date, and location of each KEPCo Board of Trustee meetings at which Applicants' merger transaction was discussed are as follows:

1. July 19, 2017, from 2:00 PM to 5:00 PM, at 600 SW Corporate View, Topeka, Kansas.
2. August 16, 2017, from 2:00 PM to 5:00 PM, at 600 SW Corporate View, Topeka, Kansas.
3. Sept. 20, 2017, from 2:00 PM to 5:00 PM, at 600 SW Corporate View, Topeka, Kansas.
4. Oct. 11, 2017, from 2:00 PM to 5:00 PM, and Oct. 12, 2017, from 8:30 AM to about 9:15 AM, at 600 SW Corporate View, Topeka, Kansas.

GPE-2(a)(1). Please see attached **CONFIDENTIAL** documents. The documents provided in response to this request contain confidential, strategic information prepared for and reviewed by the KEPCo Board of Trustees. These documents disclose commercial decisions and strategies considered and deployed by KEPCo in connection with the day-to-day operations of KEPCo, including strategies concerning power supply, negotiations, and cost, as well as nonpublic financial and business information. As such, these materials constitute "confidential commercial information" pursuant to KAR 82-1-221a, and if disclosed or otherwise placed in the public domain would result in irreparable harm to KEPCo's economic and competitive interests.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

### **Verification of Response**

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed:  \_\_\_\_\_

Date:  \_\_\_\_\_



**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 September 12, 2017, and the Commission's Rules of Practice and Procedure, Kansas Electric Power Cooperative, Inc. ("KEPCo") hereby objects to applicant Great Plains Energy Incorporated's ("GPE's") discovery or data requests ("Requests") served on November 1, 2017, and numbered GPE-1 through GPE-7:

General Objections.

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).
- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work-product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.
- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.
- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publically available or that are already in the possession, custody, or control of GPE.
- E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.
- F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

In addition to the General Objections set forth above, KEPCo states other Specific Objections that are not generally applicable to all of the Requests. By setting forth Specific Objections, KEPCo does not intend to limit or restrict the General Objections set forth above.

**GPE/KCP&L/Westar**  
Information Request

Request No: GPE-3

Submitted To: Kansas Electric Power Company (KEPCo)  
Docket Number: 18-KCPE-095-MER  
Request Date: November 1, 2017  
Date Information Needed: November 15, 2017

**Please Provide the Following:**

a) Please list the date, time, and location of all meetings between KEPCo employees, members or consultants related to the merger transaction proposed in this docket or the merger transaction for which approval was sought in Docket No. 16-KCPE-593-MER. For each such meeting, provide the following documents or information:

1. All documents, including meeting agendas, reports, presentations, and meeting minutes in your possession distributed to or viewed by the parties involved in the meeting.
2. All correspondences, including emails, between any of the parties to the meeting(s) addressing the merger transaction proposed in this docket or the merger transaction for which approval was sought in Docket No. 16-KCPE-593-MER.
3. Copies of any notes taken by anyone in attendance at such meetings.

**Objections**

KEPCo objects to this request to the extent it requests information about meetings related to a “merger transaction” in “Docket No. 16-KCPE-593-MER” that does not exist. KEPCo further objects to this request due to the vagueness and uncertainty of the term “meetings.” To the extent GPE is seeking information about “meetings” related to the acquisition transaction in Docket No. 16-KCPE-593-AQC, KEPCo objects to this request because it seeks information about meetings related to the denied acquisition that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. KEPCo further objects to this request because it seeks information that is irrelevant to the question of whether the merger application in this case meets applicable law and the Commission’s merger standards. KEPCo objects to the request as overly broad and unduly burdensome because the documentation requested is not limited in time. KEPCo also objects to GPE-3(a)(2) and GPE3(a)(3) because they seek documents that are not within KEPCo’s possession, custody, or control. KEPCo incorporates the General Objections by reference.

GPE did not announce the merger that is the subject of this proceeding until July 10, 2017. KEPCo will undertake a reasonable search for and produce relevant, non-privileged documents in its possession, custody, or control for meetings on or after July 10, 2017.

## Response

Without waiving the forgoing general and specific objections to this request and its subparts, KEPCo provides the following:

GPE-3(a). On September 25, 2017, from about 9:00 AM to 1:00 PM, at 1015 15<sup>th</sup> St NW, Washington, DC, representatives of KEPCo met with legal counsel and consultants under the direction of legal counsel.

GPE-3(a)(1). There are no documents responsive to this request that are not subject to attorney-client privilege or the attorney work-product doctrine.

GPE-3(a)(2). There are no documents responsive to this request that are not subject to attorney-client privilege or the attorney work-product doctrine.

GPE-3(a)(3). There are no documents responsive to this request that are not subject to attorney-client privilege or the attorney work-product doctrine.

Submitted by: Applicants

Submitted to: KEPCo

If for some reason, the above information cannot be provided by the date requested, please provide a written explanation of those reasons.

## Verification of Response

I have read the foregoing Information Request 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 GPE/KCP&L/Westar any matter subsequently discovered which affects the accuracy or completeness of the answer(s) to this Information Request.

Signed:  \_\_\_\_\_

Date: 11/15/17

**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 September 12, 2017, and the Commission's Rules of Practice and Procedure, Kansas Electric Power Cooperative, Inc. ("KEPCo") hereby objects to applicant Great Plains Energy Incorporated's ("GPE's") discovery or data requests ("Requests") served on November 1, 2017, and numbered GPE-1 through GPE-7:

General Objections.

- A. KEPCo objects to the Requests to the extent that they seek to impose requirements on KEPCo that are inconsistent with, or in addition to, the Commission's Discovery Order and K.A.R. 82-1-234a(a).
- B. KEPCo objects to the Requests to the extent that they seek information, communications, and/or documents that are protected by the attorney-client privilege, the attorney work-product doctrine, or any other constitutional, statutory or common-law privilege or doctrine.
- C. KEPCo objects to the Requests to the extent that they seek information and/or documents that are neither clearly relevant to the subject matter of this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.
- D. KEPCo objects to the Requests to the extent they call for the production of documents that are publically available or that are already in the possession, custody, or control of GPE.
- E. KEPCo objects to the Requests to the extent they seek information or documents that are not within KEPCo's possession, custody, or control. KEPCo will produce non-privileged, responsive documents only to the extent that such documents are in the possession, custody, or control of KEPCo.
- F. KEPCo objects to the Requests as overbroad, burdensome, harassing, oppressive and/or designed to cause undue annoyance.

In addition to the General Objections set forth above, KEPCo states other Specific Objections that are not generally applicable to all of the Requests. By setting forth Specific Objections, KEPCo does not intend to limit or restrict the General Objections set forth above.