

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

In the Matter of the Application of Great Plains Energy Incorporated, Kansas City Power & Light Company and Westar Energy, Inc. for Approval of the Merger of Westar Energy, Inc. and Great Plains Energy Incorporated.)
Docket No. 18-KCPE-095-MER

**STAFF'S RESPONSE TO KIC'S MOTION TO EXTEND DEADLINE FOR
TESTIMONY IN OPPOSITION TO A SETTLEMENT AGREEMENT**

The Staff of the Kansas Corporation Commission ("Staff" and "Commission," respectively), hereby states the following in response to the Kansas Industrial Consumers Group, Inc.'s (KIC's) *Motion to Extend Deadline for Testimony in Opposition to a Settlement Agreement* (Motion) filed March 6, 2018, in this proceeding:

Background and KIC's Motion to Extend

1. On November 21, 2017, the Commission issued a Procedural Schedule in this docket. The Procedural Schedule adopted a March 7, 2018, deadline for submission of a settlement agreement, and a March 12, 2018, deadline for filing testimony in support/opposition to a settlement agreement.¹

2. On March 6, 2018, KIC filed its immediate Motion seeking extension of the deadline to file testimony opposing a settlement until March 15, 2018. Pointing out that parties supporting a settlement generally know the contents of the agreement before its filing with the Commission, KIC argues that opposing parties are at a disadvantage because they do not know what is in any settlement agreement until it is filed.² KIC also argues that parties supporting approval of a settlement agreement carry the burden to prove such agreement should be approved

¹Order Setting Procedural Schedule, ¶13.

²March 6, 2018 Motion, ¶7.

by the Commission under applicable legal standards, and thus, opposing parties should have an opportunity to respond.³

Staff's Response

3. KIC's Motion is not timely. The scheduling order in this matter was issued nearly four months ago, specifically laying out the deadlines for a settlement agreement and testimony in support/opposition to a settlement agreement. The appropriate avenue for KIC to take issue with this procedural timeline would have been by filing a Petition for Reconsideration of the Commission's November 21, 2018, Order Setting Procedural Schedule.

4. In addition to being untimely, KIC's March 6, 2018 Motion squarely contradicts its October 16, 2018, *Motion for Procedural Schedule and Response in Opposition to Applicants' Proposed Schedule* wherein KIC requested a March 26, 2018, deadline for settlement agreement and a March 30, 2018 deadline for testimony in support/opposition to a settlement agreement. Not only does KIC's requested procedural structure undermine its own argument that concurrent deadlines for both testimony in support and testimony in opposition to a settlement agreement results in impermissible burden-shifting, but KIC's October 16, 2018, proposal leaves the parties with only four calendar days to develop settlement testimony—less than the five calendar days available under the current schedule.

5. All parties who participated in the settlement conferences in this docket are generally aware of the issues contemplated by any settlement agreement such that even parties in opposition to a settlement could begin drafting testimony at this point in time. All parties to this docket were presented with the opportunity to participate in settlement conferences and any party who did not participate affirmatively and voluntarily made such decision. KIC argues that

³*Id.*

signatories are probably already working on their testimony and that this puts KIC at a disadvantage. Notwithstanding that this is speculation, there is no reason why KIC, if it knows it will object, cannot start preparing opposition testimony.

6. Finally, KIC's Motion improperly changes the fundamental character of a settlement agreement from an offer to compromise based on the record to a Joint Application of the signatories.

7. The issue in this proceeding is whether or not the proposed merger promotes the public interest. Rather than litigate this issue, KIC now seeks to litigate a settlement agreement or refute the testimony filed by parties that support the same. The purpose of a settlement agreement is to present the Commission with a path forward based upon evidence currently in the record, not start the clock over and treat the settlement agreement as a new application. Additionally, positions put forth in settlement agreements are compromise positions and do not necessarily reflect parties' originally held positions. Thus, they should not be subject to the same direct and rebuttal testimony scheme as the original application in this proceeding. KIC has already had the opportunity to fully explain its positions in Direct Testimony and Cross-Answering Testimony, and will have the opportunity to object to any settlement agreement.

WHEREFORE, for the reasons set forth above, Staff respectfully requests that the Commission deny KIC's Motion.

Respectfully Submitted,



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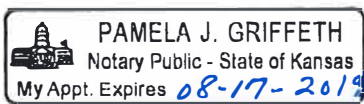
VERIFICATION

Michael Neeley, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Staff's Response to KIC's Motion to Extend Deadline for Testimony in Opposition to a Settlement Agreement* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Michael Neeley # 25027
Kansas Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 7th day of March, 2018.



Notary Public

My Appointment Expires: August 17, 2019

CERTIFICATE OF SERVICE

18-KCPE-095-MER

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Response to KIC's Motion to Extend Deadline for Testimony in Opposition to a Settlement Agreement was served by electronic service on this 7th day of March, 2018, to the following:

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