

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Pat Apple

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

PREHEARING OFFICER ORDER ON JOINT APPLICANTS' MOTION TO COMPEL

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Prehearing Officer makes the following findings:

1. On August 25, 2017, Westar Energy, Inc. and Kansas Gas and Electric Company (Westar), Great Plains Energy Incorporated (Great Plains) and Kansas City Power & Light Company (KCP&L) filed an Application seeking approval to merge. The Applicants intend to form a new, publicly traded holding company with a combined equity value of approximately \$14 billion, which will operate regulated electric utilities in Kansas and Missouri.¹ Westar and KCP&L would become wholly-owned subsidiaries of the new holding company.² As proposed, Westar shareholders will own approximately 52.5% of the combined company with Great Plains' shareholders owning the remaining 47.5% of the combined company.³

2. On September 12, 2017, the Commission issued an Order Designating Prehearing Officers; Granting Intervention to CURB; and Protective and Discovery Order (Order), establishing the procedure for handling confidential material and governing the conduct of

¹ Application, Aug. 25, 2017, ¶¶ 9-10.

² *Id.*, ¶ 10.

³ *Id.*, ¶ 11.

discovery.⁴ Specifically, the Order outlines the process for issuing data requests, responding and objecting to data requests, and filing motions to compel.⁵ The Prehearing Officer is tasked with rulings related to protective and discovery orders.⁶

3. On December 6, 2017, the Joint Applicants filed a Motion to Compel against Kansas Electric Power Cooperative, Inc. (KEPCo),⁷ seeking substantive responses to GPE-1 through GPE-4, and GPE-7, issued November 1, 2017; and GPE-9 through GPE-19, issued November 15, 2017.⁸ On December 20, 2017, KEPCo filed its Response and on January 3, 2018, the Joint Applicants filed their reply.

4. The Prehearing Officer held a hearing on the Motion to Compel on January 12, 2018. Counsel for the Joint Applicants and KEPCo appeared at the hearing. After listening to the arguments, the Prehearing Officer issued a ruling from the bench on each disputed discovery request. This Order reduces those findings to writing.

5. KEPCo is ordered to produce documents responsive to GPE-1. The Prehearing Officer limited GPE-1(b) to documents related to the pending, proposed merger.

6. KEPCo is ordered to produce documents responsive to GPE-2. The Prehearing Officer modified GPE-2(a)(1) by deleting the phrase “or viewed by” and limiting the scope to documents related to the merger or acquisition proposed in Dockets 16-KCPE-593-ACQ and 18-KCPE-095-MER.

7. KEPCo is ordered to produce documents responsive to GPE-3(a)(1) and GPE-3(a)(2).

⁴ *Id.*, ¶¶ 8, 20.

⁵ *Id.*, ¶¶ 21-24.

⁶ Order Designating Prehearing Officers; Granting Intervention to CURB; and Protective and Discovery Order, Sept. 12, 2017, ¶ 3.

⁷ On September 12, 2017, KEPCo was granted intervention.

⁸ Motion to Compel, Dec. 6, 2017, ¶¶ 3-6.

8. The Joint Applicants' Motion to Compel KEPCo to respond to GPE-4 is denied.
9. The Joint Applicants' Motion to Compel KEPCo to respond to GPE-7 is denied.
10. Since the Prehearing Officer found GPE-9(a) was overbroad and sought information that should be publicly available, the Joint Applicants' Motion to Compel was denied as to GPE-9(a), but granted as to GPE-9(b).
11. KEPCo is ordered to produce documents responsive to GPE-10(a) and (b), but the Prehearing Officer denied the Joint Applicants' Motion to Compel responses to GPE-10(c)-(f).
12. KEPCo is ordered to produce documents responsive to GPE-11. The Prehearing Officer limited GPE-11 to documents relating to the effects of a merger or acquisition of Westar with or by Great Plains/KCP&L on the GFR agreement between Westar and KEPCo.
13. The Joint Applicants' Motion to Compel KEPCo to respond to GPE-12 is denied.
14. The Joint Applicants' Motion to Compel KEPCo to respond to GPE-13 is denied.
15. The Joint Applicants' Motion to Compel KEPCo to respond to GPE-14 is denied.
16. KEPCo is ordered to produce documents responsive to GPE-15, GPE-16, and GPE-17; dating back to May 31, 2016 (the date Great Plains publicly announced its intent to acquire Westar in what became the 16-KCPE-593-ACQ Docket).
17. The Joint Applicants withdrew their Motion as to GPE-18.
18. KEPCo is ordered to produce documents responsive to GPE-19.

THEREFORE, THE PREHEARING OFFICER ORDERS:

- A. The Joint Applicants' Motion to Compel is granted in part and denied in part. KEPCo shall produce documents as directed in paragraphs 5-7, 10-12, 16, and 18 by January 26, 2018.

B. This order is procedural and constitutes non-final agency action.⁹ Parties have 15 days from the date of electronic service of this Order to petition for reconsideration.¹⁰

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

Dated: January 19, 2018

/s/ Brian G. Fedotin
Brian G. Fedotin
Prehearing Officer

EMAILED

JAN 19 2018

⁹ K.S.A. 77-607(b)(2).

¹⁰ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

18-KCPE-095-MER

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on JAN 19 2018.

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