

² Order, ¶A (Apr. 19, 2017).

3. On May 4, 2017, Joint Applicants filed a Petition for Reconsideration, requesting the Commission “grant reconsideration of its Order and set the matter for further proceedings so that Joint Applicants may work together to determine whether it is feasible to develop a revised Transaction proposal...”³

II. THE PFR SHOULD BE DENIED BECAUSE IT FAILS TO ALLEGE ANY FAULT WITH THE COMMISSION’S FINAL ORDER

4. The PFR should be denied because it contains no allegation of error. In other words, there are no “grounds” for the requested relief.

5. K.S.A. 77-529(a)(1) provides in part, “[e]xcept as otherwise provided in paragraph (2), any party, within 15 days after service of a final order, may file a petition for reconsideration with the agency head, **stating the specific grounds upon which relief is requested...** (Emphasis added).⁴

6. The Kansas Court of Appeals has stated, “[t]he allegation of grounds must be sufficiently specific and direct to apprise the commission and opposing parties of the actual points relied on.”⁵

7. Furthermore, “[t]he purpose of requiring matters to be raised in the petition for reconsideration is to inform the KCC and other parties where mistakes of law and fact were made in the order.”⁶ Finally, “[r]equiring a petition for reconsideration permits the KCC to correct errors which are called to its attention and thereby perhaps avoid judicial review.”⁷

8. As the Joint Applicants’ PFR in this matter contains no allegation of error, the PFR could best be described as a motion for extension of time to develop a brand new

³ Joint Applicants’ Petition for Reconsideration (PFR), ¶9 (May 4, 2017).

⁴ K.S.A. 77-529(a)(1).

⁵ *Peoples Nat. Gas Div. of N. Nat. Gas Co. v. State Corp. Comm’n*, 7 Kan. App. 2d 519, 526 (1982).

⁶ *Citizens’ Util. Ratepayer Bd. v. State Corp. Comm’n*, 24 Kan. App. 2d 222, 228 (1997), *aff’d in part, rev’d in part* sub nom. *Citizens’ Util. Ratepayer Bd. v. State Corp. Comm’n*, 264 Kan. 363 (1998).

⁷ *Kansas Indus. Consumers v. State Corp. Comm’n*, 30 Kan. App. 2d 332, 338 (2002).

transaction. Even the Commission's regulation regarding extensions of time requires "good cause" to be shown.⁸ The Joint Applicants' PFR does not allege any cause, good or otherwise.

9. The PFR does not allege the Commission's final order in this matter was in error in any way. It should, therefore, be denied.⁹

III. THE PFR SHOULD BE DENIED BECAUSE THERE EXISTS NO GOOD CAUSE TO LEAVE THIS DOCKET OPEN

10. Joint Applicants suggest the Commission has granted similar requests to allow further proceedings. However, the cases cited by the Joint Applicants bear little resemblance to this proceeding. Several of the cited cases required further proceedings to address error in the Commission's orders or to allow the consideration of newly available evidence. Joint Applicants provide no similar justification for their request in this proceeding.

11. In some of the other cases cited by the Joint Applicants, the parties requested additional time to cure discrete and specific deficiencies identified by the Commission. In contrast, the Commission's Order in this proceeding was categorical and unqualified. The proposed transaction failed nearly every measure of the Commission's public interest test. Given the conclusive and final nature of the Commission's Order in this case, there is simply no justification to hold this proceeding open while the Joint Applicants explore a new and fundamentally different transaction.

IV. THE PFR SHOULD BE DENIED BECAUSE A REVISED TRANSACTION WOULD NECESSARILY REQUIRE A NEW APPLICATION

12. Due to how significantly the transaction proposed by the Joint Application failed to promote the public interest under the Commission's Merger Standards, a revised transaction satisfactorily addressing the deficiencies identified by the Commission in its Order denying the

⁸See K.A.R. 82-1-217(b).

⁹See Order on Reconsideration, p. 3, Docket no. 16-ATMG-079-RTS (Mar. 26, 2016).

proposed transaction would necessarily be a fundamentally different and wholly restructured transaction. Such a new transaction would constitute a material change to the transaction proposed by the Joint Application and therefore constitute a new and separate procedure under K.S.A. 66-131.¹⁰

13. Without knowledge of what a revised transaction proposal might look like, Staff cannot say with certainty that such a procedure would require the full 300 days allowed in K.S.A. 66-131(c); however, in light of the deficiencies with the transaction proposed by the Joint Application, such a revised transaction would necessarily require a thorough investigation and review. Staff concurs with the Joint Applicants PFR insofar as it acknowledges, "...the parties and the Commission would need time to evaluate any such revised Transaction proposal, conduct discovery, file testimony and hold evidentiary hearings."¹¹ However, based on the Joint Applicants' resistance to provide Staff and other intervening parties with necessary information throughout the present docket,¹² Staff is highly skeptical that thorough review of a fundamentally restructured transaction might take place on a substantially expedited basis.

14. Staff notes pursuant to the Agreement and Plan of Merger, Section 8.01(b)(i), either GPE or Westar may terminate the agreement if the closing shall not have occurred by either May 31, 2017, or if extended six months, November 30, 2017.¹³ Should these dates be guiding the Joint Applicants in their determination of whether a revised transaction proposal

¹⁰ The Joint Application was filed pursuant to K.S.A. 66-101 *et seq.*, 66-104, 66-117, 66-131, 66-136 and other applicable statutes, and pursuant to the terms of the Amended Unanimous Stipulation and Agreement in Docket No. 01-KCPE-708-MIS, and any other potentially applicable orders issued by the Commission.

¹¹ Joint Applicants' PFR, p. 3, fn. 1.

¹² See generally, Staff's Reply to Joint applicants' Verified Response to Commission's Order on Merger Standards (Sept. 9, 2016); CURB's Response to Staff's Reply to Joint Applicants' Verified Response to Commission's Order on Merger Standards (Sept. 12, 2016); Response to Staff's and CURB's Reply to Joint Applicants' Verified Response to Commission's Order on Merger Standards (Sept. 19, 2016); Motion of Kansas City, Kansas Board of Public Utilities to Compel GPE's and KCP&L's Responses to Certain Data Requests (Nov. 16, 2016); Motion of Great Plains Energy Incorporated and Kansas City Power & Light to Amend Protective Order and Response to BPU Motion to Compel (Nov. 21, 2016); Staff's Motion to Declassify All Staff Testimony and Exhibits (Jan. 10, 2017); and Joint Motion to Strike and for Sanctions Against Joint Applicants (Jan. 11, 2017).

¹³ Joint Application, Appendix C.

might permit a Commission determination that it promotes the public interest, Staff notes a procedural schedule with additional analysis, testimony, evidentiary hearing, briefs, and time for a Commission order most likely cannot be accomplished with a November deadline. Such a deadline truncates the Commission's normal timeline for review of mergers and acquisitions by approximately four months and it places Staff in an untenable situation of meeting its obligation to provide the Commission a thorough review of the revised transaction and determine whether the revised transaction meets the merger standards. For context, the duration of Staff's analysis of the initial Joint Application in this docket—from filing on June 28, 2016 until Staff's Direct Testimony Deadline of December 16, 2016—spanned roughly the same six months' time.

15. The Joint Applicants request to "...leave the docket open..." in order to "ascertain whether agreement may be reached on issues disputed during evidentiary hearing held earlier this year and whether an agreed upon procedural schedule can be obtained and presented to the Commission."¹⁴ Joint Applicants state they "will endeavor to file a revised Transaction proposal along with a supplemental application by May 31, 2017 or, if more time is necessary to fully engage all parties, ask the Commission for additional time."¹⁵ Such a request seeks to place all parties other than Joint Applicants at a procedural disadvantage, and Staff will not entertain reaching agreement on disputed issues or a procedural schedule—abbreviated or otherwise—prior to Staff's initial review of a filed application for any revised or restructured transaction.

16. Therefore, in order to give Staff and the Commission an opportunity for a full and meaningful review of any such revised transaction, the Commission should deny the PFR and require any modified transaction be subject to a procedural schedule of up to 300 days as allowed by K.S.A. 66-131.


¹⁴ Joint Applicant's PFR, ¶ 7.

¹⁵ *Id.*

V. CONCLUSION

WHEREFORE, for the reasons more fully set forth above, Staff respectfully requests the Commission deny the Joint Applicants' Petition for Reconsideration, and for any such further relief as the Commission deems just and proper.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Amber Smith", is written over a horizontal line.

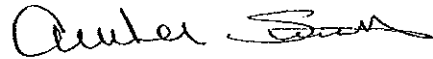
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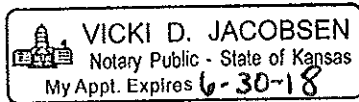
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

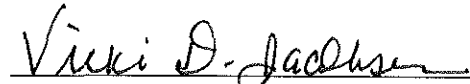
Amber Smith, of lawful age, being duly sworn upon her oath deposes and states that she is Chief Litigation Counsel for the State Corporation Commission of the State of Kansas; that she has read and is familiar with the foregoing *Staff's Response to Joint Applicants' Petition for Reconsideration*, and attests that the statements therein are true to the best of her knowledge, information and belief.



Amber Smith, S. Ct. #23911
Chief Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 9th day of May, 2017.




Notary Public

My Appointment Expires: 6-30-18

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16-KCPE-593-ACQ

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Response to Joint Applicants' Petition for Reconsideration was served via electronic service this 9th day of May, 2017, to the following:

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