

³ Compliance Filing at 2.

(“IRP”) process that the Commission required in the May 24, 2018, Order Approving Merger in Docket No. 18-KCPE-095-MER.

Although the proposed Framework is a decent starting point, the discussions at the work study confirm KEPCo’s view that additional work is warranted. Once the Filing Parties have had the opportunity to digest the discussions at the work study and the post-work study comments from interested parties, KEPCo requests that the Filing Parties supplement the proposed Framework in a further compliance filing.

In support of these post-work study comments, KEPCo states as follows:

I. Background

1. On June 28, 2016, Great Plains Energy (“GPE”), KCP&L, and Westar filed an application requesting approval for GPE’s acquisition of Westar. KEPCo participated fully in that proceeding and, after a trial-type hearing and post-hearing briefing, the Commission rejected the application by Order issued on April 19, 2017. Among the Commission’s reasons for rejection was the finding that the utilities had not provided a comprehensive IRP to support their claims that the acquisition provided benefits to Kansas customers.⁴

2. On August 25, 2017, the utilities filed a second merger application, this time presenting the transaction as a “merger-of-equals” between Westar and GPE. KEPCo again participated fully in the proceedings. KEPCo highlighted for the Commission its concerns that the merging utilities had not provided the promised IRP or otherwise performed a reliable evaluation of their accelerated generation retirement plan. A properly performed IRP would have shown how the merged company would combine the separate power supply resource portfolios of the utilities into a single, cost effective, and optimal power supply for customers

⁴ See, e.g., Order, at ¶¶ 56, 72, 81, 86, *In re Joint Application of Great Plains Energy Inc., Kansas City Power & Light Co. and Westar Energy, Inc. for Approval of the Acquisition of Westar Energy, Inc. by Great Plains Energy Inc.*, Docket No. 16-KCPE-593-ACQ (issued Apr. 19, 2017).

served by the combined company. Instead, the companies presented a study designed to justify their preferred course of action — the accelerated retirement of 777 MW of Westar generation by the end of 2018.⁵

3. Kansas is one of few states with vertically integrated utilities that does not have IRP or long-term planning requirements, according to a survey performed by the Regulatory Assistance Project.⁶ KEPCo therefore urged the Commission to require the merging companies to commit to a transparent, inclusive, and Kansas-focused IRP process.⁷ KEPCo pointed out that the settlement agreement supported by Staff, CURB, the merging companies, and others would not provide sufficient transparency into the merging companies' resource planning decisions, and that transparency would be important because the merged company would be the largest provider of electric power in the state.

4. On May 24, 2018, the Commission approved the non-unanimous settlement agreement and sought to remedy concerns about the lack of an IRP process for the merged companies:⁸

KEPCo's position is that the merger should not be allowed to proceed absent a clearly articulated Integrated Resource Plan (IRP) process in Kansas. The IRP process envisioned by KEPCo would provide the Commission with Kansas-specific information. KEPCo suggests the Kansas-specific IRP need not be completed before the merger closes, therefore, it argues requiring a Kansas-specific IRP will not be an impediment to the merger closing.

⁵ See Kansas Electric Power Cooperative, Inc.'s Post-Hearing Brief at 19-24, *In re Joint Application of Great Plains Energy Inc., Kansas City Power & Light Co. and Westar Energy, Inc. for Approval of the Merger of Westar Energy, Inc. and Great Plains Energy Inc.*, Docket No. 18-KCPE-095-MER (filed Apr. 20, 2018).

⁶ Regulatory Assistance Project, Best Practices in Electric Utility Integrated Resource Planning: Examples of State Regulations and Recent Utility Plans (June 2013), available at <https://www.raponline.org/wp-content/uploads/2016/05/rapsynapse-wilsonbiewald-bestpracticesinirp-2013-jun-21.pdf> ("RAP Best Practices Whitepaper"), Figure 2 at 5.

⁷ KEPCo's Post-Hearing Brief, *supra* n.5, at 24-41.

⁸ Order Approving Merger, at ¶¶ 65-67, *In re Joint Application of Great Plains Energy Inc., Kansas City Power & Light Co. and Westar Energy, Inc. for Approval of the Merger of Westar Energy, Inc. and Great Plains Energy Inc.*, Docket No. 18-KCPE-095-MER (issued May 24, 2018) (footnotes omitted).

While the ERSP mechanism is included in the Settlement Agreement as Condition 26, the Commission is concerned that the Capital Resource Plan provided for in paragraph 50(iv) of the Settlement Agreement does not reference an IRP. In conversations with the Applicants, Staff and CURB expressed their desire to include an IRP process in the Capital Resource Plan. Staff's expectation is that an IRP process will be discussed in the compliance docket agreed to in Condition 40 of the Settlement Agreement. At the evidentiary hearing, Bassham committed to complete an IRP and share it with the Commission. The Commission agrees with Staff, CURB, and KEPCo that an IRP process needs to be included in the Capital Resource Plan. Therefore, the Commission mandates that the Signatories develop a reporting format and submit it for Commission approval within three months of the close of the transaction. If the Signatories are unable to meet that deadline, or if the Commission rejects the proposed reporting format, the Commission may establish a formal procedural schedule to develop the IRP process. Moreover, the IRP process will remain in effect until such time as the Commission authorizes its elimination.

5. The later-issued rehearing order limited participation in the development of the “initial IRP reporting format and process” to Staff, CURB, and the merged companies.⁹ Others would be allowed to comment on the proposal after the IRP had already been “developed and proposed to the Commission.”¹⁰

6. On September 4, 2018, the Filing Parties submitted a one-page outline of a “conceptual agreement” about what they thought should be included in the Capital Plan and IRP and pledged to submit a status update filing within 45 days that “outline[d] the progress being made.”¹¹ The Filing Parties subsequently filed four motions to extend the deadline.

⁹ Order Denying Petitions for Reconsideration from the Sierra Club and Kansas Industrial Consumers, at ¶ 23, *In re Joint Application of Great Plains Energy Inc., Kansas City Power & Light Co. and Westar Energy, Inc. for Approval of the Merger of Westar Energy, Inc. and Great Plains Energy Inc.*, Docket No. 18-KCPE-095-MER, (issued June 28, 2018).

¹⁰ *Id.*

¹¹ Joint Filing Regarding Capital Plan and Integrated Resource Plan Reporting Format, at ¶ 3, *In re Capital Plan Compliance Docket for Kansas City Power & Light Co. and Westar Energy, Inc. Pursuant to the Commission's Order in Docket No. 18-KCPE-095-MER*, Docket No. 19-KCPE-096-CPL (filed Sept. 4, 2018). The Filing Parties did not serve the filing on KEPCo.

7. On March 1, 2019, the Filing Parties filed the finalized Framework document. Due to an oversight, the Compliance Filing was not served on all parties to the merger docket until March 27, 2019.¹²

8. On April 17, 2019, the Sierra Club filed a Motion For Commission to Provide 60-Day Comment Period on Joint Parties' Compliance Filing, asking the Commission to provide interested stakeholders a meaningful opportunity to review, evaluate, and comment on the submitted IRP reporting Framework.

9. The Commission rejected the Sierra Club's motion and instead issued its Scheduling Order on June 4, 2019, explaining that it favored holding a work study on June 18, 2019, for the Filing Parties to present the Framework to the Commission and allow the Commission to ask questions to the Filing Parties.¹³ The Scheduling Order provided that the Kansas Industrial Consumers Group, Inc. and the Sierra Club, the parties that had intervened up until that date, would have the opportunity to file comments in response to the work study. The Commission established July 18, 2019, as the deadline for such comments.¹⁴

10. On June 5, 2019, KEPCo submitted its Petition to Intervene in this docket. As KEPCo explained, it was granted full intervenor status in the 18-KCPE-095-MER Docket, the proceeding in which the directive for the Filing Parties to submit a proposed IRP process stemmed. Furthermore, as KEPCo explained, it has a strong interest in the IRP process. KEPCo is a co-owner of the Wolf Creek Generating Station with KCP&L and Westar, and of the Iatan Generating Station Unit 2 with KCP&L. Additionally, a significant amount of KEPCo's power

¹² Prior to the March 27, 2019 service of filings, the Filing Parties did not notify KEPCo of delays in the Framework's development.

¹³ Scheduling Order, at ¶ 7, *In re Capital Plan Compliance Docket for Kansas City Power & Light Co. and Westar Energy, Inc. Pursuant to the Commission's Order in Docket No. 18-KCPE-095-MER*, Docket No. 19-KCPE-096-CPL (issued June 4, 2019).

¹⁴ *Id.* at ¶ 8.

supply is dependent upon Westar's generation fleet through a long-term power supply contract with Westar. KEPCo is also dependent on both KCP&L's and Westar's transmission systems. KEPCo indicated that it intended to submit post-work study comments.

11. On June 25, 2019, the Commission issued its Order addressing KEPCo's Petition to Intervene. The Commission treated KEPCo's Petition to Intervene as a request to file post-work study comments, and amended its Scheduling Order to allow KEPCo to file comments in response to the work study by July 18, 2019.¹⁵

II. COMMENTS

12. KEPCo supports the Commission's goal to develop an IRP process that focuses on the needs of Kansas customers,¹⁶ and to that end, urges the Commission to implement a framework that embodies best practices including transparency and opportunity for meaningful stakeholder participation.¹⁷ KEPCo was encouraged by the discussions at the work study, both by the emphasis placed by the Filing Parties' representatives on the importance of transparency, and by the inquiries by the Commissioners regarding modification of the Framework. KEPCo offers the following five points for consideration by the Commission, the Filing Parties, and other interested participants:

13. First, KEPCo urges the Commission to ensure sufficient opportunity for stakeholder engagement in the IRP process.¹⁸ As previously noted, the process for developing

¹⁵ June 25 Order, *supra* n.2.

¹⁶ Docket No. 18-KCPE-095-MER, Tr. Vol. 3, 525:18-526:19 (Comm'r Feist Albrecht).

¹⁷ See, e.g., RAP Best Practices Whitepaper at 2 ("For an IRP process to be deemed successful, it should include both a meaningful stakeholder process and oversight from an engaged public utilities commission."); *id.* at 26 ("Prudent integrated resource planning involves both the process of creating and sharing the resource plan with stakeholders, and the elements that are analyzed and included in the plan itself.").

¹⁸ See also Sierra Club's Comments on the Joint Parties' March 1, 2019 Compliance Filing, at 4, *In re Capital Plan Compliance Docket for Kansas City Power & Light Co. and Westar Energy, Inc. Pursuant to the Commission's Order in Docket No. 18-KCPE-095-MER*, Docket No. 19-KCPE-096-CPL (filed May 24, 2019) ("Done properly, early and transparent stakeholder engagement provides benefits to all parties: the utilities because

the Framework was limited to Evergy, Staff, and CURB, presumably because the Framework, once filed, would provide a chance for comment and participation. KEPCo requests that the Commission require on a going-forward basis an expanded opportunity for stakeholder participation and collaboration. “Stakeholder group involvement is equally important when it is time for a utility to develop its integrated resource plan.”¹⁹ The Framework, unfortunately, provides no opportunity for stakeholder involvement until after Evergy files its preferred plan with the Commission and, as discussed below, it is not clear whether the Filing Parties intend to limit stakeholders’ participation to identifying alleged process deficiencies or to provide stakeholders meaningful opportunity to contribute to the development of a resource portfolio that is responsive to the needs and preferences of customers that Evergy serves.²⁰

14. The Filing Parties’ suggestion for a “limited review”²¹ of Evergy’s filed IRP should not foreclose meaningful stakeholder input for interested parties like KEPCo. Additionally, it is not clear whether the Framework’s proposal that “a report” be filed by “Commission Staff, CURB, and any Intervenors” would be a joint report and whether it would include specification of deficiencies in the IRP. Stakeholders may not be able to reach consensus on what constitutes a deficiency or how the lack of consensus would be handled in a single report. If the Commission nonetheless determines a single report to be appropriate, the

it lessens uncertainty, reduces costs, and accelerate the regulatory process; stakeholders because they are provided an opportunity to understand and have confidence in the utility’s proposed plan; and the Commission because it allows for better informed intervenors and reduces the number of contested issues that must be resolved, thereby reducing the workload through the review and approval process.”).

¹⁹ RAP Best Practices Whitepaper at 26.

²⁰ Generally, a best-practices approach would provide more opportunities for stakeholder input. *Compare id.* at 26 (“During the two-year period that preceded the filing of the plan, the utility held various workshops where stakeholders received updates on the inputs to be used, and were able to offer feedback and even give presentations on these various inputs. Stakeholders were also surveyed to determine their preferences with regard to the energy resources selected by APS. Not only does this stakeholder process inform the content of the resource plan that is ultimately filed by the utility; it can also help to inform the review process once the filing has been made.”).

²¹ Framework at 5, ¶ 4.

Commission should clarify that one or more of the stakeholders could include dissenting or alternative views in the report.

15. It appears that the Framework could inadvertently foreclose stakeholders from raising concerns about the IRP based on vague specifications of deficiency provided in paragraph four on page five. The Framework provides that only “major” deficiencies with “methodologies or analyses” that are “required to be performed” under the Framework may be included in the report.²² KEPCo notes that the Framework imposes no requirements with which Evergy must comply, and does not define the term “major deficiency.” Likewise, a failure to comply with “provisions of” or to meet “requirements identified” in the Framework would be deemed a deficiency, but the Framework does not specify requirements that would give rise to deficiency concerns.

16. Other states’ procedures can serve as illustrative of practices the Commission should consider as it evaluates the proposed Framework. For example, after the Arizona Corporation Commission issued its final IRP rules, and before the state’s largest utility, Arizona Public Service, filed its initial resource plan, “the utility was ‘engaging key stakeholders to gain an understanding and appreciate [*sic*] of their areas of concern.’”²³ In Colorado, resource planning is driven by not only the legislature and the Public Utilities Commission, but also “by interveners, whose comments and suggestions during IRP processes can lead to changes in both rules and content of utility resource plans.”²⁴ In Hawaii, “IRP rules were designed to attempt to maximize public participation in the planning process.”²⁵ Missouri Public Service Commission

²² *Id.*

²³ RAP Best Practices Whitepaper at 16 (*quoting* Arizona Public Service 2012 Integrated Resource Plan (Mar. 2012) at 2).

²⁴ *Id.* at 21.

²⁵ *Id.* at 27.

(“PSC”) rules require each electric utility to convene a stakeholder group²⁶ in order to, among other things, “provide the opportunity for public input into electric utility resource planning in a timely manner that may affect the outcome of the utility resource planning efforts.”²⁷ KEPCo believes the Missouri PSC rules are a good starting point but can be improved upon in certain respects (for example, a requirement to host an annual update workshop should be seen as a bare minimum),²⁸ and urges the Commission to take the opportunity to create rules that will result in sufficient stakeholder engagement throughout the process, which will ultimately result in an IRP that has full public confidence that meets the needs of interested parties.

17. KEPCo appreciates the thoughtful discussions at the work study. Based on those discussions, there does not seem to be disagreement about the value of having the IRP process under the Framework being transparent. However, KEPCo urges the Commission to direct the Filing Parties to modify the Framework so that it *expressly* meets the objective of transparency and ensures that stakeholders have the opportunity to provide input. Such opportunities must come early enough in the process so that they are meaningful. As Westar’s largest wholesale customer and a co-owner of generation, having such a meaningful opportunity is essential for KEPCo to be able to continue to serve its distribution member cooperatives reliably and economically. One specific refinement KEPCo recommends to the Framework is a longer period from the posting date for stakeholder input. With only a 120-day period, and given the time the Commission will need to issue a protective order and Evergy will need to provide responses to any discovery inquiries (and the likely need for follow-up discovery inquiries and responses),

²⁶ The definition of “stakeholder group” includes Staff, public counsel and any entity granted intervention in a prior resource planning proceeding of a particular electric utility. *See* Mo. Code Regs. Ann. tit. 4 § 240-22.020 (56).

²⁷ *Id.* at § 240-22.080(5).

²⁸ *Id.* at § 240-22.080(3).

there may not be sufficient time for review of the data and, if deficiencies are identified, to prepare and file a report.

18. Second, KEPCo understands that the Commission’s review would be limited to whether Evergy’s IRP filings comply with the “structure and expectations outlined in” the Framework.²⁹ The concern is that if the Framework is deficient, the results of the IRP process could be deficient, but the IRP nevertheless could be deemed to comply with the Framework’s filing obligation. KEPCo urges the Commission to direct the Filing Parties to make explicit that there would be an opportunity to raise concerns about substantive deficiencies (such as overpricing or underpricing energy efficiency or demand response, *e.g.*) that affect the IRP and the selection of Evergy’s preferred supply portfolio notwithstanding Evergy’s compliance with the Framework.

19. Third, the Framework’s statement at page 1 that the “purpose” of the IRP Process “is to present the utility’s *preferred* portfolio of resources” appears to be inconsistent with IRP best practices. The Regulatory Assistance Project’s IRP survey describes a “correctly implemented” IRP process as one that “locates the lowest practical costs at which a utility can deliver reliable energy services to its customers.”³⁰ The survey discusses how IRPs are used, provides examples of best practices in integrated utility planning by three utilities, and offers recommendations for prudent utility planning. As compared to the best practices described by the Regulatory Assistance Project, the Framework appears to give too much discretion to Evergy, as the utility’s *preferred* portfolio could be driven by any number of considerations unrelated to reliable energy services and the lowest practical cost. The remaining provisions in this section of the Framework do not describe the IRP process’ purpose, but instead could be deployed by

²⁹ Framework at 3; *see also id.* at 6, ¶ 12.

³⁰ RAP Best Practices Whitepaper at 4.

Evergy to hardwire modeling assumptions and sensitivity analyses to achieve the “optimal portfolio” it prefers. KEPCo requests that the Commission consider having the Filing Parties develop and file for comment and Commission review a robust purpose statement that is grounded in best-practices principles. KEPCo also recommends that the Framework set forth Evergy’s commitment to follow best practices in performing the IRP process for Kansas.

20. Fourth, the Framework’s IRP Process in paragraph five on page five states (emphasis added):

All workpapers, documents, reports, data, computer model documentation, analysis, letters, memoranda, notes, test results, studies, recordings, transcriptions, and any other supporting information *relating to the filed resource acquisition strategy* within Evergy’s or its contractors’ possession, custody, or control shall be preserved and made available in accordance with and protective order to the Staff, CURB and any Intervenor for use in its review of the periodic filings required by this framework.

This provision might later be interpreted as requiring Evergy to retain for record-keeping purposes only documentation “supporting” the preferred resource portfolio filed with the Commission. The document retention policy should apply to *all* documentation developed in connection with the IRP process, including documentation in Evergy’s possession, custody, or control that does not support the preferred approach or that supports a different approach not filed with the Commission. Further, while the Framework specifies the types of media to be retained, it does not specify the type of information. The retention provisions in paragraph five on page five should clearly state that Evergy shall preserve and make available the type of information necessary for the Commission and interested parties to understand Evergy’s planning options.

21. Finally, restrictions on page two of the Framework pertaining to “Commission Staff and CURB Review” could afford Evergy protections from regulatory scrutiny that would

be uncommon practice in the utility industry. The language on page two suggests a commitment that Staff and CURB will not take certain action (“Staff and CURB will not seek . . .”) and requires that they consider a particular set of facts (“Staff and CURB will consider recovery of . . .”). KEPCo’s understanding from the work study is that this provision is not intended to provide Evergy with greater legal rights or protections. However, the intent is not clear from the language itself, and KEPCo suggests that the Framework be modified to ensure that CURB and Staff are not subject to unnecessary restrictions. As is clear from the merger proceedings, Evergy understands that the principal means by which the Commission can protect ratepayers is through after-the-fact-prudence reviews.³¹ There is no reason now to provide up-front protections to Evergy beyond what the law already provides, particularly when the Commission has not yet decided for itself the details of its review process and Evergy has yet to present the Commission with a Kansas IRP. The Framework is not an agreement, and the paragraph on page two of the Framework is unclear, unnecessary, and should be removed.

WHEREFORE, KEPCo prays that the Commission consider these post-work study comments, direct Filing Parties to revise the Framework as suggested herein, and for all other relief that the Commission deems just and proper.

³¹ Docket No. 18-KCPE-095-MER, Tr. Vol. 3, 539:18-25 (Crawford) (on redirect).

Respectfully submitted,

/s/ Susan B. Cunningham

Susan B. Cunningham, KS#14083
Senior Vice President, Regulatory and Government
Affairs, and General Counsel
Kansas Electric Power Cooperative, Inc.
600 SW Corporate View
Topeka, KS 66615
T: 785.271.4833
F: 785.271.4888
Email: scunningham@kepco.org

*Attorney for Kansas Electric Power Cooperative,
Inc.*

July 18, 2019

VERIFICATION
(K.S.A. 53-601)

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

I, Susan B. Cunningham, verify under penalty of perjury that I have caused the foregoing Post-Work Study Comments of Kansas Electric Power Cooperative, Inc. to be prepared on behalf of Kansas Electric Power Cooperative, Inc.; that I have read and reviewed the Post-Work Study Comments; and that the contents thereof are true and correct to the best of my information, knowledge, and belief.

/s/ Susan B. Cunningham

Susan B. Cunningham

Executed on this 18th day of July, 2019.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Post-Work Study Comments of Kansas Electric Power Cooperative, Inc. was electronically served on this 18th day of July, 2019, to the following named persons appearing on the Commission's service list as last modified on July 12, 2019.

Amber Smith, Chief Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Rd.
Topeka, KS 66604
a.smith@kcc.ks.gov

Brian G. Fedotin, Deputy General Counsel
Kansas Corporation Commission
1500 SW Arrowhead Rd.
Topeka, KS 66604
b.fedotin@kcc.ks.gov

Joseph R. Astrab
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Rd.
Topeka, KS 66604
j.astrab@curb.kansas.gov

Todd E. Love
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Rd.
Topeka, KS 66604
t.love@curb.kansas.gov

David W. Nickel, Consumer Counsel
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Rd.
Topeka, KS 66604
d.nickel@curb.kansas.gov

Shonda Rabb
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Rd.
Topeka, KS 66604
s.rabb@curb.kansas.gov

Della Smith
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Rd.
Topeka, KS 66604
d.smith@curb.kansas.gov

Robert J. Hack, Lead Regulatory Counsel
Kansas City Power & Light Company
One Kansas City Place, 19th Floor
1200 Main St.
Kansas City, MO 64105
rob.hack@kcpl.com

Roger W. Steiner, Corporate Counsel
Kansas City Power & Light Company
One Kansas City Place, 19th Floor
1200 Main St.
Kansas City, MO 64105
roger.steiner@kcpl.com

Robert V. Eye, Attorney at Law
Kauffman & Eye
4840 Bob Billings Pkwy., Ste 1010
Lawrence, KS 66049
bob@kauffmaneye.com

Cathryn J. Dinges, Corporate Counsel
Westar Energy, Inc.
818 S. Kansas Ave.
P.O. Box 889
Topeka, KS 66601-0889
cathy.dinges@westarenergy.com

Kimberly Brickell Frank
McCarter & English, LLP
1301 K Street, NW
Suite 1000 West
Washington, DC 20005
kfrank@mccarter.com

Michael Neeley, Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Rd.
Topeka, KS 66604
m.neeley@kcc.ks.gov

Mark Doljac, Exec. Director, Regulatory
Affairs and Planning
Kansas Electric Power Cooperative, Inc.
600 SW Corporate View
Topeka, KS 66615
mdoljac@kepco.org

/s/ Susan B. Cunningham

Susan B. Cunningham