

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

**RESPONSE OF KANSAS ELECTRIC POWER COOPERATIVE, INC.
TO MOTIONS FOR PROCEDURAL SCHEDULE**

Comes now Kansas Electric Power Cooperative, Inc. (“KEPCo”) and responds to the Motion for Procedural Schedule filed by Great Plains Energy Incorporated (“GPE”), Kansas City Power & Light Company (“KCP&L”), and Westar Energy, Inc. and Kansas Gas and Electric Company (“Westar”) (all parties collectively referred to herein as “Applicants”) and to the Motion for Procedural Schedule and Response in Opposition to Applicants’ Proposed Schedule filed by Kansas Industrial Consumers Group, Inc. (“KIC”). For the reasons stated below, KEPCo supports the procedural schedule proposed by KIC as being reasonable and necessary in a case of this magnitude and significance to the electricity consumers in the State of Kansas. In support of this Response, KEPCo states as follows:

I. Introduction

1. On August 25, 2017, Applicants filed an Application (“Application”) seeking approval of a merger of Westar and GPE. On October 12, 2017, Applicants filed a “Motion for Procedural Schedule” (“Motion”) in which they proposed a 277-day procedural schedule for the Commission’s review and decision on the Application, including discovery, preparation and submission of written testimony, an evidentiary hearing, post-hearing briefs, and the issuance of a Commission order on the Application. Applicants represent that they shared their procedural schedule with Commission Staff, the Citizens Ratepayer Board (“CURB”) and three parties, and

that all of those entities either supported or did not oppose the proposed schedule.¹ Applicants do not indicate that they shared their proposed schedule with other parties, including KEPCo, which indicated their objection and opposition to the schedule.

II. The KIC Proposed Procedural Schedule Is Reasonable and Necessary.

2. The Commission must, by statute, act on a merger application within 300 days of the filing of that application. KIC's proposed procedural schedule requests nothing more. Rather, the KIC schedule would afford all interested parties the 300 days permitted by statute to investigate and probe the details of an application which, if granted, will fundamentally alter the electric utility industry in Kansas. There are critical components of and assertions in the Application that are unexplained and essentially unsupported.

3. The Application represents that the new combined company will enjoy higher earned returns,² but Applicants have relatively flat load growth projections for the next decade³ and expect to actually reduce demand "by over 1,100 MW by 2027."⁴ If sales will be flat or declining, what will be the source of the enhanced earnings? Applicants tout the operational synergies and savings to be enjoyed from the merger,⁵ but, as in Applicants' previous merger attempt,⁶ projected merger savings must be carefully investigated. A more likely source of

¹ Motion at 1-2.

² Application at ¶ 43.

³ "Great Plains Energy & Westar Integrated Company Resource Analysis Report," August 2017, at pp. 20-21 ("Resource Report"), provided as a work paper to the Direct Testimony of Darrin R. Ives.

⁴ *Id.* at p. 13.

⁵ "Direct Testimony of Anthony D. Somma on Behalf of Westar Energy, Inc.," Docket No. 18-KCPE-095-MER, filed August 25, 2017, at p. 18 ("Somma Direct")

⁶ *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.*, KCC Docket No. 16-KCPE-593-ACQ.

increased earnings in the face of declining sales may lie in Applicants' capital expenditure plans post-merger.

4. In an almost passing observation, Westar Witness Anthony D. Somma testifies that "the [combined company] financial plan contemplates capital expenditures will exceed \$6 billion over the 2018-2022 time period"⁷ and that the savings projected in that financial plan:

will benefit customers either through lower rates than would be possible absent the savings actions or by providing the combined Company's utilities the ability to offset cost of service increases and the cost of needed infrastructure investment. This is possible while still planning to make over \$6 billion of investment in utility infrastructure over the financial planning period.⁸

In other words, one of the justifications for the merger is that it will help enable the combined company to engage in a massive capital expenditure plan. This raises the clear prospect that any merger savings benefits that may be realized will be swamped by an aggressive expenditure of \$6 billion between the date of any merger approval and 2022, and highlights numerous factual questions.

- Will this Commission be able to review this massive spending program before it is undertaken?
- Will this Commission be able to conclude, on the record of this proceeding, that the \$6 billion in capital expenditures enabled by, and claimed as a benefit of the merger, are reasonable, necessary and prudent when the Commission decides to approve or disapprove the Application?
- If Applicants' current plans are to file individual rate cases while this merger application is pending before the Commission and then not file again for several years after merger approval, what ability will this Commission have to protect ratepayers if billions of

⁷ Somma Direct at p. 20.

⁸ *Id.*

dollars of capital expenditures have already been made before the Commission gets a chance to review the expenditure plans and actual expenditures?

- What will customer rates look like two, five and seven years after the merger?
- Are Applicants' proposed expenditures the wisest, most cost-effective and best for Kansas consumers?
- Are these massive expenditures driven by reliability and quality of service concerns, or are they a means to increase the corporate earnings of the combined company?

5. Applicants will no doubt argue that they will have to make these expenditures even if the merger does not go forward. KEPCo does not believe that this Commission has yet had the opportunity to decide whether it agrees or disagrees with that proposition or that the proposition has ever been factually demonstrated before this Commission. What KEPCo does know is that Westar, at a cost of hundreds of millions of dollars, has built 280 MW of wind resources and associated transmission while the SPP's Planning Reserve Margin is 29.7 percent in 2017 and is projected to remain 25.9 percent or greater through 2022,⁹ and that this Commission has not yet had an opportunity to evaluate the reasonableness of that expenditure.¹⁰ Applicants have effectively announced in the Application that they will employ this same tactic in the period 2018-2022 for more than \$6 billion of capital additions.

6. Applicants are asking this Commission to approve a merger that will enable the combined company to set the course of its infrastructure additions, retirements, and capital expenditures for at least the next decade without any prior Commission review, let alone approval. That question alone demands careful and searching scrutiny, but, when coupled with

⁹ SPP 2017 Resource Adequacy Report, published on June 19, 2017, at p. 3.

¹⁰ Westar intends to include the expenditure associated with the windfarm in the general rate case it anticipates filing in the fourth quarter of 2017 or first quarter of 2018. See Application at ¶ 45.

the merger of the two largest public utilities in Kansas and the factual assertions, assumptions, implications and risks such a transaction entails, all of which must be evaluated, the need for a full review is compelling.

III. There Is No Good Reason to Shorten the Procedural Schedule as Applicants Propose.

7. The sole justification for the shortened procedural schedule provided by Applicants' Motion is that Staff supports and CURB has no objection to the schedule.¹¹ Applicants do not allege any harm or prejudice to them, or any logistical or other problem, that would arise if the parties are afforded the full 300 days. KEPCo respects the rights of Staff and CURB to determine for themselves how much time they need in this case, but KEPCo, KIC and other parties do not believe that shorter period is adequate for them to prepare and to prosecute their respective cases in this matter.

8. Nor is there any compelling reason to shorten the period in which to decide this case to less than 300 days. Applicants have on occasion argued that their schedule is only 23 days less than the statutory 300-day limit. KEPCo agrees that Applicants' schedule is 23 days less than the 300-day limit, but that really makes KEPCo's point. What conceivable prejudice could befall Applicants from having the case decided in 300 rather than 277 days? In contrast, KEPCo and others who must live with the merged entity and the consequences of any merger approval that may be granted need the full 300 days to develop their respective cases.

9. Applicants have also argued that those challenging the merger application do not need the full 300 days because of all of the information provided in Docket No. 16-KCPE-593-ACQ. KEPCo agrees that some basic information about the companies provided in the previous merger case is still relevant and should be available to the parties in this case. But, this

¹¹ Motion at pp. 1-2.

transaction is fundamentally different than the transaction in Docket No. 16-KCPE-593-ACQ, as highlighted by Applicants in the Application in this case.¹² The justifications for this transaction as opposed to Docket No. 16-KCPE-593-ACQ are also dramatically different. For example, in Docket No. 16-KCPE-593-ACQ, there was no mention of the need for \$6 billion of capital expenditures or how that transaction supposedly would facilitate such infrastructure additions.

10. Applicants will no doubt agree that less time is needed because of all of the information provided with the Application, but, as shown in Section II, above, with respect to just one issue, there are enormous questions that are not answered in the Application. Moreover, it should be pointed out that KEPCo and KIC, among others, have already commenced discovery precisely because the need for additional information is great and, under the best of circumstances, this kind of discovery is time-consuming. KEPCo submits that the additional days afforded the Parties under KIC's proposed schedule will facilitate orderly discovery and the presentation of evidence to the Commission.

IV. It Appears that Extensive Follow-up Discovery and Depositions Will Be Required in This Case.

11. In a meeting on October 3, 2017 requested by Westar Chief Executive Officer (“CEO”) Mark Ruelle, Mr. Ruelle stated to KEPCo CEO Marcus Harris that if KEPCo pursued information through data requests in this case, KEPCo would receive the most basic answers to its specific questions. Mr. Ruelle said however that if KEPCo called Westar and asked questions, as opposed to issuing data requests, KEPCo would receive more color and clarity regarding Westar's plans. Mr. Ruelle used the following analogy: “If you ask me if my dog bites, I will tell you, ‘No.’ But I may not choose to tell you that the dog by your leg getting ready to bite you is not my dog.”

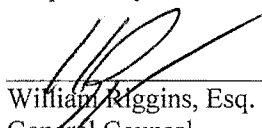
¹² Application at ¶ 24.

12. Assuming these statements by Westar's CEO reflect the Company's policy, as one must, it is imperative that, first, the parties be allowed as much time as possible for discovery in this case and, second, that depositions be permitted. It appears multiple rounds of data requests will be required to obtain a full and complete answer to a single question. In addition, KEPCo is certainly willing, as recommended by Mr. Ruelle, to conduct its discovery by asking its questions orally. KEPCo prefers, however, that the appropriate Westar employee or consultant answer the questions under oath, and that the question and answer session be transcribed so that it can be introduced into evidence in this proceeding.

V. Conclusion

For the reasons stated above, KEPCo requests that the Commission adopt the procedural schedule proposed by KIC as the schedule for this proceeding.

Respectfully submitted,



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VERIFICATION

STATE OF KANSAS)
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COUNTY OF SHAWNEE) ss:

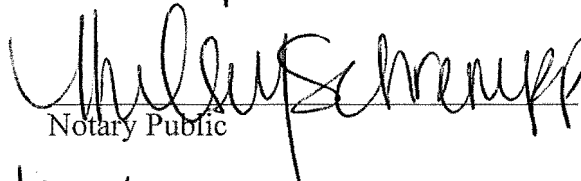
William G. Riggins, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the above named petitioner, that he has read the above and foregoing Response of Kanas Electric Power Cooperative, Inc. to Motions for Procedural Schedule, and upon information and belief, states that the matters therein appearing are true and correct.



William G. Riggins

SUBSCRIBED AND SWORN to before me this 17th day of October, 2017.



Notary Public

My Commission expires 2/24/2021



CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing was electronically served or placed in the United States mail, postage prepaid, this 17th day of October, 2017, addressed to the following:

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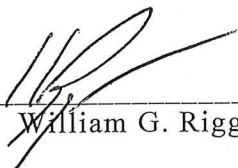
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