

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

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

In the Matter of the Joint Application of)
Great Plains Energy Incorporated, Kansas)
City Power & Light Company and Westar) Docket No. 16-KCPE-593-ACQ
Energy, Inc. for Approval of the Acquisition)
of Westar Energy, Inc. by Great Plains)
Energy Incorporated.)

ORDER DENYING JOINT APPLICANTS' PETITION FOR RECONSIDERATION

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 Commission makes the following findings:

1. On May 31, 2016, Great Plains Energy¹ (Great Plains or GPE) announced it had reached a definitive agreement to acquire 100% of the stock of Westar Energy, Inc. and Kansas Gas and Electric Company (Westar) in a transaction then valued at approximately \$12.2 billion, including assumed debt.² On June 28, 2016, GPE, KCP&L and Westar filed their Joint Application seeking approval for GPE's acquisition of Westar.

2. On April 19, 2017, the Commission issued an Order denying the proposed transaction.³ The Commission explained, "[a]fter a thorough examination of its merger standards, the Commission concludes the proposed transaction is not in the public interest. The proposed transaction fails not only to meet the majority of the merger standards, but it fails to meet the most important of the factors." Specifically, the Commission reasoned the proposed

¹ Great Plains Energy is the parent company of Kansas City Power & Light Company (KCP&L). *See* Joint Application, June 28, 2016.

² *Id.*, ¶ 6.

³ Order, Apr. 19, 2017, ¶ 89.

transaction was too risky because the excessive acquisition premium calls into question GPE's ability to service the transaction-incurred debt, leaving GPE little margin for error to maintain its investment grade rating.⁴ The Joint Application did not give the Commission adequate assurances that GPE would be able to service the newly-incurred debt without raising rates or reducing services.⁵

3. On May 4, 2017, the Joint Applicants filed their Petition for Reconsideration seeking to "set the matter for further proceedings so that the Joint Applicants may work together to determine whether it is feasible to develop a revised Transaction proposal."⁶

4. On May 9, 2017, Staff filed its Response to Joint Applicants' Petition for Reconsideration, advising the Petition should be denied because it contains no allegation of error.⁷ Staff views the Petition for Reconsideration as a motion for an extension of time, which requires a showing of good cause.⁸

5. On May 11, 2017, the Citizens' Utility Ratepayers Board (CURB) filed its Response to Joint Applicants' Petition for Reconsideration, expressing its belief that any revision to the rejected Joint Application would be so substantial as to be tantamount to a new application, and best handled in a new docket.⁹ CURB questions why the Joint Applicants' prayer for relief constitutes a petition for reconsideration as the Joint Applicants "have no problem with allowing the Commission's April 19, 2017 Order to stand."¹⁰

6. The Commission reiterates its belief that the Joint Applicants are responsible companies that serve their communities well as evidenced by the outpouring of support from

⁴ *Id.*, ¶ 92.

⁵ *Id.*, ¶ 94.

⁶ Joint Applicants' Petition for Reconsideration, May 4, 2017, ¶ 9.

⁷ Staff's Response to Joint Applicants' Petition for Reconsideration, May 9, 2017, ¶ 4.

⁸ *Id.*, ¶ 8.

⁹ CURB's Response to Joint Applicants' Petition for Reconsideration, May 11, 2017, ¶ 3.

¹⁰ *Id.*, ¶ 7.

community leaders and elected officials. However, to promote the public interest, a proposed transaction must satisfy the merger standards. As the Joint Applicants acknowledge in their Petition for Reconsideration, they would have to substantially change their application and supply a wealth of new evidence to satisfy the merger standards.

7. K.S.A. 66-529(a)(1) requires a petition for reconsideration to state “the specific grounds upon which relief is requested.”¹¹ Here, the Joint Applicants offer no grounds for relief as the only relief sought is additional time. A petition for reconsideration must allege specific grounds for the order’s unlawfulness or unreasonableness.¹² The Joint Applicants’ Petition for Reconsideration fails to allege any specific defects with the Order or that the Order was in any way unlawful or unreasonable. Instead, by its own admission, the Joint Applicants’ pleading merely seeks additional time to determine if it is possible to develop a new proposed transaction.

8. Since the Joint Applicants’ Petition for Reconsideration does not meet the legal requirements for a petition for reconsideration, the Docket closed by operation of law fifteen days after the Commission issued its Order.¹³ Under Kansas law, the only option available to the Commission is denial.

9. The Commission encourages the parties to continue working together to “revise the Transaction to address the Commission’s concerns related to purchase price, capital structure and other issues”¹⁴ and welcomes the filing of a new application that can satisfy the merger standards and advance the public interest.

¹¹ K.S.A. 77-529(a)(1).

¹² *Peoples Natural Gas Div. of Nothern Natural Gas v. Kansas Corp. Comm’n*, 7 Kan. App. 2d 519, 526, *rev. denied* 231 Kan. 801 (1982); *see also Southwestern Bell Tel. Co. v. Kansas Corp. Comm’n*, 29 Kan. App. 2d 414, 425 (2001).

¹³ *See* K.S.A. 77-529(a)(1).

¹⁴ Joint Applicants’ Petition for Reconsideration, ¶ 3.

THEREFORE, THE COMMISSION ORDERS:

A. The Joint Applicants' Petition for Reconsideration is denied.

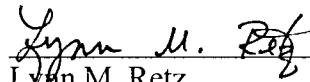
B. This Order constitutes final agency action.¹⁵ Any request for review of this action shall be in accordance with K.S.A. 77-608 and K.S.A. 77-613. Lynn M. Retz, Secretary to the Commission, is designated by the Commission to receive service of a petition for judicial review.¹⁶

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

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: MAY 23 2017



Lynn M. Retz
Secretary to the Commission

BGF

EMAILED

MAY 23 2017

¹⁵ K.S.A. 77-607(b)(1).

¹⁶ K.S.A. 77-613(e).

CERTIFICATE OF SERVICE

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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 **MAY 23 2017** .

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