

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Capital Plan Compliance )  
Docket for Kansas City Power & Light )  
Company and Westar Energy, Inc. Pursuant to ) Docket No. 19-KCPE-096-CPL  
the Commission's Order in Docket No. 18- )  
KCPE-095-MER. )

**COMMENTS OF KANSAS INDUSTRIAL CONSUMERS GROUP ON**  
**CAPITAL PLAN REPORTING PROCESS AND INTEGRATED**  
**RESOURCE PLAN FRAMEWORK**

The Kansas Industrial Consumers Group, Inc. ("KIC"), respectfully files the below *Comments* in response to the Compliance Filing of the Staff of the State Corporation Commission ("Staff"), Citizens' Utility Ratepayer Board ("CURB"), Kansas City Power & Light Company ("KCP&L"), Westar Energy, Inc. and Kansas Gas and Electric Company ("Westar")(collectively, the "Joint Parties"), and pursuant to paragraph 23 of the Commission's Order Denying Petitions for Reconsideration from the Sierra Club and Kansas Industrial Consumers dated June 28, 2018. In support of its Comments, KIC states to the State Corporation Commission of the state of Kansas ("Commission" or "KCC") as follows:

**I. Background**

1. On August 25, 2017, Westar Energy, Inc., and Kansas Gas & Electric Company ("Westar"), Great Plains Energy Incorporated ("GPE"), and Kansas City Power & Light Company ("KCP&L") (collectively referred to herein as Applicants) filed an Application with the Commission in Docket No. 18-KCPE-095-MER ("merger docket") seeking approval of a merger of Westar and GPE.

2. On September 19, 2017, the Kansas Industrial Consumers Group, Inc. ("KIC"), was granted intervention in the merger docket.<sup>1</sup> KIC was granted intervention without limitation and was an active participant throughout the proceeding.

3. On May 24, 2018, the Commission issued an Order Approving Merger, in which it approved a Non-Unanimous Settlement Agreement ("Settlement"). In the Settlement, the signatories agreed to institute a capital plan reporting process ("CPRP") to "provide Staff and the Commission with the information and data necessary to understand forecasted capital expenditures over a five-year period."<sup>2</sup> The parties further agreed to create a "Capital Plan Reporting compliance docket" to determine the appropriate information and data to report and the format of such reporting."<sup>3</sup>

4. In its Order Approving Merger, the Commission further required the signatories to develop and submit an Integrated Resource Plan ("IRP") reporting framework and submit such process for approval.<sup>4</sup> The Commission Ordered that only the Joint Parties would be allowed to develop the initial proposal. However, the Commission stated after the filing had been "developed and proposed," other parties to the merger docket would be allowed to comment on the proposal.<sup>5</sup>

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<sup>1</sup> Order Granting Intervention to Kansas Industrial Consumers Group, Incorporated, September 19, 2017. The following Westar customers participated in the merger docket through KIC: Occidental Chemical Corporation; CCPS Transportation, LLC; Spirit AeroSystems, Inc.; The Goodyear Tire & Rubber Company; Coffeyville Resources Refining & Marketing, LLC; Cargill Incorporated; and Learjet Inc.

<sup>2</sup> Docket No. 18-KCPE-095-MER, Order Approving Merger, May 24, 2018, Attachment A, ¶ 50.iv. (Order Approving Merger, Attachment A, ¶ 50.iv.)

<sup>3</sup> Order Approving Merger, Attachment A, ¶ 50.iv.)

<sup>4</sup> Order Approving Merger, ¶¶ 67, 94.

<sup>5</sup> Docket No. 18-KCPE-095-MER, Order Denying Petitions for Reconsideration from the Sierra Club and Kansas Industrial Consumers, June 28, 2018.

5. On March 1, 2019, Staff, CURB, KCP&L, and Westar filed their Compliance Filing, which included the CPRP and IRP Framework. Staff served the Compliance Filing on all parties to the merger docket on March 27, 2019.<sup>6</sup>

## **II. KIC Comments on Capital Plan Reporting Process ("CPRP") and IRP Framework**

### **A. The public interest objective of achieving and sustaining competitive retail electric rates, should be expressly identified as a goal in the CPRP and IRP Framework.**

6. KIC's review of the Compliance filing indicates the proposed CPRP and IRP Framework is an encouraging first step to 1) improve the transparency of Westar and KCP&L capital spending plans and 2) ensure least-cost options are considered and evaluated in the utilities' resource planning processes.

7. KIC's concerns regarding the regionally-uncompetitive retail rates of Westar and KCP&L are well-documented.<sup>7</sup> Therefore, KIC is pleased to see the IRP Framework includes a section titled "Financial Impact of Alternative Scenarios" wherein future revenue requirement impacts are considered. KIC is also encouraged that the IRP Framework is intended to identify "the portfolio of resources that meets customer requirements at the lowest reasonable cost given an uncertain future."

8. It is KIC's hope this type of analysis will be broadly applied to all capital spending decisions of Westar and KCP&L in the future. In the past, KIC has advocated for the utilities to manage spending to levels more closely matching depreciation to achieve more competitive

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<sup>6</sup> It is KIC's understanding the delay in service was due to an unintentional technological issue.

<sup>7</sup> See, e.g., Docket No. 18-KCPE-095-MER, Post-Hearing Brief of Kansas Industrial Consumers Group, Inc., April 20, 2018, ¶¶ 7-23.

pricing.<sup>8</sup> As documented in the merger docket, Westar and KCP&L currently have no written policies to consider retail rate impacts in developing their capital spending plans.<sup>9</sup>

9. One shortcoming of the IRP Framework is that it does not include a goal of achieving or maintaining regionally-competitive rates (along with reliable service).<sup>10</sup> KIC recommends the Commission modify the IRP Framework submitted by the Joint Parties to expressly include such an objective.

10. In a marketplace environment, where retail prices must be competitive, suppliers are forced choose from a long list of reasonable spending decisions and only pursue the most cost-effective and necessary investments. Competitive suppliers often cannot make every otherwise "prudent" investment because their retail prices must remain competitive. In other words, for competitive suppliers, the end retail price is a starting point in deciding what investments are pursued (rather than just selecting from a suite of "lowest-cost options" at the end).

11. Certain safety and reliability investments simply cannot be delayed or cancelled. However, by including an express and proactive goal of achieving and maintaining competitive rates, the IRP Framework would ask Westar and KCP&L to make the same tough spending decisions as competitive suppliers – a result utility regulators are, in theory, charged with emulating.

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<sup>8</sup> See Docket No. 18-KCPE-095-MER, Direct Testimony of Michael P. Gorman, January 29, 2018, pp. 12-14.

<sup>9</sup> See Trial Exhibits KIC-15 and KIC-20 in Docket No. 18-KCPE-095-MER.

<sup>10</sup> Substitute for Senate Bill 69 was recently approved by the Kansas Legislature and is awaiting the Governor's signature. This legislation seeks information to "to craft forward-looking electric policy that leads to regionally competitive electric rates and reliable electric service," confirming these items are important objectives for of our State and its policymakers.

**B. Certain language in the IRP Framework should be clarified to confirm the Joint Parties are not seeking to modify the traditional regulatory compact or Kansas ratemaking principles.**

12. While KIC is generally supportive of the Joint Parties' filing, it notes one peculiar section. The following language appears at page 2 of the filing:

When Staff and CURB agree that the utility's initial decision for a major capital investment was prudent, but current events require the utility to adjust or abandon planned or in-progress investments as a result of unexpected developments, *Staff and CURB will not seek to financially penalize the utility and will not apply hindsight judgement in evaluating the utility's initial decisions.* In such instances, Staff and CURB will consider recovery of investments that should be adjusted or abandoned in order to pursue an alternative investment or option that benefits customers in the long-term.<sup>11</sup>

13. As a preliminary matter, it is not clear how the "prudence" of certain capital investments is addressed during the CPRP and IRP processes. It is KIC's understanding the Commission will only address whether Evergy's filings either do or do not demonstrate compliance with the requirements of the IRP and CPRP frameworks.<sup>12</sup> It is not KIC's understanding that the Commission will make a formal determination of "prudence" in the IRP and CPRP proceedings.

14. Furthermore, it is unclear what the Joint Parties intended by the phrase "financially penalize." In addition, Staff and CURB's commitment to not apply "hindsight judgment" is also ambiguous.

15. As a general matter, KIC agrees utilities should not be financially *penalized* for prudent decisions – within the plain meaning of the word. Frankly, KIC cannot conceive of a scenario where Staff, CURB, or any other party would recommend a utility be financially

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<sup>11</sup> Compliance Filing Capital Plan Reporting & IRP Process Framework, p. 2. (Emphasis added.)

<sup>12</sup> See, Compliance Filing Capital Plan Reporting & IRP Process Framework, pp. 4, 6.

*penalized* for a prudent investment. Therefore, KIC believes the above language should be deleted from the CPRP and IRP Framework as unnecessary and superfluous.

16. The cited language should also be removed because it introduces ambiguity into the CPRP and IRP processes and potentially encourages litigation. For example, a utility may claim this language insulates its shareholders from a risk of loss when its investments are included in either the CPRP or the IRP process. In other words, assuming Staff and CURB did not object to an investment, a utility may argue that investment could never be removed from rates because such treatment would amount to "hindsight judgment" or a "financial penalty."

17. Of course, such an argument would significantly deviate from the traditional regulatory compact where utilities make investments, and customers compensate shareholders for the risks associated with those investments through a "return on investment" component in rates. A traditional investment risk for shareholders of rate-regulated utilities is the possibility that an investment may not be fully recovered in rates.

18. For example, an initially "prudent" investment may become obsolete and no longer "used and required to be used" in service to the public before its cost is fully recovered from ratepayers. While the Commission has discretion to determine how the unrecovered portion of that investment will be reflected in rates,<sup>13</sup> the investment is not automatically insulated from the risk of a diminished recovery or return solely because it was included in a prior reporting process or was otherwise initially considered a "prudent" business decision.<sup>14</sup>

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<sup>13</sup> The argument that the Commission may allow rate recovery of utility property that is no longer "used and required to be used" is tenuous, at best, under Kansas law. However, the above commentary is solely for explanatory purposes. KIC is not advancing or endorsing any position on the treatment of obsolete investments or "stranded asset cost-recovery" in this filing.

<sup>14</sup> KIC further notes the Legislature has provided a statutory process for ratemaking treatments to be "predetermined," which does alter the traditional regulatory compact to some degree (see K.S.A. 66-1239). This statute is the exclusive means of ratemaking "predetermination" under Kansas law.

19. It does not appear the Joint Parties' intended to completely and automatically insulate utility investments from risk. The final sentence of the cited paragraph states, "In such instances, Staff and CURB will *consider* recovery of investments that should be adjusted or abandoned in order to pursue an alternative investment or option that benefits customers in the long-term."<sup>15</sup> However, the language of this paragraph, as a whole, still introduces significant uncertainty about the parties' intent, including whether the regulatory compact has been altered and whether risk is being shifted from shareholders to customers.

20. KIC requests the Commission remove the cited paragraph because it is entirely superfluous and introduces ambiguity into the ratemaking process. KIC foresees this unnecessary language as a source of future contention and argument.

21. Alternatively, if the cited language is not removed, the Commission should include the following clarifying language in the CPRP and IRP Framework: "No investment shall be automatically insulated from investment risk, including the risk of non-recovery in rates, solely as a result of its inclusion in the Capital Plan Reporting or IRP Process. No language in this framework shall be construed to modify the traditional regulatory compact or established Kansas ratemaking principles."

WHEREFORE, KIC respectfully requests the Commission accept and consider its comments and modify the CPRP and IRP Framework as it deems necessary, consistent with the comments above.

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<sup>15</sup> Emphasis added.

Respectfully submitted,

/s/ **Andrew J. French**

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**VERIFICATION**

STATE OF KANSAS        )  
                                  )    ss:  
COUNTY OF JOHNSON    )

Andrew J. French, being duly sworn upon his oath, deposes and states that he is the Attorney for the Kansas Industrial Consumers Group, Inc., that he has read and is familiar with the foregoing *Comments of Kansas Industrial Consumers Group on Capital Plan Reporting Process and Integrated Resource Plan Framework*, and the statements therein are true to the best of his knowledge, information, and belief.



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Andrew J. French

SUBSCRIBED AND SWORN to before me this 8<sup>th</sup> day of April, 2019.



\_\_\_\_\_  
Notary Public

My Appointment Expires:



**CERTIFICATE OF SERVICE**

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or regular U.S. mail (unless otherwise noted), the 8<sup>th</sup> day of April, 2019, to the parties below:

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/s/ **Andrew J. French**

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