**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

In the Matter of the Application of Great Plains )

Energy Incorporated for Approval of its Merger ) File No. EM-2018-0012

with Westar Energy, Inc. )

**INITIAL BRIEF OF**

**KANSAS ELECTRIC POWER COOPERATIVE, INC.**

COMES NOW the Kansas Electric Power Cooperative, Inc. (“KEPCo”) and, pursuant to 4 CSR 240-2.080 and the October 19, 2017 Order Setting Procedural Schedule of the Public Service Commission of the State of Missouri (“Commission”), files its Initial Brief concerning the Application of Great Plains Energy Incorporated (“GPE”) for approval of its merger with Westar Energy, Inc. (“Westar”).[[1]](#footnote-1)

1. **Background**

KEPCo is a non-profit generation and transmission cooperative with its principal place of business in Topeka, Kansas. KEPCo has 19 rural electric cooperative member systems which together distribute electric power to more than 300,000 rural Kansans.[[2]](#footnote-2) KEPCo is responsible for supplying the full power and energy requirements at the designated delivery points of its members. KEPCo’s financial well-being is inextricably tied to that of Westar and to that of GPE’s subsidiary, Kansas City Power & Light Company (“KCP&L”). KEPCo’s ties to Westar and KCP&L can be summarized as follows:

* KEPCo is a joint owner with KCP&L, KCP&L Greater Missouri Operations Company (“GMO”) and the Missouri Joint Municipal Electric Utility Commission of the Iatan 2 Generating Plant, an 850MW super-critical, coal-fired power plant located in Platte County, Missouri;
* KEPCo is a joint owner with KCP&L and Westar of the 1,166MW rated Wolf Creek Generating Station (“Wolf Creek”);
* KEPCo is party to a long-term partial requirements contract with Westar under which KEPCo purchases from Westar approximately 40% of its wholesale capacity and energy requirements at rates determined pursuant to a cost-based formula rate that reflects Westar’s actual cost of providing service to KEPCo; and
* KEPCo is a transmission-dependent utility, purchasing transmission service, principally over the transmission systems of KCP&L and Westar, under the SPP Open Access Transmission Tariff (“OATT”).

KEPCo is a party to the above-captioned docket as well as Docket No. 18-KCPE-095-MER before the Kansas Corporation Commission (“KCC”). Both dockets address whether the respective Commissions should approve the proposed merger of GPE and Westar. KEPCo has presented substantial evidence in the KCC proceeding regarding the need for robust ring-fencing conditions and a comprehensive, rigorous and transparent integrated resource plan, including market-tested pricing observed from competitive request for proposal processes.

There have been two Stipulations and Agreements filed in this docket.[[3]](#footnote-3) The initial Stipulation and Agreement (“Initial S&A”) was filed on January 12, 2018 by GPE, Westar, KCP&L, KCP&L Greater Missouri Operations Company (“GMO”) (collectively, the “Joint Applicants”), the Staff of the Missouri Public Service Commission (“Staff”), Brightergy, LLC (“Brightergy”), and Missouri Joint Municipal Electric Utility Commission (“MJMEUC”). A second Stipulation and Agreement (“Supplemental S&A”) was filed on March 8, 2018 by the Joint Applicants, Staff, Brightergy, MJMEUC, the Office of the Public Counsel (“OPC”), and Midwest Energy Consumers Group (“MECG”). The Missouri Department of Economic Development – Division of Energy (“MDED”) was not a signatory to either S&A, but does not oppose the Commission’s approval of the Supplemental S&A.

There are several aspects of the Initial and Supplemental S&As that are inconsistent with KEPCo’s interests in this proceeding and with KEPCo’s positions in the Kansas proceeding. The “financing” conditions (formerly “financing and ring-fencing” conditions) in the Initial and Supplement S&As are much weaker than the financing and ring-fencing conditions supported by KEPCo in the Kansas proceeding.[[4]](#footnote-4) Additionally, the Initial and Supplemental S&As do not contain any conditions addressing integrated resource planning or prior approval for the retirement of generating capacity. Accordingly, KEPCo filed objections to each S&A[[5]](#footnote-5) and recommended that the Commission impose additional conditions regarding ring-fencing, integrated resource planning, and prior approval for the retirement of generating capacity.[[6]](#footnote-6)

Nevertheless, KEPCo’s primary interest in the Missouri proceeding is to ensure that none of KEPCo’s positions before the KCC will be prejudiced by the decisions of this Commission.[[7]](#footnote-7)

1. **Contested Issues**
   1. **Should the Commission find that GPE’s merger with Westar is not detrimental to the public interest, and approve the merger?**

The Commission should approve the merger upon imposition of the conditions discussed under this Issue II.

* 1. **Should the Commission condition its approval of GPE’s merger with Westar and, if so, how?**

The Commission should condition its approval of the merger on measures that better protect customers from future adverse impacts of the merger. KEPCo believes that additional ring-fencing measures and alterations to the commitments in Exhibit A to the Initial S&A are needed to protect the customers of the Joint Applicants’ regulated utilities. In fact, the signatories to the S&As agreed to remove five conditions related to ring-fencing without any explanation as to why.[[8]](#footnote-8)

Additionally, the Commission should condition its approval of the merger on a requirement that Joint Applicants cannot retire any generating capacity without first obtaining approval from the Commission. KCP&L and GMO plan to retire 850 MW of fossil-fueled generation by the end of 2019 and Westar plans to retire 781 MW of fossil-fueled generation, on an accelerated basis, by the end of 2018.[[9]](#footnote-9) However, the Joint Applicants have yet to file a full integrated resource plan that includes Westar, and will not do so until 2019.[[10]](#footnote-10) As demonstrated by the testimony of Burton Crawford, Joint Applicants did not consider all of the options for meeting their capacity needs, but rather studied only a handful of plants for retirement.[[11]](#footnote-11) Additionally, the plans for replacing the retired capacity are unclear and could result in increased costs for customers.[[12]](#footnote-12) The lack of a transparent competitive bidding process adds to the uncertainty. Therefore, prior to applying for approval of the retirement of any generating capacity, the Commission should require Joint Applicants to file a comprehensive, rigorous and transparent integrated resource plan, including market-tested pricing observed from competitive request for proposal processes.

* 1. **Should the Commission grant the limited request for variance of the affiliate transaction rule requested by Applicants?**

KEPCo takes no position on this issue.

* 1. **How should the bill credits proposed by Applicants be allocated between and within the various KCP&L and GMO rate classes?**

KEPCo takes no position on this issue.

1. **Conclusion**

KEPCo recommends that the Commission condition its approval of the merger as set forth above.

Respectfully Submitted,

\_\_*/s/ Andrew O. Schulte*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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ATTORNEYS FOR Kansas Electric Power Cooperative, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served or caused to be served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the secretary of the commission.

*/s/ Andrew O. Schulte\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Andrew O. Schulte

Dated: March 30, 2018

1. File No. EM-2018-0012, Application for Approval of Merger, Request for Variance from 4 CSR 240-20.015, and Motion for Expedited Treatment, filed August 31, 2017 (“GPE Application”). [↑](#footnote-ref-1)
2. KEPCo’s 19 distribution cooperative member systems are: Ark Valley Electric Cooperative Association, Inc. (Hutchison, Kansas); Bluestem Electric Cooperative, Inc. (Wamego, Kansas); Brown-Atchison Electric Cooperative Association, Inc. (Horton, Kansas); Butler Rural Electric Cooperative Association, Inc. (El Dorado, Kansas); Caney Valley Electric Cooperative Association, Inc. (Cedar Vale, Kansas); CMS Electric Cooperative, Inc. (Meade, Kansas); DS&O Electric Cooperative, Inc. (Solomon, Kansas); Flint Hills Rural Electric Cooperative Association, Inc. (Council Grove, Kansas); FreeState Electric Cooperative, Inc. (McLouth and Topeka, Kansas); Heartland Rural Electric Cooperative, Inc. (Girard, Kansas); LJEC, Inc. (McLouth, Kansas); Lyon-Coffey Electric Cooperative, Inc. (Burlington, Kansas); Ninnescah Rural Electric Cooperative Association, Inc. (Pratt, Kansas); Prairie Land Electric Cooperative, Inc. (Norton, Kansas); Radiant Electric Cooperative, Inc. (Fredonia, Kansas); Rolling Hills Electric Cooperative, Inc. (Beloit, Kansas); Sedgwick County Electric Cooperative Association, Inc. (Cheney, Kansas); Sumner-Cowley Electric Cooperative Association, Inc. (Wellington, Kansas); Twin Valley Electric Cooperative, Inc. (Altamont, Kansas); and Victory Electric Cooperative Association, Inc. (Dodge City, Kansas). [↑](#footnote-ref-2)
3. File No. EM-2018-0012, Stipulation and Agreement, filed January 12, 2018 (“Initial S&A”); File No. EM-2018-0012, Stipulation and Agreement, filed March 8, 2018 (“Supplemental S&A”). [↑](#footnote-ref-3)
4. Initial S&A, Exhibit B at 3-7. [↑](#footnote-ref-4)
5. File No. EM-2018-0012, KEPCo’s Objection to Non-Unanimous Stipulation, filed January 22, 2018; File No. EM-2018-0012, KEPCo’s Objection to Non-Unanimous Stipulation, filed March 9, 2018. [↑](#footnote-ref-5)
6. File No. EM-2018-0012, KEPCo’s Statement of Positions, filed March 5, 2018. [↑](#footnote-ref-6)
7. File No. EM-2018-0012, Transcript of Evidentiary Hearing, Vol. 2 at 56 (“Tr. Vol. 2”). [↑](#footnote-ref-7)
8. Initial S&A, Exhibit B at 3-5. For example, the signatories to the S&As removed Condition 10, which required the combined company to “exercise management prudence to maintain the financial integrity of GMO and KCP&L in all respects, including matters relating to dividends, capital investment and other financial actions in an effort to maintain investment grade credit ratings.” Condition 10 would appear to establish a minimum standard of conduct by the combined company management that should not be controversial. [↑](#footnote-ref-8)
9. File No. EM-2018-0012, Exh. No. 5, Surrebuttal Testimony of Burton Crawford at 3, filed February 21, 2018 (“Crawford Rebuttal); Tr. Vol. 2 at 175. [↑](#footnote-ref-9)
10. File No. EM-2018-0012, Exh. No. 10, Surrebuttal Testimony of Darrin Ives at 4, filed February 21, 2018; Tr. Vol. 2 at 178. [↑](#footnote-ref-10)
11. Tr. Vol. 2 at 244 (“There were only certain Westar units that were evaluated as retirement candidates”). [↑](#footnote-ref-11)
12. Tr. Vol. 2 at 175-76 (Greg Greenwood testifying that the combined company would not take any actions to replace the accelerated retirements); Crawford Rebuttal at 6 (Mr. Crawford testifying that KCP&L and GMO combined plan to add 12 MW of solar by 2028, 300 MW of wind by 2018, and drastically increase demand side management from 90 MW in 2017 to 820 MW in 2027). [↑](#footnote-ref-12)