

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

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. )

**JOINT APPLICANTS’  
PETITION FOR RECONSIDERATION**

COME NOW Great Plains Energy Incorporated (“GPE”), Kansas City Power & Light Company (“KCP&L”) and Westar Energy, Inc. (collectively “Joint Applicants”) and, pursuant to K.S.A. 66-118b, K.S.A. 2014 Supp. 77-529, and K.A.R. 82-1-235, respectfully petition for reconsideration of the April 19, 2017 Order (“Order”) issued by the State Corporation Commission of the State of Kansas (“Commission” or “KCC”) in the above captioned matter. In support of this Petition for Reconsideration (“Petition”), Joint Applicants state as follows:

**I. INTRODUCTION**

1. On June 28, 2016, Joint Applicants filed the Joint Application seeking Commission approval for GPE’s acquisition of Westar (“Transaction’). An evidentiary hearing on the Joint Application was held on January 30 – February 7, 2017.

2. On April 19, 2017, the Commission issued its Order in this docket denying the Joint Application, finding that the proposed Transaction is not in the public interest. (Order, p. 43)

3. Joint Applicants hereby petition the Commission for general reconsideration of its Order and to set the matter for further proceedings so that Joint Applicants may continue efforts to possibly (a) revise the Transaction to address the Commission’s concerns related to purchase price, capital structure and other issues and (b) provide additional information for discovery by Commission Staff and other parties to address concerns raised by the Commission in the Order.

## **II. THE COMMISSION SHOULD GRANT RECONSIDERATION TO ALLOW FOR FURTHER PROCEEDINGS IN THIS VERY IMPORTANT MATTER**

4. K.S.A. 77-529(b) provides that the Commission may deny the petition for reconsideration, grant the petition and dissolve or modify the Order, *or grant the petition and set the matter for further proceedings*. Joint Applicants request that the Commission grant reconsideration and set the matter for further proceedings to allow Joint Applicants to engage in further discussions among themselves to determine whether they can agree upon a revised Transaction proposal and present such additional information that addresses the clear concerns expressed by the Commission in its Order and would thus permit a Commission determination that the revised Transaction promotes the public interest.

5. Joint Applicants appreciate the Commission's observation that "it is not opposed to mergers" and the statement in its Order that the Commission agrees with an intervenor comment that "in many ways a merger between GPE and Westar makes sense, but for one insurmountable obstacle – the purchase price is simply too high." (Order, p. 3) Joint Applicants also appreciate the Commission's concern about GPE's Transaction debt level. (Order, p. 15) In working to develop a revised Transaction proposal, Joint Applicants fully understand that in order to permit a Commission determination that the revised Transaction proposal promotes the public interest, (a) the purchase price must be lower than originally proposed, (b) the GPE capital structure must contain a lower proportion of debt than originally proposed and (c) quantifiable customer benefits (such as Transaction savings, which are discussed below) must be demonstrated. Joint Applicants also recognize that the Commission expressed other significant concerns in the Order (such as a commitment to staffing levels at Westar's headquarters building in Topeka, for example) and, assuming Joint Applicants are able to develop a revised Transaction proposal that solves the purchase price, GPE capital structure and quantifiable customer benefits concerns, Joint

Applicants will also present additional information to address each significant concern noted in the Commission's Order in a revised Transaction proposal.

6. Joint Applicants respect the Commission's finding that by relying on pre-bid savings estimates and not providing more detailed integration and savings plans in the record, Joint Applicants hindered the ability of the Commission and the parties adequately to review and evaluate Transaction savings. (Order, p. 31) Joint Applicants completed integration planning in April 2017. Detailed integration plans and savings estimates have been fully developed and are now available for review and evaluation by the parties and presentation to the Commission

### **III. PROCEDURE**

7. Joint Applicants request that the Commission leave the docket open to allow them additional time to work together to determine whether it is possible to develop a revised Transaction proposal that would permit a Commission determination that it promotes the public interest. If so, upon announcement of a revised Transaction, Joint Applicants will engage with all other parties to ascertain whether agreement may be reached on issues disputed during the evidentiary hearing held earlier this year and whether an agreed upon procedural schedule can be obtained and presented to the Commission. Joint Applicants will endeavor to file a revised Transaction proposal along with a supplemental application by May 31, 2017 or, if more time is necessary to fully engage all parties, ask the Commission for additional time.<sup>1</sup> Of course, if Joint

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<sup>1</sup> Joint Applicants understand that the parties and the Commission would need time to evaluate any such revised Transaction proposal, conduct discovery, file testimony and hold evidentiary hearings. Joint Applicants will work with the parties and the Commission to develop a procedural schedule to be proposed in the filing to be made no later than May 31, 2017.

Applicants determine that a revised Transaction proposal is not feasible, Joint Applicants will advise the Commission and the parties of that determination.

#### **IV. CONCLUSION**

8. Joint Applicants understand that this request is unusual, but it is not unprecedented. The Commission has previously granted similar requests on a number of other occasions.<sup>2</sup> Granting this request would provide Joint Applicants time to determine whether it is possible to develop a revised Transaction proposal that would squarely address the stated concerns of the Commission in its Order, and allow the Commission to find that such revised Transaction promotes the public interest. Given the effort already devoted to this proceeding by the Commission and parties to the docket, the Commission's expressed opinion that "in many ways a merger between GPE and Westar makes sense..." and the magnitude of potential benefits that a revised Transaction proposal could deliver for customers and the state of Kansas, Joint Applicants believe that holding this docket open for four additional weeks to determine if a revised Transaction proposal is feasible would serve the public interest. In granting reconsideration for this purpose, the Commission would exercise its discretion to employ regulatory flexibility in processing a complicated matter that is of utmost importance to Kansas and its citizens.

#### **V. PRAYER FOR RELIEF**

9. For the foregoing reasons Joint Applicants respectfully request that the Commission grant reconsideration of its Order and set the matter for further proceedings so that

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<sup>2</sup> See Docket No. 14-ATMG-230-TAR, *In the Matter of the Application of Atmos Energy to Amend its Purchase Gas Adjustment (PGA) Schedule to Add a Demand Charge Savings and Pipeline Bypass Savings Component to the PGA*, Order Granting Reconsideration, issued November 25, 2014; Docket No. 99-KGSG-477-GIG, *In the Matter of Kansas Gas Service Company, a Division of ONEOK Inc. Filing its Proposed Plan for the Distribution of Kansas Ad Valorem Tax Refunds as Required in Docket No. 98-GIMG-592-GIG Order Dated October 5, 1998*, Order Granting Reconsideration and Establishing Hearing Procedures, issued February 20, 2001. See also Consolidated Dockets No. 04-LCLT-835-SHO, 05-LCLT-053-KSF and 05-LCLT-261-COC, Order Granting Reconsideration and Setting the Matter for Further Proceedings, issued March 27, 2006; and Docket No. 07-KTPM-1169-SHO, Order Granting Reconsideration and Order Soliciting Revised Stipulated Settlement Agreement, issued September 13, 2007.

Joint Applicants may work together to determine whether it is feasible to develop a revised Transaction proposal following the timeline set forth in paragraph 7 hereof.

Respectfully submitted,

*/s/ Robert J. Hack*

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**ATTORNEYS FOR WESTAR ENERGY,  
INC.**

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 4<sup>th</sup> day of May, 2017, I electronically filed via the Kansas Corporation Commission's Electronic Filing System, a true and correct copy of the above and foregoing with a copy emailed to all parties of record.

*/s/ Robert J. Hack*

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Robert J. Hack