STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 8th day of June, 2016.

In the Matter of Great Plains Energy, Inc.'s Acquisition of Westar Energy, Inc., and Related Matters	)))	Case No. EM-2016-0324

ORDER GRANTING LEAVE TO FILE REPLY LATE, GRANTING STAFF'S MOTION TO OPEN AN INVESTIGATION, AND DIRECTING FILING

Issue Date: June 8, 2016 Effective Date: June 8, 2016

Staff's Motion to Open an Investigation ("motion") asks to investigate the impending merger ("transaction") of Great Plains Energy, Inc. ("GPE") and Westar Energy, Inc., ("Westar"). That investigation is authorized by the Commission's order in an earlier case. Therefore, the Commission is granting the motion and setting a date for Staff to file a report.

Procedure

Staff filed the motion.[1] GPE filed a response ("GPE's verified response").[2] The Office of the Public Counsel ("OPC") also filed a response. [3] Staff filed a reply[4] out of time, and asks leave to file late, citing the evidentiary hearing scheduled for this week in

[1] Electronic Filing and Information System ("EFIS") No.1 (June 1, 2016) *Staff's Motion to Open an Investigation*. References to EFIS refer to this File no. EM-2016-0324 except as otherwise stated.

[2] EFIS No. 2 (June 2, 2016) *Great Plains Energy Incorporated's Verified Opposition to Staff's Motion to Open Investigation and Request for Order Declining Jurisdiction*.

[3] EFIS No. 4 (June 7, 2016) *Public Counsel's Response*.

[4] EFIS No. 5 (June 2, 2016) *Staff's Reply to Great Plains Energy*.

an electrical corporation's general rate action. The Commission will grant that motion.[5] Great Plains filed a reply to OPC's response and surreply to Staff,[6] which the Commission has also considered.[7]

No law requires an evidentiary hearing before ruling on whether to investigate the transaction. No application is pending and no complaint, or any other action to adversely affect any protected interest of GPE, is before the Commission. Therefore, this action is not a contested case.[8]

The Commission will base its decision on the filings in this action[9] and the earlier case.[10]

Staff's and OPC's Arguments

Staff cites GPE's agreement to provide information in an earlier case.[11] That earlier case was the application to make GPE a holding company for Kansas City Power & Light Company ("KCPL").[12] KCPL is the Commission-regulated entity for which

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[5] 4 CSR 240-2.050(3)(B).

[6] EFIS No. 6 (June 7, 2016) *Great Plains Energy Incorporated's Reply to Public Counsel's Response and Staff's Response*.

[7] Though GPE did not ask for leave to make that filing late. That late filing mostly addresses whether the Commission has jurisdiction over the transaction. The Commission need not address that matter, as discussed below.

[8] Section 536.010(4), RSMo Supp. 2014.

[9] *State ex rel. Rex Deffenderfer Ent., Inc.,* 776 S.W.2d 494 (Mo. App., W.D. 1989).

[10] *Envtl. Utilities, LLC v. Pub. Serv. Comm'n*, 219 S.W.3d 256, 264-66 (Mo. App., W.D. 2007).

[11] File No. EM-2001-464, Electronic Filing and Information System ("EFIS") No. 36 (August 15, 2001), *In the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing its Plan to Reorganize Itself Into a Holding Company Structure*. Filings in that action are accessible in EFIS under File No. EM2001464xxx.

[12] File No. EM-2001-464, *In the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing its Plan to Reorganize Itself Into a Holding Company Structure*, EFIS No. 28 (July 10, 2001) *Motion for Expedited Treatment of the Approval of the First Amended Stipulation and Agreement*.

GPE is the holding company. The Commission issued its decision incorporating provisions agreed to by GPE as a substitute for litigation.

Generally, GPE agreed and the Commission ordered:

> [GPE] **will provide** the Staff and Public Counsel, upon request and with appropriate notice, all information needed to verify compliance with the conditions authorized in this proceeding and **any** other **information relevant to the Commission's** ratemaking, financing, safety, quality of service and other **regulatory authority over KCPL**. [[13]]

Information about the transaction is relevant to the Commission's ratemaking, financing, safety, quality of service, and other regulatory authority over KCPL because the common stock of, cash from, and assumption of Westar debt by KCPL's parent GPE is the price of the transaction.[14] This alone supports the motion.

Also, GPE specifically agreed that:

> GPE and KCPL shall provide the Staff and Public Counsel unrestricted access to **all written information provided to** common stock, bond, or bond **rating analysts**, which directly, or indirectly, pertains to KCPL or [GPE. [15]]

Further:

> [GPE] will provide the Staff and Public Counsel, upon request and with appropriate notice, **all information needed to verify compliance with the conditions authorized in this proceeding** and any other information relevant to the

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[13] File No. EM-2001-464, *In the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing its Plan to Reorganize Itself Into a Holding Company Structure*, EFIS No. 26 (July 10, 2001), *First Amended Stipulation and Agreement* page 13, paragraph II.6.k, emphasis added; incorporated into EFIS No. 36 (August 15, 2001), *Order Approving Stipulation and Agreement and Closing Case* page 13, paragraphs 3 to 4.

[14] EFIS No. 2 (June 2, 2016) *Great Plains Energy Incorporated's Verified Opposition to Staff's Motion to Open Investigation and Request for Order Declining Jurisdiction* page 3, paragraph 8.

[15] File No. EM-2001-464, *In the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing its Plan to Reorganize Itself Into a Holding Company Structure*, EFIS No. 26 (July 10, 2001), *First Amended Stipulation and Agreement* page 12, paragraph II.6.j, emphasis added; incorporated into EFIS No. 36 (August 15, 2001), *Order Approving Stipulation and Agreement and Closing Case* page 13, paragraphs 3 to 4.

> Commission's ratemaking, financing, safety, quality of service and other regulatory authority over KCPL. [[16]]

Of those conditions, Staff cites the following:

> b. GPE will **not pledge KCPL's common stock** as collateral or security for the debt of [GPE] or a subsidiary without Commission approval.
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> c. **KCPL will not guarantee** the notes, debentures, debt obligations or other **securities of [GPE] or any of its subsidiaries**, or enter into any "make-well" agreements without prior Commission approval.
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> d. **GPE agrees to maintain consolidated common equity** of no less than 30 percent of total consolidated capitalization. GPE and KCPL agree to maintain **KCPL's common equity** at no less than 35 percent. Total capitalization is defined as common equity, preferred stock, long-term debt and short-term debt in excess of CWIP. Common equity is defined as par value of common stock, plus additional paid-in capital, plus retained earnings, minus treasury stock.
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> f. **KCPL's total long-term borrowings** including all instruments shall not exceed KCPL's regulated rate base.
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> g. **KCPL shall maintain separate debt**. KCPL agrees to maintain its debt at investment grade. This condition should not be construed to mean the Staff recommends or will recommend in any future application to the Commission or Commission proceeding the approval of any preferred stock issuance below investment grade.
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> h. GPE, KCPL and the Staff agree that the allowed return on common equity and other **costs of capital will not increase** as a result of the reorganization.

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[16] File No. EM-2001-464, *In the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing its Plan to Reorganize Itself Into a Holding Company Structure*, EFIS No. 26 (July 10, 2001), *First Amended Stipulation and Agreement* page 13, paragraph II.6.k, emphasis added; incorporated into EFIS No. 36 (August 15, 2001), *Order Approving Stipulation and Agreement and Closing Case* page 13, paragraphs 3 to 4.

> i. GPE and KCPL guarantee that the **customers of KCPL shall be held harmless** if the reorganization creating GPE, with KCPL as a subsidiary, results in a higher revenue requirement for KCPL than if the reorganization had not occurred. [[17]]

Those conditions are subject to verification by "all information needed" from GPE and KCPL, both of whom agreed to provide Staff with that information.[18] GPE and KCPL urgently sought Commission approval of that agreement.[19] That agreement is not limited to any action pending before the Commission[20]

Moreover, even absent the conditions that GPE sought and the Commission ordered, Staff and OPC allege an independent basis for an investigation: that the transaction has already had a negative effect on the credit outlooks of GPE, KCPL, and GMO. [21] GPE's unsupported reassurance, that a downgraded credit outlook is insignificant, [22] is not persuasive. The Commission is aware that a reduced credit rating is likely to increase the cost of capital. And an increased cost of capital is likely to increase rates for Missouri ratepayers.

Therefore, the Commission will grant the motion.

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[17] File No. EM-2001-464, *In the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing its Plan to Reorganize Itself Into a Holding Company Structure*, EFIS No. 26 (July 10, 2001), *First Amended Stipulation and Agreement* page 13, paragraph II.6, emphasis added; incorporated into EFIS No. 36 (August 15, 2001), *Order Approving Stipulation and Agreement and Closing Case* page 13, paragraphs 3 to 4.

[18] And, in any event, the conditions related to KCPL are subject to the Commission's power to examine any electrical corporation's documents under Section 393.140(8) and (9), RSMo 2000 and inquire of its personnel under Section 393.140(5), (9), and (10), RSMo 2000.

[19] File No. EM-2001-464, EFIS No. 26 (July 10, 2001), *Motion for Expedited Treatment of the Approval of the First Amended Stipulation and Agreement*; and EFIS No. 28 (July 10, 2001), *First Amended Stipulation and Agreement*.

[20] *State ex rel. Laclede Gas Co. v. Public Serv. Comm'n of Mo.*, 392 SW3 24, 35 (Mo. App. W.D. 2012).

[21] EFIS No. 4 (June 7, 2016) *Public Counsel's Response*, page 5 to 6, paragraph 8. EFIS No. 5 (June 2, 2016) *Staff's Reply to Great Plains Energy* page 11, paragraph 13.

[22] EFIS No. 6 (June 7, 2016) *Great Plains Energy Incorporated's Reply to Public Counsel's Response and Staff's Response*.

GPE's Arguments

GPE concedes that compliance with conditions is within the Commission's jurisdiction and authority to investigate.[23] Nevertheless, GPE expressly seeks an expedited determination that the Commission has no jurisdiction over the transaction. Staff and OPC argue that the transaction is within the Commission's jurisdiction.

Ruling on the motion does not require the Commission to determine its jurisdiction over the transaction. The transaction is not before the Commission in this action, no application for authorization of the transaction is pending in any other action, and neither Staff nor OPC has asked the Commission to bar the transaction. If the investigation substantiates a threat to Missouri ratepayers, remedies may be available other than ruling on the transaction. GPE argues that an investigation is too early but, if Staff delays, an investigation may be too late. And the Commission's experience shows that prevention is more economical than a cure.

The Commission has a duty to determine whether the transaction threatens Missouri ratepayers. If so, the Commission must also determine whether any appropriate remedy requires the Commission to have jurisdiction over the transaction. Those determinations should be expeditious, so the Commission will set a date for Staff to file a report on its investigation. The report should include a discussion of the law governing the Commission's jurisdiction over the transaction. The Commission will also set a date for the parties to file a procedural schedule if the parties believe that a procedural schedule would be helpful.

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[23] EFIS No. 2 (June 2, 2016) *Great Plains Energy Incorporated's Verified Opposition to Staff's Motion to Open Investigation and Request for Order Declining Jurisdiction*, page 8, paragraph 29.

THE COMMISSION ORDERS THAT:

1. Staff's motion to file its reply late is granted.

2. *Staff's Motion to Open an Investigation* is granted.

3. The parties may file a proposed procedural schedule related to this investigation no later than June 13, 2016.

4. Staff shall file a report on the results of its investigation no later than July 25, 2016.

5. This order shall be effective when issued.

BY THE COMMISSION

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur.

Jordan, Senior Regulatory Law Judge