

162 FERC ¶ 61,174
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

Great Plains Energy Incorporated
Westar Energy, Inc.

Docket No. EC17-171-000

ORDER AUTHORIZING MERGER AND DISPOSITION
OF JURISDICTIONAL FACILITIES

(Issued February 28, 2018)

1. On September 1, 2017, pursuant to sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA)¹ and part 33 of the Commission's regulations,² Great Plains Energy Incorporated (Great Plains) and Westar Energy, Inc. (Westar) (together, Applicants) submitted an application (Application) requesting authorization of a transaction in which Applicants will merge to form a new holding company that will operate the present Commission-jurisdictional public utilities and other affiliates of Great Plains and Westar (Proposed Transaction).

¹ 16 U.S.C. § 824b(a)(1), (a)(2) (2012).

² 18 C.F.R. pt. 33 (2017).

2. We have reviewed the Proposed Transaction under the Commission's Merger Policy Statement.³ As discussed below, we authorize the Proposed Transaction as consistent with the public interest.

I. Background

A. Description of Applicants

1. Great Plains

3. Applicants explain that Great Plains is a holding company and the direct parent of Kansas City Power & Light Company (KCP&L) and KCP&L Greater Missouri Operations Company (Greater Missouri). In addition, Great Plains is an indirect parent company of Transource Energy, LLC (Transource), a joint venture between subsidiaries of American Electric Power Company, Inc. (AEP) and Great Plains formed to develop new transmission projects.⁴

a. KCP&L

4. Applicants state that KCP&L is a vertically integrated public utility that serves customers in its franchised territories in Missouri and Kansas, subject to regulation by the Missouri Public Service Commission (Missouri Commission) and the Kansas Corporation Commission (Kansas Commission). KCP&L is a transmission-owning member of Southwest Power Pool, Inc. (SPP) and has transferred functional control of its transmission facilities to SPP. Except for certain grandfathered agreements, KCP&L

³ See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (Merger Policy Statement), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997); see also *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008). See also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). See also *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

⁴ Application at 3-4.

provides transmission service over its transmission facilities pursuant to the SPP Open Access Transmission Tariff (OATT).⁵

b. Greater Missouri

5. Applicants explain that Greater Missouri is a wholly owned subsidiary of Great Plains. Greater Missouri is a vertically integrated public utility that serves customers in Missouri, subject to regulation by the Missouri Commission. The Commission has authorized Greater Missouri to make wholesale sales of electric energy, capacity, and certain ancillary services at market-based rates. Greater Missouri is a member of SPP and has transferred functional control over its transmission facilities to SPP. Except for certain grandfathered agreements, Greater Missouri provides transmission service over its transmission facilities pursuant to the SPP OATT.⁶

c. Transource

6. Applicants represent that GPE Transmission Holding Company, LLC, a wholly owned subsidiary of Great Plains, owns 13.5 percent of Transource, and AEP Transmission Holding Company, LLC, a wholly owned subsidiary of AEP, owns 86.5 percent of Transource. Transource, in turn, holds ten wholly owned subsidiaries and one partially owned subsidiary organized to develop competitive transmission projects.

7. Applicants explain that Transource Missouri, LLC (Transource Missouri) and Transource Kansas, LLC (Transource Kansas) were formed to be participants in the SPP Transmission Owner Selection Process. Transource Missouri is a member of SPP and has transferred functional control of its facilities to SPP. Transource Kansas will become a member of SPP and transfer function control of its facilities to SPP should it be awarded a competitive transmission project.⁷

8. Applicants state that Transource Pennsylvania, LLC (Transource Pennsylvania), Transource Maryland, LLC (Transource Maryland), and Transource West Virginia, LLC (Transource West Virginia) were formed to be participants in the PJM Interconnection, L.L.C. (PJM) Regional Transmission Expansion Plan. In addition, Applicants explain

⁵ *Id.* at 4-5.

⁶ *Id.* at 5-6.

⁷ *Id.* at 7-8.

that Transource Wisconsin, LLC was formed to be a participant in the Midcontinent Independent System Operator, Inc. (MISO) Transmission Expansion Plan.⁸

2. Westar

9. Applicants represent that Westar is a vertically integrated Kansas public utility that, with its wholly owned subsidiary Kansas Gas and Electric Company (KG&E), is regulated by the Kansas Commission. Westar is a transmission-owning member of SPP, and the Westar and KG&E transmission systems are under the functional control of SPP. Westar has an open access transmission tariff on file with the Commission, but all transmission service on Westar's transmission system is provided pursuant to the SPP OATT. Westar has been authorized by the Commission to sell electricity, capacity, and ancillary services at market-based rates but also has a full requirements electric service tariff on file with the Commission.⁹

10. Applicants state that Westar Generating, Inc. (Westar Generating) is a wholly owned subsidiary of Westar and a regulated electric utility. Westar Generating owns a 40 percent undivided interest in the State Line Combined Cycle Generating Facility (State Line Facility). Westar Generating has been authorized to sell electric power and energy to Westar at cost-based rates.¹⁰

11. Applicants explain that Westar owns a 50 percent undivided interest in Prairie Wind Transmission, LLC, a regulated, transmission-only electric utility that owns and maintains a transmission line that is under the functional control of SPP.¹¹

12. Applicants explain that Westar indirectly owns a 50 percent undivided interest in MPT Heartland Development, LLC (MPT Heartland), which in turn owns Kanstar Transmission, LLC (Kanstar) and a 50 percent, undivided interest in Midwest Power Midcontinent Transmission Development, LLC (Midwest Power), which in turn owns Midwest Power Transmission Arkansas, LLC (MPT Arkansas).¹² Kanstar and MPT

⁸ *Id.* at 8-9.

⁹ *Id.* at 10-11.

¹⁰ *Id.* at 12.

¹¹ *Id.*

¹² On December 12, 2017, Kanstar and MPT Arkansas were granted approval for a transaction whereby Westar would dispose of its 50 percent interest in MPT Heartland and Midwest Power. *Kanstar Transmission, LLC*, 161 FERC ¶ 62,191 (2017).

Arkansas are regulated, transmission-only electric utilities, formed to develop projects in SPP and MISO, respectively.¹³

B. Description of the Proposed Transaction

13. Applicants explain that the Amended and Restated Agreement and Plan of Merger (Merger Agreement) among Westar, Great Plains, Monarch Energy Holding, Inc. (Holdco), and King Energy, Inc. (Merger Sub) provides the terms and conditions of the Proposed Transaction. Great Plains will merge with and into Holdco with Holdco continuing as the surviving corporation. Merger Sub, a wholly owned subsidiary of Holdco, will merge with and into Westar, with Westar continuing as the surviving corporation and a wholly owned subsidiary of Holdco. Upon consummation of the Proposed Transaction, Westar and the current direct subsidiaries of Great Plains will become direct subsidiaries of Holdco. The subsidiaries of Westar, in turn, will become either wholly owned or partially owned subsidiaries of Holdco, consistent with Westar's existing ownership interest in each entity prior to consummation of the Proposed Transaction.¹⁴

14. Applicants explain that Westar shareholders will exchange each share of Westar common stock for a share in Holdco, and Great Plains will receive a portion of a share of common stock in Holdco for each Great Plains share. Following the closing of the Proposed Transaction, shareholders of Westar will own approximately 52.5 percent and shareholders of Great Plains will own approximately 47.5 percent of Holdco.

II. Notice of Filing and Responsive Pleadings

15. Notice of the Application was published in the *Federal Register*, 82 Fed. Reg. 42,677 (2017), with interventions and protests due on or before October 31, 2017.

16. The Missouri Commission and the Kansas Commission filed timely notices of intervention.

17. Midwest Energy, Inc., Associated Electric Cooperative, Inc., Kansas City, Kansas Board of Public Utilities, Sunflower Electric Power Corp. and Mid-Kansas Electric Company, LLC, Independence Power & Light and the City of Independence, Missouri, Kansas Municipal Energy Agency, Kansas Municipal Utilities, Inc., Doniphan Electric Cooperative Association, Inc. and Nemaha-Marshall Electric Cooperative Association, Inc., and Kansas Power Pool filed timely motions to intervene.

¹³ Application at 12-13.

¹⁴ *Id.* at 13-14.

18. Kansas Electric Power Cooperative, Inc. (KEPCo) filed a timely motion to intervene and protest.

19. Applicants filed an answer to KEPCo's protest, and KEPCo filed an answer to Applicants' answer.

III. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept Applicants' and KEPCo's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. FPA Section 203 Standard of Review

22. FPA section 203(a)(4) requires the Commission to approve proposed dispositions, consolidations, acquisitions, or changes in control if the Commission determines that the proposed transaction will be consistent with the public interest.¹⁵ The Commission's analysis of whether a proposed transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.¹⁶ FPA section 203(a)(4) also requires the Commission to find that the proposed transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."¹⁷ The

¹⁵ 16 U.S.C. § 824b(a)(4). Approval of the Proposed Transaction is also required by other regulatory agencies pursuant to their respective statutory authorities before the Proposed Transaction may be consummated. *See* Application at Ex. L. Our findings under FPA section 203 do not affect those agencies' evaluation of the Proposed Transaction pursuant to their respective statutory authorities.

¹⁶ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

¹⁷ 16 U.S.C. § 824b(a)(4).

Commission's regulations establish verification and informational requirements for entities that seek a determination that a proposed transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.¹⁸

2. Analysis of the Proposed Transaction

a. Effect on Horizontal Competition

i. Applicants' Analysis

23. Applicants explain that SPP is the relevant geographic market for analyzing the effects of the Proposed Transaction. Except for the natural gas-fired Crossroads Energy Center owned by Great Plains, which is located within the MISO footprint but pseudo-tied and dedicated to SPP, Applicants do not control generation located outside of the SPP footprint. Applicants also state that there are no submarkets within SPP to consider. Applicants note that there has not been significant congestion or price separation across the SPP footprint to suggest that a submarket analysis is needed.¹⁹

24. Applicants analyze the Proposed Transaction's effect on competition with respect to energy, capacity, and ancillary services. Applicants performed a Delivered Price Test, also referred to as an Appendix A analysis or Competitive Analysis Screen,²⁰ to analyze

¹⁸ 18 C.F.R. § 33.2(j).

¹⁹ Application at 16-17.

²⁰ The Delivered Price Test determines the pre- and post-transaction market shares from which the change in market concentration, or the change in the Herfindahl-Hirschman Index (HHI), due to a proposed transaction can be derived. The HHI is a widely accepted measure of market concentration, calculated by squaring the market share of each firm competing in the market and summing the results. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is less than 1,000 points are considered to be unconcentrated; markets in which the HHI is greater than or equal to 1,000, but less than 1,800 points, are considered to be moderately concentrated; markets in which the HHI is greater than or equal to 1,800 points are considered to be highly concentrated. In the Merger Policy Statement, the Commission adopted the 1992 Federal Trade Commission/Department of Justice Horizontal Merger Guidelines, which state that in a horizontal merger, an increase of more than 50 HHI points in a highly concentrated market or an increase of 100 HHI points in a moderately concentrated market fails its screen and warrants further review. Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,129; *see also Analysis of Horizontal Market Power under the Federal Power Act*, 138 FERC ¶ 61,109 (2012) (affirming the Commission's use of the thresholds (continued ...))

the impacts of the Proposed Transaction on market concentration in the SPP market. Applicants' Delivered Price Test analyzes the Proposed Transaction using both the Available Economic Capacity (AEC) and Economic Capacity (EC) measures.²¹

25. Applicants explain that, for AEC, the SPP market is unconcentrated in all periods, with no HHI exceeding 572 points, and that in no period studied do Applicants' post-merger market shares exceed 17 percent. Applicants state that, for the EC measure, the SPP market is similarly unconcentrated in all periods, with no HHI exceeding 770, and that Applicants' highest post-merger market share is 21 percent. Applicants argue that, because the Delivered Price Test shows that the Proposed Transaction results in no screen violations, there is no adverse effect on horizontal competition. Applicants also performed plus and minus 10 percent price sensitivities and note that no competitive issues were raised in those analyses.²²

26. Applicants note that SPP does not have a Commission-regulated centrally administered market for capacity; however, Applicants use the Delivered Price Test to simulate centrally administered capacity market-like circumstances when all or nearly all generation capacity is economic (i.e., the Summer Super Peak 1 period). Applicants state that, during this period, the HHI using the EC measure would be 752. Applicants also note that SPP maintains a significant resource margin (i.e., 43 percent in 2016)²³ and conclude that the Proposed Transaction will not adversely affect the market for installed

adopted in the Merger Policy Statement).

²¹ Each supplier's "Economic Capacity" is the amount of capacity that could compete in the relevant market given market prices, running costs, and transmission availability. "Available Economic Capacity" is based on the same factors but subtracts the supplier's native load obligation from its capacity and adjusts transmission availability accordingly.

²² Application at 19-21. A sensitivity analysis is a standard statistical procedure designed to test whether the results of the model change significantly due to small changes in key parameters of the model. Results that are not sensitive to changes in key parameters of the model are considered "robust." For example, the results of the Delivered Price Test can be affected by changes in the assumed market price or input prices such as fuel costs. *Duke Energy Corp.*, 113 FERC ¶ 61,297, at P 26 n.9 (2005) (citing Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,891-92).

²³ Applicants explain that a resource margin is the amount of extra system capacity available after peak load has been met. Application at 22.

capacity in the SPP footprint.²⁴

27. As to ancillary services, Applicants explain that, since 2014, SPP determined that zonal limits for ancillary services were not needed to ensure deliverability, which indicates that ancillary services markets in SPP include sellers throughout SPP and that the market is unconcentrated. Applicants further state that their Electric Quarterly Report filings show that KCP&L, Greater Missouri, and Westar comprise two percent of the market for regulation services, one percent of the market for spinning reserves services, and 12 percent of the market for supplemental reserves services.²⁵

ii. Commission Determination

28. In analyzing whether a proposed transaction will adversely affect horizontal competition, the Commission examines the effects on concentration in generation markets and whether the proposed transaction otherwise creates the incentive and ability to engage in behavior harmful to competition, such as withholding of generation.²⁶

29. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on horizontal competition. First, there is no evidence that a submarket currently exists within SPP for purposes of analyzing the Proposed Transaction. As a result, the SPP market is the relevant market for purposes of examining the effect of the Proposed Transaction on competition. Second, Applicants' Delivered Price Test shows that, following the Proposed Transaction, the SPP market remains unconcentrated in all season/load periods for both the EC and AEC measures. Based on this evidence, we conclude that the Proposed Transaction will not have an adverse effect on horizontal competition for energy and capacity. In addition, as Applicants have shown that they provide only a small percentage of ancillary service products delivered in SPP, we find that the Proposed Transaction will not have an adverse effect on competition for regulation, spinning reserves, or supplemental reserves.

²⁴ *Id.* at 21-22.

²⁵ *Id.* at 22-23.

²⁶ *Nev. Power Corp.*, 149 FERC ¶ 61,079, at P 28 (2014).

b. Effect on Vertical Competition**i. Applicants' Analysis**

30. Applicants argue that the Proposed Transaction does not result in any vertical market power concerns. Applicants explain that they do not own or control: (1) interstate natural gas pipeline facilities; (2) gas distribution systems; or (3) any physical coal supplies, nor do they control who may access transportation of coal supplies. Applicants note that, although Westar, KCP&L, and Greater Missouri own and lease rail cars dedicated to their own use, they believe there is no basis to rebut the presumption that ownership or control of fuel supplies does not allow a seller to raise barriers to entry.²⁷ Applicants also state that the Proposed Transaction will not increase their ability to use ownership or control of transmission facilities to give themselves a competitive advantage in energy markets because their transmission facilities are under the functional control of SPP and subject to the SPP OATT.²⁸ Lastly, Applicants assert that they do not possess market power with respect to any other inputs to the generation of electricity because SPP is a large market and any generation sites that Applicants may control for developing generation would not be the site of an essential facility needed for entry by rivals.²⁹

ii. Commission Determination

31. In analyzing whether a proposed transaction presents vertical market power concerns, the Commission considers the vertical combination of upstream inputs, such as transmission or natural gas, with downstream generating capacity. As the Commission has previously found, transactions that combine electric generation assets with inputs to generating power (such as natural gas, transmission, or fuel) can harm competition if the transaction increases an entity's ability or incentive to exercise vertical market power in wholesale electricity markets. For example, by denying rival entities access to inputs or

²⁷ Application at 24, Ex. J at 24 (citing *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 22, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012)).

²⁸ *Id.* at 24.

²⁹ *Id.* at 25.

by raising their input costs, an entity created by a transaction could impede entry of new competitors or inhibit existing competitors' ability to undercut an attempted price increase in the downstream wholesale electricity market.³⁰

32. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on vertical competition. Applicants have turned over operational control of their transmission facilities to SPP, and transmission service is provided pursuant to the SPP OATT. Other than certain rail cars, Applicants have demonstrated that they do not own or control inputs to electric generation. We find that control over these rail cars does not provide Applicants with the ability to erect barriers to entry into the SPP generation market.³¹

c. Effect on Rates

i. Applicants' Analysis

33. Applicants highlight that the Proposed Transaction will be a stock-for-stock merger that involves no premium paid or received, no transaction debt, and no exchange of cash. In addition, Applicants specify that each public utility operating company and its affiliates will continue to maintain separate books and records. Applicants explain that there will be no acquisition premium or goodwill recorded on the books of any operating company, and that no portion of the acquisition adjustment or goodwill will be recovered through the rates of any operating company.³²

34. Applicants claim that the Proposed Transaction will have no adverse effect on Commission-jurisdictional rates. Except for transmission formula rates and several Westar agreements discussed below, Applicants' public utility affiliates make wholesale sales at market-based rates or fixed stated cost-of-service rates that cannot be modified without a section 205 filing.³³ Applicants explain further that no new debt will be issued to close the Proposed Transaction and, pursuant to the Merger Agreement, customers of

³⁰ *Upstate N.Y. Power Producers, Inc.*, 154 FERC ¶ 61,015, at P 15 (2016); *Exelon Corp.*, 138 FERC ¶ 61,167, at P 112 (2012).

³¹ *See Upstate N.Y. Power Producers, Inc.*, 154 FERC ¶ 61,015 at P 16.

³² Application at 26.

³³ *Id.* at 26-27.

Applicants' public utility operating companies will not bear any financing costs associated with the Proposed Transaction.³⁴

(a) **Hold Harmless Commitment**

35. Applicants commit for a period of five years to hold transmission, wholesale power, and wholesale distribution service customers with cost-based rates harmless from the rate effects of the Proposed Transaction (Hold Harmless Commitment). Applicants specify, however, that such commitment does not apply to Applicants' market-based rate contracts.³⁵ Applicants explain that, for the five-year period, they will not include transaction-related costs in their transmission or cost-based wholesale requirements, cost-based wholesale power, or cost-based wholesale distribution service rates, except if they can demonstrate, through a section 205 filing,³⁶ that merger-related savings equal or exceed all of the transaction-related costs so included.³⁷

36. Applicants define transaction-related costs as follows:

- the costs of securing an appraisal, formal written evaluation, or fairness opinions related to the Proposed Transaction;
- the costs of structuring and negotiating the transaction and obtaining tax advice on the structure of the Proposed Transaction;
- the costs of preparing and reviewing documents effectuating the Proposed Transaction, including costs to transfer legal title of an asset, building permits, valuation fees, the Merger Agreement and any related financing documents;

³⁴ *Id.* at 27.

³⁵ Applicants explain that the Commission has established that market-based wholesale power sales do not raise concerns about whether a transaction has an adverse effect on rates. *Id.* (citing *NorAm Energy Servs., Inc.*, 80 FERC ¶ 61,120, at 61,382-83 (1997)).

³⁶ *See infra* P 41.

³⁷ Application at 28-29.

- the internal labor costs of employees and the costs of external, third-party, consultants and advisors to evaluate potential merger transactions, and once a merger candidate has been identified, to negotiate merger terms, to execute financing and legal contracts, and to secure regulatory approvals;
- the costs of obtaining shareholder approval (e.g., costs of proxy solicitation and special meeting of shareholders). Professional service fees incurred in the Proposed Transaction (e.g., fees for accountants, surveyors, engineers, and legal consultants); and
- installation, integration, testing, and set up costs related to ensuring the operability of facilities subject to the Proposed Transaction.³⁸

37. Applicants explain that transaction-related costs subject to the Hold Harmless Commitment include transition costs. Applicants commit to exclude from recovery during the Hold Harmless Commitment period, unless they can demonstrate, in a section 205 filing,³⁹ savings in excess of such costs, the following transition costs incurred to integrate operations: engineering studies after the closing of the Proposed Transaction, severance payments, operational integration costs, accounting and operating systems integration costs, and refinancing costs to refinance existing obligations in order to achieve operational and financial synergies.⁴⁰

38. Applicants specify that the internal labor costs of Applicants' public utility salaried employees engaged in merger-related activities will be charged to non-utility accounts and will not be passed through to customers in Commission-jurisdictional cost-based rates. Applicants explain that pre-existing cost allocation procedures will remain in place during the pendency of the Proposed Transaction and will allow for separate tracking of employee transaction-related work through an accounting distribution protocol specific to the Proposed Transaction.⁴¹

39. Applicants note that their Hold Harmless Commitment is consistent with commitments made by Applicants regarding state jurisdictional rates that are reflected in

³⁸ *Id.* at 29 (citing *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189, at P 44 (2016) (Hold Harmless Policy Statement)).

³⁹ *See infra* P 41.

⁴⁰ Application at 29-30.

⁴¹ *Id.* at 30-31.

Exhibit F to the Merger Agreement, which provides that capital costs used to set state jurisdictional rates will not increase as a result of the Proposed Transaction.⁴²

40. After the Proposed Transaction closes, Applicants further commit to the following additional measures to ensure that cost-based wholesale power and transmission customers are held harmless:

- Holdco and its public utility operating companies (i.e., the operating company transmission and distribution utilities that will be subsidiaries of Holdco following the Proposed Transaction) will maintain separate debt that is separately rated by national credit ratings agencies so that none will be responsible for the debts of affiliated companies and separate preferred stock, if any.
- Holdco and its public utility operating companies will maintain separate capital structures to finance the activities and operations of each entity.
- Holdco and its public utility operating companies will maintain investment grade credit ratings.
- Applicants agree that, except for existing guarantees between Westar and its subsidiaries, Holdco and its public utility operating companies shall not guarantee notes (or enter into make-well agreements, etc.) of one another, or Holdco or any of Holdco's other affiliates.
- Applicants agree that no utility stock or assets shall be pledged as collateral for obligations of any entity other than the utility unless otherwise ordered by the state commissions or this Commission.
- Applicants agree that each public utility subsidiary shall be held harmless from any business and financial risk exposures associated with another public utility subsidiary, Holdco or its other affiliates.
- Holdco and its public utility operating companies and other affiliates will maintain separate books and records and will agree to reasonable conditions regarding access by the state commissions and this Commission to information, books and records.

⁴² *Id.* at 31.

- No new debt will be issued to close the Proposed Transaction. Regardless, Applicants separately agree that customers of their public utility operating companies will not bear any financing costs associated with the Proposed Transaction.⁴³

41. Applicants' public utility operating companies understand that, pursuant to the Hold Harmless Commitment, if they were to seek to recover transaction-related costs or transition costs through their transmission formula rates, existing fixed-rate contracts, or other cost-based rates, they will be required to make an FPA section 205 filing with the requisite support.⁴⁴

(b) Transmission Rates

42. Applicants explain that KCP&L, Greater Missouri, and Transource Missouri (i.e., Great Plains affiliates) and Westar, KG&E and Prairie Wind (i.e., Westar entities) currently own and/or operate electric transmission assets. Applicants state that all of these transmission assets are under the functional control of SPP and that transmission service is provided pursuant to the SPP OATT. Except for certain grandfathered transmission service, Applicants note that KCP&L, Greater Missouri, Transource Missouri, Transource West Virginia, Transource Pennsylvania, Transource Maryland, Westar, and Prairie Wind each have annually updated and Commission-accepted formula rates on file for their transmission assets.⁴⁵ Applicants specify that the SPP OATT incorporates these transmission formula rates and that the Hold Harmless Commitment applies to the transmission customers that take service pursuant to the SPP OATT.⁴⁶

43. Applicants state that the Commission has accepted formula rate protocols for KCP&L, Greater Missouri, Westar, and Applicants' other affiliates. Applicants note that the annual informational filings for these formula rate protocols provide the information

⁴³ *Id.* at 31-32.

⁴⁴ *Id.* at 32 (citing *PPL Corp.*, 133 FERC ¶ 61,083, at P 27 (2010)).

⁴⁵ Applicants note that Great Plains and Westar each have other public utility affiliates that have transmission formula rates on file with the Commission and that Applicants similarly extend their Hold Harmless Commitment during the five-year period to those affiliates' rates. *Id.* at 34, n.89.

⁴⁶ *Id.* at 33-34.

needed to determine the effect of any accounting change and the accuracy of the underlying data, among other things.⁴⁷

44. In addition to transmission service under the SPP OATT, Applicants explain that KCP&L and Greater Missouri each have interconnection agreements among themselves, SPP, and certain transmission interconnection customers pursuant to which KCP&L and Greater Missouri may provide wholesale distribution service. According to Applicants, these agreements provide that any change for wholesale distribution service requires a section 205 filing, so there is no risk of transaction-related costs flowing to such customers. Applicants also note that certain of their public utility affiliates have grandfathered, pre-SPP OATT transmission agreements pursuant to which they provide unbundled transmission service, which may not be changed without a separate section 205 filing.⁴⁸

(c) Wholesale Power Rates

45. Applicants' public utility affiliates make wholesale sales of power pursuant to market-based rate authority. In addition, Applicants note that Westar Generating has a Commission-approved power purchase agreement with affiliate Westar, by which Westar Generating sells its entire share of the capacity and associated energy of the State Line Facility to Westar at cost-based rates and allows Westar Generating to pass through the associated costs of the share. Applicants explain that their Hold Harmless Commitment will apply to the power purchase agreement.⁴⁹

46. Applicants state that Westar also provides full requirements electric service to customers at cost-based rates pursuant to a tariff and rate schedules with a cost-based generation formula rate on file with the Commission. Applicants specify that the Proposed Transaction will not result in any changes to the tariff, rate schedules, or formula rate protocols and that Applicants' Hold Harmless Commitment will apply to the tariff and rate schedules.⁵⁰

⁴⁷ *Id.* at 34-35.

⁴⁸ *Id.* at 36.

⁴⁹ *Id.* at 37.

⁵⁰ *Id.* at 37-38.

ii. Protest and Answers**(a) Hold Harmless Commitment**

47. In its protest, KEPCo makes several requests, one of which is for the Commission to condition the Proposed Transaction so that wholesale customers are no less protected than Applicants' retail customers. KEPCo believes that the provisions of the Merger Agreement are not limited to the rates of a particular jurisdiction in providing that the capital costs used to set any rates shall not increase. KEPCo expresses concern regarding potential rate impacts caused by Applicants' current capital structure, which KEPCo alleges is overly equitized, and which it alleges could result in higher capital costs. KEPCo requests that the Commission require a cap on the common equity ratio used to calculate rates based on pre-merger common equity levels.⁵¹

48. KEPCo argues that Applicants should not be able to recover costs associated with the transaction in Docket No. EC16-146-000 (2016 Transaction)⁵² and asks that the Commission prevent Applicants from recovering: (i) costs incurred prior to May 23, 2017; or (ii) any other costs connected with the previous transaction.⁵³

49. In addition, KEPCo requests that, because the Commission should evaluate each hold harmless commitment on a case-by-case basis, the Commission should direct Applicants to modify the definition of transaction and transition costs to be more specific, as described in its protest.⁵⁴ KEPCo similarly asks that the Commission require an indefinite Hold Harmless Commitment period, noting that Applicants provide no support for a five-year period as required by the Hold Harmless Policy Statement and that, in the context of the 2016 Transaction, Applicants previously agreed to an indefinite hold harmless commitment period.⁵⁵ KEPCo also requests that the Commission require a

⁵¹ Kansas Electric Power Cooperative, Inc., Protest at 12-14 (filed Oct. 31, 2017) (KEPCo Protest).

⁵² On July 11, 2016, Applicants submitted an application requesting authorization of a merger and disposition of assets in which Great Plains would acquire Westar. While the application was pending before the Commission, the Kansas Commission rejected the transaction on April 19, 2017. On July 20, 2017, Applicants filed a notice withdrawing the application for the 2016 Transaction, stating that they intended to seek Commission authorization for a new transaction, the instant Proposed Transaction.

⁵³ KEPCo Protest at 16-17.

⁵⁴ *Id.* at 17-20.

⁵⁵ *Id.* at 21-22.

compliance filing that describes the internal controls related to tracking, recording, and auditing merger-related costs and that Applicants provide to KEPCo an accounting of all merger-related costs.⁵⁶

50. According to Applicants, KEPCo's protest raises issues that are speculative and beyond the scope of this proceeding. Applicants argue that, because the Proposed Transaction involves no new debt and Holdco and its public utility operating companies will maintain separate capital structures, the Proposed Transaction is not expected to affect the capital structure of any relevant public utility operating company. Applicants also contend that KEPCo made no demonstration that rates were impacted by any change to Holdco's capital structure and that KEPCo's argument about a potential adverse effect on any relevant public utility operating company's wholesale cost-based rates is a vague allegation of future conditions. As such, Applicants believe that the Commission should reject KEPCo's request to implement caps on the common equity ratio of Holdco's capital structure.⁵⁷

51. Applicants disagree with KEPCo regarding whether wholesale hold harmless commitments should be no less protective than retail commitments. Applicants argue that KEPCo provides no support for this request and that the Commission has previously rejected similar arguments.⁵⁸

52. Applicants maintain that their Hold Harmless Commitment is consistent with recent Commission precedent. Nevertheless, Applicants clarify that transaction-related costs for purposes of their Hold Harmless Commitment include the following:

- securing appraisals, evaluations, and fairness opinions related to the Proposed Transaction;
- retaining strategic advisors, entering into confidentiality agreements, negotiating with interested parties, and conducting the competitive process to seek interest from other suitors;

⁵⁶ *Id.* at 22-24.

⁵⁷ Great Plains Energy Incorporated, Answer at 3-6 (filed Nov. 15, 2017) (Applicants Answer) (citing *Fortis Inc.*, 156 FERC ¶ 61,219 (2016), *order on clarification and reh'g*, 158 FERC ¶ 61,019 (2017)).

⁵⁸ *Id.* at 6-7 (citing *Wis. Energy Corp.*, 151 FERC ¶ 61,015 (2015)).

- structuring the Proposed Transaction, negotiating the structure and terms of the Proposed Transaction, and obtaining accounting and legal advice (including tax) on the structure of the Proposed Transaction;
- all due diligence-related matters related to the Proposed Transaction, including obtaining lien, judgment and similar searches related to the parties to the Proposed Transaction and their subsidiaries;
- preparing, reviewing and negotiating the documents effectuating the Proposed Transaction (e.g., the costs and expenses to transfer legal title of an asset (including the discharge of any existing liens; filings and recording charges; and the costs and charges of title agents, or assignment of a contract or permit), building permits, valuation fees, the merger agreement or purchase agreement and any related financing documents);
- internal labor costs of employees (including the reasonable allocated amounts for internal counsel) and the costs of external, third-party, consultants and advisors (including legal counsel and accountants), and vendors to evaluate bids for potential merger transactions, and once a merger candidate has been identified, to negotiate merger terms, to draft, negotiate and execute financing and legal contracts, and to secure regulatory approvals;
- obtaining shareholder approval (e.g., the costs of proxy solicitation and special meetings of shareholders) for the Proposed Transaction; defending against shareholder or other lawsuits related to the Proposed Transaction;
- professional service fees incurred to solicit, evaluate, negotiate and close the Proposed Transaction (e.g., fees for accountants, surveyors and title agents, structural, environmental and other engineers, and legal counsel); and
- installation, testing, environmental monitoring and set-up costs incurred to solicit, evaluate, negotiate and close the Proposed Transaction.⁵⁹

53. Applicants specify that none of these costs will be included in Commission-jurisdictional cost-based rates except where approved by the Commission on a showing that such costs are offset by transaction-related savings. Applicants also specify that Great Plains' transaction-related costs will be booked at the holding company level and

⁵⁹ *Id.* at 8-9.

will not be booked to utility accounts or reflected in utility account amounts in FERC Form No. 1. Westar's transaction-related costs will be booked to Account 426.5, which, while reported in Westar's FERC Form No. 1, is not included in Westar's transmission formula rate or its generation formula rate.⁶⁰

54. In addition, Applicants clarify that the following transition-related costs apply for purposes of the Hold Harmless Commitment:

- engineering studies needed for transition planning, whether those studies were conducted prior to and after closing the Proposed Transaction;
- employment retention payments, and severance payments other than those required to be made under change of control agreements;
- operational integration, including internal and third-party costs for organization, process, and technology integration planning, training, and execution;
- facilities and other integration costs, including the cost of temporary housing, travel, and permanently relocating employees;
- accounting and operating systems integration costs;
- systems training, including employee time and outside consultant fees;
- termination of duplicative leases, contracts, and operations;
- financing and related transaction costs and charges, including commitment and similar lenders' fees, to refinance existing obligations in order to achieve operational and financial synergies; and
- all external legal costs related to the foregoing.⁶¹

55. Applicants specify that transition-related costs will be allocated to Applicants' public utility operating companies based on expected savings, and the allocated transition-related costs will be booked either to a regulatory asset account or Account 426.5. Applicants note that, in either case, these transition-related costs will not

⁶⁰ *Id.* at 9.

⁶¹ *Id.* at 9-10.

be included in Commission-jurisdictional cost-based rates, consistent with their Hold Harmless Commitment.⁶²

56. Applicants further clarify that their Hold Harmless Commitment includes the transaction and transition costs related to both the Proposed Transaction and the 2016 Transaction.⁶³ Applicants specify that they commit to not include the impacts of Great Plains' equity issuances related to the 2016 Transaction in the capital structure for formula rate purposes.⁶⁴

57. Applicants point out that their five-year Hold Harmless Commitment period is consistent with Commission precedent, and they request that the Commission reject KEPCo's request for an indefinite Hold Harmless Commitment period.⁶⁵

58. Applicants reiterate their methods of tracking transaction and transition costs described in the Application. Applicants note that they separately track internal labor costs and that employees also separately track non-Proposed Transaction-related tasks. Westar records these separately tracked costs in a monthly journal entry in internally coded accounts, whereas Great Plains directly charges appropriate labor costs to certain project or accounting costs with its time-tracking system. These costs are subject to general accounting processes and to the same audit process as other internal controls over financial reporting.⁶⁶

59. In its answer, KEPCo believes that Applicants have not shown that KEPCo is protected from the Proposed Transaction's rate impacts.⁶⁷ In particular, KEPCo reiterates that Applicants' Hold Harmless Commitment is insufficient and results from the

⁶² *Id.* at 10.

⁶³ Applicants note, in response to KEPCo's protest, that "[w]hether a particular cost incurred in connection with the 2016 Transaction qualifies as a transaction or transition cost in this proceeding is not a function of timing but instead a function of whether such costs related to the Proposed Transaction or only related to the 2016 Transaction" *Id.* at 11, n.42.

⁶⁴ *Id.* at 11.

⁶⁵ *Id.* at 11-12.

⁶⁶ *Id.* at 13-14.

⁶⁷ Kansas Electric Power Cooperative, Inc., Answer at 2-3 (filed Nov. 30, 2017) (KEPCo Answer).

financing structure of the previously proposed, but abandoned, transaction.⁶⁸ KEPCo notes that Applicants did not provide the Commission with any information related to the effect of the post-merger structure on rates due to the financing of the Proposed Transaction, instead insisting that KEPCo's concerns are speculative. KEPCo points out that Applicants are the only parties to this proceeding that know how acquisition-related financing will affect rates and have changed their Hold Harmless Commitment to not address this concern.⁶⁹

60. KEPCo believes Applicants misread the Commission's precedent. KEPCo notes that its request here is for the Commission to condition the Proposed Transaction on Applicants' agreement that post-merger capital costs used to set rates will not increase as a result of the Proposed Transaction.⁷⁰

61. With respect to the 2016 Transaction, KEPCo notes that, while Applicants agree that costs related to transactions that are pursued, but not completed, should not be recovered from ratepayers, Applicants provide a vague explanation describing how Applicants will treat costs associated with 2016 Transaction for purposes of their Hold Harmless Commitment, but no enforceable commitment.⁷¹

(b) Formula Rate Protocols and Customer Service

62. KEPCo asks that the Commission direct Westar to make an additional compliance filing to temporarily extend the information exchange period in the transmission formula rate protocols and Generation Formula Rate protocol proceedings. KEPCo argues that KCP&L and Westar may have difficulty providing timely and complete responses to KEPCo's questions and KEPCO will need more time to analyze the utilities' accounting and treatment of transaction and transition costs during the merger transition period.⁷²

⁶⁸ *Id.* at 3-4.

⁶⁹ *Id.* at 4-5.

⁷⁰ *Id.* at 5 (citing *Fortis Inc.*, 156 FERC ¶ 61,219).

⁷¹ *Id.* at 6-7.

⁷² KEPCo Protest at 26.

KEPCo also raises concerns about the quality of customer service that it will receive from the combined company.⁷³

63. Applicants note that Westar and other transmission owners in SPP recently updated their formula rate protocols, which were accepted by the Commission, and that KEPCo actively participated in that proceeding. As a result, Applicants believe that KEPCo's request for a longer period of time to review the formula rate inputs should be rejected as beyond the scope of this proceeding and should instead be raised in the formula rate context.⁷⁴ Applicants also believe that, if any actual customer service issues materialize, KEPCo can raise those concerns in an FPA section 206 complaint or in the formula rate protocol process.⁷⁵

64. KEPCo argues that its request to temporarily extend the time period to review Westar's formula rate protocols is not a collateral attack on a prior Commission order. KEPCo notes, instead, that the Commission has broad authority under FPA section 203 to condition transactions and that its request is specific to the new circumstances created by the Proposed Transaction.⁷⁶

(c) GFR Agreement

65. KEPCo notes concerns related to a formula rate requirements agreement (GFR Agreement) as well. In particular, KEPCo states that the GFR Agreement was meant to be a long-term agreement with Westar, a financially stable utility, and that certain provisions were built into the GFR Agreement to ensure such financial stability. For example, KEPCo notes that Westar may, without KEPCo's prior written consent "transfer or assign [the GFR Agreement] to any Person or entity succeeding by merger or by acquisition to all or substantially all of the assets of Westar Energy, where such Person's or entity's creditworthiness is equal to or higher than that of Westar" KEPCo points out that, in contrast, Great Plains' credit ratings are currently several notches below Westar's. KEPCo requests that, if Holdco is ultimately less creditworthy post-merger than Westar, the Commission require either Applicants to obtain KEPCo's

⁷³ *Id.* at 31.

⁷⁴ Applicants Answer at 16-17.

⁷⁵ *Id.* at 18.

⁷⁶ KEPCo Answer at 7-8.

prior written consent pursuant to the GFR Agreement or Westar to agree to adopt modified open season provisions for the GFR Agreement.⁷⁷

66. As to the GFR Agreement, Applicants believe that KEPCo's arguments should be dismissed as beyond the scope of the proceeding and that KEPCo has not met its burden in showing that a modification to the GFR Agreement in this proceeding is in the public interest.⁷⁸ Applicants also point out that the GFR Agreement provides KEPCo with flexibility to diversify its power supply portfolio, that KEPCo retains its FPA section 206 rights under the terms of the GFR Agreement, and that Applicants commit to hold customers like KEPCo harmless from the rate effects of the Proposed Transaction.⁷⁹

(d) Wolf Creek Facility

67. KEPCo also asserts that, because Westar and KCP&L together own 94 percent of the Wolf Creek Generating Station (Wolf Creek Facility),⁸⁰ the Proposed Transaction alters the bargained-for relationship KEPCo sought as the minority owner in the Wolf Creek Facility. KEPCo believes that the Wolf Creek Facility may be retired prematurely without KEPCo's input and that KEPCo would not be able to replace this capacity except through the GFR Agreement, which does not permit KEPCo to acquire new resources to replace any shutdown capacity. KEPCo asks that, as a result of changed circumstances, the Commission condition authorization of the Proposed Transaction on a commitment by Applicants to allow KEPCo to replace its share of the capacity of the Wolf Creek facility, if it is retired, through third-party acquisitions.⁸¹

68. With respect to the Wolf Creek Facility, Applicants point out that KEPCo's six percent ownership interest in the Wolf Creek Facility is unaffected by the Proposed Transaction and that concerns over a retirement of the Wolf Creek Facility are misplaced.

⁷⁷ KEPCo Protest at 26-28.

⁷⁸ Applicants Answer at 14 (citing *United Gas Pipe Line Co. v. Mobile Gas. Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956)).

⁷⁹ *Id.* at 14-15. See also 16 U.S.C. § 824e (2012).

⁸⁰ KEPCo explains that the Wolf Creek Facility is a 1,166 MW nuclear generating station located in Coffey County in eastern Kansas. KEPCo Protest at 10.

⁸¹ *Id.* at 28-30.

Applicants suggest that KEPCo can pursue relief from the GFR Agreement provisions, if appropriate, in an FPA section 206 proceeding.⁸²

iii. Commission Determination

69. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on rates. We find that Applicants' Hold Harmless Commitment, as modified by Applicants' Answer, is consistent with the Hold Harmless Policy Statement.⁸³ We are not persuaded by KEPCo's speculative arguments that Applicants' Hold Harmless Commitment requires further modification beyond what is required by the Hold Harmless Policy Statement without further evidence that the Proposed Transaction requires additional ratepayer protections.⁸⁴

70. We accept the Hold Harmless Commitment and interpret it to apply to all transaction-related costs, including costs related to consummating the Proposed Transaction incurred prior to the consummation of the Proposed Transaction or in the five years after the Proposed Transaction's consummation.⁸⁵

71. As noted above, Applicants state that the Hold Harmless Commitment includes the transaction and transition costs related to both the Proposed Transaction and the 2016 Transaction. We note, however, that the Commission's policy is that costs related to transactions that are pursued but never completed should not be recovered from ratepayers as part of a hold harmless commitment; rather, these costs are subject to the Commission's general ratemaking principles under FPA sections 205 and 206, and the Commission's accounting precedent.⁸⁶ Accordingly, because the 2016 Transaction was pursued but never completed, costs related to the 2016 Transaction should not be included as part of the Hold Harmless Commitment and cannot be recovered from ratepayers pursuant to it. The costs related to the 2016 Transaction are instead subject to the Commission's ordinary ratemaking principles under FPA sections 205 and 206. We also acknowledge Applicants' commitment to not include the impacts of Great Plains' equity issuances related to the 2016 Transaction in the capital structure for formula rate purposes.

⁸² Applicants Answer at 17-18.

⁸³ See *Fortis Inc.*, 156 FERC ¶ 61,219 at P 80.

⁸⁴ See *NorthWestern Corp.*, 117 FERC ¶ 61,100, at P 40 (2006).

⁸⁵ Hold Harmless Policy Statement, 155 FERC ¶ 61,189 at P 24.

⁸⁶ *Id.* P 58.

72. The Commission has established that, where applicants make hold harmless commitments in the context of FPA section 203 transactions, in order to recover transaction-related costs, applicants must demonstrate offsetting benefits at the time they apply to recover those costs. The Commission has clarified its procedures for recovery of such costs under sections 203 and 205⁸⁷ of the FPA.⁸⁸ Consistent with those clarifications, and given the commitment by Applicants to hold transmission, wholesale distribution, and wholesale power customers harmless from transaction-related costs, if Applicants seek to recover transaction-related costs incurred prior to the consummation of the Proposed Transaction or in the five years after the consummation of the Proposed Transaction, then Applicants must make that filing in a new FPA section 205 docket⁸⁹ and submit that same filing as a concurrent informational filing in this FPA section 203 docket.⁹⁰ The Commission will notice the new FPA section 205 filing for public comment.

73. In the FPA section 205 proceeding, the Commission will determine first, whether Applicants have demonstrated offsetting savings, supported by sufficient evidence, to customers served under Commission jurisdictional rate schedules such that recovery of transaction-related costs is consistent with the Hold Harmless Commitment and, second, whether the resulting new rate is just and reasonable in light of all the other factors underlying the proposed new rate. In the FPA section 205 filing, Applicants must: (1) specifically identify the transaction-related costs they are seeking to recover; and (2) demonstrate that those costs are exceeded by the savings produced by the Proposed Transaction. Applicants must show that the proposed rate is just and reasonable in addition to providing appropriate evidentiary support, such as reasonable documentation and estimates of the costs avoided, demonstrating that transaction-related costs have been offset by transaction-related savings in order to recover those transaction-related costs and comply with the Hold Harmless Commitment. Those savings must be realized prior to, or concurrent with, any authorized recovery of transaction-related costs, and cannot be based on estimates or projections of future savings, but must be based on a demonstration of actual transaction-related savings realized by jurisdictional customers.⁹¹ The

⁸⁷ 16 U.S.C. § 824d (2012).

⁸⁸ *Exelon Corp.*, 149 FERC ¶ 61,148, at PP 106-09 (2014).

⁸⁹ The Commission will not authorize the recovery of transaction-related costs in an annual informational filing under existing formula rates.

⁹⁰ Upon receipt, the Commission will not act on or notice the concurrent informational filing.

⁹¹ See *Exelon Corp.*, 149 FERC ¶ 61,148 at P 107 (citing *Audit Report of National Grid, USA*, Docket No. FA09-10-000, at 55 (Feb. 11, 2011)); see also *Ameren Corp.*, (continued ...)

Commission will consider rates not to be “just and reasonable” if they include recovery of costs subject to a hold harmless commitment made in connection with an FPA section 203 application and if applicants fail to show offsetting savings due to the transaction.⁹²

74. The Commission will be able to monitor Applicants’ Hold Harmless Commitment under its authority under section 301(c) of the FPA⁹³ and the books and records provision of the Public Utility Holding Company Act of 2005 (PUHCA 2005), if applicable.⁹⁴ Moreover, the commitment is fully enforceable based on the Commission’s authority under section 203 of the FPA.

75. We are not persuaded by KEPCo’s arguments related to the formula rate protocols and customer service. As Applicants note, the Commission recently reviewed and accepted Westar’s formula rate protocols in Docket No. ER14-2852-000, *et al.*, proceedings in which KEPCo participated.⁹⁵ Further, customers will have the opportunity to scrutinize any recovery of transaction-related costs subject to Applicants’ Hold Harmless Commitment before any such costs are included in Commission jurisdictional rates.⁹⁶ We also note that the Proposed Transaction will not limit the right of customers, including KEPCo, to file a complaint pursuant to FPA section 206.

76. We are also not persuaded by the arguments raised by KEPCo related to the GFR Agreement. KEPCo’s argument depends on whether Holdco is less creditworthy than Westar, yet there is no evidence in the record that suggests Holdco will be less creditworthy than Westar following the Proposed Transaction. Further, even if we assume Holdco is less creditworthy than Westar, KEPCo admits that the GFR Agreement provides that written consent is required before the GFR Agreement can be transferred or assigned to any person or entity where such person’s or entity’s creditworthiness is less than Westar’s. The Commission has explained that approval of proposed transactions

140 FERC ¶ 61,034, at PP 36-37 (2012).

⁹² *Exelon Corp.*, 149 FERC ¶ 61,148 at P 107.

⁹³ 16 U.S.C. § 825(c) (2012).

⁹⁴ 42 U.S.C. § 16451 *et seq.* (2012).

⁹⁵ *See Westar Energy, Inc.*, 153 FERC ¶ 61,143 (2015); *Westar Energy, Inc.*, 150 FERC ¶ 61,203 (2015); *Westar Energy, Inc.*, Docket No. ER14-2852-002 (Mar. 23, 2016) (delegated letter order).

⁹⁶ *Fortis Inc.*, 156 FERC ¶ 61,219 at P 84.

does not affect any other approvals that may be necessary, such as consent by a party to a contract.⁹⁷

77. We are also not persuaded by KEPCO's arguments related to the Wolf Creek Facility. First, we note that the Proposed Transaction will not change KEPCO's ownership interest in the Wolf Creek Facility. After the Proposed Transaction closes, KEPCO will remain a minority owner of the facility. Second, there is no evidence in the record that the Wolf Creek Facility will be retired as a result of the Proposed Transaction. KEPCO's arguments about the Wolf Creek facility are speculative and go beyond the scope of this proceeding.⁹⁸

d. Effect on Regulation

i. Applicants' Analysis

78. Applicants explain that the Proposed Transaction will not result in a regulatory gap or diminish federal or state regulatory authority over any jurisdictional affiliates of Great Plains or Westar. According to Applicants, following the Proposed Transaction, Applicants and their jurisdictional affiliates and assets will remain subject to the same jurisdiction of the Commission under the FPA as they currently are.⁹⁹

79. Applicants note that KCP&L and Westar will seek approval of the Proposed Transaction from the Kansas Commission and that KCP&L and Greater Missouri will seek approval of the Proposed Transaction from the Missouri Commission. Applicants

⁹⁷ *Am. Elec. Power Serv. Corp.*, 107 FERC ¶ 61,209, at P 18 (2004) (approval of proposed transaction does not affect any other necessary approvals or contractual disputes between parties); *Midwest Generation, LLC*, 107 FERC ¶ 61,137, at P 17 (2004) ("Our determination that the proposed transaction is consistent with the public interest does not affect any other approvals necessary to complete the transaction, such as approval by a State commission, any necessary consent from any party to a contract, or any required PJM approval."); *Commonwealth Atl. Ltd. P'ship*, 97 FERC ¶ 61,375, at P 32 (2001) (approving proposed transaction that would result in change in upstream ownership of a generation facility and noting that Commission approval of the application did not affect any other necessary approvals, such as necessary consent by any party to a contract).

⁹⁸ *Dominion Energy Brayton Point, LLC*, 144 FERC ¶ 61,139, at P 49 (2013) (agreeing that assertions concerning future operations of a facility are speculative and go beyond the scope of the proceeding).

⁹⁹ Application at 39.

explain that they will have obtained approval from both state commissions prior to consummating the Proposed Transaction. Applicants point out that the Proposed Transaction will have no effect on the Kansas Commission's regulation of KCP&L and Westar or the Missouri Commission's regulation of KCP&L and Greater Missouri. Accordingly, Applicants state that the Proposed Transaction will have no adverse effect on regulation.¹⁰⁰

ii. Commission Determination

80. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap.¹⁰¹ As to whether a proposed transaction will have an effect on state regulation, the Commission explained in the Merger Policy Statement that it ordinarily will not set the issue of the effect of a proposed transaction on state regulatory authority for a trial-type hearing where a state has authority to act on the proposed transaction. However, if the state lacks this authority and raises concerns about the effect on regulation, the Commission may set the issue for hearing and it will address such circumstances on a case-by-case basis.¹⁰² Based on Applicants' representations, we find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. Finally, we note that no party alleges that regulation, state or federal, would be impaired by the Proposed Transaction, and no state commission has requested that the Commission address the issue of the effect on state regulation.

e. Cross-Subsidization

i. Applicants' Analysis

81. Applicants verify that, based on the facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission

¹⁰⁰ *Id.*

¹⁰¹ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

¹⁰² *Id.*

facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.¹⁰³

ii. Commission Determination

82. Based on Applicants' representations,¹⁰⁴ we find that the Proposed Transaction will not result in the cross-subsidization of a non-utility associate company by a utility company, or in a pledge or encumbrance of utility assets for the benefit of an associate company. We note that no party has argued otherwise.

3. Other Considerations

83. Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215.¹⁰⁵ Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, North American Electric Reliability Corporation, or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

84. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Proposed Transaction is based on such examination

¹⁰³ Application, Ex. M at 3-4.

¹⁰⁴ *Id.*

¹⁰⁵ 16 U.S.C. § 824(o) (2012).

ability. In addition, applicants subject to PUHCA 2005 are subject to the record-keeping and books and records requirements of PUHCA 2005.

85. Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.¹⁰⁶ To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

The Commission orders:

(A) The Proposed Transaction is hereby authorized, as discussed in the body of this order.

(B) Applicants must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever not pending or may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(G) Applicants shall notify the Commission within 10 days of the date on which the Proposed Transaction is consummated.

¹⁰⁶ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005). See 18 C.F.R. § 35.42 (2017).

(H) If Applicants seek to recover transaction-related costs through their transmission, wholesale distribution, or wholesale power rates, they must make a new FPA section 205 filing and submit concurrently an informational filing in the instant FPA section 203 docket. In the FPA section 205 filing, Applicants must: (1) specifically identify the transaction-related costs they are seeking to recover; and (2) demonstrate that those costs are exceeded by the savings produced by the Proposed Transaction.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

