

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Midwest Energy Consumers Group,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. EC-2017-0107
	)	
Great Plains Energy Incorporated	)	
	)	
Respondent.	)	
	)	

**SECOND AMENDED COMPLAINT**

COMES NOW the Midwest Energy Consumers Group (“MECG”) and for its Second Amended Complaint against Great Plains Energy Incorporated (“GPE” or “Company”) states as follows. This Complaint pleads alternative theories for Commission jurisdiction. First, as in its First Amended Complaint, MECG alleges that GPE is purchasing an affiliate of a Missouri public utility (Westar Generating, Inc.). Second, MECG alleges that GPE is purchasing Westar Energy, Inc., which is itself a public utility within the meaning of the GPE Settlement. While the Commission has already conducted an oral argument regarding its jurisdiction under the GPE settlement, MECG points out that 4 CSR 240-2.070(9) contemplates an answer by the Respondent. As such, MECG advises that the Commission refrain from issuing its order regarding its jurisdiction until such time as it has allowed for Respondent to file its answer.

**INTRODUCTION**

1. MECG files this Complaint concerning GPE’s ongoing violation of the Missouri Public Service Commission’s (“Commission”) *Order Approving Stipulation and Agreement and Closing Case* in Case No. EM-2001-464. In that case, the

Commission authorized the corporate restructuring of Kansas City Power & Light Company (“KCPL”) and the creation of the GPE holding company conditioned upon certain commitments made by GPE. Relevant to this action, GPE agreed to seek Commission approval of any acquisition of a public utility or an affiliate having controlling interest in a public utility. As announced on May 31, 2016, GPE proposes to acquire Westar Energy, Inc., an affiliate of a public utility.

2. “MECG” is an incorporated entity created for the purpose of representing large commercial and industrial customers before the Public Service Commission and in the General Assembly. The street address for MECG is 308 E. High Street, Suite 204, Jefferson City, MO 65101.

3. GPE is a Missouri corporation and the publicly traded holding company. GPE is the sole shareholder of the stock of KCPL and KCP&L Greater Missouri Operations Company (“GMO”), both regulated public utilities in Missouri. GPE was established on February 26, 2001. GPE’s business address is 1200 Main Street, Kansas City, Missouri 64105. The address of GPE’s registered agent, CSC-Lawyers Incorporating Service Company, is 221 Bolivar Street, Jefferson City, Missouri 65101.

### **JURISDICTION**

4. The Commission has jurisdiction of this matter under sections 386.390.1 RSMo, Commission Rule 4 CSR 240-2.070(4), and the Commission’s *Order Approving Stipulation and Agreement and Closing Case* in Case No. EM-2001-464.

5. Section 386.390.1 RSMo authorizes the Commission to hear and determine complaints, providing:

Complaint may be made by the Commission of its own motion, or by the public counsel or any corporation or person, ... by petition or complaint in

writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission[.]<sup>1</sup>

6. Commission Rule 4 CSR 240-2.070(4) in relevant portions describes the information a complaint should contain:

(4) Formal Complaints. A formal complaint may be made by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, or public utility, in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission. The formal complaint shall contain the following information:

- (A) The name and street address of each complainant and, if different, the address where the subject utility service was rendered;
- (B) The signature, telephone number, facsimile number, and email address of each complainant or their legal representative, where applicable;
- (C) The name and address of the person, corporation, or public utility against whom the complaint is being filed;
- (D) The nature of the complaint and the complainant's interest in the complaint, in a clear and concise manner;
- (E) The relief requested;
- (F) A statement as to whether the complainant has directly contacted the person, corporation, or public utility about which complaint is being made;
- (G) The jurisdiction of the commission over the subject matter of the complaint; and
- (H) If the complainant is an association, other than an incorporated association or other entity created by statute, a list of all its members.

7. MECG's interest in this complaint is related to its concern that Great Plains does not intend to seek Commission approval of the Westar Energy, Inc. transaction. Such approval is required by the condition adopted by the Commission in

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<sup>1</sup> MECG notes that it is not required to provide a listing of 25 consumers or purchasers as this complaint does not concern "the reasonableness of any rates or charges" of a public utility.

Case No. EM-2001-0464. As such, Missouri ratepayers will not be protected from the detriment that is inherent in that transaction.

8. Complainant states that it has not directly contacted respondent regarding the matters addressed in this complaint.

### **COUNT ONE**

9. In 2001, KCPL sought Commission approval to reorganize with KCPL becoming a wholly-owned subsidiary of a newly formed holding company – Great Plains Energy. In the *First Amended Stipulation and Agreement* (“GPE Settlement”), GPE agreed to seek Commission approval for certain transactions as follows:

#### **7. Prospective Merger Conditions**

**GPE agrees that it will not, directly or indirectly, acquire or merge with a public utility or the affiliate of a public utility, where such affiliate has a controlling interest in a public utility unless GPE has requested prior approval for such a transaction from the Commission and the Commission has found that no detriment to the public would result from the transaction.** In addition, GPE agrees that it will not allow itself to be acquired by a public utility or the affiliate of a public utility, where such affiliate has a controlling interest in a public utility, unless GPE has requested prior approval for such a transaction from the Commission and the Commission has found that no detriment to the public would result from the transaction. (emphasis added).<sup>2</sup>

10. In its *Order Approving Stipulation and Agreement and Closing Case*, and relying upon the authority provided by Section 393.250.3, the Commission imposed the foregoing condition to its approval of the KCPL reorganization. Specifically, Ordered Paragraph 4 of that Order provides:

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<sup>2</sup> *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*, Case No. EM-2001-464, Order Approving Stipulation and Agreement and Closing Case, EFIS Doc. No. 37; *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*, Case No. EM-2001-464, First Amended Stipulation and Agreement, EFIS Doc. No. 26, p. 13.

4. That Kansas City Power & Light Company is authorized to reorganize as described in its application referred to in Ordered Paragraph 2, above, **subject to the conditions contained in the First Amended Stipulation and Agreement referred to in Ordered Paragraph 3, above.** Kansas City Power & Light Company is authorized to take all necessary and lawful actions to effect and consummate the reorganization herein approved. (emphasis added).

11. In pertinent part, Section 386.020(42) defines a “public utility” an “electrical corporation”

12. Section 386.020(15) defines an “electrical corporation” as a “corporation, company, . . . owning, operating, controlling or managing any electric plant.”

13. Section 386.020(14) defines “electric plant” as “real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing or electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.”

14. Westar Generating, Inc. is an electrical corporation owning and using electric plant in the state of Missouri. Specifically, Westar Generating, Inc. owns 40% of the State Line Combined Cycle Plant in Joplin, Missouri. As an electrical corporation, Westar Generating, Inc. is also a public utility. Indeed, the Commission has granted Westar Generating, Inc. a Certificate of Convenience and Necessity authorizing it to “construct, install, own, operate, control, manage and maintain electric facilities in Jasper County, Missouri.”<sup>3</sup>

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<sup>3</sup> See, *In the Matter of the Application of The Empire District Electric Company*, Case Nos. EM-2000-145 and EA-2000-153, (*Order Approving Application to Transfer Assets and Order Granting Certificate of Convenience and Necessity*, issued May 26, 2000) 9 Mo.P.S.C.3d 136.

15. 4 CSR 240-14.010(6)(A) defines an affiliate as “any person who, directly or indirectly, controls or is controlled by or is under common control with a public utility.”

16. Given the definition in 4 CSR 240-14.010(6)(A), Westar Energy, Inc. is an affiliate of Westar Generating, Inc.

17. According to the terms of the 2001 *First Amended Stipulation and Agreement*, GPE agreed to seek Commission approval and show that no detriment to the public would result from the acquisition of a public utility or the affiliate of a public utility. While proposing to acquire Westar Energy, an affiliate of a public utility, GPE has refused to seek Commission approval for this acquisition in order to allow the Commission to find that no detriment to the public would result from the transaction.

18. In fact, on May 31, 2016, Terry Bassham, CEO of GPE, announced to the Commission and OPC by email that GPE and Westar Energy, Inc., had entered into an agreement for GPE to acquire the Topeka, Kansas-based Westar Energy, Inc. GPE indicated it did not intend to seek Missouri Commission approval for the acquisition.

19. By choosing not to seek Commission approval of the pending Westar Energy, Inc. transaction, GPE has violated the Commission’s order approving the *First Amended Stipulation and Agreement* and the terms contained therein.

20. MECG requests that the Commission order GPE to comply with the *Order Approving Stipulation and Agreement and Closing Case* and the terms of the *First Amended Stipulation and Agreement* in EM-2001-464 by seeking Commission approval for its proposed Westar Energy, Inc. transaction.

## **COUNT TWO**

21. MECG incorporates provisions 1 through 10 as if fully set forth herein.
22. On May 31, 2016, GPE announced that it had entered into a definitive agreement for the purchase of Westar Energy, Inc.
  22. Westar Energy, Inc. is a public utility within the meaning of the GPE Settlement.
  23. According to the terms of the 2001 *First Amended Stipulation and Agreement*, GPE agreed to seek Commission approval and show that no detriment to the public would result from the acquisition of a public utility or the affiliate of a public utility. While proposing to acquire Westar Energy, a public utility, GPE has refused to seek Commission approval for this acquisition in order to allow the Commission to find that no detriment to the public would result from the transaction.
  24. In fact, on May 31, 2016, Terry Bassham, CEO of GPE, announced to the Commission and OPC by email that GPE and Westar Energy, Inc., had entered into an agreement for GPE to acquire the Topeka, Kansas-based Westar Energy, Inc. GPE indicated it did not intend to seek Missouri Commission approval for the acquisition.
  25. By choosing not to seek Commission approval of the pending Westar Energy, Inc. transaction, GPE has violated the Commission's order approving the *First Amended Stipulation and Agreement* and the terms contained therein.
  26. MECG requests that the Commission order GPE to comply with the *Order Approving Stipulation and Agreement and Closing Case* and the terms of the *First Amended Stipulation and Agreement* in EM-2001-464 by seeking Commission approval for its proposed Westar Energy, Inc. transaction.

WHEREFORE, MECG respectfully requests that the Commission: 1) provide statutory notice of this complaint; 2) order that GPE answer this complaint; 3) order a procedural schedule providing for discovery and the pre-filing of testimony; 4) convene a hearing on this complaint and, after hearing; 5) determine that GPE has violated a Commission order as alleged herein and thereafter 6) direct GPE to comply with the Commission's prior order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Woodsmall". The signature is stylized with a large initial "D" and a cursive "W".

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David L. Woodsmall, MBE #40747  
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ATTORNEY FOR THE MIDWEST ENERGY  
CONSUMERS' GROUP



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to:

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David L. Woodsmall

Dated: December 28, 2016