

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

In the Matter of the Application of KCP&L)
Greater Missouri Operations Company for)
Approval of a Special Rate for a Facility Whose) File No. EO-2019-0244
Primary Industry is the Production or)
Fabrication of Steel in and Around Sedalia,)
Missouri)

MOTION TO QUASH DEPOSITION

COMES NOW the Midwest Energy Consumers Group (“MECG”), by and through counsel, and for its Motion to Quash Notice of Deposition, respectfully states as follows:

1. On July 12, 2019, KCP&L Greater Missouri Operations Company (“GMO”) filed its Application in the above captioned docket. On July 22, 2019, MECG timely filed its Application to Intervene in this docket.

2. On the following day, at a properly noticed procedural conference, the Commission considered the pending MECG Application to Intervene. At that time, under the mistaken belief that an application to intervene from a corporation must contain a list of specific customers, GMO expressed concern with the MECG Application to Intervene.¹ Relying on Commission Rule 20 CSR 4240-2.075, and recognizing that MECG is an “entity created under statute”, MECG informed the Commission that it was not representing the interests of any specific GMO customers, but rather was intervening as a separate incorporated entity.²

¹ Noticeably, Staff never expressed any reservation regarding MECG’s Application to Intervene.
² 20 CSR 4240-2.075 provides the requirements for an Application to Intervene. Noticeably, while requiring an identification of members for an association, a similar requirement is not needed for a corporation. “If any applicant is an association, other than an incorporated association or other entity created by statute, a list of all of its members.

GMO: Mr. Woodsmall, what customer does MEG – CEG represent in this matter? What group?

MECG: MECG is an incorporated entity representing the interests of large commercial and industrial customers. The Commission has found repeatedly in the past that incorporated entities don't have to reveal who their members are.

GMO: We'd like to know who your customer is that you represent is?

MECG: We've never -- all the customers?

GMO: Yeah. Who you're representing in this particular case that has an interest in our application?

MECG: MECG, the Incorporated entity.

GMO: Is it Wal-Mart? Is it someone -

MECG: None of them. MECG. I do not represent Wal-Mart. I represent MECG Incorporated Association. They are an entity of themselves.

GMO: And does GMO have a customer that you're representing?

MECG: No. It's just like Renew Missouri, anybody else. You don't have to be a customer to have an interest in a case. The Commission has found that repeatedly. MECG is an incorporated entity, incorporated solely for the in-- to represent the interest of large commercial, industrial customers. The Commission has ruled on this many times involving MIEC.³

Subsequently, after further consultation with its client, counsel for GMO withdrew its concern. "I was able to reach my client, and we do not have an objection to the application for intervention."⁴

3. GMO's willingness to drop its objection was appropriate. GMO recognized, as Staff now seems unable to do, that corporations like MECG do not have members. For this reason, the Commission's rule on interventions recognizes a clear

³ Tr. 6-7.

⁴ Tr. 10.

distinction between associations, which are required to list their members, and corporations that do not.

4. Recently, MECG has warned the Commission about the “cozy relationship” that has developed between Staff and KCPL / GMO.⁵ Consistent with that cozy relationship, Staff now seeks to take up the fight on behalf of GMO.⁶ Specifically, just days after MECG dared to object to the latest settlement between Staff and KCPL / GMO, Staff issued a subpoena for MECG to provide a witness to testify on “the identity of the large commercial and industrial electricity users whose interests MECG claims it is representing” – the exact information that GMO was seeking during at the July 23 procedural conference. Furthermore, the coziness of Staff’s relationship with GMO is also demonstrated by the fact that the Staff subpoena attempts to elicit the exact same information that GMO is seeking in data requests issued on September 23.⁷ As in so many recent cases, Staff and KCPL / GMO are moving in lockstep. In this case, punish any intervenor that dares to point out to the Commission the unlawful nature of their latest settlement.

5. Staff fails to recognize that MECG is a separate legal entity created under Missouri statutes. As its Articles of Incorporation indicate, MECG was created for the purpose of representing “commercial and industrial customers regarding energy

⁵ See, MECG Reply Brief, Case No. EC-2019-0200, at pages 16-19.

⁶ In fact, one day after MECG objected to the latest Staff settlement with KCPL / GMO, Staff went so far as to ask the Commission to dismiss MECG as a party to this proceeding and quash MECG’s objection. There, the Staff, apparently dissatisfied with the positions taken by MECG, suggests that MECG is not actually representing “the interests of large commercial and industrial users of electricity,” but is simply the “alter ego” of MECG’s counsel. As MECG will point out in a timely filed response to that motion, if Staff believes that MECG is acting in a manner inconsistent with its corporate charter, then Staff’s remedy is to ask the Secretary of State to rescind the MECG corporate status. Short of that, Staff’s motion is simply an indication of its belief that it understands how to represent large commercial and industrial interests better than MECG. At this point in time, however, the State of Missouri has concluded differently.

⁷ Exhibit A.

matters.”⁸ As the Missouri Secretary of State website indicates, MECG is a nonprofit corporation in good standing established for that purpose.⁹ In this regard, therefore, MECG is statutorily authorized to represent the interests of all commercial and industrial customers and not the interest of any specific GMO customer.

6. The nature of MECG’s interest in this case should not be surprising to anyone. In its Application to Intervene in this matter, MECG candidly informed the Commission that “Midwest Energy Consumers Group (“MECG”) is an incorporated association representing the interests of large commercial and industrial users of electricity.” Based upon that interest, the Commission granted the MECG application to intervene.

7. Unlike Staff’s current assertion that corporations must represent the interests of specific utility customers, the Commission has routinely allowed interventions for corporations and entities that do not represent any customers. Specifically, the Commission has taken a liberal approach to interventions and allowed utilities to intervene in dockets of other utilities even though they have no direct interest in the case and do not represent any specific customer. Still again, entities like Sierra Club, Renew Missouri and Consumers Council of Missouri do not represent specific utility customers, but are allowed to intervene in utility dockets based upon the purposes contained in their corporate charters. Similarly, while MECG does not represent any specific GMO customers, the state-approved purpose in its Articles of Incorporation provides the basis for it to participate in Missouri utility cases.

⁸ Exhibit B.

⁹ Exhibit C.

8. The Staff subpoena to depose an MECG witness is designed simply to harass MECG for daring to object to the latest settlement between Staff and KCPL / GMO. Rule 57.03(e) of the Missouri Rules of Civil Procedure allows the Commission to terminate a deposition that “is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party.” Staff’s subpoena is not designed to elicit any information relevant to the immediate proceeding (the review of an application for a tariff and special contract rate), but is simply designed to punish an intervenor that has the audacity to question the latest settlement between Staff and KCPL / GMO. Given that Staff’s subpoena was submitted in bad faith and fails to recognize the basic legal concept that a corporation is a lawful entity and is permitted to intervene as a separate entity under Commission rule, the Commission should quash Staff’s subpoena.

9. On September 27, 2019, Staff filed a motion asking that the presiding officer attend the scheduled October 2 deposition. Later on that same day, the Commission issued its order requiring responses by September 30, 2019. As detailed in this pleading, MECG believes that, despite its statutory obligation to balance the interests of utilities and customers, Staff’s deposition is not designed to further Staff’s statutory obligation, but instead is designed to punish an intervenor that is willing to point out Staff’s cozy relationship with KCPL / GMO and dares to question the latest settlement between Staff and the utility it is supposed to be regulating. Given that Staff’s deposition is “being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party”, MECG asserts that the Commission should quash Staff’s subpoena. That said, however, in the event that the Commission seeks to condone the bad faith conduct of its Staff, MECG has no objection with the presiding officer being

present at the deposition. The attendance of the presiding officer will allow the opportunity for MECG to demonstrate the candid approach that MECG has taken in presenting its interests to the Commission.

WHEREFORE, MECG respectfully requests that the Commission quash the Notice of Deposition issued by Staff on September 25, 2019.

Respectfully submitted,

 /s/ David Woodsmall
David L. Woodsmall, MBE #40747
308 East High Street, Suite 204
Jefferson City, Missouri 65101
(573) 797-0005
david.woodsmall@woodsmalllaw.com

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 all parties by their attorneys of record as provided by the Secretary of the Commission.

 /s/ David Woodsmall
David L. Woodsmall

Dated: September 30, 2019

EXHIBIT A
(GMO DATA REQUESTS)



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed:10/8/2019

Question No. : KCPL-1.1

Please provide the names of each director on the board of directors of MECG and their affiliation to a large commercial or industrial interest.

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed: 10/8/2019

Question No. : KCPL-1.2

Provide a copy of any written guidelines approved by the MECG Board of Directors or its officers for the representation of large commercial and industrial interests in proceedings before regulatory agencies.

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed: 10/8/2019

Question No. : KCPL-1.3

Please verify that the current President and Secretary of MECG is David Woodsmall, and there are no other officers of MECG. If there are other officers of MECG, please provide the names of each officer of MECG.

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed: 10/8/2019

Question No. : KCPL-1.4

Please provide the name of each large commercial and industrial user of electricity that has authorized MECG to represent its interests in this proceeding (Case No. EO-2019-0244) and documentation from each such entity substantiating such authorization.

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed:10/8/2019

Question No. : KCPL-1.5

Please provide the name of each large commercial and industrial user of electricity that has agreed to pay, or has actually paid, MECG to represent its interests in this proceeding (Case No. EO-2019-0244) and documentation from each such entity substantiating such agreement or payment.

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed: 10/8/2019

Question No. : KCPL-1.6

Please provide the name of each large commercial and industrial user of electricity whom MECG (including any agent or representative of MECG) has solicited to either (1) represent its interests in this proceeding (Case No. EO-2019-0244), or (2) pay to represent its interest in this proceeding (Case No. EO-2019-0244). Please provide documentation substantiating each such solicitation as well as all responses to each such solicitation.

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed: 10/8/2019

Question No. : KCPL-1.7

Under MECG's articles of incorporation, MECG has no members (see attached), yet on MECG's website (<https://midwestecg.com/participating-members>) it lists a number of "participating members".

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed:10/8/2019

Question No. : KCPL-1.7.1

Please explain the meaning of "participating members" as it is used on the MECG website.

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed: 10/8/2019

Question No. : KCPL-1.7.2

Do "participating members" of MECG vote on actions or positions taken by MECG before the Missouri Public Service Commission?

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed:10/8/2019

Question No. : KCPL-1.7.3

Will each "participating member" of MECG vote in determining the position(s) taken by MECG in this procedure (Case No. EO-2019-0244)?

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed: 10/8/2019

Question No. : KCPL-1.7.4

Will "participating member" of MECG have the opportunity to opt-out or object to the position(s) taken by MECG in this procedure (Case No. EO-2019-0244)?

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed:10/8/2019

Question No. : KCPL-1.7.5

Does MECG purport to represent the specific interest(s) of any of its "participating members" in this proceeding (Case No. EO-2019-0244)? If yes, please provide the name of such "participating entity".

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed: 10/8/2019

Question No. : KCPL-1.7.6

Do the positions MECG will take in this proceed reflect the positions of each "participating member" of MECG regarding the substantive issues in this proceeding (Case No. EO-2019-0244)?

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed:10/8/2019

Question No. : KCPL-1.7.7

Do "participating members" of MECG meet on a regular basis, either in person or via telecommunications?

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed: 10/8/2019

Question No. : KCPL-1.7.8

Please provide a copy of any communication between MECG and its "participating members" regarding this proceeding (Case No. EO-2019-0244)?

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed: 10/8/2019

Question No. : KCPL-1.8

Please provide a copy of any formal resolution passed by MECG regarding this proceeding (Case No. EO-2019-0244).

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed:10/8/2019

Question No. : KCPL-1.9

Please provide a copy of any analysis or reports provided for or behalf of MECG regarding any likely substantive issue in this proceeding (Case No. EO-2019-0244).

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company

Case: EO-2019-0244

Requested By: Rob Hack

Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019

Date Response Needed: 10/8/2019

Question No. : KCPL-2.1

Does MECG plan on retaining an expert witness to provide testimony in this proceeding (Case No. EO-2019-0244)? If yes, please provide the name of MECG's expert witness in this proceeding (Case No. EO-2019-0244).

RESPONSE:



INFORMATION REQUEST

Company Name: KCP&L Greater Missouri Operations Company
Case: EO-2019-0244

Requested By: Rob Hack
Requested From: Midwest Energy Consumers Group (MECG)

Date Requested: 9/23/2019
Date Response Needed: 10/8/2019

Question No. : KCPL-2.2

Please provide a copy of the MECG's bylaws.

RESPONSE:

EXHIBIT B
(MECG ARTICLES OF
INCORPORATION)



State of Missouri
Jason Kander, Secretary of State
 Corporations Division
 PO Box 778 / 600 W. Main St., Rm. 322
 Jefferson City, MO 65102

N000702369
Date Filed: 7/15/2016
Jason Kander
Missouri Secretary of State

Articles of Incorporation of a Nonprofit Corporation
(Submit with a filing fee of \$25.00)

The undersigned natural person(s) of the age of eighteen years or more for the purpose of forming a corporation under the Missouri Nonprofit Corporation Act adopt the following Articles of Incorporation:

Midwest Energy Consumers Group

1. The name of the corporation is: _____

2. This corporation is a Mutual _____ Benefit Corporation.
Public or Mutual

3. The period of duration of the corporation is _____ Perpetual _____
"Perpetual" unless stated otherwise

4. The name and street address of the Registered Agent and Registered Office in Missouri is:
David Woodsmall 807 Winston Court Jefferson City MO 65101
Name Address City/State/Zip

5. The name(s) and address(es) of each incorporator:
Woodsmall, David 807 Winston Court Jefferson City MO 65101

6. Will the corporation have members? YES NO

7. The assets of the corporation will be distributed on dissolution as follows
 Upon dissolution of the corporation and after paying or making provision for the payment of all of the liabilities of the corporation, any assets of the corporation shall be distributed to the board of directors.

8. The corporation is formed for the following purpose(s):
Represent commercial and industrial customers regarding energy matters

9. The effective date of this document is the date it is filed by the Secretary of State of Missouri unless a future date is otherwise indicated: _____
(Date may not be more than 90 days after the filing date in this office)

Name and address to return filed document: Name: <u>Woodsmall David</u> Address: <u>Email: david.woodsmall@woodsmalllaw.com</u> City, State, and Zip Code: _____

(Please see next page)

Articles of Incorporation of a Nonprofit Corporation

In Affirmation thereof, the facts stated above are true and correct:

(The undersigned understands that false statements made in this filing are subject to the penalties provided under Section 575.040, RSMo)

Must be signed by all Incorporator(s):

David Woodsmall

DAVID WOODSMALL

07/15/2016

Signature

Printed Name

Date of Signature

STATE OF MISSOURI



Jason Kander
Secretary of State

CERTIFICATE OF INCORPORATION

WHEREAS, Articles of Incorporation of

Midwest Energy Consumers Group
N000702369

have been received and filed in the Office of the Secretary of State, which Articles, in all respects, comply with the requirements of Missouri Nonprofit Corporation Law;

NOW, THEREFORE, I, JASON KANDER, Secretary of State of the State of Missouri, do by virtue of the authority vested in me by law, do hereby certify and declare this entity a body corporate, duly organized this date and that it is entitled to all rights and privileges granted corporations organized under the Missouri Nonprofit Corporation Law.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri. Done at the City of Jefferson, this 15th day of July, 2016.


Secretary of State

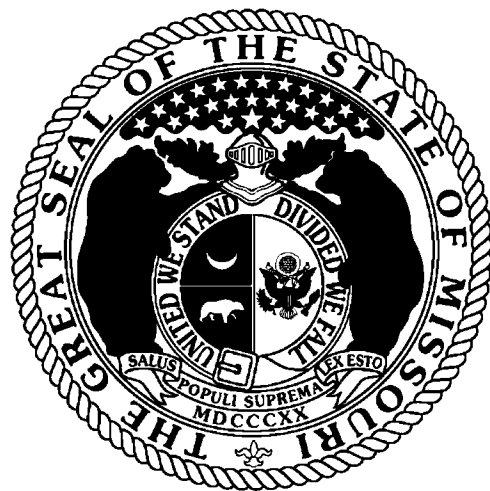


EXHIBIT C
(MECG GOOD STANDING)

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Required Field

Exact Match searches should include corporate designations (inc., llc, etc.) and punctuation.
We recommend you do not include these for other searches.

Search

Search for a Business Entity

Business Name Includes names Only Active Corporations

SEARCH

Search Results as of 9/26/2019 2:47 PM

Business Name	Charter No.	Type	Status	Created	Registered Agent Name
Midwest Energy Consumers Group	N000702369	Nonprofit Corporation (Domestic)	Good Standing	7/15/2016	Woodsmall, David Woodsmall