

In the Matter of Great Plains Energy Incorporated for)
Approval of its Acquisition of Westar Energy, Inc.) Case No. EM-2017-0226

**MOTION TO REQUIRE
STAFF TO FILE TESTIMONY**

COMES NOW the Midwest Energy Consumer's Group, pursuant to 4 CSR 240-2.080, and for its Motion to Require Staff to File Testimony in this case, states as follows:

1. On February 23, 2017, Great Plains Energy filed its Application for Commission approval of its acquisition of Westar Energy. In its application, GPE seeks to consolidate this matter with Case No. EE-2017-0113.

2. In Case No. EE-2017-0113, Staff executed a Non-Unanimous Stipulation and Agreement with GPE. That settlement was negotiated and executed prior to GPE's application in that case. Further, that settlement was negotiated without any other parties being present. Instead, the settlement was negotiated behind closed doors between only Staff and GPE. Given this, MECG is worried about the thoroughness of Staff's investigation.

3. That settlement provides that:

GPE, on behalf of itself, its successors, assignees, and its subsidiaries, and in consideration of the Staff's support of this Stipulation, and in further consideration of **Staff's agreement to not file any complaint nor support or otherwise assist in any way the prosecution of any complaint that may be filed** by others alleging that GPE is, or may be, in violation of any requirement that prior Commission approval of the Transaction was required, agrees that it will uphold the conditions agreed to by KCP&L and GMO in this Stipulation.

4. MECG is concerned that, as a result of its closed-door negotiation and settlement, as well as the provision preventing any assistance to other parties, Staff will elect not to provide any testimony in this matter.

5. Staff is the party in this case with the most resources to detect and demonstrate for the Commission the detriments inherent in GPE's acquisition of Westar. Indeed, Staff's resources are paid by customers through the PSC assessments built into KCPL and GMO rates. It is inequitable for the customers that paid for Staff's resources to be deprived of Staff's opinions and conclusions regarding the detriments inherent in the acquisition. Frankly, it is inappropriate for Staff to deny the customers that pay their salaries of its investigation. Certainly the transparency in government that everyone seeks to provide dictates more from Staff. Furthermore, the Commission is deprived of a significant resource in its consideration of this transaction if Staff elects not to file testimony regarding the detriments it uncovered relative to this transaction.

6. In a similar matter pending in Kansas, the Kansas Corporation Commission Staff presented thousands of pages of analysis, in the form of the expert testimony of eight witnesses. This testimony provides significant findings and conclusions for the KCC's consideration of this matter. Absent similar Staff testimony in Missouri, Missouri ratepayers and the Missouri Commission will be denied similar insight.

7. In similar cases, Staff devoted significant resources towards the consideration of detriments inherent in GPE's acquisition of Aquila, as well as Algonquin's acquisition of Empire District Electric. Certainly, Staff should be expected to participate in this case to the same extent that it participated in those previous cases. Both the Commission and the ratepayers have a right to demand such participation.

8. Staff may seek to direct the Commission's attention to previous cases in which parties have sought to require Staff to participate. Specifically, in Case Nos. EC-2014-0223 and GC-2016-0297, Staff opposed efforts to require them to participate in the proceeding. This case

is entirely different. Since they filed a Non-Unanimous Stipulation, Staff has presumably completed its investigation. As such, this motion does not seek to require Staff to do any more investigating. Rather, this motion simply seeks to require Staff to provide the Commission and ratepayers the benefit of its investigation. This motion is necessitated by Staff's unusual decision to negotiate and execute a settlement prior to a case being filed and their testimony being completed. The Commission and other ratepayers should not be deprived of this investigation simply because Staff settling this matter prior to the case being filed. For this reason, the Commission should order to file testimony with a thorough recitation of its investigation and findings.

9. The Commission has previously recognized the logic in MECG's request. In EC-2017-0107, MECG alleged that the Commission had jurisdiction over GPE's acquisition of Westar. There, the Commission ordered Staff to file its recommendation regarding the legitimacy of MECG's complaint.¹ In response, Staff filed a Comment simply indicating that it has reached a settlement with GPE and KCPL and asking "to be relieved of the obligation to file a recommendation."² In response, the Commission rejected Staff's attempt to avoid weighing in on the legitimacy of MECG's complaint. "Staff's recommendation will be helpful in making that determination."³ Ultimately, despite its attempts to avoid weighing in on the matter, Staff was forced to admit that MECG's complaint was legitimate.⁴ Just as the Commission found it valuable for Staff to weigh in on the legitimacy of MECG's Complaint, the Commission should also find it valuable for Staff to present testimony setting forth the entirety of its investigation into the GPE / Westar transaction.

¹ Case No. EC-2017-0107, *Notice of Contested Case and Order Directing Filing*, issued October 12, 2016.

² Case No. EC-2017-0107, *Staff's Comment*, filed November 8, 2016.

³ Case No. EC-2017-0107, *Order Denying Staff's Motion to be Relieved from the Filing of a Recommendation*, issued November 17, 2016.

⁴ Case No. EC-2017-0107, *Staff Recommendation*, filed November 22, 2016.

10. Finally, it should be pointed out that, through this motion, MECG does not seek a Commission order rejecting Staff's settlement. MECG has already opposed that settlement. Staff can continue to advocate for the approval of that settlement. But, Staff should not be allowed to simply file testimony that continues to support its settlement. Rather, MECG believes that, despite that settlement, Staff should be required to file full and complete testimony detailing the extent of its investigation and the nature of all detriments that it uncovered. Only then will the Commission be able to determine if the provisions in the Staff settlement resolve these detriments.

WHEREFORE, MECG respectfully requests that the Commission issue its order requiring Staff to fully participate in this matter, to a similar extent that it participated in previous merger dockets, including the prefiling of testimony disclosing the nature of its investigation and detriments uncovered.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David L. Woodsmall". The signature is stylized with a large, circular initial "D" and a long, sweeping horizontal stroke at the end.

David L. Woodsmall, MBE #40747
308 E. High Street, Suite 204
Jefferson City, Missouri 65101
(573) 636-6006 (telephone)
(573) 636-6007 (facsimile)
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.

A handwritten signature in black ink, appearing to read "David L. Woodsmall", written in a cursive style.

David L. Woodsmall

Dated: March 1, 2017