

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

Midwest Energy Consumers Group,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. EC-2017-_____
	)	
Westar Energy, Inc.	)	
	)	
Respondent.	)	
	)	

**COMPLAINT**

COMES NOW the Midwest Energy Consumers Group (“MECG”) and for its Complaint against Westar Energy, Inc. (“Westar” or “Company”) states as follows:

**INTRODUCTION**

1. MECG files this Complaint concerning Westar’s ongoing violation of Section 393.190.1. Specifically, Westar proposes to sell, assign, transfer, merge or consolidate its works or system without having first secured Commission approval.

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. Westar Energy, Inc. is a foreign corporation authorized to conduct business in the state of Missouri. Westar’s business address is 818 S. Kansas Avenue, Topeka, Kansas 66612. The address of GPE’s registered agent, CT Corporation System, is 120 South Central Avenue, Clayton, Missouri 63105.

## JURISDICTION

4. The Commission has jurisdiction of this matter under sections 386.390.1 RSMo., Section 393.190 RSMo., and Commission Rule 4 CSR 240-2.070(4).

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;

---

<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.

(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.

### **COMPLAINT**

7. Section 393.190.1 provides in pertinent part:

“No electrical corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it to do so.”

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

9. 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.”

10. Westar Energy is an electrical corporation operating, controlling, owning and using electric plant in the state of Missouri. Specifically, Westar Energy owns 40% of the State Line Combined Cycle Plant in Joplin, Missouri. As an electrical corporation, Westar Energy is also a public utility. Indeed, the Commission has granted Westar a

Certificate of Convenience and Necessity authorizing it to “construct, install, own, operate, control, manage and maintain electric facilities in Jasper County, Missouri.”<sup>2</sup>

11. On May 31, 2016, Terry Bassham, CEO of Great Plains Energy, announced to the Commission and OPC by email that GPE and Westar Energy, Inc. (“Westar”), had entered into an agreement for GPE to acquire the Topeka, Kansas-based Westar. GPE indicated it did not intend to seek Missouri Commission approval for the acquisition.

12. Through the proposed acquisition, Westar seeks to “sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation.” As such, Commission approval of the transaction is required.

13. MCEG requests that the Commission order Westar to comply with Section 393.190.1 by seeking Commission approval of the proposed transaction.

WHEREFORE, MCEG respectfully requests that the Commission: 1) provide statutory notice of this complaint; 2) order that Westar 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 Westar has violated Section 393.190.1 and thereafter 6) direct Westar to comply with that statutory section.

---

<sup>2</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.

Respectfully submitted,



---

David L. Woodsmall, MBE #40747  
308 E. High Street, Suite 204  
Jefferson City, Missouri 65101  
(573) 636-6006 (telephone)  
(573) 636-6007 (facsimile)  
Internet: [david.woodsmall@woodsmalllaw.com](mailto: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:

Cathy Dinges  
Westar Energy, Inc.  
818 S. Kansas Avenue  
Topeka, Kansas 66612

Kevin Thompson  
Staff of the Missouri Public Service Commission  
200 Madison Street, Suite 900  
Jefferson City, MO 65101

James Owen  
Office of the Public Counsel  
200 Madison Street, Suite 650  
Jefferson City, MO 65101



---

David L. Woodsmall

Dated: October 11, 2016