

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

In the Matter of Great Plains Energy, Inc.'s)
Acquisition of Westar Energy, Inc., and)
Related Matters.)

Case No. EM-2016-0324

APPLICATION FOR REHEARING

COMES NOW the Midwest Energy Consumers' Group, and for its Application for Rehearing, states as follows:

1. On June 9, 2016, MECG filed its Application to Intervene in the above-captioned docket. On the same date, the Administrative Law Judge, pursuant to an alleged delegation of authority, denied MECG's application to intervene. As detailed in this pleading, that decision is unlawful and / or unreasonable. As such, MECG requests that the Commission reverse the ALJ's decision and grant MECG's application to intervene.

2. The ALJ's decision takes the extraordinary step of precluding customer input regarding the extent of the Commission's jurisdiction to review the pending Great Plains Energy / Westar Energy merger. Noticeably, this ALJ took this decision without waiting to hear opposition from any other party.

In the recent past, the Commission has taken a liberal approach to granting intervention in its dockets. In fact, counsel is unaware of any cases in which the Commission has denied intervention in the last 10 years. As such, the ALJ's decision represents a radical departure from the Commission's policy to allow for customer participation in its dockets and suggests a disturbing movement to stifle the voices of utility customers.

3. The ALJ's decision is presumptively unlawful and constitutes an abuse of discretion in that it provides for an effective date on the same date of issuance. As such, it precludes MEGC from preparing and filing an application for rehearing prior to the order becoming effective. The Court of Appeals has previously chastised the Commission, in a decision penned by the same ALJ, for its failure to provide a reasonable period of time to prepare and file an application for rehearing. Given the Commission's repeated refusal to provide for this reasonable period of time, the Court then established a presumption that anything less than 10 days is unreasonable.

Court's teaching in *State ex rel. Office of Public Counsel v. Public Service Commission*, 236 S.W.3d 632 (Mo. banc 2007), and what has already been said herein, it is clear that any shortening of the date on which PSC orders will become effective to less than ten days is presumptively unreasonable and, if challenged, would require the PSC to demonstrate that the circumstances surrounding the case are so extraordinary as to clearly warrant further encroachment on the time provided to the parties in which to exercise their right to apply for rehearing and/or appeal and that the time allowed was reasonably sufficient.¹

4. The ALJ's decision is unlawful in that it is based upon an alleged delegation of authority from the Commission. That said, there is no basis by which to suggest that the Commission has delegated the authority to rule on applications to intervene. Section 386.280 requires such decisions to be in writing. Certainly, to the best of counsel's recollection, such a delegation is not contained in any Commission orders or rules. Absent proper delegation of authority, the ALJ's decision is unlawful.

WHEREFORE, MEGC respectfully requests that the Commission rehear and reverse the ALJ's unlawful decision and allow MEGC to participate in this docket.

¹ *State ex rel. Office of Public Counsel v. Public Service Commission*, 409 S.W.3d 522, 529 (Mo.App. 2013).

Respectfully submitted,



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



David L. Woodsmall

Dated: June 20, 2016