

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 17th day of November, 2016.

Midwest Energy Consumers Group,)	
)	
Complainant,)	
)	
v.)	File No. EC-2017-0106
)	
Westar Energy, Inc.)	
)	
Respondent.)	

**ORDER DENYING STAFF’S MOTION TO BE RELIEVED FROM THE
FILING OF A RECOMMENDATION**

Issue Date: November 17, 2016

Effective Date: November 17, 2016

Midwest Energy Consumers Group (“MECG”) filed the complaint.¹ The Commission directed its staff (“Staff”) to file a recommendation on the complaint.² In response, Staff asked to be relieved of the obligation to file a recommendation (“motion”).³

The Complaint and the Motion

The complaint charges that Westar Energy, Inc. (“Westar Energy”) violated Section 393.190.1, RSMo Supp. 2013. That statute requires an electrical corporation to seek authorization from the Commission before disposing of, consolidating, or merging its

¹ Electronic Filing Information System (“EFIS”) No. 1 (October 11) *Complaint*. Citations to EFIS refer to this file except as otherwise noted. All dates are in 2016 except as otherwise noted.

² EFIS No. 2 (October 12) *Notice of Contested Case and Order Directing Filing*.

³ EFIS No. 9 (November 8) *Staff’s Comment*.

works or system. The Commission must determine whether a violation has occurred with regard to the statutes committed to the Commission for enforcement.⁴

The complaint alleges that Westar Energy violated that statute with regard to the impending acquisition (“transaction”) of Westar Energy by Great Plains Energy Incorporated (“Great Plains”). Staff asked the Commission to authorize an investigation into the transaction including whether such Commission approval was required,⁵ and the Commission authorized that investigation⁶ over the objections of Great Plains.⁷ Staff filed a report (“investigatory report”) setting forth the results of that investigation.⁸ In the investigatory report, Staff asserted that conducting the transaction without prior Commission approval constituted a violation of a Commission order in an earlier case and could be detrimental to Missouri ratepayers.⁹ Staff also stated, “Staff will prepare and file a complaint against [Great Plains] and [Kansas City Power & Light Company] should [Great Plains] not comply with a Commission order requiring prior approval over the proposed

⁴ Section 386.390, RSMo 2000.

⁵ File No. EM-2016-0324, *In the Matter of Great Plains Energy, Inc.'s Acquisition of Westar Energy, Inc., and Related Matters*, EFIS No. 1 (June 1) *Staff's Motion to Open an Investigation*.

⁶ File No. EM-2016-0324, *In the Matter of Great Plains Energy, Inc.'s Acquisition of Westar Energy, Inc., and Related Matters*, EFIS No. 7 (June 8) *Order Granting Leave To File Reply Late, Granting Staff's Motion To Open An Investigation, and Directing Filing*.

⁷ File No. EM-2016-0324, *In the Matter of Great Plains Energy, Inc.'s Acquisition of Westar Energy, Inc., and Related Matters*, EFIS No. 2 (June 2) *Great Plains Energy Incorporated's Verified Opposition to Staff's Motion to Open Investigation and Request for Order Declining Jurisdiction*; EFIS No. 6 (June 7) *Great Plains Energy Incorporated's Reply to Public Counsel's Response and Staff's Response*; EFIS No. 14 (June 10) *Great Plains Energy Incorporated's Verified Motion for Reconsideration*; EFIS No. 17 (June 15) *Great Plains Energy Incorporated's Reply to Staff's Response to Verified Motion for Reconsideration*; EFIS No. 19 (June 21) *Supplement to Great Plains Energy Incorporated's June 15, 2016 Reply to Staff's Response to Verified Motion for Reconsideration*; EFIS No. 26 (August 1) *Response of Great Plains Energy Incorporated to Staff's Investigation Report*.

⁸ File No. EM-2016-0324, *In the Matter of Great Plains Energy, Inc.'s Acquisition of Westar Energy, Inc., and Related Matters*, EFIS No. 25 (July 25) *Staff's Investigation Report*.

⁹ File No. EM-2016-0324, *In the Matter of Great Plains Energy, Inc.'s Acquisition of Westar Energy, Inc., and Related Matters*, EFIS No. 25 (July 25) *Staff's Investigation Report*, page 28-29.

transaction.”¹⁰ The Commission issued no order granting any relief in that investigation because an investigation is not a context for determining whether a violation occurred.¹¹

Concerning the pending motion, Staff states that it does not support any complaint regarding the transaction because Staff and the Public Counsel have reached stipulations and agreements with Great Plains, Kansas City Power & Light Company, and KCP&L Greater Missouri Operations Company (“Joint Applicants”) in another pending case concerning Great Plains’ request for a variance from Commission rules (“variance case”).¹² Staff’s motion states that those stipulations and agreements protect, and may benefit, Missouri ratepayers, and resolve Staff’s concerns with the transaction. Those concerns appear to be the same as set forth in Staff’s investigatory report. On those grounds, Staff asks to be relieved of the duty to file a recommendation.

The Variance Case

On October 18, MECG filed an objection to the stipulation and agreement between the Joint Applicants and Staff. MECG filed an objection to the stipulation and agreement between the Joint Applicants and Public Counsel on November 3.

The Commission’s rule regarding stipulations and agreements, 4 CSR 240-2.115(2)(C), indicates “[i]f no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.” 4 CSR 240-2.115(2)(B) allows each party seven

¹⁰ File No. EM-2016-0324, *In the Matter of Great Plains Energy, Inc.'s Acquisition of Westar Energy, Inc., and Related Matters*, EFIS No. 25 (July 25) *Staff's Investigation Report*, page 73-74.

¹¹ File No. EM-2016-0324, *In the Matter of Great Plains Energy, Inc.'s Acquisition of Westar Energy, Inc., and Related Matters*, EFIS No. 28 (August 3) *Order Closing File*.

¹² File No. EE-2017-0113, *In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company for a Variance from the Commission's Affiliate Transactions Rule*.

days in which to object to a nonunanimous stipulation and agreement. MECG objected to the stipulation and agreement between Staff and the Joint Applicants six days after it was filed, but objected to the stipulation and agreement between Public Counsel and the Joint Applicants on the eighth day after it was filed.

At the time the nonunanimous stipulations and agreements were filed, MECG was not yet a party and its objections to those stipulations and agreement could not yet be effective. MECG was made a party by separate order issued today, and at the time it became a party its objections became effective. Further, the Commission's regulation provides that the Commission *may* treat a stipulation and agreement as unanimous if no timely objection is raised, but it does not *require* the Commission to do so. Under the circumstances of that case, the Commission found that MECG's objections to the stipulations and agreement are timely and the Commission will not treat either stipulation and agreement as unanimous.

4 CSR 240-2.115(2)(D), provides that "[a] nonunanimous stipulation to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it."

Ruling

Even though the stipulations and agreements appear to resolve Staff's concerns as to the effect of the transaction on Missouri ratepayers, as set forth in the investigatory report, and assuming arguendo that approving the stipulation and agreements would be in the public interest, the Commission must determine whether Westar Energy violated Section 393.190.1, RSMo Supp. 2013. Staff's recommendation will be helpful in making

that determination. In addition, as set forth above, the stipulations and agreements in the variance case are not binding on Staff. Therefore, the Commission will deny the motion.

THE COMMISSION ORDERS THAT:

1. The motion described in the body of this order is denied.
2. This order shall be effective when issued.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur.

Daniel Jordan, Senior Regulatory Law Judge

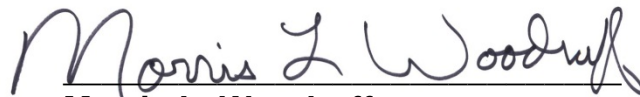
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 17th day of November 2016.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

November 17, 2016

File/Case No. EC-2017-0106

**Missouri Public Service
Commission**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.