BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Midwest Energy Consumers Group,	)	
	)	
Complainant,	)	
	)	Case No. EC-2017-0107
v.	)	
	)	
Great Plains Energy Incorporated,	)	
	)	
Respondent.	)	

SUPPLEMENTAL MOTION TO DISMISS OF
GREAT PLAINS ENERGY INCORPORATED
AND SUGGESTIONS IN SUPPORT

Great Plains Energy Incorporated ("GPE" or "Respondent"), pursuant to Missouri Public Service Commission ("Commission" or "PSC) Rule 4 CSR 240-2.070(7), moves to dismiss the First Amended Complaint ("Complaint") filed on November 22, 2016 by the Midwest Energy Consumers Group ("MECG") for failure to state a claim upon which relief can be granted.

Contrary to the Complaint, the Commission has no authority to exercise jurisdiction to approve or disapprove GPE's acquisition of Westar Energy, Inc. based on the language of the First Amended Stipulation and Agreement that the PSC approved in 2001 when it authorized the establishment of the Respondent's holding company structure. MECG's interpretation of the stipulation would expand the Commission's jurisdiction to the acquisition of non-Missouri regulated public utilities by Missouri-based holding companies, and grant the PSC extraterritorial powers never contemplated by Missouri law. Because this transaction does not involve a Missouri public utility, the Commission has no jurisdiction to approve or disapprove it, and MECG's Complaint must be dismissed.

In support of this motion, the Respondent states the following:

SUGGESTIONS IN SUPPORT OF THE MOTION TO DISMISS

A. Statement of Facts

1. The Transaction

On May 31, 2016 GPE announced that it had reached a definitive agreement to acquire Westar Energy, Inc. ("Westar") in a transaction valued at approximately $12.2 billion. Upon closing, Westar will become a wholly-owned subsidiary of GPE. Westar is a Kansas electric public utility.

GPE entered into an Agreement and Plan of Merger on May 29, 2016, pursuant to which GP Star, Inc. (a Kansas corporation whose outstanding equity interests are 100% owned by GPE) will be merged with and into Westar, with Westar emerging as the surviving corporation. Immediately following the merger, GP Star, Inc. will cease to exist, and GPE will acquire all of the capital stock of Westar ("Transaction").

GPE is a Missouri corporation and the holding company for the stock of Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO"), both Missouri public utilities regulated by the Commission. GPE is a public utility holding company regulated under the Public Utility Holding Company Act of 2005, which was enacted as part of the Energy Policy Act of 2005. Its stock is traded on the New York Stock Exchange as "GXP." Although GPE is a Missouri corporation, it is not an "electrical corporation" or a "public utility" under Missouri law. See Section 386.020(15) and (43).[1] GPE

[1] All statutory references are to the Missouri Revised Statutes (2000), as amended, unless otherwise noted.

does not own "electric plant," as defined in Section 386.020(14), and does not offer electric service to the public as a public utility.

Westar is a Kansas corporation with its headquarters in Topeka, Kansas. It is authorized by the Kansas Corporation Commission ("KCC") to conduct business as a public utility and holds a Certificate of Convenience and Authority from the KCC to engage in the business of an electric public utility in Kansas. Westar is not a Missouri public utility subject to the jurisdiction of this Commission.

Westar owns 100% of the stock of Westar Generating, Inc. ("WGI") which owns an undivided 40% share of the State Line Combined Cycle Generating Facility ("State Line") near Joplin, Missouri. WGI sells all of its portion of the electric energy from State Line to Westar.[2] Although WGI was granted a certificate of convenience and necessity ("CCN") in 2000 by the Commission, its order found that WGI did not have any customers in Missouri.[3] Importantly, the Commission did not find that WGI was offering electricity "for public use" and did not conclude that WGI was a Missouri public utility under State ex rel. M.O. Danciger & Co. v. PSC, 205 S.W. 36, 40 (Mo. 1918), which holds that an "electrical corporation" is not subject to PSC regulation unless it is offering electricity for public use. Because WGI does not offer electricity or any other service to any member of the public in Missouri, it is not a public utility subject to the jurisdiction of this Commission.

The closing of the Transaction is subject to customary conditions, such as the receipt of certain approvals by the common shareholders of GPE and Westar, which occurred on

[2] The remaining 60% of State Line is owned by the Empire District Electric Company which operates the facility.

[3] "Indeed WGI does not have any retail customers anywhere in Missouri." Order at 3, In re Application of Westar Generating, Inc. for a Certificate of Public Convenience and Necessity, No. EA-2000-153 (June 1, 2000).

September 26, 2016. The Transaction is also subject to the receipt of certain state and federal regulatory and governmental approvals, including the approval of the KCC, the Federal Energy Regulatory Commission, and the Nuclear Regulatory Commission. Additionally, the Transaction is subject to the notification, clearance, and reporting requirements of the Hart-Scott-Rodino Act, under which clearance was received in October 2016. Closing is expected to occur in the Spring of 2017. At the closing of the Transaction, Westar will become a wholly-owned subsidiary of GPE and will no longer be a publicly-held corporation.

2. The 2001 GPE Stipulation

On July 9, 2001, GPE, KCP&L, the Staff of the Commission and the Office of the Public Counsel submitted the First Amended Stipulation and Agreement ("GPE Stipulation") to the Commission. See In re Application of Kansas City Power & Light Co. for an Order Authorizing its Plan to Reorganize Itself into a Holding Company Structure, Case No. EM-2001-464. After conducting two on-the-record presentations on July 5 and 27, 2001, at which Commissioners asked numerous questions, the Commission approved the GPE Stipulation. Id., Order Approving Stipulation and Agreement and Closing Case at 4-5, 13-14 (July 31, 2001). The GPE Stipulation is attached as Exhibit 1.

As a result, a holding company structure for GPE and its subsidiaries was created under the terms of the GPE Stipulation, which contained the following provision related to prospective acquisitions by the Respondent:

> Section II (7): Prospective Merger Conditions
>
> GPE agrees that it will not, directly or indirectly, acquire or merge with a public utility or the affiliate of a public utility, where such affiliate has a controlling interest in a public utility unless GPE has requested prior approval for such a transaction from the Commission and the Commission has found that no detriment to the public would result from the transaction. … [emphasis added] [hereafter referred to as "Paragraph 7"].

The term "public utility" is not defined in the GPE Stipulation, however, the only references to any state law in the stipulation are to Missouri law. See Exhibit 1, pages 5-6, 9, 16-18. Therefore, "public utility" can only be interpreted as it is defined under Missouri law. Since Westar is neither a "public utility," an "electrical corporation," nor an affiliate of a "public utility" under Missouri law, Paragraph 7 of the GPE Stipulation has no bearing on the Transaction.

Similarly, WGI is not a "public utility" under Missouri law. It is also not an "affiliate" within the meaning of Paragraph 7 because it has no investments in any subsidiary company and controls no corporation or other business organization. Therefore, it does not have "a controlling interest in a public utility" as required by Paragraph 7.

Section 386.250(1) states that the jurisdiction, supervision, powers and duties of the Commission extend to "the manufacture, sale, or distribution of ... electricity for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; … [emphasis added]."

Section 386.020(43) defines "public utility" as follows:

> (43) "Public utility" includes every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heat or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter [emphasis added].

Section 386.020(15) defines "electrical corporation" as follows:

> (15) "Electrical corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or

> through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others … [emphasis added].

Section 386.020(14) defines "electric plant" as follows:

> (14) "Electric plant" includes all 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 of 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; ….

Because Westar does not own "electric plant" that is "devoted to a public use" in Missouri, it is not "a public utility within the meaning of the Public Service Commission Act." State ex rel. M.O. Danciger & Co. v. PSC, 205 S.W. 36, 40 (Mo. 1918). WGI is also not a Missouri public utility because it does not sell electricity or provide any service to a member of the public in Missouri. Its operations are not "devoted to a public use," and it is not a "public utility" under the Public Service Commission Act. Id.

B. The Complaint is not Ripe for Decision.

There is no dispute that GPE has not acquired or merged with Westar. The Transaction is not scheduled to close until the second quarter of 2017, and there are provisions in the Merger Agreement for extending the closing date. It is, therefore, clear that the Complaint is not ripe since GPE has not acquired or merged with Westar, even assuming that Westar is a public utility or affiliate of a public utility under Paragraph 7 of the GPE Stipulation, which GPE disputes.

Both the courts and this Commission are without authority to decide issues that do not reflect a presently existing controversy that is ripe for determination. Ameren Trans. Co. of Ill. v. PSC, 467 S.W.3d 875, 880 (Mo. App. 2015) (summary judgment properly granted where controversy regarding CCN for an interstate transmission project was not ripe). Paragraph 5 of MECG's Complaint states that it is being brought under Section 386.390.1, which permits a complaint to be filed regarding "any act or thing done or omitted to be done by any corporation,

person or public utility." Yet, GPE has not yet committed the "act" of a merger or acquisition that could give rise to a proper allegation under the statute.

In Schweich v. Nixon, 408 S.W.3d 769, 772, 778-79 (Mo. en banc 2013), the State Auditor sued the Governor alleging that he had reduced the expenditures of state agencies below their appropriations. However, where the fiscal year in question had yet not concluded and "it could not be known" what amounts, if any, might be permanently withheld by the Governor, the Auditor's claims "were not ripe," "did not present a justiciable controversy," and were dismissed Id. at 779. Similarly, the MECG Complaint is not ripe for decision and must be dismissed.

C. The GPE Stipulation does not Apply to the Transaction

MECG claims that GPE has violated Paragraph 7 of the GPE Stipulation because it intends to acquire Westar Energy, a Kansas public utility, without seeking this Commission's approval. See Complaint, ¶¶ 18-19. However, because the phrase "public utility" is not defined in the GPE Stipulation (and could not lawfully be defined there to include non-Missouri public utilities), and because Westar is a public utility only under Kansas law, GPE's acquisition of Westar will not violate Paragraph 7.

The critical portion of the relevant sentence in Paragraph 7 states that "GPE agrees that it will not, directly or indirectly, acquire or merge with a public utility or the affiliate of a public utility, where such utility has a controlling interest in a public utility unless GPE has requested prior approval for such transaction from the Commission … [emphasis added]." Contrary to MECG's argument, this provision does not and cannot confer jurisdiction on the Commission to approve or disapprove the Transaction under its Section 393.190 merger and acquisition authority, or its Section 393.250 reorganization authority. There is nothing in the Commission's

Order approving the 2001 GPE Stipulation that even mentions Paragraph 7, let alone seeks to assert extraterritorial jurisdiction over a future GPE acquisition of a non-Missouri public utility.

It is well established that an "agency's subject matter jurisdiction cannot be enlarged or conferred by consent or agreement of the parties." Livingston Manor, Inc. v. Department of Social Services, 809 S.W.2d 153, 156 (Mo. App. W.D. 1991). However, this lack of jurisdiction to approve the Transaction does not limit the Commission's authority over KCP&L and GMO, and its ability to protect Missouri customers through its retail ratemaking powers.

Section 386.250(1) states that the jurisdiction, supervision, powers and duties of the Commission extend to "the manufacture, sale, or distribution of … electricity for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same [emphasis added]." Similar "within the state" language is found in other passages in Chapter 386 with regard to Missouri gas corporations, telecommunications companies, water corporations, and sewer systems. See § 386.250(1)-(4). It is these Missouri-based "public utility corporations," collectively referenced in Section 386.250(5), that are subject to the Commission's jurisdiction. Consequently, there is no statutory authority for the PSC to assert jurisdiction over GPE's acquisition of a Kansas utility. Because Westar is not a "public utility," an "electrical corporation," or an affiliate of a "public utility" under Missouri law, Paragraph 7 of the GPE Stipulation does not apply to the Transaction. Similarly, WGI is not a Missouri public utility because it offers no service to the public in this state. It is also not an "affiliate" as defined in Paragraph 7 because it does not have "a controlling interest in a public utility."

Beyond these statutory definitions, the Missouri Supreme Court has held that a public utility must offer its services generally to the public. Otherwise, it is not a public utility under Missouri law and not subject to the Commission's authority. In State ex rel. M.O. Danciger &

Co. v. PSC, 205 S.W. 36, 40 (Mo. 1918) ("Danciger"), the Missouri Supreme Court held that an electrical corporation, as defined in Section 386.020(15), is not subject to regulation by the Commission unless it is offering electricity "for a public use, and therefore be coupled with a public interest."[4] In the absence of offering electricity as a "general public service" in Missouri, an entity is not "a public utility, within the meaning of the Public Service Commission Act." Id. Neither Westar nor WGI offers electricity as a general public service in Missouri. Because Westar is neither a "public utility" nor an "affiliate of a public utility" under Missouri law, Paragraph 7 does not apply to GPE's acquisition of Westar. Paragraph 7 also does not apply to WGI because it is not a public utility within the meaning of Danciger and is not an affiliate that owns a controlling interest in a public utility.

Any "other view" would have "far-reaching results" not contemplated by Missouri law. Danciger, 205 S.W. at 42.

At the hearing where the GPE Stipulation was presented, Commissioner Murray inquired about Paragraph 7, asking whether "the parties believe that that [provision] gives the Commission jurisdiction over an unregulated holding company that it would otherwise not have." See Tr. 32, Vol. 2, In re Application of Kansas City Power & Light Co. for an Order Authorizing its Plan to Reorganize itself into a Holding Company Structure, No. EM-2001-464 (July 5, 2001). Counsel for GPE stated that this provision was "inconsistent" with past Commission decisions "on other holding company mergers of parents." Id. This comment properly referred to prior Commission decisions that declined to exercise any jurisdiction over a

[4]The Danciger case has continued to be binding precedent for almost one hundred years. See Hurricane Deck Holding Co. v. PSC, 289 S.W.3d 260, 264 (Mo. App. W.D. 2009); Osage Water Co. v. Miller County Water Auth., Inc., 950 S.W.2d 589, 574 (Mo. App. S.D. 1997); Khulusi v. Southwestern Bell Yellow Pages, Inc., 916 S.W.2d 227, 232 (Mo. App. W.D. 1995); State ex rel. Cirese v. PSC, 178 S.W.2d 788, 790 (Mo. App. K.C. 1944).

holding company, even when it was acquiring a Missouri public utility. Although GPE agreed to submit itself to the jurisdiction of the PSC on certain matters where permitted by Missouri law, there is no provision in the Stipulation where GPE agreed to seek Commission approval if it acquired public utilities operating outside of Missouri.

Consistent with this approach, Staff counsel advised that "different parties can interpret the statute differently," and that the GPE Stipulation "was an effort to establish in certain areas what arguably the holding company would not contest in a way of coming before the Commission in certain instances." Id. at 33. He observed that "the Commission is always free, if it so chooses, to assert that it will not exercise jurisdiction in a particular situation." Id. (emphasis added). Staff did not claim that GPE's acquisition of a non-Missouri public utility would require Commission approval.

Similarly, the Office of the Public Counsel ("OPC") did not assert in 2001 that the GPE Stipulation required the Company to seek Commission approval regarding the acquisition of a non-Missouri public utility. OPC properly noted that "the facts of the particular case will continue to control as to whether jurisdiction will be exercised." Id. at 34.

MECG's interpretation of Paragraph 7 must be rejected because it would have the practical effect of allowing this Commission extraterritorial jurisdiction over a holding company that is not a public utility in Missouri. It would permit the Commission to control commercial activity by a corporation that is not a Missouri public utility which is taking place outside Missouri.

D. The Exercise of Extraterritorial Jurisdiction by a State Agency Violates the Commerce Clause of the U.S. Constitution

This extraterritorial and extra-jurisdictional reach advocated by MECG would violate the dormant Commerce Clause of the U.S. Constitution. Such a violation occurred in North Dakota

v. Heydinger, 15 F. Supp. 3d 891, 897-98, 910-19 (D. Minn. 2014) ("Heydinger"), where Minnesota's New Generation Energy Act prohibited power sales from outside the state that would contribute to carbon dioxide emissions. State law that has an "extraterritorial reach" by having "the practical effect of controlling conduct beyond the boundaries of the state" is per se invalid under the dormant Commerce Clause. Cotto Waxo Co. v. Williams, 46 F.3d 790, 793 (8th Cir. 1995), citing Healy v. Beer Institute, Inc., 491 U.S. 324, 336 (1989). In the Minnesota case, the District Court found that the state statute violated the extraterritorial doctrine by requiring businesses to conduct their "out-of-state commerce in a certain way." Heydinger, 15 F. Supp. 3d at 911-12, 918. It additionally held that actions by regulatory agencies, such as the Minnesota Public Utilities Commission, to enforce such extraterritorial provisions violated the Commerce Clause. Id. at 918-19.

In affirming the District Court's opinion, the Court of Appeals for the Eighth Circuit agreed that the Minnesota statute violated the Commerce Clause because of its extraterritorial reach. North Dakota v. Heydinger, 825 F.3d 912, 919-22 (8th Cir. 2016).[5] The appellate court stated that the "critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State." Id. at 919 (citations omitted). A statute or a regulation that "has undue exterritorial reach" is per se invalid when it "requires people or businesses to conduct their out-of-state commerce in a certain way." Id., citing Cotto Waxo, 46 F.3d at 793. "Forcing a merchant to seek regulatory approval in one State before undertaking a transaction in another directly regulates interstate commerce." Brown-Forman Distillers Corp. v. New York State Liquor Auth., 476 U.S. 573, 582 (1986).

[5] The Eighth Circuit also found that the Minnesota statute was preempted by § 201(b)(1) of the Federal Power Act, 16 U.S.C. Section 824(b)(1), because it sought to regulate wholesale sales and the transmission of electric energy in interstate commerce. 825 F.3d at 926-28.

Because MECG's Complaint is premised on an interpretation of the GPE Stipulation that would have this unlawful and unconstitutional effect, there is no legal foundation to support its allegations, and the Complaint must be dismissed. In the Heydinger litigation, the Eighth Circuit found that "the challenged prohibitions apply to non-Minnesota utilities" and were unlawful. Heydinger v. North Dakota, 825 F.3d at 921. This is similar to the relief sought by MECG which would require the Commission to apply the GPE Stipulation to GPE's acquisition of a non-Missouri utility like Westar. Such an extraterritorial reach would violate the Commerce Clause.

Similar efforts by states to control commerce beyond their borders have also been struck down. See Hughes v. Talen Energy Marketing, LLC, 136 S. Ct. 1288, 1297-99 (2016) (Federal Power Act preempts Maryland PSC order directing utilities to enter into contracts with new generating plants where FERC had approved PJM's wholesale electricity capacity auction to address resource adequacy issues); New Jersey Bd. of Pub. Util. v. FERC, 744 F.3d 74, 95-102 (3d Cir. 2014) (upholding FERC's elimination of generation exemptions granted by the New Jersey and Maryland Commissions regarding PJM capacity markets).

E. No Commission or Judicial Decisions Support the Legal Basis of the Complaint

Allowing MECG's Complaint to go forward would also be contrary to Missouri law which contains not one decision -- of either this Commission or a court -- that has construed the provisions of Chapter 386 or Chapter 393 to exercise jurisdiction to approve or disapprove the acquisition of a non-Missouri public utility by a Missouri public utility holding company.

There are almost a dozen cases where the Commission "has consistently found that the Commission does not have jurisdiction over transactions at the holding company level." See Order Dismissing Application for Lack of Jurisdiction, In re Advanced TelCom, Inc. and Shared Commun. Services, Inc., No. XM-2005-0111 (2004).

The Commission has held steady to this position over many years, regardless of whether the holding companies owned telecommunications, electrical, gas, or water and sewer corporations. When SBC Communications acquired Ameritech in 1998, the PSC found that "there is nothing in the statutes that confers jurisdiction to examine a merger of two non-regulated parent corporations even though they may own Missouri-regulated telecommunications companies." In re Merger of SBC Commun., Inc. and Ameritech Corp., Report and Order, No. TM-99-76, 1998 Mo. PSC LEXIS 48 (Oct. 8, 1998). Accord In re Proposed Merger of Verizon Commun., Inc. and MCI, Inc., No. TM-2005-0370 (May 3, 2005). Similarly, when Ameren Corporation acquired Cilcorp, Inc., a holding company that owned Central Illinois Light Company, an Illinois public utility, the Commission declined to exercise jurisdiction over the transaction. It specifically rebuffed Staff's invitation to review joint dispatch issues. See Order Closing Case, In re Proposed Acquisition of Cilcorp, Inc. by Ameren Corp., No. EO-2002-1082 (June 13, 2002).

A variety of other holding company transactions by telecommunications, water and sewer companies is consistent with these orders. See Order Closing Case, In re Proposed Acquisition of Mo.-Am. Water Co. and Am. Water Works Co. by the German Corp. RWE AG, No. WO-2002-206 (2001); Order Closing Case, In re United Water Mo., Inc. for Authority for Lyonnaise American Holding, Inc, to Acquire the Common Stock of United Water Resources. Inc., No. WM-2000-318 (Dec. 7, 1999); Order Dismissing Application for Lack of Jurisdiction, In re Joint Application for Transfer of Control of Eclipse Telecomm. Inc., IXC Comm. Serv. Inc. and Telecom One. Inc. to Cincinnati Bell, Inc., No. TM-2000-85 (Oct. 28, 1999); Order Denying Motion to Reconsider Order Closing Case, In re Proposed Merger between GTE Corp. and Bell Atlantic, No. TM-99-261 (Apr. 22, 1999); Order Regarding Jurisdiction and Dismissing

Application, In re Commun. Central of Georgia, Inc. and Davel Commun. Group Inc. for Approval of Merger and Transfer of Control, No. TM-98-268 (Jan. 22, 1998); Order Dismissing Application, In re Application of ALLTEL Commun. Inc. to Merge with Certain Wholly Owned Subsidiaries of ALLTEL Mobile Commun., Inc., No. TM-98-153 (Dec. 24, 1997).

If the Commission were going to depart from these precedents, it might have done so when two holding companies that each owned regulated Missouri public utilities sought to merge. But, in its order that declined to review the merger of the holding companies that owned Missouri-American Water Co. and St. Louis County Water Co., the Commission agreed with Staff's position that since "the Commission has not asserted jurisdiction over mergers of non-regulated parent companies," "… the Commission should follow this practice now, and decline to assert jurisdiction." See Report & Order, In re Merger of American Water Works Co. with Nat'l Enterprises Inc. and the Indirect Acquisition by American Water Works Co. of St. Louis Water Co., No. WM-99-224, 1999 Mo. PSC LEXIS 183 at *3 (Mar. 23, 1999).

Based on these precedents, it is understandable that no complaint has been filed in a similar situation where a Missouri-based holding company governed by a comparable stipulation[6] acquired non-Missouri public utilities in 2015 and 2016. Notably, the Commission did not direct Staff to file a complaint, but instead closed its file after Staff initiated an investigation. See Order Closing File, In re Spire, Inc.'s Acquisition of EnergySouth, Inc., No. GM-2016-0342 (Sept. 7, 2016). Significantly, no entity took any action before this Commission regarding Spire, Inc.'s acquisition of EnergySouth, Inc., even though Staff had alleged that the

[6] Order Approving Stipulation and Agreement, and Approving Plan to Restructure, In re Application of Laclede Gas Co. for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries, No. GM-2001-342 (Aug. 14, 2001).

acquisition was subject to a requirement of prior Commission approval, and the closing of that transaction was known to be imminent. There is no reason why GPE should be treated any differently.

Given the absence of any Missouri judicial precedent, or any order by this Commission or any other Missouri administrative agency that supports the exercise of PSC jurisdiction to approve or disapprove GPE's acquisition of a non-Missouri public utility, the legal premise of the Complaint must be rejected.

F. Conclusion

There is no legal basis for the Commission to exercise jurisdiction to approve or disapprove GPE's acquisition of Westar Energy. If the intent of the 2001 GPE Stipulation was to extend the Commission's jurisdiction over the acquisition of non-Missouri public utilities, it would have contained clear and precise language saying so. If the Commission had intended to exercise such authority, it too would have said so in the Report & Order approving the GPE Stipulation. It did not.

Finally, no stipulation and no Commission decision can create jurisdiction which does not exist under Missouri statutes. Livingston Manor, Inc. v. Department of Social Services, 809 S.W.2d 153, 156 (Mo. App. W.D. 1991). "As a basic tenet of administrative law, an administrative agency has only such jurisdiction that may be granted by the legislature." Tetzner v. Department of Social Services, 446 S.W.3d 689, 692 (Mo. App. W.D. 2014) (citations omitted). Since extraterritorial jurisdiction has not been granted to the Commission to approve or disapprove the acquisition of non-Missouri public utilities by Missouri-based public utility holding companies, no stipulation approved by this Commission can grant such power.

WHEREFORE, Respondent Great Plains Energy Incorporated asks that the First Amended Complaint be dismissed.

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CERTIFICATE OF SERVICE

A copy of the foregoing was served upon the below named parties by email or U.S. mail, postage prepaid, this 2nd day of December, 2016:

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