

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

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

**ORDER SETTING DEADLINE FOR RESPONSES**

Issue Date: January 20, 2017

Effective Date: January 20, 2017

On January 4, 2017, the Commission issued an order scheduling an evidentiary hearing or oral arguments in support of motions for summary determination for February 1. On January 18, Midwest Energy Consumers Group, Great Plains Energy Incorporated, the Staff of the Missouri Public Service Commission, and Consumers Council of Missouri filed a *Joint Stipulation of Facts and List of Issues, Request to Take Official Notice, Motion to Cancel Hearing and Oral Argument and to Establish Briefing Schedule, and Motion for Expedited Treatment* (hereinafter, "Joint Motion"). The signatories request the Commission cancel the scheduled evidentiary hearing, since they do not intend to call any witnesses or file any motions for summary determination. The signatories included in the Joint Motion joint stipulated facts and a joint list of issues.

The Office of the Public Counsel was not a signatory to the Joint Motion. Pursuant to Commission Rule 4 CSR 240-2.010(10), the Office of the Public Counsel (OPC) is automatically considered a party to any action before the Commission unless a

notice of intent not to participate is filed. Since OPC is a party to this case, but not a signatory of the Joint Motion, the Commission will set a deadline for OPC to file a response indicating if it objects to the Joint Motion; specifically, to the request of the other four parties to cancel the February 1 hearing.

Additionally, the signatories to the Joint Motion identified certain records that they request the Commission take official or administrative notice of, pursuant to Section 536.070(6), RSMo (Cum. Supp. 2013). That statutory subsection states in pertinent part, “[a]gencies shall take official notice of all matters of which the courts take judicial notice.” However, in certain circumstances, the courts have found it improper for a trial court to base its judgment on matters judicially noticed but not put into evidence. *Hume v. Wright*, 274 S.W. 741,744 (Mo. 1925).

Some of the documents the signatories are seeking official notice of, and facts within those documents, are not typically considered for judicial notice by the courts. They are not issues of common knowledge or facts for ready determination by reference to other sources.<sup>1</sup> While the Commission can take official notice of its own records,<sup>2</sup> this request goes beyond merely asking the Commission to recognize the existence of certain documents.

The signatories assert they submitted stipulated facts and documents for notice that combined provide a complete record of facts and evidence sufficient for the Commission to reach a determination without necessitating a hearing. To effectuate

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<sup>1</sup> See *City of Gainesville v. Gilliland*, 718 S.W.2d 553, 571 (Mo. App. 1986) (Courts can take judicial notice of the population).

<sup>2</sup> See *In re X.D.G.*, 340 S.W.3d 607, 609 (Mo. App. 2000) (A court on its own motion can take judicial notice of its own recording in prior proceedings between the same parties on the same basic facts involving the same general claims for relief.)

this, the Commission will interpret the Joint Motion as a request for the Commission to admit into the record as exhibits in this contested case the following items:

- a. File No. EM-2001-464; First Amended Stipulation and Agreement, In re Application of Kansas City Power & Light Co. for an Order Authorizing its Plan to Reorganize Itself into a Holding Company Structure.
- b. File No. EM-2001-464; Order Approving Stipulation and Agreement and Closing Case, In re Application of Kansas City Power & Light Co. for an Order Authorizing its Plan to Reorganize Itself into a Holding Company Structure.
- c. File No. EM-2001-464; Transcript of Proceedings, On-the-Record Presentations, Vol. 2 and Vol. 3, In re Application of Kansas City Power & Light Co. for an Order Authorizing its Plan to Reorganize Itself into a Holding Company Structure.
- d. File No. EA-2000-153; Application of Westar Generating, Inc., In re Application of Westar Generating, Inc. for a Certificate of Public Convenience and Necessity.
- e. File No. EA-2000-153 and EM-2000-145; Staff Recommendation, In re Application of Westar Generating, Inc. for a Certificate of Public Convenience and Necessity and In re Application of Empire Dist. Elec. Co.
- f. File No. EA-2000-153 and EM-2000-145; Staff Recommendation, In re Application of Westar Generating, Inc. for a Certificate of Public Convenience and Necessity and In re Application of Empire Dist. Elec. Co.
- g. File No. EA-2000-153 and EM-2000-145; Order Approving Application to Transfer Assets and Order Granting Certificate of Convenience and

Necessity, In re Application of Westar Generating, Inc. for a Certificate of Public Convenience and Necessity and In re Application of Empire Dist. Elec. Co.

An evidentiary hearing provides parties the opportunity to present testimony and evidence and to cross-examine witnesses on disputed issues. The admission of the aforementioned items into the evidentiary record without a hearing replaces that option. Therefore, the Commission will allow the parties an opportunity to respond and clarify if this was not the intent of the signatories by the request for official notice or to object to the Commission's admission into the record of those documents.

The Commission will refrain from canceling the hearing or setting a briefing schedule before any responses are received.

**THE COMMISSION ORDERS THAT:**

1. No later than Monday, January 23, 2017, the Office of the Public Counsel may file a response to the Joint Motion and the request to cancel the February 1, 2017 hearing.
2. No later than Monday, January 23, 2017, parties may file objections to the admission into the evidentiary record of the documents identified in the Request to Take Official Notice section of the Joint Motion.

3. 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 style.

Morris L. Woodruff  
Secretary

Kim S. Burton, Senior Regulatory  
Law Judge, by delegation of authority  
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 20<sup>th</sup> day of January, 2017.

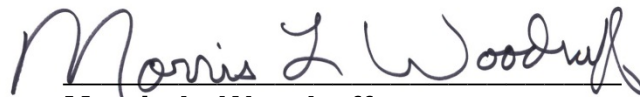
**STATE OF MISSOURI**

**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 20<sup>th</sup> day of January 2017.



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**January 20, 2017**

**File/Case No. EC-2017-0107**

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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**

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