

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

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

NOTICE OF CONTESTED CASE AND ORDER DIRECTING FILING

Issue Date: October 12, 2016

Effective Date: October 12, 2016

On October 11, 2016, the complainant filed the complaint, a copy of which is attached. The filing of a complaint requires the Commission to set a hearing.¹ The requirement of a hearing on the issues described in the complaint signifies a contested case.² A contested case is a formal, adversarial, evidentiary hearing procedure.

The Commission's regulation provides the respondent with 30 days from the date of this notice to file an answer.³ The Commission also desires the recommendation of Staff,⁴ so the Commission will order an answer and recommendation. The Commission's provisions for discovery are at 4 CSR 240-2.090.

As alternatives to the formal evidentiary hearing procedure, contested case procedure allows for waiver of procedural formalities and a decision without an evidentiary

¹ Section 386.390.5, RSMo 2000.

² Section 536.010(4), RSMo Supp. 2013.

³ 4 CSR 240-2.070(8).

⁴ 4 CSR 240-2.070(11).

hearing, including by stipulation and agreement.⁵ The Commission also offers mediation, a voluntary process in which a neutral person assists the parties in exploring opportunities for settlement. Upon a request for mediation, the Commission may suspend the schedule set forth in this order.

THE COMMISSION ORDERS THAT:

1. The commission's data center shall serve a copy of the complaint upon the respondent, by certified mail, postage prepaid.
2. No later than November 14, 2016, the respondent shall file an answer.
3. No later than November 23, 2016, the Commission's staff shall file a recommendation, which may refer in whole or in part to documents relevant to the complaint's subject matter already on file with the Commission.
4. This order shall be effective when issued.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Daniel Jordan, Senior Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 12th day of October, 2015.

⁵ Section 536.060, RSMo 2000; 4 CSR 240-2.115.

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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[.]¹

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;

¹ 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.”²

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.

² 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
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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



Commissioners

DANIEL Y. HALL
Chairman

STEPHEN M. STOLL

WILLIAM P. KENNEY

SCOTT T. RUPP

MAIDA J. COLEMAN

Missouri Public Service Commission

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SHELLEY BRUEGGEMANN
General Counsel

MORRIS WOODRUFF
Secretary

WESS A. HENDERSON
Director of Administration
and Regulatory Policy

CHERLYN D. VOSS
Director of Regulatory Review

KEVIN A. THOMPSON
Chief Staff Counsel

Information Sheet Regarding Mediation of Commission Formal Complaint Cases

Mediation is a process whereby the parties themselves work to resolve their dispute with the aid of a neutral third-party mediator. This process is sometimes referred to as “facilitated negotiation.” The mediator’s role is advisory and although the mediator may offer suggestions, the mediator has no authority to impose a solution nor will the mediator determine who “wins.” Instead, the mediator simply works with both parties to facilitate communications and to attempt to enable the parties to reach an agreement which is mutually agreeable to both the complainant and the respondent.

The mediation process is explicitly a problem-solving one in which neither the parties nor the mediator are bound by the usual constraints such as the rules of evidence or the other formal procedures required in hearings before the Missouri Public Service Commission. The Regulatory Law Judges at the Public Service Commission are trained mediators and this service is offered to parties who have formal complaints pending before the Public Service Commission at no charge. In addition, the assistance of an attorney is not necessary for mediation. In fact, the parties are encouraged not to bring an attorney to the mediation meeting.

The formal complaint process before the Commission invariably results in a determination by which there is a “winner” and a “loser” although the value of winning may well be offset by the cost of attorneys fees and the delays of protracted litigation. Mediation is not only a much quicker process but it also offers the unique opportunity for informal, direct communication between the two parties to the complaint and mediation is far more likely to result in a settlement which, because it was mutually agreed to, pleases both parties. This is traditionally referred to as “win-win” agreement.

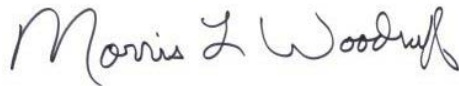
The traditional mediator’s role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating one participant’s perspective or proposal into a form that is more understandable and acceptable to the other participant, (8) assist the

participants with the actual negotiation process, (9) occasionally a mediator may propose a possible solution, and (10) on rare occasions a mediator may encourage a participant to accept a particular solution. The Judge assigned to be the mediator will not be the same Judge assigned to the contested complaint.

In order for the Commission to refer a complaint case to mediation, the parties must both agree to mediate their conflict in good faith. The party filing the complaint must agree to appear and to make a good faith effort to mediate and the utility company against which the complaint has been filed must send a representative who has full authority to settle the complaint case. The essence of mediation stems from the fact that the participants are both genuinely interested in resolving the complaint.

Because mediation thrives in an atmosphere of free and open discussion, all settlement offers and other information which is revealed during mediation is shielded against subsequent disclosure in front of the Missouri Public Service Commission and is considered to be privileged information. The only information which must be disclosed to the Public Service Commission is (a) whether the case has been settled and (b) whether, irrespective of the outcome, the mediation effort was considered to be a worthwhile endeavor. The Commission will not ask what took place during the mediation.

If the dispute is settled at the mediation, the Commission will require a signed release from the complainant in order for the Commission to dismiss the formal complaint case. If the dispute is not resolved through the mediation process, neither party will be prejudiced for having taken part in the mediation and, at that point, the formal complaint case will simply resume its normal course.



Morris L. Woodruff
Secretary

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 12th day of October 2016.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

October 12, 2016

File/Case No. EC-2017-0106

**Missouri Public Service
Commission**

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Westar Energy, Inc.

Legal Department
818 South Kansas Ave.
Topeka, KS 66612

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.