

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

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

**RESPONSE TO MOTION TO DISMISS
OF THE CONSUMERS COUNCIL OF MISSOURI**

COMES NOW the Consumers Council of Missouri (“Consumers Council” or “CCM”), and hereby files its response to the Motion to Dismiss¹ filed by Great Plains Energy (“GPE” or “Company”).

In 2001, Kansas City power & Light Company (“KCPL”), a regulated Missouri electric company, sought approval from the Commission for the creation of GPE, through an application filed in Case No. EM-2001-464. Without the approval of that application, the holding company GPE would not have been created, and GPE would not now exist. The Commission’s jurisdiction and its authority to address and rule on public detriments or the lack thereof in that matter were not challenged.

In Case No. EM-2001-464, the Commission did ultimately approve the request to allow the creation of the holding company GPE to hold KCPL stock, but it did so subject

¹ “Motion to Dismiss” references both GPE’s October 30, 2016 Motion to Dismiss and its Supplemental Motion to Dismiss filed on December 2, 2016.

to various conditions designed to ensure that the public interest was protected from the detriments that could result from the creation of the was raised during Case No. EM-2001-464 was *precisely* the ability of the Commission to review mergers and acquisitions involving GPE in potential future situations such as the GPE-Westar transaction that is pending today. It is exactly why consumer representatives in Case No. EM-2001-464 insisted on a settlement that included this crucial commitment on behalf of GPE and KCPL to seek Commission approval of such potential future mergers and acquisitions:

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.²

The Commission approved the settlement that included this commitment. Without this curative condition, the creation of GPE would have been inherently detrimental to the public interest and should not have been approved. That condition which GPE and KCPL voluntarily made and signed as part of the stipulated settlement, and which was approved by the Commission in EM-2001-464, continues to be enforceable, regardless of GPE's new arguments designed to wiggle out of this solemn commitment.

The MECG Complaint which initiated the instant case alleges that GPE has violated the above cited provision of the approved settlement in Case No. EM-2001-464 because it has not filed a "no detriments" review application. The stipulated commitment to which GPE agreed is straightforward, and whether GPE has complied with that

² In the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing Its Plan to Reorganize Itself Into A Holding Company Structure, Case No. EM-2001-464, Order Approving Stipulation and Agreement and Closing Case, approving First Amended Stipulation and Agreement, p. 13.

condition is a factual question that can be addressed by the Commission subject to a hearing pursuant to Section 386.390 RSMo of Missouri law.

The Commission continues to have the authority to enforce the conditions that were deemed necessary to avoid a public detriment in Case No. EM-2001-464, namely the commitment to subject any future GPE acquisition or merger with a public utility to a “no detriments” review by the Missouri Commission. The Commission and every segment of the general public had the legal right to expect that GPE’s voluntary commitments to subject itself to such a review (and which were approved and ordered by the Commission) would be valid and continue to be enforced by the Commission.

In its Motion to Dismiss, GPE improperly claims that the MECG Complaint fails “to state a claim upon which relief can be granted.” GPE claims that “[b]ecause 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.”³ The Commission continues to have the jurisdiction to review and enforce its prior orders, specifically to enforce its order resolving Case No. EM-2001-464. Otherwise, the Commission’s order in EM-2001-464 is unenforceable and means nothing.

Per GPE’s reasoning, whatever obligations it agreed to in order justify to the Commission its creation as a parent holding company in 2001 are nothing more than a paper tiger. This argument is unconscionable. The Commission should not allow any party before it to make a voluntary and stipulated promise to resolve a case which was squarely within the Commission’s jurisdiction, and then claim later that it does not have to fulfill that promise because the commitment goes beyond what the party may have

³ Motion to Dismiss, p. 1.

been required to do under the law *sans* that agreement. The Commission jurisdiction to accept GPE's commitment in Case No. EM-2001-464 was clear, and the Commission's jurisdiction to enforce its orders from that case remains intact.

For GPE to now argue that the Commission cannot make the holding company live by its commitments because the statutory authority to make a parent holding company file a "no detriments" application misses the point entirely and is disingenuous. The GPE commitment which was essential to the settlement that resolved Case No. EM-2001-464 was designed to operate and be enforceable, *with or without independent statutory authority*. The settlement provision that was approved by the Commission, which requires GPE to file a "no detriments" application for any future (direct or indirect) acquisition or merger of a public utility was designed to address a situation where statutory authority may be in question. If statutory authority had been clear on this point, the commitment would have been unnecessary and pointless. Why would consumer representative parties and the Commission itself insist upon such a commitment if it was already clearly required by statute? The public detriment that GPE's voluntary commitment addresses is the potential use of the GPE holding company to make an end run around the Commission's jurisdiction, denying the public a full and fair merger review.

The Commission must interpret this commitment in a manner that does not render it meaningless, because the parties did not intend for it to be surplusage:

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.

This was not merely a commitment to follow existing statutory law. It was the creation of a new stipulated obligation to protect the public against the inherent detriments of creating the GPE holding company, ensuring that the holding company could not be used to perform an end run around Commission's review of future public utility mergers.

Pursuant to Section 386.390.2 RSMo, the Commission must hold a hearing to address the merits of MEGC's claim that GPE is now violating the settlement and Commission order resolving Case No. EM-2001-464. To rule in favor of a motion to dismiss, the Commission must assume all the facts alleged by the Complainant and then find that no cause exists as a matter of law. GPE has not presented any facts that contradict the claim that it is violating the subject commitment made in Case No. EM-2001-464.

WHEREFORE, Consumers Council respectfully requests that the Commission deny GPE's Motion to Dismiss, stating that GPE must live up to its commitments in Case No. EM-2001-464 by complying with the Commission's order approving that commitment.

Respectfully submitted,

/s/ John B. Coffman

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties listed on the official service list on this 12th day of December, 2016.

/s/ John B. Coffman
