

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 12th day of
July, 2016.

In the Matter of Great Plains Energy, Inc.'s)	
Acquisition of Westar Energy, Inc.,)	File No. EM-2016-0324
and Related Matters)	

ORDER DENYING APPLICATION FOR REHEARING

Issue Date: July 12, 2016

Effective Date: July 12, 2016

This file is an investigation into whether the impending merger between Great Plains Energy, Inc. and Westar Energy, Inc. ("transaction") will have any effect on Missouri ratepayers. This file includes no procedure for ruling on the transaction, as more fully explained in the Commission's *Order Denying Reconsideration*.¹ Because there is no case, no final decision, no order subject to rehearing, and no grounds for intervention, the Commission will deny the *Application for Rehearing*.²

Missouri Energy Consumers Group ("MECG") filed an *Application to Intervene and Motion for Expedited Treatment*³ ("motion to intervene") seeking to intervene in this investigation. MECG did not seek intervention as a matter of right, so only permissive

¹ Electronic Filing Information System ("EFIS") No. 20 (June 29, 2016). The Commission incorporates that ruling into this order as if fully set forth at length.

² EFIS No. 18 (June 20).

³ EFIS No. 9 (June 9).

intervention was at issue.⁴ The Commission denied the motion to intervene.⁵ That order is the subject of the *Application for Rehearing*.⁶

Rehearing is available by statute⁷ only on a final decision of the Commission, which occurs “when [the Commission] arrives at a terminal, complete resolution of the case before it.”⁸ And no case is before the Commission in this file, only an investigation. Even if this investigation were a case, “[a]n order denying a motion requesting permissive intervention is not final and appealable[,]”⁹ so rehearing would still not apply.¹⁰ And if rehearing applied, the Commission would maintain its ruling because neither the *Application for Rehearing* nor the motion for intervention shows any right, nor any persuasive reason, for MCEG to intervene in Staff’s investigation.

The motion for intervention cited the following standard:

The commission may grant a motion to intervene or add new member(s) if—

(A) The proposed intervenor or new member(s) has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.[¹¹]

The *Application for Rehearing* refers to the following standard.

⁴ *Matter of Missouri-Am. Water Co. v. Hall*, 470 S.W.3d 761, 766 (Mo. App, W.D. 2015).

⁵ EFIS No. 11 (June 9) *Order Denying Motion for Intervention*.

⁶ EFIS No. 18 (June 20).

⁷ Section 386.500, RSMo 2000.

⁸ *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm’n*, 276 S.W.3d 303, 309 (Mo. App. W.D. 2008);

⁹ *Matter of Missouri-Am. Water Co. v. Hall*, 470 S.W.3d 761, 766 (Mo. App, W.D. 2015).

¹⁰ For this reason, the Commission need not address MCEG’s argument that the effective date of the *Order Denying Motion for Intervention* allowed insufficient time for preparing an application for rehearing.

¹¹ 4 CSR 240-2.075(2).

1. [T]he commission shall grant and hold such rehearing, if in its judgment sufficient reason therefor be made to appear[.]

2. . . . Such application shall set forth specifically the ground or grounds on which the applicant considers said order or decision to be unlawful, unjust or unreasonable[.¹²]

MECG argues that it may intervene in Staff's investigation on the following premise.

The motion to intervene asserts that intervention "will serve the public interest by assisting the record for the Commission's decision in this case."¹³ The "decision in this case [,]" according to the *Application for Rehearing*, is "the extent of the Commission's jurisdiction to review the pending Great Plains Energy / Westar Energy merger."¹⁴ But no decision on the transaction is before the Commission, so MECG's premise is incorrect, as is its conclusion.

MECG offers no support for its premise, but it may be influenced by past Commission orders of the type cited in the motion for reconsideration, filed by Great Plains Energy, Inc. ("GPE").¹⁵ In each of GPE's cited orders, the merger or acquisition was between two holding companies and, on that basis, the Commission determined that jurisdiction was absent when denying a request to investigate. But in this investigation, the filings describe the transaction as occurring between a holding company and an electrical company. Also, an order denying a request to investigate is no longer sought. GPE's motion for reconsideration asks for a stand-alone ruling. Any such ruling on jurisdiction to make a decision on the transaction, when no decision on

¹² Section 386.500, RSMo 2000.

¹³ EFIS No.10 (June 9, 2016) *Application for Intervention of Midwest Energy Consumer's Group and Motion for Expedited Treatment*, page 2, paragraph 4.

¹⁴ EFIS No. 18 (June 20, 2016) *Application for Rehearing*, first page, paragraph 2.

¹⁵ EFIS No. 14 (June 10, 2016) *Great Plains Energy Incorporated's Verified Motion for Reconsideration*.

the transaction is pending, would constitute an advisory opinion.¹⁶ The Commission has no authority to issue an advisory opinion.¹⁷

MECG has not shown a persuasive basis for intervention, or sufficient reason for rehearing, so the Commission will deny the *Application for Rehearing*.¹⁸

THE COMMISSION ORDERS THAT:

1. The *Application for Rehearing* is denied.
2. 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

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

Jordan, Senior Regulatory Law Judge

¹⁶ As discussed more fully at EFIS No. 20 (June 29, 2016) *Order Denying Reconsideration* page 5 to 6.

¹⁷ *Ameren Transmission Co. of Illinois v. Pub. Serv. Comm'n of the State of Missouri*, 467 S.W.3d 875, 880 (Mo. App. W.D. 2015).

¹⁸ This disposition makes it unnecessary to address MECG's argument that "The ALJ's decision is unlawful in that it is based upon an alleged delegation of authority [that is not] in writing." EFIS No. 18 (June 20, 2016) *Application for Rehearing*, page 2, paragraph 4.

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 July 2016.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

July 12, 2016

File/Case No. EM-2016-0324

**Missouri Public Service
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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.