

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

Midwest Energy Consumers Group,	)	
	)	
Complainant,	)	
	)	
vs.	)	<b><u>Case No. EC-2017-0107</u></b>
	)	
Great Plains Energy, Incorporated,	)	
	)	
Respondent	)	

**STAFF'S INITIAL BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Initial Brief*, states as follows:

**INTRODUCTION:**

***Statement of the Case:***

Complainant the Missouri Energy Consumers Group (“MECG”) filed its *Complaint* on October 11, 2016, charging that Respondent Great Plains Energy, Inc. (“GPE”), had violated an order of the Commission by undertaking to acquire Westar Energy, Inc., a Kansas regulated electric utility, without having first obtained authorization from this Commission.<sup>1</sup> The order in question, issued on July 31, 2001, in Case No. EM-2001-464,<sup>2</sup> approved the terms of the *First Amended Stipulation and Agreement*, in which GPE promised (at ¶ II(7)):

...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

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<sup>1</sup> *Midwest Energy Consumers Group v. Great Plains Energy, Incorporated*, Case No. EC-2017-0107 (*Complaint*, filed Oct. 11, 2016).

<sup>2</sup> *In the Matter of Kansas City Power & Light Company for an Order Authorizing its Plan to Reorganize Itself into a Holding Company Structure*, 10 Mo.P.S.C.3d 394 (July 31, 2001).

such a transaction from the Commission and the Commission has found that no determinant to the public would result from the transaction.<sup>3</sup>

In exchange for this promise, Kansas City Power & Light Company (“KCPL”) was permitted to reorganize as a public utility holding company (GPE) and its wholly-owned, regulated electric utility operating company (KCPL).<sup>4</sup> The Commission’s order expressly directed GPE to comply with the provisions of the *First Amended Stipulation and Agreement*.<sup>5</sup>

On November 9, 2016, the Consumers Council of Missouri was allowed to intervene in alignment with Complainant.<sup>6</sup> Thereafter, Complainant filed a *First Amended Complaint* and a *Second Amended Complaint*, on November 22, 2016, and December 28, 2016, respectively.<sup>7</sup> Respondent answered the several complaints and asserted affirmative defenses on October 31, 2016, December 2, 2016, and January 10, 2017.<sup>8</sup> In its answers, GPE asserted that

Contrary to MEEG’s argument, Section II(7) of the GPE Stipulation does not and cannot confer jurisdiction on the Commission to approve or authorize the Transaction. This provision applies to a “public utility” as

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<sup>3</sup> *In the Matter 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 (*First Amended Stipulation and Agreement*, filed July 9, 2001) p. 13. The *First Amended Stipulation and Agreement* itself was not published in *PSC Reports*.

<sup>4</sup> 10 Mo.P.S.C.3d, at 401.

<sup>5</sup> *Id.*, at Ordered Paragraph 3.

<sup>6</sup> *Midwest Energy Consumers Group v. Great Plains Energy, Incorporated*, Case No. EC-2017-0107 (*Order Granting Intervention*, issued Nov. 9, 2016).

<sup>7</sup> *Midwest Energy Consumer’s Group v. Great Plains, Incorporated*, Case No. EC-2017-0107 (*First Amended Complaint*, filed No. 22, 2016); *Midwest Energy Consumer’s Group v. Great Plains, Incorporated*, Case No. EC-2017-0107 (*Second Amended Complaint*, filed Dec. 28, 2016).

<sup>8</sup> *Midwest Energy Consumer’s Group v. Great Plains, Incorporated*, Case No. EC-2017-0107 (*Answer and Affirmative Defenses of Great Plains Energy Incorporated*, filed Oct. 31, 2016); *Midwest Energy Consumer’s Group v. Great Plains, Incorporated*, Case No. EC-2017-0107 (*Answer to First Amended Complaint and Affirmative Defenses of Great Plains Energy Incorporated*, filed Dec. 2, 2016); *Midwest Energy Consumer’s Group v. Great Plains, Incorporated*, Case No. EC-2017-0107 (*Answer to Second Amended Complaint and Affirmative Defenses of Great Plains Energy Incorporated*, filed Jan. 10, 2017).

defined under Missouri law. Since Westar is neither a “public utility,” an “electrical corporation,” nor an affiliate of a “public utility” under Missouri law, Section II(7) of the GPE Stipulation is irrelevant to the Transaction.<sup>9</sup>

Its theory is that, because § 386.250, RSMo., limits the Commission’s jurisdiction to electric utilities “within the state,” § II(7) must have been intended, and must be construed, to apply only to Missouri public utilities.<sup>10</sup> Respondent summarizes its argument:

In the GPE Stipulation, Great Plains Energy Incorporated agreed that it would not 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” without the approval of the Commission. Because neither Westar nor WGI are a public utility or an affiliate of a public utility under the GPE Stipulation, the Commission has no jurisdiction to approve the Transaction.<sup>11</sup>

On November 30, 2016, the Commission set an oral argument on the issue of jurisdiction on December 21, 2016.<sup>12</sup> That argument occurred as scheduled.<sup>13</sup> On January 4, 2017, the Commission set an evidentiary hearing for February 1, 2017, and also denied Respondent’s *Motion to Dismiss* and *Supplemental Motion to Dismiss*.<sup>14</sup>

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<sup>9</sup> ***Midwest Energy Consumer’s Group v. Great Plains, Incorporated***, Case No. EC-2017-0107 (***Answer to Second Amended Complaint and Affirmative Defenses of Great Plains Energy Incorporated***, issued Jan. 10, 2017) p. 5; ***Midwest Energy Consumer’s Group v. Great Plains, Incorporated***, Case No. EC-2017-0107 (***Answer to First Amended Complaint and Affirmative Defenses of Great Plains Energy Incorporated***, issued Dec. 2, 2017) p. 5.

<sup>10</sup> ***Answer to Second Amended Complaint***, *supra*.

<sup>11</sup> *Id.*, p. 6.

<sup>12</sup> ***Midwest Energy Consumer’s Group v. Great Plains, Incorporated***, Case No. EC-2017-0107 (***Order Setting Procedural Schedule***, issued Nov. 30, 2016) p. 2.

<sup>13</sup> ***Midwest Energy Consumer’s Group v. Great Plains, Incorporated***, Case No. EC-2017-0107 (***Transcript of Oral Argument***, filed Dec. 22, 2016).

<sup>14</sup> ***Midwest Energy Consumer’s Group v. Great Plains, Incorporated***, Case No. EC-2017-0107 (***Order Denying Motion to Dismiss and Scheduling Evidentiary Hearing***, issued Jan. 4, 2017).

On January 18, 2017, all of the parties except the Office of the Public Counsel (“OPC”) 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*, suggesting that an evidentiary hearing was not necessary as the material facts were well known and the case turned on the legal question of jurisdiction.<sup>15</sup> OPC indicated its lack of objection on January 20, 2017,<sup>16</sup> and the Commission cancelled the hearing on January 24, 2017.<sup>17</sup> On January 25, 2017, the Commission issued its *Order Admitting Exhibits and Setting Briefing Schedule*.<sup>18</sup>

***Issues for Determination:***

The parties agree that the issues for determination are these:<sup>19</sup>

1. What is the meaning of the term “public utility,” as found in Section II(7) of the 2001 GPE Stipulation?
2. Does the 2001 GPE Stipulation apply to GPE’s acquisition of Westar?
3. Is GPE required to obtain Commission approval of its proposal to acquire Westar?

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<sup>15</sup> *Midwest Energy Consumer’s Group v. Great Plains, Incorporated*, Case No. EC-2017-0107 (*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*, filed Jan. 18, 2017).

<sup>16</sup> *Midwest Energy Consumer’s Group v. Great Plains, Incorporated*, Case No. EC-2017-0107 (*Public Counsel’s Response to Commission Order*, filed Jan. 20, 2017).

<sup>17</sup> *Midwest Energy Consumer’s Group v. Great Plains, Incorporated*, Case No. EC-2017-0107 (*Order Cancelling Hearing*, issued Jan. 24, 2017).

<sup>18</sup> *Midwest Energy Consumer’s Group v. Great Plains, Incorporated*, Case No. EC-2017-0107 (*Order Admitting Exhibits and Setting Briefing Schedule*, issued Jan. 25, 2017).

<sup>19</sup> *Joint Stipulation of Facts and List of Issues*, *supra*, p. 4.

Underlying these issues is the fundamental issue of jurisdiction, argued on December 21, 2016: Does the Commission have jurisdiction over GPE's proposed acquisition of Westar such that GPE must seek prior authorization for the Commission?

**ARGUMENT:**

**A.**

***What is the meaning of the term "public utility," as found in Section II(7) of the 2001 GPE Stipulation?***

GPE was formed by a restructuring of KCPL in 2001, pursuant to which KCPL and GPE sought, and obtained, authority from this Commission to restructure as a holding company and its wholly-owned operating subsidiary.<sup>20</sup> The Commission approved that reorganization by order on July 31, 2001, in Case No. EM-2001-464.<sup>21</sup> By the same order, the Commission also approved the *First Amended Stipulation and Agreement*, filed on July 9, 2001, and executed on behalf of KCPL and GPE by James M. Fischer, which sets out and applies a number of conditions to the reorganization.<sup>22</sup>

Utility reorganizations are governed by § 393.250, RSMo., which provides:

1. Reorganizations of gas corporations, electrical corporations, water corporations and sewer corporations shall be subject to the supervision and control of the commission, and no such reorganization shall be had without the authorization of the commission.

2. Upon all such reorganizations the amount of capitalization, including therein all stocks and bonds and other evidence of indebtedness, shall be such as is authorized by the commission, which in making its determinations, shall not exceed the fair value of the property

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<sup>20</sup> See Notes 2 and 3, above. The parties stipulated that the Commission take official notice of these documents, *Joint Stipulation of Facts and List of Issues*, *supra*, p. 3.

<sup>21</sup> See Note 2, *supra*.

<sup>22</sup> *Id.* and Note 3, *supra*.

involved, taking into consideration its original cost of construction, duplication cost, present condition, earning power at reasonable rates and all other relevant matters and any additional sum or sums as shall be actually paid in cash; provided, however, that the commission may make due allowance for the discount of bonds.

3. Any reorganization agreement before it becomes effective shall be amended so that the amount of capitalization shall conform to the amount authorized by the commission. **The commission may by its order impose such condition or conditions as it may deem reasonable and necessary.** (Emphasis added.)

The language of § II(7) of the *First Amended Stipulation and Agreement* is just such a condition:

[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 determinant to the public would result from the transaction.

Respondent contends that the phrase “public utility” cannot be applied to Westar because it is not a *Missouri* public utility because Westar does not hold itself out as willing to serve the general public in Missouri<sup>23</sup> and that to apply the language to Westar would impermissibly expand the Commission’s jurisdiction to include activities outside Missouri.<sup>24</sup> For that reason, Respondent argues, “public utility” must be understood to mean “*Missouri* public utility.”<sup>25</sup>

Respondent’s argument is specious. A stipulation and agreement is a contract;<sup>26</sup> in construing a stipulation and agreement, as with any contract, the goal is to discern

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<sup>23</sup> *Answer to Second Amended Complaint*, p. 6.

<sup>24</sup> *Id.*, p. 5.

<sup>25</sup> *Id.*, pp. 6-7.

<sup>26</sup> *Fair Mercantile Co. v. Union-May-Stern Co.*, 359 Mo. 385, 390, 221 S.W.2d 751, 755 (Mo. 1949).

the parties' intent and to give effect to it if possible.<sup>27</sup> "The terms of a contract are read as a whole to determine the intention of the parties and are given their plain, ordinary, and usual meaning."<sup>28</sup> Section II(7) does not mention Missouri; the limitation Respondent relies on does not appear on the face of the document.<sup>29</sup> As in statutory construction, the plain, ordinary, and usual meaning of the words used may be found in a dictionary.<sup>30</sup> The plain, ordinary, and usual meaning of the phrase "public utility" is "[a] company that provides necessary services to the public, such as telephones, electricity, and water. Most utilities operate as monopolies but are subject to governmental regulation."<sup>31</sup> Westar is a monopoly that provides electricity to customers in Kansas; it is subject to governmental regulation by the Kansas Corporation Commission ("KCC"). It is unmistakably a "public utility" within the plain, ordinary, and usual meaning of that phrase and it is, therefore, necessarily a "public utility" for the purposes of § II(7) of the *First Amended Stipulation and Agreement*.

This analysis is supported by another consideration. If, as Respondent argues, § II(7) is construed to refer only to the acquisition of *Missouri* public utilities, then it merely duplicates the authority that the Commission already possesses under the Missouri statutes.<sup>32</sup> "A construction that attributes a reasonable meaning to all the provisions of the agreement is preferred to one that leaves some of the provisions

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<sup>27</sup> ***Dunn Indus. Group, Inc. v. City of Sugar Creek***, 112 S.W.3d 421, 428 (Mo. banc 2003).

<sup>28</sup> *Id.*

<sup>29</sup> See Note 3, *supra*.

<sup>30</sup> ***Campbell v. County Commission of Franklin County***, 453 S.W.3d 762, 768 (Mo. banc 2015).

<sup>31</sup> **Black's Law Dictionary**, p. 1544 (West, St. Paul, MN: 7<sup>th</sup> ed., 1999).

<sup>32</sup> A public utility must obtain prior Commission authorization to sell, assign, lease, or transfer utility assets, § 393.190.1, RSMo.; to merge or consolidate, whether directly or indirectly, § 393.190.1, RSMo.; to raise capital by issuing stock, notes, or bonds, or by mortgaging property, §§ 393.180, 393.200, 393.210, and 393.220, RSMo.; and to acquire the stock of another utility, § 393.190.2, RSMo.

without function or sense.”<sup>33</sup> Because Respondent’s reading of § II(7) renders it a meaningless condition that accomplishes nothing, it is not preferred. We must instead read § II(7) as the parties actually intended; its unmistakable purpose is to give the Commission the same authority over GPE’s future mergers and acquisitions of public utilities outside of Missouri that it already has, under Missouri statutes, over any that GPE pursues within Missouri.

But was the parties’ intention successful? In its *Supplemental Motion to Dismiss*, Respondent argued:

[T]he 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.<sup>34</sup>

This is not the first time that the Missouri Public Service Commission Law has been applied to the extraterritorial activities of Missouri regulated entities.<sup>35</sup> In a decision upholding the extraterritorial application of § 393.190.2, RSMo., the Eighth Circuit stated:

The statute here at issue [§393.190.2, RSMo.] is part of Chapter 393 of the Missouri Statutes, which authorizes the Commission to establish “just and reasonable” rates for the local distribution of natural gas, electricity, water, and sewer services. Rate regulation is a complex process. A public utility’s investments in other companies can affect its

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<sup>33</sup> *Dunn Indus. Group, supra.*

<sup>34</sup> *Midwest Energy Consumer’s Group v. Great Plains, Incorporated*, Case No. EC-2017-0107 (*Supplemental Motion to Dismiss and Suggestion in Support*, Dec. 2, 2016) p. 1.

<sup>35</sup> *Southern Union Co. v. Missouri Pub. Serv. Comm’n*, 289 F.3d 503, 507-08 (8th Cir. 2002).



regulated rate of return, if investment losses are allocated to the regulated business. Transactions between affiliated utilities can present rate regulators with difficult issues of preferential treatment and cost allocation. The abuses Congress identified in enacting the Public Utility Holding Company Act attest to the long-standing regulatory concern over interlocking ownership and management of public utilities. This concern does not mean that Southern Union's acquisition strategy is necessarily contrary to the public interest, but it tends to confirm the presumptive validity of Missouri regulating that strategy by requiring pre-acquisition approval.<sup>36</sup>

To the extent that the extraterritorial activities of Missouri public utilities affect the rates charged to Missouri ratepayers, those activities are properly within the jurisdiction of this Commission.

This was certainly one of the non-utility parties' concerns at the time that they entered into the *First Amended Stipulation and Agreement*; it was certainly one of the Commission's considerations at the time that it found the *First Amended Stipulation and Agreement* to be reasonable, approved it, and ordered GPE and KCPL to comply with it.<sup>37</sup> Staff's expert financial analyst witnesses have testified in repeated rate cases that the rating agencies consider GPE and its operating subsidiaries, KCPL and KCP&L Greater Missouri Operations Company ("GMO"), collectively.<sup>38</sup> In 2015, Staff expert Zephaniah Marevangepo testified, "it is important to understand the current credit profiles of KCPL, Great Plains and GMO, as their ratings collectively influence the investors' views of the risks associated with investing in KCPL."<sup>39</sup> In Staff's *Investigation Report* filed in Case No. EM-2016-0324, Staff expert David Murray testified, "even if KCPL maintains separate debt and this debt is still at least investment grade, this does

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<sup>36</sup> *Id.*

<sup>37</sup> See Notes 2 and 3, *supra*.

<sup>38</sup> See *In the Matter of Kansas City Power & Light Company*, Case No. ER-2014-0370 (*Staff's Revenue Requirement Cost of Service Report*, filed Apr. 3, 2015) at pp. 34-37.

<sup>39</sup> *Id.*, p. 35.

not mean higher capital costs will not be incurred by KCPL and now GMO as a result of the leverage introduced by the transaction . . . Staff filed testimony in KCPL's and GMO's 2012 rate cases that demonstrated how GPE's financial support for GMO did cause KCPL to have a higher cost of debt due to shorter tenor debt being assigned to GMO and none being assigned to KCPL."<sup>40</sup> Mr. Murray went on to testify:

It is important for the Commission to understand Staff's objective for the conditions that were imposed in Case No. EM-2001-464. Staff understood that the creation of GPE was probably for the purposes of pursuing other business investments that may impact KCPL's costs, including but not limited to its cost of capital, whether directly or indirectly. Staff's proposed conditions were intended to produce a stand-alone S&P credit rating for KCPL that was a function of KCPL's business and financial risks. If this had occurred, this would have alleviated Staff's concern about GPE's other business and financial risks potentially causing an increased cost of capital to KCPL. However, S&P has never recognized these conditions as being significant enough to allow for a consideration of KCPL's stand-alone risk for purposes of assigning KCPL a rating. S&P has consistently stated the following in its ratings assessment of KCPL and also GMO: "There are no meaningful insulation measures in place that protect KCP&L from its parent and, therefore, KCP&L's issuer credit rating is in line with GPE's group credit profile of 'BBB+'." This is significant due to the fact that S&P believes KCPL has a stand-alone risk profile consistent with an 'A-' credit rating, but nonetheless assigns it a 'BBB+' credit rating due to its affiliation with GPE and GMO.

Given the above, the issuance of debt at GPE will have at least an indirect impact on KCPL and now GMO because the proposed transaction to acquire Westar Energy will result in increased financial risk for GPE on a consolidated basis, which will directly impact S&P's ratings of KCPL and GMO. . . .

\* \* \*

Absent rating-agency-recognized ring-fencing of GPE's Missouri subsidiaries, which Staff believes can only be ensured if the company collaborates with rating agencies through its own initiatives, Staff does not know how to provide the Commission assurance that KCPL

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<sup>40</sup> *In the Matter of Great Plains Energy, Inc.'s Acquisition of Westar Energy, Inc., and Related Matters*, Case No. EM-2016-0324 (*Staff's Investigation Report*, filed July 25, 2016) pp. 25-26. Staff requests that the Commission take official notice of *Staff's Investigation Report*.

and GMO ratepayers will not pay higher capital costs as a result of the proposed transaction and possibly suffer impaired ability to raise reasonably-priced capital due to unforeseen events. Staff's experience from monitoring the activities of companies, such as Ameren Corporation's abandonment of its non-regulated generation subsidiary, is that the holding company will protect itself and its affiliates from a financially-troubled subsidiary, but rarely vice versa. Experience from Staff's efforts in Case No. EM-2001-464 has proven that proposing a list of untested conditions did not accomplish stand-alone ratings for KCPL. Therefore, Staff recommends GPE, which is operated by KCPL, pursue such efforts and provide evidence that such efforts have been accepted by S&P as being sufficient to allow for KCPL and GMO to be assigned a rating consistent with their stand-alone risk profiles.<sup>41</sup>

To summarize, § II(7) of the *First Amended Stipulation and Agreement* was certainly intended to apply to GPE's extraterritorial adventures in order to empower the Commission to protect Missouri ratepayers from exactly the sort of situation that confronts the Commission in this case: excessive borrowing by GPE to fund an overlarge acquisition that likely will result in a higher cost of capital and thus higher rates for Missouri ratepayers. The Eighth Circuit, as shown above, has approved this sort of extraterritorial application of the Public Service Commission Law.<sup>42</sup> The Commission should therefore enforce § II(7) as intended and require GPE to seek authorization to acquire Westar.

The Commission has no jurisdiction over Westar and Staff does not say that it does. But GPE is a Missouri entity, headquartered in Missouri, created by an act of the Commission.<sup>43</sup> It is present in the forum.<sup>44</sup> In exchange for an authority that it sought, it voluntarily promised the Commission and the parties to Case No. EM-2001-464 that it

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<sup>41</sup> *Id.*, at pp. 30 and 34.

<sup>42</sup> *Supra*, Note 36.

<sup>43</sup> ***In the Matter of Great Plains Energy, Inc.'s Acquisition of Westar Energy, Inc., and Related Matters***, Case No. EM-2016-0324 (*Staff's Investigation Report*, filed July 25, 2016) pp. 17-22.

<sup>44</sup> *Id.*

would seek prior authorization from the Commission whenever it might seek to acquire a public utility.<sup>45</sup> The Commission accepted GPE's promise and, as a condition of the authority sought by GPE and granted by the Commission, ordered GPE to comply with the promise it had made.<sup>46</sup> That is the order that MECG now seeks to enforce.

Staff further points out that the Commission should not permit GPE to deny the effect of § II(7). Staff detrimentally relied upon the promise GPE made in the *First Amended Stipulation and Agreement* and did not oppose KCPL's reorganization; therefore, GPE is estopped from evading it now.<sup>47</sup> Equitable estoppel has three elements: "(1) an admission, statement or act inconsistent with the claim afterwards asserted and sued upon; (2) action by another party on the faith of such admission, statement, or act; and (3) injury to such other party, resulting from allowing contradiction of the admission, statement, or act."<sup>48</sup> All of those elements are present in this case: GPE promised to seek prior Commission approval for future acquisitions of public utilities without limitation; Staff did not oppose the reorganization of KCPL in reliance on GPE's promise; and GPE now asserts that its promise does not apply to its acquisition of Westar. One might well wonder, as well, whether when GPE signed the *First Amended Stipulation and Agreement*, it ever intended to comply with it.

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<sup>45</sup> See Note 2, *supra*.

<sup>46</sup> See Note 3, *supra*.

<sup>47</sup> Estoppel is a doctrine under which a party may not change position to the detriment of another party which acted in reliance upon the first asserted position. It is an equitable affirmative defense based upon the notion of good-faith detrimental reliance upon a misleading representation. **Black's Law Dictionary**, p. 570. It is founded on the concept of fairness.

<sup>48</sup> **JGJ Properties, LLC v. City of Ellisville**, 303 S.W.3d 642, 650 -652 (Mo. App., E.D. 2010), citing **Fraternal Order of Police Lodge # 2 v. City of St. Joseph**, 8 S.W.3d 257, 263 (Mo. App., W.D.1999).

**B.**

***Does the 2001 GPE Stipulation apply to GPE's acquisition of Westar?***<sup>49</sup>

Yes, as discussed above, Westar is a “public utility” within the plain meaning and intendments of § II(7) and, therefore, § II(7) of the *First Amended Stipulation and Agreement* – a.k.a the 2001 GPE Stipulation – necessarily applies to GPE's acquisition of Westar.

**C.**

***Is GPE required to obtain Commission approval of its proposal to acquire Westar?***

Yes, GPE is required to obtain Commission approval of its proposal to acquire Westar, both by § II(7) of the *First Amended Stipulation and Agreement* and by Missouri statutes and Commission rules.

GPE, a public utility holding company, is a Missouri general business corporation, headquartered in Kansas City, Missouri.<sup>50</sup> Nothing in the language of the Missouri Public Service Commission Law exempts Missouri public utility holding companies from the Commission's jurisdiction. Quite the opposite, in fact:

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter: (1) 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**; and to . . . electric plants, **and to persons or corporations owning, leasing, operating or controlling the same**.[.]<sup>51</sup> (Emphasis added.)

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<sup>49</sup> By “2001 GPE Stipulation,” this question means § II(7) of the *First Amended Stipulation and Agreement*.

<sup>50</sup> See Note 43, *supra*.

<sup>51</sup> Section 386.250, RSMo.

The traditional rules of statutory construction require that every word of a legislative enactment be given meaning.<sup>52</sup> The word “control,” therefore, used by the legislature in § 386.250, RSMo., and also in § 386.020, RSMo.,<sup>53</sup> must be given a meaning that reflects a different relationship between utility assets/activities on the one hand and a corporation on the other. While GPE does not directly own the utility assets and activities of KCPL and GMO, it controls them by virtue of its ownership of KCPL and GMO.

“In the absence of a statutory definition or established judicial interpretation, analysis \* \* \* begins with the proposition that ‘[t]he primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute.’”<sup>54</sup> To discern legislative intent, we must look to statutory definitions or, if none are provided, the text’s “‘plain and ordinary meaning,’ which may be derived from a dictionary.”<sup>55</sup> “Control” means to exercise power or influence over; to regulate or govern; and to have a controlling interest in.<sup>56</sup> GPE has a controlling interest in both KCPL and GMO and thus exercises power and influence over their utility assets and operations. GPE is thus an electric corporation and a public utility under the Missouri Public Service Commission Act. Any other conclusion ignores the plain language of the statute and the certain intent of the legislature.

### CONCLUSION:

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<sup>52</sup> *Spradlin v. City of Fulton*, 982 S.W.2d 255, 262 (Mo. banc 1998).

<sup>53</sup> Section 386.020(15), RSMo., provides that an “electrical corporation” is “every corporation . . . owning, operating, controlling or managing any electric plant . . . .”

<sup>54</sup> *Gash v. Lafayette County*, 245 S.W.3d 229, 232 (Mo. banc 2008), quoting *State ex rel. Burns v. Whittington*, 219 S.W.3d 224, 225 (Mo. banc 2007).

<sup>55</sup> *Campbell v. County Commission of Franklin County*, 453 S.W.3d 762, 768 (Mo. banc 2015).

<sup>56</sup> *Black’s Law Dictionary*, p. 330 (West, St. Paul, MN: 7<sup>th</sup> ed., 1999).

The Commission has jurisdiction over GPE's activities, both within Missouri and without, pursuant to Missouri statutes.<sup>57</sup> Section II(7) of the *First Amended Stipulation and Agreement* emphasized and reaffirmed that jurisdiction. Alternatively, § II(7) serves as an alternative basis of jurisdiction, as specifically authorized by the general assembly at § 393.250.3, RSMo., as a condition upon KCPL's reorganization.

**WHEREFORE**, on account of all the foregoing, Staff prays that the Commission will resolve the issues herein as Staff has advised; approve the non-unanimous *Stipulations and Agreements* now pending in Case No. EE-2017-0113; and grant such other and further relief as is just in the premises.

Respectfully submitted,

**/s/ Kevin A. Thompson**

Kevin A. Thompson  
Missouri Bar Number 36288  
Chief Staff Counsel  
Missouri Public Service Commission

P.O. Box 360  
Jefferson City, MO 65102  
573-751-6514 (Voice)  
573-526-6969 (Fax)  
[kevin.thompson@psc.mo.gov](mailto:kevin.thompson@psc.mo.gov)

Attorney for the Staff of the  
Missouri Public Service Commission

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<sup>57</sup> See *In the Matter of Great Plains Energy, Inc.'s Acquisition of Westar Energy, Inc., and Related Matters*, Case No. EM-2016-0324 (*Staff's Investigation Report*, filed July 25, 2016) pp. 55-74. Staff hereby incorporates this report by reference herein for all purposes.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on all counsel of record this 31<sup>st</sup> day of January, 2017.

**/s/ Kevin A. Thompson**