

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

MISSOURI ENERGY)	
CONSUMERS GROUP,)	
)	
Complainant,)	
)	
v.)	File No. EC-2017-0106
)	
WESTAR ENERGY, INC.,)	
)	
Respondent.)	

**ANSWER, MOTION TO DISMISS,
OR IN THE ALTERNATIVE, MOTION FOR SUMMARY DETERMINATION**

COMES NOW Respondent, Westar Energy, Inc. (“Westar Energy”), pursuant to the *Notice of Contested Case and Order Directing Filing*, issued herein on October 12, 2016, 4 CSR 240-2.070(7), and 4 CSR 240-2.117, and for its Answer, Motion To Dismiss, or in the alternative, Motion for Summary Determination, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

ANSWER AND MOTION TO DISMISS

For its Answer, Westar Energy states as follows:

1. Westar Energy denies the allegations contained in paragraph 1.
2. Westar Energy is without sufficient information or belief to admit or deny the allegations contained in Paragraph 2, and therefore, denies the same.
3. Westar Energy admits the factual allegations contained in Paragraph 3.
4. Westar Energy denies the allegations contained in paragraph 4.
5. Paragraph 5 does not contain a factual allegation to which a response is required.
6. Paragraph 6 does not contain a factual allegation to which a response is required.
7. Paragraph 7 does not contain a factual allegation to which a response is required.

8. Paragraph 8 does not contain a factual allegation to which a response is required.

9. Paragraph 9 does not contain a factual allegation to which a response is required.

10. Westar Energy denies the allegations contained in paragraph 10.

11. Westar Energy admits the factual allegations contained in Paragraph 11, further stating that Mr. Bassham advised the Commission and the Office of the Public Counsel that GPE's position is that the Transaction is not subject to approval by the Commission because it will be effectuated at the parent corporation/holding company level by entities that are not subject to the Commission's jurisdiction.

12. Westar Energy denies the allegations contained in paragraph 12.

13. Paragraph 13 does not contain a factual allegation to which a response is required.

14. Further answering and, in the alternative, as an affirmative defense, Westar Energy states that the Complaint fails to state a claim upon which relief may be granted in that the Complaint requests relief that is beyond the Commission's authority.

15. Further answering and as an affirmative defense, Westar Energy states that the Complaint fails to state a claim upon which relief may be granted in that the Complainant does not allege a violation of any tariff, statute, rule, order, or decision.

16. Except as expressly admitted in this answer, Westar Energy denies each and every allegation contained in the Complaint.

WHEREFORE, having fully answered the allegations contained in the Complaint, Westar Energy asks that the Complaint be dismissed.

MOTION FOR SUMMARY DETERMINATION

Pursuant to Commission Rule 4 CSR 240-2.117, Westar Energy moves for summary determination in its favor. There is no genuine issue as to any material fact, and, as a matter of

law, the Complaint must be resolved in favor of Westar Energy because Complainant has alleged no violation of any tariff, statute, rule, order, or decision in that:

(1) This matter is not ripe in that the transaction identified by the Complainant has not yet taken place;

(2) Westar Energy does not own the generating facility identified by Complainant; and,

(3) even if the transaction described by Complainant were to take place, Westar Generating would not “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” in violation of Section 393.190, RSMo. These reasons will be more fully explained in the Legal Memorandum in Support of Motion for Summary Determination filed concurrently with this pleading.

Pursuant to Commission Rule 4 CSR 240-2.117(1)(B), Westar Energy submits the following material facts as to which there is no genuine issue (*See Appendix A, Affidavit*):

1. Westar Generating, Inc. (“Westar Generating”) is a Kansas corporation with its principal place of business located at 818 South Kansas Avenue, Topeka, KS 66612.
2. Westar Generating is a wholly owned subsidiary of Westar Energy, Inc.
3. Westar Generating was granted a certificate of convenience and necessity (CCN) in Commission Case No. EA-2000-153 (as consolidated with Case No. EM-2000-145) to own a portion of an electric generating facility in Jasper County, Missouri, known as the “State Line” facility.

4. Westar Generating owns a 40% interest in the State Line facility that was commissioned in the year 2001.
5. Westar Generating's ownership interest in the State Line Unit has not been transferred to any other person or entity.
6. On May 29, 2016, Great Plains Energy ("GPE") entered into an Agreement and Plan of Merger ("Agreement") with Westar Energy to acquire 100% of the stock of Westar Energy. The Agreement provides that "Merger Sub" (which has now been officially named "GP Star, Inc." and 100% of the outstanding equity interests of which will be owned by GPE) will be merged with and into Westar Energy, with Westar Energy emerging as the surviving corporation. Immediately following the merger, GP Star, Inc. will cease to exist, and Great Plains Energy will become the owner of all of the capital stock of Westar Energy.
7. Westar Generating has no plans to transfer its ownership interest in the State Line Unit to any person or entity.
8. The ownership of Westar Generating has not changed, and will not change, as a result of the Great Plains Energy/Westar Energy transaction described in paragraph 6 above. Westar Generating is, and will continue to be, a wholly owned subsidiary of Westar Energy.

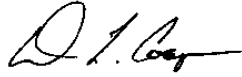
WHEREFORE, having fully answered, Westar Energy requests that the Complaint be

dismissed, or in the alternative, that summary determination be issued in favor of Westar Energy.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:



Dean L. Cooper MBE#36592
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
Phone: (573) 635-7166
E-mail: dcooper@brydonLaw.com

ATTORNEYS FOR WESTAR ENERGY, INC.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 31st day of October, 2016, to:

Missouri Public Service Commission
Governor's Office Building
Jefferson City, Missouri 65102
staffcounsel@psc.mo.gov

Office of the Public Counsel
Governor's Office Building
Jefferson City, Missouri 65102
opcservice@ded.mo.gov

David Woodsmall
MECG
David.woodsmall@woodsmalllaw.com

John B. Coffman
Consumers Council
john@johncoffman.net

