

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

In the Matter of the Application of)
Great Plains Energy Incorporated for)
Approval of its Acquisition of)
Westar Energy, Inc.)

Case No. EM-2017-0226

Staff's Response to MECG

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

1. On March 1, 2017, the Missouri Energy Consumers' Group ("MECG") filed its *Motion to Require Staff to File Testimony*. MECG states that it "is worried about the thoroughness of Staff's investigation."¹ MECG further points to a provision in the agreement negotiated by Staff and Great Plains Energy, Inc. ("GPE"), whereby Staff promised neither to file a complaint itself nor to support or to assist any complaint filed by any other party.² MECG goes on to assert that "Staff is the party in this case with the most resources to detect and demonstrate for the Commission the detriments inherent in GPE's acquisition of Westar" and that it would be "inequitable" for the customers who have paid for Staff's resources to be deprived of the benefit of them in this case.³ Finally, MECG notes that, since Staff has entered into an agreement with GPE, that it must have already completed its investigation.⁴

2. In response, Staff states, first, that it is well able to determine the level of its participation in cases before the Commission. In fact, the two situations MECCG cites

¹ *MECG's Motion to Require Staff to File Testimony*, ¶ 2.

² *Id.*, ¶ 3.

³ *Id.*, ¶ 5.

⁴ *Id.*, ¶ 8.

where Staff “opposed efforts to require them to participate,” were complaints filed by other parties in which it was not appropriate for Staff to have the obligation of providing evidence to support the burden of proof in complaints that were not its own. Second, it is not the ratepaying public that pays for the Staff, but rather the regulated utilities.⁵ Third, Staff has indeed completed its investigation and its *Investigation Report* is attached to this pleading as Exhibit A (HC), as is Staff’s report on the investigation performed by the Staff of the Kansas commission, as Exhibit B (HC). Fourth, due to the unusual history of this matter, by the time that GPE filed its *Application* for approval of the Westar acquisition, the available time for any further investigation was limited. In any event, Staff is satisfied that it has already identified the significant possible detriments and has already presented those to the Commission in its *Investigation Report* filed originally in Case No. EM-2016-0324 and, as stated previously, now filed in this docket. Staff does not intend to undertake any further investigation in this docket but will likely file surrebuttal testimony.

3. Perhaps MCEG, whose successful complaint after all resulted in GPE’s *Application* being filed at all, will hire its own experts and conduct its own investigation, as parties litigant typically do. Staff understands MCEG’s desire to contain its costs, but does not believe that it is appropriate to do so by riding Staff’s coat tails.

4. Staff is ready, as always, to do whatever the Commission directs it to do. Staff’s *raison d’être* is to provide the Commission with the facts and analyses necessary to perform its statutory duties. In the present matter, Staff has conducted an investigation, filed a report, filed testimony, and negotiated an agreement containing

⁵ Section 386.370, RSMo.

conditions that, should the Commission approve the acquisition, will provide a measure of protection for Missouri ratepayers.

5. MECG and the other parties to this case should recall that under Missouri law, corporations cannot be prevented from engaging in such transactions unless a definite detriment to the public interest can be shown.⁶ Staff's investigation disclosed *possible* detriments and Staff has negotiated conditions with respect to those.

WHEREFORE, Staff prays that the Commission will **DENY** MECG's *Motion to Require Staff to File Testimony*; and grant such other and further relief as is appropriate in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail on each of the parties listed in the Service List for this case maintained by the Commission's Data Center on this 2nd day of March, 2017.

/s/ Kevin A. Thompson

⁶ ***State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz***, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980): "Before a utility can sell assets that are necessary or useful in the performance of its duties to the public it must obtain approval of the Commission. § 393.190 RSMo. (1969). The obvious purpose of this provision is to ensure the continuation of adequate service to the public served by the utility. The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest. ***State ex rel. City of St. Louis v. Public Service Commission of Missouri***, 335 Mo. 448, 73 S.W.2d 393, 400 (Mo. banc 1934)." See also ***State ex rel. AG Processing, Inc. v. Public Service Com'n of State***, 120 S.W.3d 732, 735 (Mo. banc 2003).