

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

In the Matter of the Joint Application of)
Great Plains Energy Incorporated, Kansas)
City Power & Light Company, and KCP&L) Case No. EE-2017-0113
Greater Missouri Operations Company for)
a Variance from the Commission's Affiliate)
Transaction Rule, 4 CSR 240-20.015)

**REPLY OF JOINT APPLICANTS
TO MECG'S RESPONSE TO THE OPPOSITION
OF JOINT APPLICANTS TO MECG'S APPLICATION TO INTERVENE**

Great Plains Energy Incorporated ("GPE"), Kansas City Power & Light Company ("KCP&L"), and KCP&L Greater Missouri Operations Company ("GMO") (collectively, "Joint Applicants") state the following in reply to the Response of the Midwest Energy Consumers Group ("MECG") to Joint Applicants' Opposition to MECG's Application to Intervene ("Response"):

1. MECG's Application to Intervene and its Response to the Joint Applicants' Opposition is premised on the mistaken belief that this case seeks the approval of a transaction under Section 393.190¹ or that it is governed by the 2001 GPE Stipulation. See Order Approving Stipulation and Agreement and Closing Case, In re Application of Kansas City Power & Light Co. for an Order Authorizing its Plan to Reorganize Itself into a Holding Company Structure, No. EM-2001-464 (July 31, 2001). However, Section 393.190 does not apply because neither GPE nor Westar, Inc. ("Westar") are electrical corporations or public utilities under Missouri law, and no provision in the 2001 GPE Stipulation requires GPE to seek this Commission's approval to merge with Westar, a provider of regulated electric service in Kansas that is not a public utility under Missouri law. Consequently, there is no basis for MECG to be granted intervention in this

¹ All statutory references are to the Missouri Revised Statutes (2000), as amended.

Affiliate Transactions Rule variance proceeding because its interest is no different from that of the general public under the Commission's Intervention Rule, 4 CSR 240-2.075(3)(A).

2. All of the transactions that MECG refers to in its Response concern the acquisition of a Missouri public utility. The first case cited by MECG is the acquisition of Empire District Electric Company by Liberty Utilities Company and its parent corporation Algonquin Power & Utilities Corp. See MECG Response, ¶ 2. Unlike Westar, however, Empire's Missouri utility operations have been serving the public for years and are fully regulated by the Commission. Therefore, the acquisition of Empire clearly required the approval of the Commission under Section 393.190, as the Commission recognized in its order approving the transaction. See Order Approving Stipulation and Agreement and Authorizing Merger Transaction at 3, In re Joint Application of The Empire District Electric Co., Liberty Utilities (Central) Co., and Liberty Sub Corp. Concerning an Agreement and Plan of Merger, No. EM-2016-0213 (Sept. 7, 2016).

3. Similarly misplaced is MECG's reliance on the 2008 merger of Aquila, Inc. and GPE, and the 1999 merger of St. Joseph Light & Power Co. and UtiliCorp United Inc. which have no bearing on the pending request for a variance from the Affiliate Transactions Rule. In those cases where the applicants sought prior Commission approval under Section 393.190.1, Aquila and St. Joseph Light & Power were fully regulated Missouri public utilities subject to the jurisdiction of the Commission. See Report and Order at 37, In re Joint Application of Great Plains Energy Inc., Kansas City Power & Light Co. and Aquila, Inc. for Approval of the Merger of Aquila, Inc. with a Subsidiary of Great Plains Energy Inc., No. EM-2007-0374 (July 1, 2008); Report and Order, In re Joint Application of UtiliCorp United Inc. and St. Joseph Light & Power Co. for Authority to Merge, No. EM-2000-292, 2000 Mo. PSC LEXIS 1646 at 4 (Dec. 14, 2000).

4. By contrast, the facts in this proceeding are similar to the acquisition of non-Missouri public utilities in 2015 and 2016 by Spire, Inc., a Missouri-based holding company governed by a stipulation comparable to the GPE Stipulation.² See Order Closing File, In re Spire, Inc.’s Acquisition of EnergySouth, Inc., No. GM-2016-0342 (Sept. 7, 2016). Significantly, neither MECG nor any other entity took any action before this Commission regarding Spire, Inc.’s acquisitions of Alabama Gas Corporation or EnergySouth, Inc., even though Staff had alleged that both transactions were subject to prior Commission approval and the closing of the EnergySouth transaction was imminent.

5. MECG’s citation to the Supreme Court’s reversal of the Commission’s decision to defer ruling on UtiliCorp’s request regarding recovery of the acquisition premium is also irrelevant to this proceeding. See MECG Response, ¶ 12. In State ex rel. Ag Processing, Inc. v. PSC, 120 S.W.3d 732, 736 (Mo. en banc 2003), the Court held that “when determining whether to approve the merger” the Commission erred “because it failed to consider and decide all the necessary and essential issues,” including “the issue of UtiliCorp’s being allowed to recoup the acquisition premium.” However, there is no issue regarding an acquisition premium in this proceeding. As discussed below, KCP&L and GMO have agreed not to seek recovery of any acquisition premium unless another party to a subsequent general rate case seeks to impute the cost of debt used by GPE to finance the Westar acquisition in a KCP&L or GMO general rate case. Only then may KCP&L or GMO seek such recovery.

² See Order Approving Stipulation and Agreement, and Approving Plan to Restructure, In re Application of Laclede Gas Co. for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries, No. GM-2001-342 (Aug. 14, 2001).

6. MECG has alleged that the commitment that GPE made in this proceeding regarding acquisition premium and transaction costs is different than the commitment it made before the Kansas Corporation Commission. See MECG Response, ¶ 4. However, the representations made by GPE, KCP&L, and GMO in this proceeding are the same ones made in Kansas. In Section B(1) of the Stipulation and Agreement entered into with Commission Staff,³ the following condition is stated:

Neither KCP&L nor GMO will seek direct or indirect recovery or recognition in retail rates of any acquisition premium through any purported acquisition savings “sharing” adjustment (or similar adjustment) in current or future rate cases; provided, however, that if any party to any KCP&L or GMO general rate case proposes to impute the cost or proportion of the debt GPE is using to finance the Transaction to either KCP&L or GMO for purposes of determining a fair and reasonable return for either utility, then KCP&L and GMO reserve the right to seek, in any such rate case, recovery and recognition in retail rates of the acquisition premium [emphasis added].

7. This same representation has been made in the Kansas case. GPE witness Darrin R. Ives stated in Supplemental Direct Testimony:

Therefore, if – and only if – any party to a KCP&L or Westar general rate case proposes to impute the cost or proportion of debt used by GPE to finance the Transaction for purposes of determining a fair and reasonable return, then Westar and KCP&L reserve the right to seek, in any such rate case, recovery of the

³ Section 1 of the Joint Applicants’ Stipulation and Agreement with the Office of the Public Counsel, filed on October 26, 2016, incorporates by reference the Stipulation and Agreement with Commission Staff, filed on October 12.

acquisition premium in excess of book value and transaction costs associated with the Transaction through inclusion and revenue requirement and retail rates in order to match the recovery of the use of funds with such a request to utilize the source of funds in setting retail rates [emphasis added].

See Supp. Direct Testimony of D. Ives, Joint Applicants’ Motion for Leave to File Supplemental Direct Testimony, In re Joint Application of Great Plains Energy Inc., Kansas City Power & Light Co., and Westar Energy Inc. for Approval of the Acquisition of Westar Energy, Inc. by Great Plains Energy Inc., No. 16-KCPE-593-ACQ (Nov. 2, 2016).

8. Finally, neither MEGC’s Response nor its Application to Intervene states how its interest is different from that of the general public, how it “may be adversely affected by a final order” in this case, or why its intervention “would serve the public interest.” These are the touchstones of the Commission’s Intervention Rule. See 4 CSR 240-2.075(3)(A)-(B). MEGC has been unable to fulfill these requirements because this proceeding seeks a variance from the asymmetric pricing standards of the Affiliate Transactions Rule under 4 CSR 240-20.015 that would permit transactions between the regulated operations of KCP&L, GMO and Westar to occur at cost.⁴ Although KCP&L and GMO will continue to be regulated public utilities in Missouri, and Westar will continue to be a regulated provider of electric service in Kansas, the Affiliate Transactions Rule could prevent transactions between and among their regulated operations from occurring at cost. The requested variance would allow such transactions to occur at cost and permit the attainment of savings that will ultimately benefit customers of GPE’s regulated utility subsidiaries. Indeed, MEGC has raised no specific objection to the Joint

⁴ The variance request excludes wholesale power transactions, which will be based on FERC-approved rates.

Applicants' request for a variance from the Affiliate Transactions Rule, but rather seeks to re-characterize this proceeding as a transaction that requires the Commission's approval under Section 393.190 or the 2001 GPE Stipulation.

9. Nothing regarding this request for a variance from the Affiliate Transactions Rule or the conditions to which the Joint Applicants have agreed in its Stipulation and Agreements with Commission Staff and the Office of the Public Counsel ("OPC") will change the rates, charges or terms of service extended to any customer. Therefore, MEGC has no interest different from that of the general public and no basis to claim that it may be adversely affected by a final order in this case.

10. Denying MEGC intervention would be consistent with other Commission decisions where intervention was sought without a sufficient demonstration of interest. In a financing case where Ameren applied for approval to assume a lease relating to the combustion turbine generating facility owned by Audrain County, the Commission denied the intervention application of the Missouri Joint Municipal Electric Utility Commission ("MJMEUC"), noting that "MJMEUC's *rates ... will not be affected.*" See Order Denying Application for Intervention at 2, Application of Union Elec. Co., No. EF-2006-0278 (Feb. 2, 2006) (emphasis added). The Commission found that MJMEUC did "not have an interest which is different from that of the general public" and "will not be adversely affected by a final order arising from the case." Id. See also Order at 4, In re Union Elec. Co. for Authority to File Tariffs Increasing Rates for Natural Gas Service, No. GR-2010-0363 (Sept. 1, 2010) (MoGas Pipeline LLC denied intervention where it "failed to show that its interest will be affected by an outcome of this case").

11. The identical situation exists in the subject proceeding, where granting the Joint Applicants' request for a variance from the Affiliate Transactions Rule and approving the stipulations entered into with Staff and OPC will not change or otherwise affect the rates paid by MCEG's members. Because MCEG has not shown that its interest is different from that of the general public, that it will be adversely affected by a final order, or that its proposed intervention would serve the public interest, its application for intervention should be denied.

WHEREFORE, the Joint Applicants request that the Commission deny MCEG's Application to Intervene.

/s/ Robert J. Hack

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CERTIFICATE OF SERVICE (PARTIES)

A copy of the foregoing was served upon the below named parties by email or U.S. mail, postage prepaid, this 16th day of November, 2016.

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**CERTIFICATE OF SERVICE
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A copy of the foregoing was served upon the below named parties by email or U.S. mail, postage prepaid, this 16th day of November, 2016.

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