

In the Matter of Great Plains Energy Incorporated for)
Approval of its Acquisition of Westar Energy, Inc.) Case No. EM-2017-0226

NOTICE OF WITHDRAWAL

COMES NOW the Midwest Energy Consumer's Group ("MECG"), and through this pleading, provides Notice of its Withdrawal from this proceeding:

1. On February 23, 2017, Great Plains Energy (“GPE”) filed its application for Commission approval to acquire Westar. As the Commission is aware, the immediate merger approval docket is a direct result of MECG filing a complaint alleging that the Commission had jurisdiction over the Westar acquisition. As such, given the significant amount of work that it has already done in order to see this case even filed, MECG does not take the decision to withdrawal from this proceeding lightly. Nevertheless, given the process implemented by the Commission, MECG realizes that withdrawing from this case is the best option.

2. The Commission will recall that MECG, along with every other non-utility party to this case, sought a procedural schedule that would have provided for an evidentiary hearing in this case in early May and a Commission decision by late May. In contrast, GPE sought to unnecessarily expedite this case. As the other parties pointed out, the GPE procedural schedule would not provide for a meaningful opportunity for other parties to participate. Indeed, the adopted schedule calls for undersigned counsel to begin litigating this case on Wednesday, one day after the reply brief in the KCPL rate case and just a week after GPE filed extensive surrebuttal testimony. Despite the unworkable nature of the GPE procedural schedule, it was adopted by the Commission.

3. Now, being forced to choose, MECG must devote its resources to the rate case. That is, rather than ignore other pressing matters including legislative events and the KCPL rate case, simply so that it can participate in a case that does not provide for a fair process, MECG has instead decided to withdraw from the case.

4. As one of only two parties that filed rebuttal testimony in this case, MECG recognizes that its withdrawal from this case plays directly into GPE's plan for this matter. Specifically, at all turns, GPE has sought to deny all other parties an opportunity to voice concerns regarding this transaction. First, rather than open this matter to all interested stakeholders, GPE instead sought to negotiate secretly with just Staff before a case was even filed. Then, GPE filed a docket (EE-2017-0113) for a variance from the Commission's affiliate transaction rules. Despite numerous assertions to the contrary, GPE repeatedly informed the Commission and other parties that this was not a merger review, but was simply an affiliate transaction waiver. In that same case, GPE then took the unusual step of opposing the intervention of every stakeholder. During this entire time, GPE was fighting every assertion that the Missouri Commission actually had oversight over this transaction. After losing the complaint case and being ordered to file a merger application, GPE suddenly changed its tune and informed the parties that its affiliate transaction testimony was actually merger approval testimony. Given this, GPE sought an expedited schedule and faulted the other parties for not realizing the true nature of this other testimony and taking use its time to prepare and submit merger review rebuttal testimony. While GPE eventually lost its battle regarding Commission jurisdiction, it has been rewarded handsomely for its obstinance. Specifically, in order to accommodate GPE's arbitrary closing date, the Commission adopted GPE's unusually expedited

procedural schedule.¹ In the end, despite overcoming all of GPE's other regulatory obstacles, MECG found the Commission sanctioned procedural schedule too much to overcome.²

5. While it is withdrawing from this proceeding, MECG nevertheless needs to remind the Commission of its responsibility to ensure that this acquisition is "not detrimental to the public interest." Unfortunately, through the sanctioned process, the Commission will not have the benefit of other stakeholder viewpoints in conducting its review. Indeed, Staff and OPC settled this case before it was even filed.³ Moreover, given the unreasonably expedited procedural schedule, only one other party, and no customer advocates, had sufficient opportunity to prepare and file testimony regarding the implications of this transaction. Given the paucity of other testimony, MECG suggests that the only thorough review of this transaction was that conducted by the Kansas Staff.⁴

6. Undoubtedly, based upon this thorough review, the Kansas Commission will either reject this acquisition or seek to impose conditions designed to mitigate the detrimental effects that are undeniable in this transaction. MECG would hope that the Missouri Commission would accept the guidance of the Kansas Commission and impose similar conditions on the

¹ MECG suggests that the closing date is arbitrary because, despite the Commission's approval of the expedited procedural schedule, there is no indication that FERC approval will be imminent.

² Certainly, GPE's treatment of stakeholders in these cases is indicative of its treatment of customers in general and symptomatic of the sudden decline in KCPL's customer satisfaction scores. In this light, MECG directs the Commission's attention to the manner in which Empire processed its merger application which included input from all stakeholders. Despite such input, that merger was not hindered or delayed. In fact, that acquisition received Missouri approval months before similar approval was received from Kansas. One necessarily wonders whether KCPL was prevented from taking a similar approach in this case because it recognized the detriments inherent in its acquisition of Westar.

³ While Missouri Staff has previously alleged that its non-unanimous stipulation resolves all of its concerns with the acquisition, Staff apparently recognized the inadequate nature of its settlement and was seeking to add further conditions to that settlement as late as yesterday. See, Dietrich Surrebuttall, filed March 27, 2017. Certainly this is a strange situation and stands in stark contrast to the settlement in the Empire acquisition in which Staff waited to reach its conclusions until after it had the benefit of discussing this matter with other parties.

⁴ The Commission may recall that the Kansas Staff found that this transaction was so inherently flawed, due to the mammoth acquisition premium paid by GPE and the amount of debt necessary to finance that acquisition premium, that it took the unprecedented step of simply recommending that the Kansas Commission simply reject the transaction. In other words, after conducting its extensive review, the Kansas Staff found that no condition could remedy this faulty transaction.

Missouri operations of both KCPL and GMO.⁵ It would be unfortunate that Missouri ratepayers, who have already experienced skyrocketing KCPL rates, should have to suffer further as a result of this detrimental acquisition; while Kansas ratepayers, protected from the detrimental nature of this transaction through the thorough review conducted its Staff would be shielded from such effects.

WHEREFORE, MECG files this notice of its withdrawal from this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David L. Woodsmall". The signature is fluid and cursive, with the first name "David" being more prominent.

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⁵ Presumably any structural conditions placed on KCPL by the Kansas Commission would be equally applicable to KCPL's Missouri operations. That said, however, since GMO has no operations in Kansas, such conditions would not be automatically placed on GMO. Such conditions would necessitate action by this Commission.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

A handwritten signature in black ink, appearing to read "David L. Woodsmall", written in a cursive style.

David L. Woodsmall

Dated: March 28, 2017