

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 4th day of January, 2017.

Midwest Energy Consumers Group,)	
)	
Complainant,)	
)	
v.)	File No. EC-2017-0107
)	
Great Plains Energy, Inc.)	
)	
Respondent.)	

**ORDER DENYING MOTION TO DISMISS AND SCHEDULING
EVIDENTIARY HEARING**

Issue Date: January 4, 2017

Effective Date: January 4, 2017

Midwest Energy Consumers Group (“MECG”) filed a complaint (“*First Amended Complaint*”) against Great Plains Energy, Inc. (“Great Plains”) alleging the holding company is violating the terms of the Commission’s previously issued *Order Approving Stipulation and Agreement and Closing Case* (“2001 Reorganization Order”).¹ Great Plains filed a *Motion to Dismiss of Great Plains Energy Incorporated and Suggestions in Support* (“*Motion to Dismiss*”) arguing that the *First Amended Complaint* fails to state a claim upon which relief can be granted. Oral arguments on the *Motion to Dismiss* were held on December 22, 2016. MECG filed a *Second Amended Complaint* on December 28, in which it pleads alternative theories on the Commission’s jurisdiction. Great Plains has yet to file an answer to the *Second Amended Complaint*. The Commission sees no

¹ Case No. EM-2001-464.

reason to delay ruling on the pending *Motion to Dismiss* filed against the *First Amended Complaint*, and consequently, sets this case for hearing to allow for an expeditious resolution of this matter.

A motion to dismiss is an attack on the petition and solely a test of the adequacy of the pleadings.² When evaluating the merits of Great Plain's *Motion to Dismiss*, the Commission will treat all facts contained in MCEG's *First Amended Complaint* as true.³ It is improper to weigh or determine the credibility or persuasiveness of the factual allegations.⁴

Facts Asserted in MCEG's First Amended Complaint:

According to the *First Amended Complaint*, in 2001 Kansas City Power & Light Company requested the Commission's approval to reorganize and become a wholly-owned subsidiary of a new holding company, Great Plains. The Commission issued its 2001 Reorganization Order in Case No. EM-2001-464, which approved the terms of a stipulation and agreement placing prospective merger conditions on Great Plains. Specifically, Great Plains agreed:

“...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 [Great Plains] 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.”

On May 31, 2016, a Great Plains representative informed the Commission that the holding company had entered into an agreement to acquire Kansas-based Westar Energy, Inc. (“Westar Energy”), and would not seek this Commission's approval for the

² *Rychnovsky v. Cole*, 119 S.W.3d 204, 208 (Mo.App. W.D. 2003).

³ *Lynch v. Lynch*, 260 S.W.3d 834 (Mo. Banc 2008).

⁴ *Nazeri v. Mo. Valley Coll.*, 860 S.W.2d 303, 306 (Mo. banc 1993).

acquisition. Westar Energy is an affiliate of Westar Generating, Inc., an electric corporation and public utility. MCEG's *First Amended Complaint* further states that Great Plains is violating the terms of the 2001 Reorganization Order by not seeking this Commission's approval of the pending Westar Energy transaction.

Determination:

The Commission has before it a complaint alleging a lack of compliance with a prior order of the Commission. MCEG's *First Amended Complaint* requests the Commission determine Great Plains violated the terms of the 2001 Reorganization Order and direct Great Plains to comply with that order. Section 386.390.1, RSMo 2000, authorizes the Commission to hear a complaint that sets forth an act or omission by a corporation that is claimed to violate any provision of law, rule, order or decision of the Commission. Liberally construing the facts in MCEG's favor, the complaint sets forth facts that if proven would entitle MCEG to relief. The *First Amended Complaint* states a claim upon which relief can be granted and the *Motion to Dismiss* will be denied.

In its *Supplemental Motion to Dismiss*, Great Plains further argues that the Commission lacks jurisdiction to either approve or disapprove the potential Westar Energy acquisition. Great Plains reasons that if the intent of the 2001 Reorganization Order was to extend the Commission's jurisdiction over the acquisition of non-Missouri public utilities, "it would have contained clear and precise language saying so."⁵ Great Plains' *Motion to Dismiss* and *Supplemental Motion to Dismiss* presume an interpretation of the 2001 Reorganization Order that precludes subject matter

⁵ Supplemental Motion to Dismiss of Great Plains Energy Incorporated and Suggestions in Support, pg. 15, ¶ F Conclusion.

jurisdiction of the Commission, namely that the term “public utility” in the 2001 Reorganization Order only applies to a Missouri-based public utility. The issue before the Commission is not approval or disapproval of a merger, but rather, whether a violation of the 2001 Reorganization Order exists. That determination remains with the Commission, which is entitled to interpret its own orders and to ascribe to them a proper meaning.⁶ The incomplete record makes such a determination improper at this time.

Therefore, the Commission will set a hearing date and establish deadlines for parties to file motions.

THE COMMISSION ORDERS THAT:

1. The *Motion to Dismiss of Great Plains Energy Incorporated and Suggestions in Support* is denied.

2. Great Plains shall file an answer to MECG’s *Second Amended Complaint* no later than January 10, 2017.

3. Parties may file motions for summary determination no later than January 17, 2017.

4. Parties may file responses to filed motions for summary determination no later than January 27, 2017.

5. No later than January 25, 2017, the parties shall file a joint list of issues, joint stipulation of facts, witness list, and order of cross-examination.

6. An evidentiary hearing or oral arguments in support of motions for summary determination shall be held on Wednesday, February 1, 2017, beginning at 9:00 a.m. at the Commission’s office at the Governor Office Building, 200 Madison

⁶ *State ex rel Beaufort Transfer Co v. Pub. Serv. Comm’n of MO*, 610 S.W.2d 96, 100 (Mo. App. 1980).

Street, Jefferson City, Missouri, Room 310. The Governor Office Building meets accessibility standards required by the Americans with Disabilities Act. Any person who needs specific accessibility accommodations may call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 prior to the hearing.

7. The Commission directs the parties to present live testimony at the evidentiary hearing on any facts not stipulated to by the parties.

8. This order shall be effective when issued.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur.

Burton, Senior Regulatory Law Judge.