

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

In the Matter of the Application of)
KCP&L Greater Missouri Operations Company)
For Approval of a Special Rate for a Facility) File No. EO-2019-0244
Whose Primary Industry is the Production or)
Fabrication of Steel in or Around Sedalia, Missouri.)

**KCP&L GREATER MISSOURI OPERATIONS COMPANY’S RESPONSE
TO MECG’S MOTION TO COMPEL**

COMES NOW KCP&L Greater Missouri Operations Company (“GMO”) and for its response to Midwest Energy Consumers Group’s (“MECG”) *Motion to Compel Responses to Data Requests from GMO and Motion for Expedited Treatment* (“Motion”) filed in this docket on September 12, 2019, states as follows:

A. MECG Seeks Highly Sensitive Communications Between GMO and Other Prospective Customers Which are Subject to Non-Disclosure Agreements and Not Relevant To the Nucor Contract and Are Not Calculated to Lead to Admissible Evidence.

1. In its Motion, MECG seeks to obtain highly sensitive and confidential communications (and related information) between GMO and other prospective customers which are subject to non-disclosure agreements between GMO and third parties who are not parties to this case. As the Commission knows, GMO is constantly soliciting new business customers and works closely with the Missouri Department of Economic Development to bring new businesses to the State of Missouri and GMO’s service area. The needs and existence of other prospective customers is not relevant to the issues in this case, and Nucor’s desire to have a specific rate approved by January 1, 2020, to allow it to operate its steel plant in Sedalia, Missouri. Mr. Woodsmall on behalf of MECG has no right to delve into such sensitive and confidential

discussions when there is no connection or relevance to issues raised by the Nucor special contract. Therefore, the Commission should deny MECG's motion to compel.

B. The “various communications” mentioned by MECG occurred during prehearing settlement negotiations in this case and are privileged. Their use in MECG’s motion is a violation of Commission rules.

2. Furthermore, Mr. Woodsmall has egregiously violated the Commission's rules against the disclosure of privileged settlement discussions. 20 CSR 4240-090(7) states that: “Facts disclosed in the course of a prehearing conference and settlement offers are privileged. . .” Such privileged information should not be disclosed (even under seal) to the Commission and/or the Regulatory Law Judge, and may not be used against participating parties. In this case, Mr. Woodsmall is using “various communications” and settlement discussions to promote his own agenda and argument that GMO is required to utilize the provisions of Section 393.355 RSMo to obtain approval of the Nucor Special Contract. Mr. Woodsmall is wrong on the merits of this argument, but that is a matter to be addressed later in the proceeding.

3. Footnote 4 to the Motion states that “MECG marked the redacted information as confidential out of concerns that GMO may assert that the mere existence of such negotiations is confidential. Therefore, MECG marked the information sought by the data requests as confidential out of abundance of caution.” Without consulting GMO's counsel, Mr. Woodsmall included privileged settlement discussions in its Motion. His apparent “solution” to his ethical problem is to underline and put asterisks around the privileged information and treat it as “confidential” under 20 CSR 4240-2.135. But this solution totally misses the mark since the communications in settlement conferences are not just confidential but they are also privileged. Merely placing the information under seal does not remedy the fact that MECG has now disclosed to the decision-maker information which was discussed as privileged information.

4. In its DRs, MECG has asked for wide ranging information – all correspondence, status of agreement, size of peak demand, sustainability goals, etc. The Commission should consider the message that granting this motion will send to future prospective large customers if their business plans are released as a result of what used to be protected settlement negotiations and discussions. Companies will be reluctant to start negotiations to seek to locate in KCPL/GMO service territory (even when subject to non-disclosure agreements) if such information can be disclosed to outside third parties without the consent of prospective customers.

C. GMO’s Decision Not To Utilize the Provisions of Section 393.355 RSMo Is Not Because of the Desire of Other Prospective Customers And Such Desires Are Irrelevant to this Case.

5. Contrary to the arguments of MECG, GMO is not using the provisions of Section 393.355 in this case solely because other prospective customers need to be served exclusively by wind farms. Mr. Darrin Ives explained in this Direct Testimony supporting that Application (pp. 6-7) that Section 393.355 was designed to apply to facilities where there is no need for extensive investment to serve the customer. Therefore, it is realistic to assume that the utility’s net income would not change as a result of providing a special rate to the facility. However, this is not the case for the Nucor facility. As Mr. Ives explains:

However, in providing service to a new facility with new load that has never before been served by the utility, incremental cost would be necessary to connect that facility to the utility grid and provide electric service. Under this scenario it would be reasonable to expect the utility would be able to recover its cost to install poles, wires, and equipment and earn a return on its rate base investment. In this situation, involving new incremental load, the utility would need to increase its net income in order to recover the incremental cost of the investment, including a return on that investment, necessary to serve the new load. Therefore, the section of the statute(sic) requiring the use of a tracker to ensure that net income neither increases nor decreases (Section 393.355.3) appears to be contradictory to the statute’s emphasis on incremental cost (Section 393.355.2(1)).

6. GMO is extremely reluctant to discuss settlement discussion at all before the Commission. However, it is necessary to correct one aspect of the record now that Mr. Woodsmall has breached his obligations to keep such discussions privileged. Contrary to Mr. Woodsmall's representations, GMO did not indicate in settlement negotiations that its decision not to utilize Section 393.355 was solely because other prospective customers desired to have a wind-only option for obtaining service. In fact, the desires of other prospective customers have nothing with the why the proposed SIL tariff was negotiated with Nucor and therefore any communications with other prospective customers is totally irrelevant to this proceeding and will not lead to admissible evidence. The Commission should not encourage such breaches of the PSC rules against disclosing privileged settlement discussions by entertaining Mr. Woodsmall's motion to compel, but instead should summarily reject it for the reasons stated herein.

WHEREFORE, the KCP&L Greater Missouri Operations Company respectfully requests the Commission enter an order denying MCEG's Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 16th day of September 2019.

/s/ Roger W. Steiner

Roger W. Steiner