

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

In the Matter of KCP&L Greater Missouri)	File No. <u>ET-2012-0022</u>
Operations Company's Solar Photovoltaic)	Tariff No. JE-2012-0015
Rebate Program)	

**RESPONSE OF KCP&L GREATER MISSOURI OPERATIONS COMPANY TO
STAFF'S MOTION TO OPEN CASE AND
RECOMMENDATION TO REJECT TARIFF SHEETS**

KCP&L Greater Missouri Operations Company ("GMO" or "Company") hereby responds to Staff's Motion to Open Case and Recommendation to Reject Tariff Sheets.

1. On June 29, 2011, Circuit Judge Daniel R. Green issued his Findings of Fact, Conclusions of Law and Judgment ("Judgment") in State ex rel. Missouri Energy Development Ass'n v. PSC, No. 10AC-CC00512 (Cole Co. Cir. Ct., June 29, 2011).

2. The Judgment contained 14 conclusions of law, which among other things found Section 393.1030.3 of Proposition C illegal and unconstitutional under the Due Process Clause of Article I, Section 10 of the Missouri Constitution, as well as under Article I, Section 28 as an unlawful attempt to take private property for public use. The Judgment also found Section (5) of the Commission's regulations that were promulgated under Proposition C to be unlawful and unreasonable because they conflicted with Section 393.1030.2(1) in their effort to exceed the 1% rate increase maximum.

3. In his conclusion Judge Green declared that "the Court enters JUDGMENT for Relators." He stated: "Section 393.1030's solar rebate provision is declared illegal and unconstitutional. The Commission's Order adopting the subject Regulations is reversed and remanded to the Commission for further action consistent with this JUDGMENT"

4. As a result, the Judgment is a final and complete judgment in the sense that it addresses all of the issues raised in the case and does not leave any issues to be decided in any other order or judgment.

5. Under Missouri Rule of Civil Procedure 75.01, cited by Staff, “a court loses its power to correct, amend, vacate, reopen or modify a judgment on its own motion after thirty days from the entry of judgment,” however, the courts have frequently stated that they “have inherent power to enforce their own judgments and should see to it that such judgments are enforced when they are called upon to do so.” Multidata Systems Int’l Corp. v. Zhu, 107 S.W.3d 334, 339 (Mo. App. E.D. 2003); Lake Thunderbird Prop. Owners Ass’n, Inc. v. Lake Thunderbird, Inc., 680 S.W.2d 761, 763 (Mo. App. E.D. 1984), *quoting* 46 Am. Jur. 2d *Judgments* § 898 (1969).

6. In the Multidata Systems case, the Court of Appeals stated that “Rule 75.01 serves merely as a bar to the Court’s right to alter, modify, or change its judgment, but it does not prevent the court from enforcing its judgment as originally entered.” 107 S.W.3d at 339. All of this is consistent with the general rules quoted in American Jurisprudence treatise. For example:

A court not only has the right, but a duty to make its decrees effective, and prevent evasions thereof. The court should see to it that its judgment is enforced when the court is asked to do so by the issuance of the necessary orders and appropriate processes to make the judgment effective. The court’s inherent power to enforce its decrees may at times justify the court to go beyond the parties’ requests. The court also has the power and authority to exercise equitable control over its enforcement.

See 30 Am. Jur. 2d *Executions and Enforcement of Judgments* § 3 (2005).

7. “Under the general principles applicable to civil appeals, the judgment of the circuit court can be executed upon unless stayed on appeal by the filing of a supersedeas bond.”

State ex rel. GTE North, Inc. v. PSC, 835 S.W.2d 356, 366 (Mo. App. W.D. 1992). Thus, if a stay or a supersedeas bond is filed with the trial court, enforcement of the judgment will be prevented. However, Judge Green has not issued a stay of his Judgment, nor has any party, to date, petitioned for a stay of his Judgment. Additionally, the Commission is not entitled to the issuance of a stay, as it cannot file a valid bond and there is no specific statute authorizing a stay without a bond. Id.

8. GMO's proposed tariff sheets, filed on July 11, 2011 which Staff recommends that the Commission reject, are consistent with the law regarding the solar rebate provision of the Missouri Renewable Energy Standard statute, Section 393.1030.3. The Cole County Circuit Court, in no uncertain terms, held that "Section 393.1030's solar rebate provision is declared illegal and unconstitutional." GMO cannot continue to implement Section 393.1030.3 in tariff sheets P.S.C. MO. No. 1 Second Revised Sheets No. R-62.19 and R-62.20 without acting contrary to and violating the clear holding of the Circuit Court. In filing tariff sheets No. R-62.19 and R-62.20, GMO is simply implementing the law pursuant to the Judgment and protecting itself from claims that GMO is making unlawful payments to certain customers.

WHEREFORE, KCP&L Greater Missouri Operations Company respectfully requests that the Commission accept P.S.C. MO. No. 1 Second Revised Sheets No. R-62.19 and R-62.20, and order such other relief as may be appropriate.

/s/ Karl Zobrist

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, postage prepaid, this 25th day of July, 2011 to all counsel of record in this case.

/s/ Lisa A. Gilbreath

Lisa A. Gilbreath