

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

In the Matter of KCP&L Greater Missouri Operations)
Company’s Application for Authority to Establish a) File No. EO-2014-0151
Renewable Energy Standard Rate Adjustment Mechanism)

**REPLY BRIEF OF
KCP&L GREATER MISSOURI OPERATIONS
COMPANY**

COMES NOW KCP&L Greater Missouri Operations Company (“GMO” or “Company”), and pursuant to the *Order Amending Procedural Schedule* issued on November 26, 2014, submits its Reply Brief to Renew Missouri’s Brief Regarding Commission’s Authority To Grant Relief filed on December 3, 2014. In support of its Reply Brief, GMO states as follows:

I. BACKGROUND

1. On April 10, 2014, GMO filed its application in this case seeking Commission authority, pursuant to Section 393.1030 and 4 CSR 240-20.100(6), to establish a renewable energy standard rate adjustment mechanism (“RESRAM”) that will allow for the adjustment of its rates outside the context of a regular rate case for prudently incurred renewable energy standard costs.

2. On October 20, 2014, GMO, the Staff of the Missouri Public Service Commission (“Staff”), the Office of the Public Counsel (“OPC”) and Earth Island Institute d/b/a Renew Missouri (“Renew Missouri”)(collectively “Signatories”) filed a *Non-Unanimous Partial Stipulation And Agreement* (“*Stipulation*”) in which the Signatories agreed that the Commission should approve a RESRAM tariff (attached to the *Stipulation*) which includes a RESRAM rate element of \$0.00094/kWh applicable to all kWh sales. The Signatories also agreed the following issues raised by Renew Missouri remained unresolved:

- a) Is the Company required to calculate and report the financial benefits (including avoided costs) as savings achieved associated with costs incurred in meeting the

requirements of the RES, specifically (1) costs of customer-owned solar generation and (2) costs of landfill gas used at the St. Joseph landfill gas plant?

b) If so, how should such avoided costs and/or benefits be quantified?

3. On November 5, 2014, the Commission issued its *Order Approving Partial Stipulation And Agreement, Rejecting Tariff, and Establishing Procedural Schedule* which approved the Stipulation and authorized GMO to file tariff sheets in compliance with the order.

4. On November 6, 2014, GMO filed compliance tariffs which established the RESRAM mechanism. On November 18, 2014, the Commission issued its *Order Approving Tariff Filing In Compliance With Commission Order* which approved the tariffs effective on December 1, 2014, and closed the file on December 2, 2014.

5. A prehearing conference was held on November 19, 2014, and Judge Bushmann directed that Renew Missouri should file its initial brief addressing the legal issues on December 3, 2014 and other parties should file responsive briefs on December 12, 2014.

II. LEGAL ARGUMENT

A. THE COMMISSION HAS ALREADY APPROVED GMO'S RESRAM APPLICATION AND TARIFF, AND RENEW MISSOURI'S REQUEST FOR RELIEF IS AN UNLAWFUL COLLATERAL ATTACK ON FINAL AND UNAPPEALABLE ORDERS OF THE COMMISSION.

6. In its brief, Renew Missouri states: "Simply stated, Renew Missouri is requesting that the Commission determine whether the requesting utility's RESRAM application meets the requirements of the law. If it does not meet the requirements of the law, as Renew Missouri asserts, then the Commission should either order the utility to meet the requirements of the law or assess the requisite penalties for non-compliance." (Renew Missouri Brief at 3)

7. Since the Commission has already approved GMO's application and tariff implementing the RESRAM in this proceeding, Renew Missouri's request for relief is an impermissible and unlawful collateral attack upon the Commission's previous orders approving

the RESRAM application and tariff in violation of Section 386.550, RSMo. *State ex rel. Licata, Inc. v. Pub. Serv. Comm'n*, 343 S.W.2d 177, 184 (Mo. App. W.D. 1960).

8. Renew Missouri is a signatory to the *Stipulation* in this proceeding, and is bound by its terms, including the approval of the RESRAM. Renew Missouri did not seek rehearing of the *Order Approving Partial Stipulation And Agreement*, and that Order is now final and unappealable. The Commission must not allow Renew Missouri to now attempt to collaterally attack this Order by suggesting that GMO's application does not meet the requirements of the law, as is apparently now being argued by Renew Missouri.

9. If Renew Missouri had wished to assert that GMO's application did not meet the statutory requirements of the law, then Renew Missouri should not have stipulated that GMO's RESRAM should be approved, and should have sought a determination by the Commission on their legal arguments before the Commission approved GMO's RESRAM. Simply put, it is untimely to now suggest that GMO's application and RESRAM are legally deficient, and Renew Missouri's request for relief is barred by Section 386.550.

B. RENEW MISSOURI'S REQUEST FOR RELIEF CONSTITUTES AN IMPROPER REQUEST FOR A RULEMAKING PROCEEDING TO AMEND 4 CSR 240-20.100

10. Renew Missouri specifically requests that:

. . . the Commission find that KCP&L-GMO's RESRAM filing fails to meet the requirements of 4 CSR 240-20.100(6) by making no effort to quantify the benefits associated with its RES costs and by not demonstrating how such benefits will be passed through to customers. In so finding, the Commission should order KCP&L-GMO to: 1) fully account for the benefits that result from the Company's expenses related to solar rebates and the St. Joseph Landfill Gas facility, which are proposed for recovery in this case; 2) account for the pass-through mechanisms and demonstrate in what amounts these benefits will be passed-through to customers; and 3) include the true cost of the RESRAM on all customer bills, reflecting the apportioned costs of the RESRAM net of the existing benefits associated with those apportioned costs. (Renew Missouri Brief at 3)

11. Contrary to the argument of Renew Missouri, 4 CSR 240-20.100(6) does not

require a quantification of the benefits of RES compliance, as Renew Missouri requests. Nor does the rule require that GMO “fully account for the benefits that result from the Company’s expenses related to solar rebates and the St. Joseph Landfill Gas facility.” Similarly, the rule does not require a statement of the “true cost of the RESRAM” net of the existing benefits associated with those apportioned costs to be included on all customer bills.

12. In fact, consumer benefits are passed through to customers through a reduction in the costs of the public utility in the normal ratemaking processes. If a public utility is able to avoid costs, then customers benefit directly because the utility is able to defer seeking rate increases or reduce the amount of rate increases it would otherwise seek. In other words, to the extent that any such actual financial benefits exist, they are flowed through to the benefit of customers through the operation of presently existing mechanism outside of the RESRAM. (See *GMO Response to Comments*, File No. EO-2014-0151, pp. 7-8 (August 22, 2014). It is unnecessary to attempt to separately quantify such benefits, as requested by Renew Missouri, since they accrue throughout the year and are reflected in the netting against the costs of providing electric service to customers.

13. There is nothing in 4 CSR 240-20.100(6) that expressly requires such a quantification of benefits or “avoided costs”. To the extent that Renew Missouri believes 4 CSR 240-20.100(6) should require such a quantification of benefits or avoided costs, Renew Missouri is in effect requesting that the PSC’s rule be amended and modified. As Judge Bushmann pointed out during the prehearing conference (Tr. 41), such a request for relief should be pursued through the filing of a Petition For Rulemaking, and not an evidentiary hearing in a case in which the Commission has already approved GMO’s application and tariff implementing the RESRAM.

C. RENEW MISSOURI'S REQUEST FOR RELIEF SHOULD BE DENIED SINCE IT SEEKS AN ADVISORY OPINION FROM THE COMMISSION.

14. Contrary to its protestations to the contrary (Renew Missouri Brief at 7), Renew Missouri's requested relief also includes what is clearly intended as an "advisory opinion" which Renew Missouri itself admits that the Commission and the courts do not provide to address hypothetical or future events.

15. Renew Missouri argues that "there will not be sufficient time in KCP&L-GMO's rate case for the Company to comply with a Commission order to properly calculate all benefits and demonstrate how they are passed through to consumers through the FAC. There is likely to be disagreement as to how benefits should be calculated; such disagreements should be resolved in this case, not in a later proceeding involving a myriad of other complicated issues." (Renew Missouri Brief at 7) Contrary to the assertion of Renew Missouri, it would be nothing more than an advisory opinion for the Commission to opine on the calculation of all benefits, or venture into the "calculation" methodology for them in the context of this non-contested case where it would involve review of only hypothetical costs and benefits. If this type of exercise is ever required, it should be left to a contested proceeding where real costs and benefits would be examined.

16. Renew Missouri argues that "Finally, there are other Missouri utilities preparing to make their own RESRAM applications. Should the Commission fail to clarify what the requirements of the RESRAM are until a year or more for (sic) now, it could cause unneeded litigation and delay." (Renew Missouri Brief at 7) Clearly, Renew Missouri is seeking an advisory opinion that it believes it will benefit from in some future and hypothetical proceeding involving other public utilities. The Commission should decline this request for an advisory opinion. *State ex rel. Laclede Gas Co. v. Missouri Public Service Commission*, 392 S.W.3d 793, 794 (Mo. App. 1985).

III. MOTION FOR EXPEDITED DECISION

GMO respectfully requests that the Commission render its decision on the legal issues raised by Judge Bushmann prior to December 22, 2014, the date required in the procedural schedule for the filing of surrebuttal testimony in this proceeding. As explained herein, the relief sought by Renew Missouri cannot, as a legal matter, be obtained in this proceeding. It would be wasteful, therefore, to require the preparation of surrebuttal testimony, position statements, the conduct of an evidentiary hearing and the preparation of post-hearing briefs addressing Renew Missouri's request for relief that the Commission has no authority to grant.

WHEREFORE, for the reasons stated herein, GMO respectfully requests that the Commission decline Renew Missouri's request for relief, cancel the remainder of the procedural schedule, including evidentiary hearings, and again close this file.

Respectfully submitted,

/s/ James M. Fischer

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ATTORNEYS FOR KCP&L GREATER
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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, to the certified service list in File No. EO-2014-0151, this 12th day of December, 2014.

/s/ James M. Fischer

James M. Fischer