

Commission in the Report and Order. On January 18, 2013, the Companies filed substitute tariffs to correct and address certain items requested by the Commission Staff.

3. On January 22, 2013, the Commission Staff filed Staff's Recommendations To Approve Tariff Sheets which requested "the Commission issue an Order that finds (1) good cause shown to make them effective on less than thirty days' notice and (2) approves the following tariff sheets, as filed on January 16, 2011, and substituted on January 18, 2013, to become effective on January 26, 2013, as Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company request" As has been the custom and practice of the Commission Staff in previous cases, the Staff's Recommendation included a Memorandum signed by Thomas M. Imhoff, Energy Rate Design & Tariffs, and Nathan Williams, Staff Counsel's office. An Affidavit of Thomas M. Imhoff was attached to the Memorandum and essentially stated that he was involved in the preparation of the Staff Recommendation and that the matters set forth are true.

Response to MECG Motion

4. On January 22, 2013, the Midwest Energy Consumers Group ("MECG") filed a Motion For Scheduling Of A Hearing, and Objection To Affidavit which requested that the Commission schedule a hearing regarding the compliance tariffs. The pretext for the motion for hearing was the Affidavit of Thomas M. Imhoff. For the reasons stated herein, MECG's motion should be denied and their objection dismissed. Simply stated, the legal authority upon which MECG relies is not applicable in the circumstances and a hearing is otherwise not required by law.

5. MECG's reliance on Section 536.070(12) is not applicable to the filing of the Staff's Recommendation related to the compliance tariffs. That provision of the Missouri

Administrative Procedure Act is a provision relevant to the adjudication of a “contested case.” As the Commission has already held, the filing of compliance tariffs to implement a rate increase does not constitute a “contested case” as the term is defined in the Missouri Administrative Procedures Act.

6. In its *Order Granting Expedited Treatment, Approving Certain Tariff Sheets And Rejecting Certain Tariff Sheets, Re Aquila, Inc.*, Case No. ER-2007-0004 (issued on May 25, 2007), the Commission addressed similar issues raised by MECG in this proceeding. In that case, certain industrial intervenors requested a hearing and filed an objection to an affidavit filed in support of the Staff Recommendation to approve compliance tariffs filed to comply with the Commission’s Report And Order. The Commission rejected the motion and the objection to the affidavit, stating:

On May 23, 2007, the Office of the Public Counsel, Sedalia Industrial Energy Users Association (SIEUA) and AG Procession, Inc., (AGP) objected to Aquila’s Motion for Expedited Treatment of the tariff filings as it does not provide parties an opportunity to review the revised tariffs. Also, on May 23, 2007, SIEUA and AGP filed a Motion for Scheduling of a Hearing and an objection to the filing of Staff’s Recommendation and Memorandum under the Affidavit of James Watkins. Both filings were based upon SIEU and AGP’s inaccurate impression that Aquila’s May 18 tariff filings constites a contested case.

SIEUA, AGP and Public Counsel fail to recognize the different posture of the tariffs that initiate rate cases, and the compliance tariffs following the Commission’s Report and Order. The Commission’s Report and Order, after full evidentiary process pursuant to Chapters 386, 393, and 536, does four things pertinent to the pending motions. First, it finds that Aquila’s current tariffs and rates are not just and reasonable; second, it finds that Aquila’s proposed tariffs and rates are not just and reasonable; third, it prescribes the terms upon which Aquila’s service will be just and reasonable; and, finally, it directs Aquila to file tariffs and rates that comply with the terms prescribed in the Report and Order.

The inquiry conducted on the tariffs that initiated Case No. ER-2007-0004 is conducted pursuant to section 393.150, and provided all parties the full panoply of due process to permit the Commission to determine just and reasonable rates.

The inquiry to determine whether Aquila's compliance tariffs comport with the Commission's Report and Order is much more limited.

Aquila's May 18 tariff filing did not initiate a contested case under Section 537.070 RSMo 2000. The Commission has decided the contested issues before it in this case and its decisions on those issues are set out in the Report and Order. The only question before the Commission regarding the compliance tariff filing is whether that filing actually complies with the Report and Order and Order Approving Stipulation. In reaching a decision regarding the tariff filing, the Commission reviews the tariff filing and makes its determination. The Commission is entitled to interpret its own order and ascribe to that order a proper meaning. . .

See also Order Approving Tariffs in Compliance with Commission Report and Order, Re Kansas City Power & Light Company, Case No. ER-2007-0291 (issued December 21, 2007).

7. The Commission should follow this same analysis in this case. It is clear the Commission may permit new rates to take effect based on a mere tariff filing by a utility and without a hearing. See Section 393.140(11), RSMo.

The "file and suspend" provisions of the statutory sections quoted above lead inexorably to the conclusion that the Commission does have discretionary power to allow new rates to go into effect immediately or on a date sooner than that required for a full hearing as to what will constitute a fair and reasonable permanent rate. This indeed is the intended purpose of the file and suspend procedure. Simply by non-action, the Commission can permit a requested rate to go into effect. Since no standard is specified to control the Commission in whether or not to order a suspension, the determination as to whether or not to do so necessarily rests in its sound discretion.

State ex rel. Laclede Gas Company v. Public Service Commission, 535 S.W.2d 561, 566 (Mo.App. 1976). This principle was affirmed by the Missouri Supreme Court in *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979).

8. Ultimately, the filing of compliance tariffs after the issuance of a rate order by the Commission is not a contested case under the Missouri Administrative Procedure Act as defined

by Section 535.010 because no hearing is required by Section 393.140(11). The provision relied upon by MECG (Section 536.070(12)) is not applicable and provides no lawful basis for holding a hearing as requested by MECG. Consequently, the Objection to Affidavit is not pertinent to the filing of the Staff's Recommendation and MECG's Motion should be denied.

9. A decision not to conduct a formal evidentiary hearing when it approves compliance tariffs is also supported by its longstanding practice where, pursuant to Section 386.240, the Commission authorized members of its Staff to perform acts which the Commission is authorized to perform. The Commission traditionally has relied on its Staff to review the tariffs that a utility files to make certain they reflect the Commission's orders or opinions. After Staff and the other parties review tariff filings, it is typical that substantive objections and other technical points are raised. Once these matters are resolved in Staff's opinion, it files its recommendation with the Commission and the Commission may then approve the tariff. *See, e.g.*, Staff's Recommendation to Approve Tariff Sheets, In re Tariff Filing of Union Elec. Co., d/b/a AmerenUE to Implement a General Rate Increase, No. ER-2007-0002 (July 13, 2007); Staff's Recommendation to Reject Tariff Sheets, In re Tariff Filing of Aquila, Inc. to Implement a General Rate Increase, No. ER-2007-0004 (May 29, 2007), Staff's Recommendation to Approve Tariff Sheets, *Id.* (June 25, 2007).

10. MECG's objection to the Companies' compliance tariffs is not based on specific issues relating to individual tariff sheets. Rather, MECG demands that the Commission hold additional hearings to determine if the Companies' tariffs comply with the Report and Order. However, the Staff has already determined, after the opportunity for comment by all the parties, that the tariffs were in compliance with the Report and Order. MECG's motion appears to be an

effort to delay the effective date of the new rates beyond the statutory operation of law deadline, and should for the reasons stated herein be denied.

Response to OPC Response

11. On January 22, 2013, OPC filed its Response To Order Regarding Filings Related To Compliance Tariffs And Order Setting Filing Date requesting that the Commission not approve the tariffs filed on January 16, 2013, not approve the substitute sheets filed on January 18, and deny the Companies' request for expedited treatment.

The Companies' substitute tariff sheets do not impact the rate elements or revenues approved in the cases.

12. As indicated on the cover letters included in its January 18 filing of substitute tariff sheets, and attached to this pleading as Exhibit A, the Companies made the filings after discussions with Staff to correct inadvertent mistakes in the version tracking located in the tariff headers. Additionally, for GMO, some of the changes were made to clarify the pre-MEEIA language contained in the tariffs. None of the changes impact the rate elements or revenues approved in the cases. The substitute sheets bear a date of January 16 because they do not materially affect the original compliance tariffs which are dated January 16. Contrary to OPC's characterization of the Companies' filings as bearing a "false issue date" the Commission's instructions on EFIS regarding substitute tariff sheets do not even allow modification of the issue date when making a substitute tariff filing. The Companies have followed the Commission's procedures for the filing of substitute tariff sheets.

13. OPC argues that several of the substitute sheets are for KCP&L are entirely new sheets not included in the January 16 tariff filing. This is not the case, first revised sheets 49 and 50 were include in January 16 filing but incorrectly incorporated into sheets as 48 A and 48B.

After discussions with Staff, it was determined that these sheets should be uniquely included and be marked “Reserved for future use.”

14. OPC also argues that several of GMO’s substitute tariffs are substantially different than the sheets filed on January 16. This is not the case. The substitute sheets were again filed at the request of Staff to clarify certain MEEIA language. The words “MEEIA and Pre- MEEIA” were added in the section headings on the GMO tariff sheets, along with cross references to specific tariff sheets numbers where MEEIA terms could be found . In GMO sheet R-63.01.1, the Company added eight words and deleted three words to clarify that opt out amounts will be settled monthly.

15. On January 22, 2013, the staff approved the Companies’ compliance tariffs including the substitute tariff sheets filed on January 18.

16. As for OPC’s other arguments, the Commission has already rejected them in its January 16 Order.

WHEREFORE, for the foregoing reasons, KCP&L and GMO respectfully request that the Commission deny the (1) Motion For Scheduling Of A Hearing and dismiss the Objection To Affidavit filed by MECG on January 22, 2013, and (2) Public Counsel’s Response To Order Regarding Filings Related To Compliance Tariffs And Order Setting Filing Date.

Respectfully submitted,

/s/ Roger W. Steiner

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**Attorneys for Kansas City Power & Light Company
and KCP&L Greater Missouri Operations Company**

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 22th day of January, 2013.

/s/ Roger W. Steiner

Roger W. Steiner