

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

In the Matter of the Application of KCP&L)	
Greater Missouri Operations Company for)	<u>Case No. ER-2010-0356</u>
Approval to Make Certain Changes in its)	
Charges for Electric Service)	

PUBLIC COUNSEL'S OBJECTIONS TO TARIFFS

COMES NOW the Office of the Public Counsel and for its Objections to Tariffs states as follows:

1. On May 4, 2011, the Commission issued its Report and Order with an effective date of May 14. On May 27, the Commission issued an Order of Clarification and Modification. The latter order required any objections to the new compliance tariffs to be filed no later than June 2 at 9:00 a.m.

2. The first filing of new compliance tariffs was made after 1:00 P.M. on May 31, and the workpapers supporting that filing were not provided to the parties until 4:20 P.M on May 31. The filing consisted of 19 tariff sheets with effective dates of June 4, 2011 or July 1, 2011, plus a number of additional sheets with later effective dates. On June 2, after 4:00 P.M., KCP&L Greater Missouri Operations Company (GMO) filed four substitute sheets and provided the parties with workpapers shortly thereafter.

3. The Commission is under no legal obligation to rush GMO's rate increase into effect at the expense of the parties' ability to examine and respond to a very unusual tariff filing. Section 393.150 RSMo 2000 allows the Commission to suspend a tariff filing implementing a rate increase for up to eleven months. The Commission never suspended GMO's initial tariff filing, but nonetheless acted upon it within eleven months of its filing by explicitly rejecting it.

The Commission could, pursuant to that same statutory section, suspend the compliance tariffs. While it should be the Commission's goal to approve compliance tariffs quickly once the Commission has determined in a Report and Order that a rate increase is justified, the Commission should not equate that goal with a statutory requirement.

4. In this case, under these circumstances, if the Commission does not suspend the tariffs, the Commission will have abused any discretion it might be afforded pursuant to Section 393.140(11) to allow rate increases without thirty days' notice.¹ The Commission has provided notice that it intends to take up an "Order Regarding Compliance Tariffs" at its public meeting today, June 2 at 1:00 P.M. – less than 48 hours after the first new compliance tariffs were filed and less than 24 hours after the substitute sheets were filed. The Commission appears to be headed down a path very similar to the one that lead the Missouri Supreme Court to find that the Commission acted unreasonably in State ex rel. Office of the Public Counsel v. Public Service Commission, 236 S.W.3d 632, (Mo. banc 2007).

5. In addition, the Commission's artificial and unreasonable 9:00 A.M. deadline requires other parties to prepare and file objections before the recommendation of the Commission's Staff is filed. The Commission is well aware that other parties rely on the Staff's review of tariff filings because the Staff has both the requisite number of employees and the requisite institutional expertise to do the required detailed tariff analysis in the abbreviated time that the Commission generally allows for compliance tariff review. In this case, the Commission

¹ While this section does appear to allow the Commission to waive the thirty days' notice, it does not allow the Commission to waive publication for thirty days. As discussed below, because the tariffs did not bear an effective date that is thirty days beyond the issue date, the tariffs do not comply with the non-waivable publication requirement.

has abbreviated the time for review well beyond reason. It is unreasonable for the Commission to require its Staff and the parties to analyze, identify, write up, and file objections to (or recommendations to approve) tariffs less than two business hours (and less than 15 actual hours) after those tariffs were filed.

6. Public Counsel has made its best efforts to meet the Commission's unreasonable deadline of June 2 at 9:00 A.M. to file its objections, but Public Counsel believes that it may have been able to identify other objections given a reasonable time to analyze the tariff filing. At this point, Public Counsel has identified the following objections.

7. The tariff sheets which bear an issue date of May 31 and an effective date of June 4 violate *ab initio* the requirement in Section 393.140(11) that changes in rates require thirty days' notice to the Commission and publication for thirty days.

8. The effective date of June 4 on some of the tariffs – if the Staff is correct in its pleadings filed on May 31 and June 1, which Public Counsel has not had time to analyze – makes customers in one area overpay and allows customers in the other area to underpay.

9. The tariffs which bear effective dates of 2012 and 2013 require customers to pay interest at 8.414%, which is an unreasonably high rate. Section 393.155 RSMo simply requires that the Commission “make a just and reasonable adjustment ... to reflect the fact that recovery of a part of such revenue is deferred to future years.”

WHEREFORE Public Counsel respectfully submits these Objections to Tariffs.

Respectfully submitted,

OFFICE OF THE Public Counsel

/s/ Lewis R. Mills, Jr.

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the parties of record this 2nd day of June 2011.

/s/ Lewis R. Mills, Jr.
