

**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 to Make Certain Changes in its)
Charges for Electric Service) **Case No. ER-2010-0356**

**PUBLIC COUNSEL’S RESPONSE TO APPLICATION FOR REHEARING AND
RESPONSE TO ORDER DIRECTING FILING**

COMES NOW the Office of the Public Counsel and for its Response to Application for Rehearing and Response to Order Directing Filing states as follows:

Response to GMO

1. On June 3, 2011, KCP&L Greater Missouri Operations Company (GMO) filed an “Application For Rehearing And Motion For Clarification Of KCP&L Greater Missouri Operations Company.” Although the pleading is denominated in part as a request for clarification and in part as an application for rehearing, it is unclear exactly what GMO wants reheard or clarified. It appears that GMO simply wants the Commission to approve the immediate (first phase) rate increase sooner than June 18, the date to which the Commission suspended the increase.

2. In its filing GMO makes a number of statements, which even though they may be factually accurate, are woven together to create misleading impressions. First, GMO notes that a Stipulation and Agreement entered into by many of the parties required GMO to extend its requested effective date to June 4. GMO also notes that the parties were ordered to comply with that Agreement. The only possible point to this recitation is to suggest that the parties are not complying with the agreement, but that is certainly not the case. No party has requested a further suspension of those tariffs, and the Commission explicitly and affirmatively acted to **reject** them

before the June 4 date. Neither the Commission nor the parties have any further obligation with respect to the processing of those tariffs, and none of the parties did anything improper (or failed to do anything they were obligated to do) under the terms of the Agreement.

3. Second, GMO stretches beyond all reason Public Counsel's statement that other parties rely on the Staff for tariff review. GMO takes this statement to mean that Public Counsel has waived any right it has to review tariffs, and suggests that since the Staff has completed its review of the general rate increase tariffs and recommended approval, that no other party needs time to perform an independent review. To be perfectly clear, Public Counsel was not suggesting that it does not review tariffs and was not suggesting that it does not need time to review tariffs. Public Counsel was simply noting that it does not have enough people with enough time to do the exhaustive compliance tariff review that Staff undertakes in the time the Commission generally allows.

4. Third, GMO appears to suggest, based upon the Alton Railroad case,¹ that Missouri Courts have held that ten days is sufficient to review a complex tariff filing. That case did not address the question of how much time is reasonable to allow parties to conduct a tariff review. It simply addressed the question of how much is reasonable to review a Commission order and file an application for rehearing. GMO fails to note that important limitation.

5. There are two distinct timing issues at play here: first, parties need sufficient time to review and respond to tariff filings; second, parties need to be allowed sufficient time to review Commission orders, and prepare and file applications for rehearing in advance of the

¹ State ex rel. Alton Railroad Co. v. Public Service Commission, 155 S.W.2d 149, 154 (Mo. 1941)

orders' effective dates.² In this case, the Commission ran afoul of the first requirement in its May 27 Order of Clarification and Modification by ordering GMO to file tariffs on May 31 with a June 4 effective date. The Commission was also apparently headed for trouble with respect to the second, if it planned to issue an order approving those tariffs on June 2 or 3 with an effective date of June 4.

6. The Commission must keep the second of these two timing issues in mind when it considers GMO's request to approve the currently-pending tariffs sooner than June 18. At this point, since the Commission is not planning to next act until June 10, any order approving the tariffs sooner than June 18 would necessarily have an effective date less than eight days after its issue date, and would afford the parties only a few business days to prepare and file applications for rehearing. To the extent that GMO requests that the Commission issue a tariff approval order that allows an unreasonably short time for filing applications for rehearing of that order, the Commission should deny that request.

Response to Order Directing Filing

7. In its June 2 Order Suspending Tariff Sheets and Directing Filing, the Commission directed the parties to file any additional objections to the compliance tariffs and to respond to the question of whether carrying costs on the phase-in should be calculated based on short-term debt rates or on GMO's rate of return.

8. To begin with, it is important to realize that the statute³ does not explicitly require that ratepayers pay carrying costs at any level. It simply requires that the Commission "make a just and reasonable adjustment [to the later phases of the increase] to reflect the fact that

² It is this second time period that Alton Railroad addressed.

³ Section 393.155.1 RSMo 2000.

recovery of a part of such revenue is deferred to future years.” Certainly the application of carrying costs is one such adjustment, but the statute affords the Commission with broad discretion to determine what is just and reasonable. The sole purpose of such an adjustment under the statute, however, is limited to accounting for the time value of the period of deferral, because the actual revenue foregone is also recovered.⁴

9. Essentially, the Commission has given L&P a \$29 million rate increase effective now, but has required L&P to wait to collect relatively small parts of that increase for one and two years. There is a reasonable return already included in the \$29 million; it would be double-dipping to allow another return on top of the return already included. The only thing the Commission needs to do (and indeed the only thing the Commission can lawfully do) to give effect to the statutory requirement that it “make a just and reasonable adjustment thereto to reflect the fact that recovery of a part of such revenue is deferred to future years” is to account for the time-value of the delay in L&P getting the full increase. The return required to account for a relatively short delay in getting the full increase is **not** the same return that debt and equity holders require to invest in the utility; it is the utility’s short-term debt rate.

10. Public Counsel concurs in the analysis of the Staff filed in its June 7 Staff Response to Order Suspending Tariff Sheets and Directing Filing. Public Counsel understands that the Staff’s calculation of GMO’s short-term debt costs is based upon the information used to calculate the short-term debt rate applied to FAC balances, which is the appropriate rate to apply to the deferred portions of the L&P rate increase.

⁴ The portion of the statute immediately preceding the portion requiring a “just and reasonable adjustment” requires that: “Any such phase-in shall allow the electrical corporation to recover the revenue which would have been allowed in the absence of a phase-in....”

WHEREFORE Public Counsel respectfully requests that the Commission: 1) deny GMO's Application For Rehearing And Motion For Clarification; and 2) reject GMO's phase-in tariffs and authorize GMO to re-file them using the short-term debt rate of 3.00% set forth in the Staff filing of June 7, 2011.

Respectfully submitted,

OFFICE OF THE Public Counsel

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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 8th day of June 2011.

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