

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

In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service.)	Case No. ER-2012-0174
)	
In the Matter of KCP&L Greater Missouri Operations Company's Request for Authority to Implement a General Rate Increase for Electric Service.)	Case No. ER-2012-0175
)	

**OPPOSITION OF KANSAS CITY POWER & LIGHT COMPANY AND
KCP&L GREATER MISSOURI OPERATIONS COMPANY
TO PUBLIC COUNSEL'S MOTION FOR RECONSIDERATION**

Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO") (collectively referred to as "Companies") state as follows in opposition to the Office of the Public Counsel's ("OPC") January 11, 2013 Motion for Reconsideration:

I. The Review Period Ordered by the Commission is Reasonable.

1. OPC complains that the Commission's January 9, 2013 Order Regarding Filings Related to Compliance Tariffs unreasonably shortens the time for Staff and other parties to respond to the Companies' compliance tariffs because it provides two and one-half business days and five and one-half calendar days for such review. Given the 11-month statutory deadline that the Commission faces in these rate cases under Section 393.150,¹ with its mandate that such matters be decided "as speedily as possible," the review period is reasonable as a matter of law and should not be modified.

2. Indeed, the review period ordered by the Commission is necessary so that the Companies may begin to charge what the Commission has determined to be just and reasonable rates within the eleven-month statutory deadline. See § 393.150. As discussed below, the filing

¹ Unless otherwise indicated, all statutory references are to the Missouri Revised Statutes (2000), as amended.

of compliance tariffs is neither “an entirely new tariff filing” nor a “new request.” In so characterizing compliance tariffs, OPC misconstrues the role compliance tariffs play in the ratemaking process and would have the Commission disregard its duty to fix just and reasonable rates in a prompt manner. Id.

3. Any delay in charging rates that this Commission has determined to be just and reasonable would be unconscionable. The Companies filed their rate request nearly eleven months ago, on February 27, 2012. Further postponement by the Commission of its statutory duty to set rates would be unfair and unjust, particularly since the Report and Order concluded that the Companies’ current rates are not just and reasonable. OPC requests that the Commission reconsider its January 9 Order, in which the Commission specifically noted that it is adjusting the time for Staff’s recommendation on the Companies’ compliance tariffs so that it may address the compliance tariffs on its January 23 agenda. If the Commission were to grant OPC’s request, it is likely that the Commission would not be able to approve the Companies’ compliance tariffs by the January 26 operation of law date, resulting in an unwarranted, unjust, and manifestly unfair and avoidable delay in setting just and reasonable rates.

4. Section 393.140(11) expressly provides that, for good cause shown, the Commission may allow tariff changes without requiring thirty days’ notice. Good cause exists to make the Companies’ compliance tariffs effective on or before the operation of law date in these cases because the Commission has already found that the Companies’ revenues are deficient.

5. By ordering a review period so that the tariffs may take effect as soon as possible, the Commission will assure that just and reasonable rates will “speedily” take effect. Furthermore, the adjusted review period of tariffs filed in compliance with the Report and Order and approval of those compliance tariffs to be effective on January 26, 2013 will have no

negative effect, as the substance of these tariffs has already been fully litigated and set forth in the Commission's Report and Order.

6. The only rate case cited by OPC in support of its motion is State ex rel. Office of the Public Counsel v. PSC, 236 S.W.3d 632, 635-37 (Mo. en banc 2007), which did not pertain to the review of compliance tariffs. There, the Supreme Court held that the Commission abused its discretion in allowing only an hour and 20 minutes to file an application for rehearing, finding that such a short time was not reasonable. Those facts stand in sharp contrast to this case, where several days have been provided.

7. The other decision cited by OPC is Harter v. PSC, 361 S.W.3d 52, 55 (Mo. App. W.D. 2011), which was a customer complaint, not a rate case. Despite the Court of Appeals' critical language in a footnote (which pertained to effective dates falling on weekends in cases filed by individual ratepayers, not general rate cases filed by public utilities), the decision of the Commission was affirmed.

8. In an equally complex rate case to which OPC was a party, the Commission ordered its Staff to file an expedited recommendation regarding Ameren Missouri's compliance tariff so that the tariff could go into effect on the operation of law date set by the initial tariff filing. See In re Union Elec. Co. Tariff to Increase Annual Revenues for Elec. Serv., Case No. ER-2012-0166, Order Directing Staff to File Expedited Recommendation and Establishing Time for Other Parties to Offer Recommendations at 2 (Dec. 17, 2012). The Commission ordered Staff on the day Ameren Missouri filed tariffs in compliance with the Commission's Report and Order to file its recommendation no later than December 24, 2012. Id. The Commission also ordered that any party wishing to file a recommendation regarding the compliance tariff to do so no later than December 24, 2012. Id.

9. While the Commission permitted Staff and any interested party four business days to review Ameren Missouri's compliance tariffs, and ordered recommendations filed no later than Christmas Eve, no party objected to the order. Staff filed its Recommendation on December 21, 2012. In its Recommendation, Staff stated that "there is good cause such that Ameren Missouri's compliance tariffs should be approved on less than thirty days' notice because the Commission's decision of December 12, 2012, determined that Ameren Missouri's rates are no longer just and reasonable and that a general rate increase is appropriate." Id., Staff's Recommendation and Memorandum Regarding Ameren Missouri's Compliance Tariffs at 2 (Dec. 21, 2012). The Commission approved Ameren's compliance tariffs on December 27, 2012 with an effective date of January 2, 2013, finding that "[e]xpeditious approval of the tariff is appropriate because the Commission has found that the rates resulting from its report and order are just and reasonable and Ameren Missouri should not be required to wait to implement those rates." Id., Order Approving Compliance Tariffs at 2 (Dec. 27, 2012).

II. The Rejection of Proposed Tariffs Does Not End the Rate Proceeding.

10. Contrary to OPC's statement, the Commission's decision to reject tariffs proposed by a utility does not end the rate proceeding initiated by the filing and suspension of those tariffs, nor does a compliance tariff filing constitute "an entirely new tariff filing." See OPC's Motion for Reconsideration at 2. Rather, the filing of compliance tariffs is a step in the process by which the Commission fixes just and reasonable rates after a utility has proposed a revenue increase.

11. Given its reference to "so-called 'compliance tariffs'" on the first page of its motion, OPC appears to question or object to the basic concept of compliance tariffs. However, the appellate courts plainly recognize compliance tariffs and their role in the ratemaking process. See State ex rel. Ag Processing, Inc. v. PSC, 340 S.W.3d 146, 149 n.5 (Mo. App. W.D. 2011); State ex rel. Aquila, Inc. v. PSC, 326 S.W.3d 20, 25 (Mo. App. W.D. 2010); State ex rel. Ag

Processing, Inc. v. PSC, 311 S.W.3d 361, 364 (Mo. App. W.D. 2010); State ex rel. Laclede Gas Co. v. PSC, 156 S.W.3d 513, 516-17, 523 (Mo. App. W.D. 2005).

12. On February 27, 2012, KCP&L and GMO filed tariffs seeking revenue increases in their respective service areas, and on February 28, 2012, the Commission suspended the tariffs until January 26, 2013, the maximum time allowed by statute. See § 393.150. The suspension of the tariffs initiated a contested case. See §§ 393.150.1, 536.010(4).

13. The Commission shall, on its own motion, by complaint, or by application, determine and prescribe “just and reasonable” rates “thereafter to be in force.” See §§ 386.390.1, 393.130.1, 393.140(5), 393.150.1. Any hearing involving a rate increase is to be given preference over all other questions before the Commission, and the Commission shall determine rates “as speedily as possible.” See §393.150.2.

14. Tariffs filed by a utility are simply suggestions to the Commission as to what the utility considers to be a “just and reasonable” rate. May Dep’t Stores Co. v. Union Elec. Light & Power Co., 107 S.W.2d 41, 50 (Mo. 1937). “[I]f the Commission accepts them, they are authorized rates, but the Commission alone can determine that question and make them a lawful charge.” Id. The decision of whether to suspend a tariff and hold a hearing is a matter for the sound discretion of the Commission. See State ex rel. Utility Consumers Council, Inc., v. PSC, 585 S.W.2d 41, 49 (Mo. en banc 1979). However, the rate case method, under which the Commission enters an order setting new rates after investigation and hearing, is preferred over the file and suspend method, under which no hearing is required. Id. This is because all interested parties have the opportunity to present their views as to what is a just and reasonable rate during a rate case. Id.

15. The decision to reject tariffs proposed by a utility does not end the rate proceeding initiated by the filing and suspension of those tariffs, as OPC suggests at page 2 of its Motion for

Reconsideration. See State ex rel. Aquila, Inc. v. PSC, 326 S.W.3d 20, 24-25 (Mo. App. W.D. 2010) (the “final substantive action” the Commission takes in a rate proceeding is the rejection of applications for rehearing). Because the rate case is a proceeding by which the Commission fixes just and reasonable rates, the suspension of proposed tariffs is simply a statement that the utility’s suggested rates must be investigated. “The Commission is empowered under section 393.140.5 to determine and prescribe the just and reasonable rates and charges.” State ex rel. Noranda Aluminum v. PSC, 356 S.W.3d 293, 305-06 (Mo. App. S.D. 2011). In other words, it is the Commission, not the utility or any complainant, that fixes just and reasonable rates. May Dep’t Stores, 107 S.W.2d at 50.

16. After a hearing on the Companies’ proposed rate increase, the Commission rejected the tariffs originally filed by the Companies and ordered the filing of new tariffs to comply with its decision. See Report and Order at 65.

III. The Filing of Compliance Tariffs Does Not Initiate a New Rate Proceeding.

17. Similarly, the filing of compliance tariffs does not initiate a new rate case or restart the clock that began when the Commission suspended the Companies’ initial tariffs, as OPC argues. See OPC Motion for Reconsideration at 2 (arguing that the compliance tariffs constitute “an entirely new tariff filing” and a “new request for a smaller rate increase”). In filing compliance tariffs, the Companies will be submitting no new requests regarding rates. They will merely submit tariffs to comply with the Commission’s rate determinations on the cases initiated eleven months ago.

18. Compliance tariffs are limited in scope, as they merely comply with the “mandates and substantive standards adopted by the Commission in its Report and Order.” State ex rel. Aquila, Inc. v. PSC, 326 S.W.3d 20, 25 (Mo. App. W.D. 2010). As noted above, the approval of compliance tariffs does not end the proceeding, as the “final substantive action” the

Commission takes in a rate case is the rejection of applications for rehearing, unless rehearing is granted. Id. at 24-25.

19. Furthermore, OPC cites no authority for its position that by filing compliance tariffs the Companies make a new rate request, and that the operation of law date set by Section 393.150 pertains only to the Commission's rejection of the Companies' tariffs. See OPC Motion for Reconsideration at 2. This position is contrary to the plain language of the statute, which provides that the Commission shall decide questions as to a just and reasonable rate "as speedily as possible." See § 393.150.2. The Commission remains under an obligation to conclude this rate case by January 26, 2013.

IV. The Commission May Order Tariffs to be Effective in Fewer Than Thirty Days.

20. OPC suggests that any order by the Commission that approves the Companies' compliance tariffs on or before the January 26, 2012 operation of law date would be unlawful. See OPC Motion for Reconsideration at 3. However, it is clear that under Section 393.140(11) that Commission may allow for less than thirty days notice and publication if it is reasonable.

21. Under Section 393.140(11) "the commission for good cause shown may allow changes without requiring the thirty days' notice under such conditions as it may prescribe." It goes on to state:

Unless the commission otherwise orders, no change shall be made in any rate or charge . . . except after thirty days' notice to the commission and publication for thirty days as required by order of the commission

22. In no uncertain terms, "the PSC has discretion to set the effective date of its rate making decisions" pursuant to Section 393.140(11). State ex rel. AG Processing Inc. v. PSC, 276 S.W.3d 303, 312 (Mo. App. W.D. 2008). Thus, the Commission may lawfully shorten the time for the compliance tariffs to go into effect on January 26, 2013.

V. Conclusion.

23. Compliance tariffs are neither “an entirely new tariff filing” nor “a new request” for a rate increase, but rather are an ordered filing to institute rates the Commission has determined to be just and reasonable. It is reasonable for the Commission to adjust the period within which to review the Companies’ compliance tariffs, so that the Companies may begin to charge what the Commission has determined to be just and reasonable rates within the eleven-month statutory timeline.

24. Accordingly, the Companies request that the Commission deny OPC’s Motion for Reconsideration and uphold the adjusted review period specified in its January 9, 2013 Order Regarding Filings Related to Compliance Tariffs. This order allows Staff and other parties a reasonable period of time to review the Companies’ compliance tariffs prior to the January 26, 2013 operation of law date.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing was served upon counsel of record on this 15th day of January, 2013.

/s/ Lisa A. Gilbreath

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