

**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 of a Special Rate for a Facility Whose) File No. EO-2019-0244
Primary Industry is the Production or)
Fabrication of Steel in and Around Sedalia,)
Missouri)

**MECG MOTION TO COMPEL RESPONSES TO DATA REQUESTS FROM
KCP&L GREATER MISSOURI OPERATIONS AND
MOTION FOR EXPEDITED TREATMENT**

COMES NOW the Midwest Energy Consumers Group (“MECG”), pursuant to 20 CSR 4240-2.090, and for its Motion to Compel Responses to Data Requests¹ from KCP&L Greater Missouri Operations Company (“GMO”) respectfully states as follows:

1. During the first extraordinary session of the 2017 General Assembly, the legislature enacted Section 393.355. Among other things, that section provides for the establishment of an electric rate, at the utility’s “incremental cost”, for aluminum smelters; steel mills; and new facilities with a monthly load in excess of 50 MWs. In addition, that statutory section requires that the Commission establish a tracking mechanism to ensure that GMO’s “net income is neither increased nor decreased.”

Any commission order approving a special rate authorized by this section to provide service to a facility in the manner specified under subsection 4 of this section shall establish, as part of the commission’s approval of a special rate, **a tracking mechanism to track changes in the net margin experienced by the electrical corporation** serving the facility with the tracker to apply retroactively to the date the electrical corporation’s base rates were last set in its last general rate proceeding concluded prior to June 14, 2017. The commission shall ensure that the changes in net margin experienced by the electrical corporation between the general rate proceedings as a result of serving the facility are calculated in such a

¹ As required by 20 CSR 4240-2.090(8)(A), counsel represents that he contacted counsel for GMO shortly after receiving GMO’s objections on September 11 concerning the matters addressed by this motion.

manner that *the electrical corporation's net income is neither increased nor decreased.*²

2. On July 12, 2019, GMO filed its Application to provide a special rate to Nucor Steel Sedalia, LLC. As the application indicates, Nucor will operate a steel mill in Sedalia and therefore qualifies for the specific rate under Section 393.355. Importantly, however, GMO does not propose to provide this special incremental rate pursuant to the terms of Section 393.355. Instead, “GMO proposes to establish a Special Rate, *significantly similar* to Section 393.355 RSMo., which gives the Commission the authority to approve a special rate contract for aluminum and steel producers or facilities resulting in incremental monthly load increases over 50 megawatts, outside of a general rate proceeding.”³ Thus, the application does not comply with Section 393.355. Most importantly, MECG believes that this new mechanism is designed to provide GMO an opportunity to increase net income in direct contravention of Section 393.355.

3. ** _____

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4. _____

² Section 393.355.3 (emphasis added).

³ Application, page 4 (emphasis added).

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5. Among GMO's basis for denying this information to MECG are general objections including that the data requests are vague, ambiguous, overbroad, burdensome, or otherwise not susceptible to a meaningful response. Among its more specific objections, GMO argues that the data requests seek "confidential or competitively sensitive business, financial or other proprietary documents, trade secrets or information or confidential information protected under Missouri law, federal law, belonging to or in possession of the Company." The Commission is undoubtedly aware that such an objection is simply a distraction.

At 20 CSR 4240-2.135, the Commission has provided procedures for the treatment of confidential information. Among the types of information that the Commission treats as confidential are customer specific information; information related to strategies employed, to be employed, or under consideration in contract negotiations; and information related to trade secrets.⁵ Moreover, to the extent that GMO believes that the information sought by the MECG data requests falls outside the scope of the Commission's confidential information rule, 20 CSR 4240-2.135(3) allows for the issuance of a protective order in order to treat such information as confidential.

6. As mentioned, GMO expressly acknowledges that the mechanism through which it seeks to provide service to Nucor, while "significantly similar" to Section 393.355, does not comply with all aspects of that statutory section. Certainly, given that

⁴ MECG marked the redacted information as confidential out of concerns that GMO may assert that the mere existence of such negotiations is confidential. Therefore, MECG marked the information sought by the data requests as confidential out of an abundance of caution.

⁵ 20 CSR 4240-2.135(2).

GMO is asking the Commission to work outside of the statutory mechanism created for the establishment of a rate for steel mills like Nucor, the Commission and the parties should be able to delve into the reasons that GMO asks to ignore that statute. The data requests issued by MECG do nothing more than seek to obtain information proving the legitimacy of GMO's stated rationale. It would be unreasonable for the Commission to ignore the mechanism created by the General Assembly based solely on blind faith acceptance of the reasons given by a regulated utility.

MOTION FOR EXPEDITED TREATMENT

7. 20 CSR 4240-2.080(14) provides the procedure for seeking expedited treatment of a motion. As provided by that rule, MECG asks that the Commission order GMO to respond to this pleading by Monday, September 16 so that the Commission can act on this matter at its next scheduled meeting on Wednesday, September 18.

8. Expedited treatment is warranted by the ambitious procedural schedule in place in this matter. Specifically, the Commission has ordered evidentiary hearings for October 17 and 18 with a Commission order no later than December 1.⁶ This ambitious schedule was imposed in an effort to meet an expected operational date for Nucor of January 1, 2020. While the Commission has recently issued a suspension of the procedural schedule, the desired operational date for the Nucor facility makes further slippage of the scheduled evidentiary hearing essentially impossible. Thus, in the next 4 weeks, the Commission must presumably accommodate the filing of rebuttal and surrebuttal testimony as well as a List of Issues and Statement of Positions. Therefore,

⁶ The ambitious nature of the evidentiary hearing dates are obvious given that it only provides 6 weeks for the filing of initial and reply briefs, Commission deliberations and the preparation and voting of a Report and Order.

given the rapidly approaching evidentiary hearing, it is imperative that the Commission expedite the treatment of motions such as the current Motion to Compel.

9. This motion was filed as soon as reasonably possible. As indicated, GMO objected to MECG's data requests at 4:59 p.m. on September 11. Therefore, this pleading is being filed the next business day. It was impossible for MECG to anticipate that GMO would object and file this pleading any earlier.

WHEREFORE, MECG respectfully requests that the Commission order GMO to respond to this motion by Monday, September 16 and, at its next scheduled meeting, order GMO to respond to MECG's data requests.

Respectfully submitted,

/s/ David Woodsmall
David L. Woodsmall, MBE #40747
308 East High Street, Suite 204
Jefferson City, Missouri 65101
(573) 797-0005
david.woodsmall@woodsmalllaw.com

ATTORNEY FOR THE MIDWEST
ENERGY CONSUMERS GROUP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

/s/ David Woodsmall
David L. Woodsmall

Dated: September 12, 2019

EXHIBIT 1

(HIGHLY CONFIDENTIAL IN ITS ENTIRETY)

EXHIBIT 2



Roger W. Steiner
Corporate Counsel
Telephone: (816) 556-2314
Facsimile: (816) 556-2110
Roger.Steiner@evergy.com

September 11, 2019

VIA EMAIL: david.woodsmall@woodsmalllaw.com

Mr. David Woodsmall
Woodsmall Law Office
305 E. High Street
Jefferson City, MO 65101

Re: File No. EO-2019-0244; MECG Data Requests

Dear Mr. Woodsmall:

This letter is in response to the data requests (“Data Requests”) which KCP&L Greater Missouri Operations Company (“GMO” or the “Company”) received on September 6, 2019. This letter should be considered an objection on behalf of the Company to the MECG Data Requests in accordance with Commission Rule 20 CSR 4240-2.090(2), for the reasons described below.

GENERAL OBJECTIONS

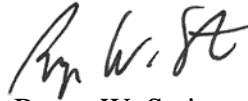
The Company objects to the Data Requests to the extent they seek documents or information protected by the attorney client privilege, the attorney work product doctrine, or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver by the Company of the attorney-client privilege, work product doctrine, or other applicable privileges or doctrines. The Company further objects to any request to the extent it purports to impose overly broad or unduly burdensome reporting and documentation requirements regarding privileged information. The Company further objects to the Data Requests to the extent that they are vague, ambiguous, overbroad, burdensome, or otherwise not susceptible to a meaningful response.

The Company objects to each Data Request to the extent it seeks confidential or competitively sensitive business, financial or other proprietary documents, trade secrets or information or confidential information protected under Missouri law, federal law, belonging to or in possession of the Company.

SPECIFIC OBJECTIONS

The Company objects to Data Requests 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, and 1.11 as overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence and not relevant or material to the subject matter of this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "R. W. Steiner". The signature is written in a cursive style with a large initial "R" and "S".

Roger W. Steiner

RWS/arw