BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of KCP&L Greater Missouri Operations Company's Application for Authority to Establish a Renewable Energy Standard Rate Adjustment Mechanism	)))	File No. EO-2014-0151

RENEW MISSOURI'S BRIEF REGARDING
COMMISSION'S AUTHORITY TO GRANT RELIEF

COMES NOW Earth Island Institute d/b/a Renew Missouri ("Renew Missouri"), pursuant to 4 CSR 240-2.080 and the Commission's November 26, 2014 Order in this case, and submits this Brief to address the relief requested by Renew Missouri, and the Commission's authority to grant such relief.

INTRODUCTION

This case represents the first opportunity for the Commission to consider approval of a Renewable Energy Standard Rate Adjustment Mechanism ("RESRAM"), as authorizes by § 393.1030.2, RSMo. and 4 CSR 240-20.100(6). Accordingly, it is critical for the Commission to proceed with consideration regarding the requirements of the statute and RESRAM rule provision before approving the implementation of a RESRAM. The Commission has both the authority and the responsibility to approve KCP&L-GMO's RESRAM application only after the Company has met all the requirements of the law.

On April 10, 2014, KCP&L-Greater Missouri Operations Company ("KCP&L-GMO" or "the Company") filed its Application to establish a RESRAM to recover some of its RES compliance costs through the period since its last rate proceeding through the end of 2013. These costs primarily consist of solar rebates paid to KCP&L-GMO's customers during that time. Along with other parties, Renew Missouri submitted comments expressing concerns about alleged deficiencies in the Company's application. Renew Missouri's chief concern was that the

Company had made no attempt to calculate or disclose the amount of benefits that resulted from the investments, which the statute and RESRAM rule require to be passed through to customers.

On October 20, 2014, Renew Missouri entered into a Non-Unanimous Partial Stipulation and Agreement (the "Stipulation") with KCP&L-GMO, along with Staff and Office of Public Counsel. The Stipulation recognized that the Commission has previously stated that it will not adjust a fuel adjustment clause ("FAC") outside of a general rate proceeding. Although 4 CSR 240-20.100(6) specifically requires benefits to be passed through the RESRAM, the Company had expressed a preference for passing-through benefits to customers through the FAC and requested a variance to that effect. Renew Missouri agreed that KCP&L-GMO could be allowed to begin collecting under the RESRAM, provided that the following issues be identified as unresolved in this case: "a) Is the Company required to calculate and report the financial benefits (including avoided costs) as savings achieved associated with costs incurred in meeting the requirements of the RES… ?; b) If so, how should such avoided costs and/or benefits be quantified?" (See "Non-Unanimous Partial Stipulation and Agreement," pg. 5, ¶6.) Renew Missouri has since filed Rebuttal Testimony to address these unresolved issues and to recommend an approach the Commission can take to resolve them.

In Part I of this Brief, Renew Missouri articulates the relief it is requesting from the Commission in this case. In Part II, we discuss the burden that a party requesting approval of a RESRAM bears, and what authority the Commission has to approve or deny such request based on the RESRAM provisions of the Commission's rule. In Part III, we briefly discuss how the Stipulation failed to resolve all issues in this case, and why the Commission must not wait till the next rate case to resolve these issues. Finally, in Part IV, we explain why the relief requested does not constitute an advisory opinion on the part of the Commission.

DISCUSSION

I. Relief Requested by Renew Missouri, and the Commission's General Authority to Approve RESRAM Applications.

Simply stated, Renew Missouri is requesting that the Commission determine whether the requesting utility's RESRAM application meets the requirements of the law. If it does not meet the requirements of the law, as Renew Missouri asserts, then the Commission should either order the utility to meet the requirements of the law or assess the requisite penalties for non-compliance.

Specifically, Renew Missouri requests the Commission find that KCP&L-GMO's RESRAM filing fails to meet the requirements of 4 CSR 240-20.100(6) by making no effort to quantify the benefits associated with its RES costs and by not demonstrating how such benefits will be passed through to customers. In so finding, the Commission should order KCP&L-GMO to: 1) fully account for the benefits that result from the Company's expenses related to solar rebates and the St. Joseph Landfill Gas facility, which are proposed for recovery in this case; 2) account for the pass-through mechanisms and demonstrate in what amounts these benefits will be passed-through to customers; and 3) include the true cost of the RESRAM on all customer bills, reflecting the apportioned costs of the RESRAM net of the existing benefits associated with those apportioned costs.

In this case, Renew Missouri has asserted that KCP&L-GMO has not complied with the legal requirements of a RESRAM. Both § 393.1030.2, RSMo and the first paragraph of Section (6) makes clear that the RESRAM is meant for the dual purposes of recovering prudently incurred costs *and* passing through to customers any benefits received as a result of compliance with RES requirements. KCP&L-GMO's application makes no attempt to demonstrate how or in what quantity benefits will be passed through to customers. Furthermore, 4 CSR 240-

20.100(6)(C)2.F requires a utility to include in its application and direct testimony: "[a] complete explanation of all the revenues that shall be considered in the determination of the amount eligible for recovery under the proposed RESRAM and the specific amount where each such revenue item is recorded on the electric utility's books and records." When addressing this provision, Tim M. Rush's direct testimony makes no reference to any economic benefits that will accrue to the Company because of the investments for which it is seeking recovery. (See "Direct Testimony of Tim M. Rush," Schedule TMR-3, pg. 49.)

The Commission possesses the ability to grant the above relief under the authority given to it through 4 CSR 240-20.100(6) ("Section (6)"). The Commission's authority under Section (6) to approve or deny a utility's application for a RESRAM is self-evident. If a utility's RESRAM application falls short of what is required under 4 CSR 240-20.100(6), the Commission must determine so, and either deny the application or order the utility to correct the deficiencies. In this case, the Commission should find that KCP&L-GMO's application: 1) fails to include the necessary information required by 4 CSR 240-20.100(6)(C)2.F; and 2) fails to demonstrate how and in what quantity RESRAM benefits will be passed through to customers.

II. The Utility Bears the Burden of Proving that its Request is Just and Reasonable.

A central principle of utility regulation in Missouri is that a utility bears the burden of proving that any proposed rate increase is just and reasonable. § 393.150.2, RSMo states: "At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the… electrical corporation…." In this case, KCP&L-GMO bears the burden of showing not only that it has complied with all provisions of the law, but also that it's request is "just and reasonable," as determined by the Commission and as defined by the Missouri courts. It is within the

Commission's authority to determine whether the Company has met this burden in this case. If the Company has not met its burden, the Commission has the authority and responsibility to either deny the application or order it to be amended to meet the required burden.

In this case, KCP&L-GMO has not met its burden. As stated above, the Company failed to include the necessary elements in its application as required by law. But in addition, the Company has not met its burden of proving that it is "just and reasonable" to recover RES costs without accounting for all associated RES benefits. In fact, in its August 22, 2014 Response Comments in this case, KCP&L-GMO goes so far as to deny that benefits exist at all, despite extensive evidence to the contrary: (pp. 7-8)

> The "actual" financial benefits discussed by Renew Missouri (items a-g on pp. 2-3 of Renew Missouri's Comments) are not readily quantifiable and, particularly in connection with solar installations by customers, may not exist at all depending on the characteristics of the specific solar installation. Perhaps more importantly, however, to the extent that any such 'actual' financial benefits do exist, they are flowed through to the benefit of customers through the operation of presently existing mechanisms outside the RESRAM.

As summarized in the Rebuttal Testimony of Patrick J. Wilson, there is a substantial body of studies, research, and existing state practices that provide ample evidence for the many economic benefits of customer solar installations in particular. For the Company to claim that no customer solar benefits exist – with no supporting evidence – is far from "just and reasonable."

Missouri law grants the Commission authority to judge what is just and reasonable: (§ 393.270.2, RSMo) (emphasis added)

> After a hearing and after such investigation as shall have been made by the commission… the commission within lawful limits may, by order, fix the maximum price of gas, electricity, water or sewer service not exceeding that fixed by statute to be charged by such corporation or person, for the service to be furnished; and may order such improvement in the manufacture, distribution or supply of… electricity… or in the methods employed by such persons or corporation as will *in its judgment be adequate, just and reasonable*.

In addition, Missouri courts have held that the Commission has a duty to prohibit unjust or unreasonable rates by employing a "prudence" standard: "The PSC has the duty to set rates that are 'just and reasonable;' any unjust or unreasonable charge is prohibited. § 393.130.1. The PSC employs a 'prudence' standard to determine whether a utility's costs meet this statutory requirement." *State v. Missouri Public Service Commission, et al.*, 408 S.W.3d 153 (Mo. App., 2013)(citing *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n*, 954 S.W.2d 520, 528 (Mo. App. W.D. 1997))

In this case, Renew Missouri requests that the Commission exercise that authority in order to determine whether KCP&L-GMO's proposal to recover costs without quantifying benefits is just or reasonable. Mr. Wilson's testimony provides references to the many existing studies that quantify the benefits of distributed solar electric systems, so we will not reiterate the evidence here. We do, however, ask that the Commission consider the evidence present, and consider the risk of over-recovery if the Company is not required to calculate and disclose all RES benefits in the RESRAM. In addition, we ask that the Commission consider whether it is just and reasonable to fail to disclose to customers the benefits associated with the renewable costs that appear on their bills.

III. The Stipulation Does Not Resolve All Issues in This Case

Because KCP&L-GMO's tariff in this case has already been approved, the question may arise as to why the Commission must act now as opposed to in a later rate proceeding. The answer to this question is two-fold.

First, KCP&L-GMO has not yet met all the requirements of the RESRAM in this case. The Stipulation did not resolve all issues, as is evident by the "Issues Remaining to Be Decided

in this Case" section of Stipulation (¶6, pg. 5). KCP&L-GMO states that it plans to pass through benefits to customers through its FAC, and the Stipulation recognizes that the Commission will not adjust the FAC outside of a rate case. However, the only reason the Company is waiting to pass through benefits till its rate case is because of a specific variance. Absent the variance, Section (6) requires benefits to be passed through the RESRAM, which entails a specific quantification of benefits. No parties have agreed to give KCP&L-GMO a variance for proving what benefits exist and in what amounts. Accordingly, the Commission should order KCP&L-GMO to correct the deficiency before closing this case.

The second answer for why the Commission must act now as opposed to in a later case has to do with the timing and effect on future RESRAM proceedings. There will not be sufficient time in KCP&L-GMO's rate case for the Company to comply with a Commission order to properly calculate all benefits and demonstrate how they are passed through to consumers through the FAC. There is likely to be disagreements as to how benefits should be calculated; such disagreements should be resolved in this case, not in a later rate proceeding involving a myriad of other complicated issues. Moreover, should there be additional benefits which the Company does not plan to pass through the FAC, the Commission will have missed an opportunity to order that those benefits be passed through in the RESRAM.

Finally, there are other Missouri utilities preparing to make their own RESRAM applications. Should the Commission fail to clarify what the requirements of the RESRAM are until a year or more for now, it could cause unneeded litigation and delay. In order to ensure an uninterrupted implementation of the RESRAM rule, the Commission must order KCP&L-GMO to calculate benefits now rather than waiting until the Company's next general rate case.

IV. The Relief Requested Does Not Constitute an Advisory Opinion

In the case of *State ex rel Laclede Gas Co. v. Missouri Public Service Commission*, the Missouri Court of Appeals for the Western District again clarified that the Commission does not issue advisory opinions that do not effect material issues in the dispute but only effect future matters. 392 S.W. 3d 24, 28 (Mo. App. 2013): "The Commission, the circuit court, and this court should not render advisory opinions." (quoting *Wasinger v. Labor & Industrial Relations Commission*, 701 S.W.2d 793, 794 (Mo.App.1985).

The relief requested from Renew Missouri in this case does not constitute an advisory opinion. As stated above, Renew Missouri is alleging that KCP&L-GMO has failed to comply with the requirements of the RESRAM rule at 4 CSR 240-20.100(6). The determination that the Commission makes in this case will have immediate effect and are not limited to future proceedings or cases. As just one example, the Commission could order the Company to include a line item for "RESRAM benefits" on the notice portion of customers' bills.

CONCLUSION

Accordingly, Renew Missouri asks that the Commission exercise its authority to approve or deny RESRAM applications, as well as its authority to determine what is just and reasonable, in finding that KCP&L-GMO has not met its burden in this case. In so finding, the Commission should order KCP&L-GMO to amend its RESRAM application so that it: 1) quantifies the benefits associated with the costs proposed for recovery; 2) demonstrates how such benefits are to be passed through to customers; and 3) includes a customer notice example that lists RESRAM benefits alongside costs.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served, via e-mail, on counsel for each of parties of record on this 3rd day of December, 2015.

/s/ Andrew J. Linhares
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