

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

In the Matter of Kansas City)	
Power & Light Company's Request)	Case No. ER-2014-0370
for Authority to Implement a General)	
Rate Increase for Electric Service)	
)	

**OBJECTION TO TARIFFS, OBJECTION TO AFFIDAVITS
AND REQUEST FOR HEARING**

COMES NOW the Midwest Energy Consumers Group ("MECG") and for its Objection to Tariffs, Objection to Staff Affidavits, and Request for Hearing respectfully states as follows:

1. On September 8, 2015, KCPL filed tariffs which it alleges are in compliance with the Commission's September 2, 2015 Report and Order. On September 11 and 15, 2015, KCPL filed various substitute tariffs. By this pleading, MECG objects to KCPL's compliance tariffs, objects to KCPL's request to expedite approval of the KCPL tariffs, objects to Staff's affidavits and requests an evidentiary hearing.

2. KCPL's request to expedite its compliance tariffs fails to consider the statutory right to notice and publication. That 30-day time period is obviously necessary to allow parties to consider the rate increase. By its motion, KCPL seeks to reduce this statutory time period from 30-days to 8 days. Most egregious, however, is KCPL's request that the Commission approve its September 15, 2015 substitute sheets with notice

of only 15 hours.¹ Certainly, good notice does not exist to reduce statutory notice and publication periods to less than 24 hours.

3. Section 536.140 provides that, in any contested case, the Commission order must be supported by competent and substantial evidence. While KCPL asks that the Commission approve its compliance tariffs, there is no evidence in the record to support such an order. Specifically, there is no evidence to support: (1) KCPL's calculation of the revenue requirement implied by the Report and Order; (2) KCPL's allocation of that revenue requirement to the various customer classes; or (3) KCPL's determination of rates to collect the individual class revenue requirements.

4. In its September 8, 2015 Motion for Expedited Approval of its tariff sheets, KCPL asks the Commission to approve its tariffs no later than September 29, 2015. In its Motion, KCPL argues that, given the upcoming operation of law date, good cause exists to approve the compliance tariffs on an expedited basis. Contrary to KCPL's argument, however, any Commission order approving KCPL's compliance must first consider and recognize all statutory procedural requirements.

In 2013, the Western District Court of Appeals considered a similar situation. There, the Court held that the Commission's desire to approve compliance tariffs prior to the operation of law date must first recognize the parties' statutory right to prepare and file an application for rehearing.²

[T]he statutes simply require that the PSC process cases in a timely fashion, which means, of necessity, concluding its hearings and entering orders far enough in advance of the operation of law date (if it is in fact applicable) so as to provide the OPC and other parties a reasonable time in which to request

¹ Specifically, KCPL filed its last substitute tariff sheet at 6:30 p.m. on September 15, 2015. Recognizing that the Commission is scheduled to consider this filing at its regularly scheduled public meeting at 9:30 a.m. on September 16, 2015, notification and publication of this rate schedule amounts to 15 hours.

² *State ex rel. Office of the Public Counsel v. Public Service Commission*, 409 S.W.3d 522 (Mo.App. 2013).

rehearing and file appeals. *The PSC's failure to meet appropriate timelines cannot justify or constitute "good cause" for infringing upon the due process rights of the parties.*³

Similarly, contrary to KCPL's current assertion, the need to "meet appropriate timelines cannot justify or constitute good cause for infringing" on the due process requirement that the Commission's order be supported by competent and substantial evidence. As such, KCPL's desire to approve tariffs in an expedited manner must give way to the Commission's statutory requirement to base its decision on competent and substantial evidence.

5. As part of KCPL's September 15, 2015 compliance tariff substitution filing, KCPL included three Staff affidavits (Dana Eaves, Thomas Imhoff and Michael Scheperle). Section 536.070(12) provides that an affidavit can constitute competent and substantial evidence only if that affidavit is not objected to by other parties. That statutory section also provides nothing shall prevent other parties from cross-examining the affiant. By this pleading, MECG objects to the three Staff affidavits and exercises its statutory right to cross-examine each of Staff's affiants. As such, these affidavits cannot constitute the competent and substantial evidence necessary to support a Commission order approving KCPL's compliance tariffs.


6. In order to allow the Commission to comply with Section 536.140 as well as Section 536.070(12), MECG requests that, consistent with statutory notice requirements, the Commission immediately schedule an evidentiary hearing. That hearing will allow the Commission to receive the competent and substantial evidence necessary to support a Commission order approving compliance tariffs as well as to provide MECG the opportunity to cross-examine Staff affiants.

³ *Id.*

7. Finally, MECG points out that, as part of its September 15, 2015 Joint Filing, KCPL asks that its Fuel Adjustment Clause tariff sheets go into effect on or before September 29, 2015. Section 386.266.4 requires that any amounts collected under a fuel adjustment clause be subject to a true-up. Consistent with this statutory requirement, the Commission has promulgated CSR 240-20.090(1)(I) provides that “True-up year means the twelve (12)-month period beginning on the first day of the first calendar month following the effective date of the commission order approving a RAM unless the effective date is on the first day of the calendar month.” Given this definition, as well as the statutory requirement that all amounts collected under a fuel adjustment clause be subject to true-up, a fuel adjustment clause must become effective on the first of the month. Given this requirement, MECG objects to KCPL’s request to approve the fuel adjustment clause tariff on September 29. Instead, MECG asks that the Commission simply delay KCPL’s fuel adjustment clause tariff for two days so that the tariff becomes effective on October 1 as required by Commission rule.

WHEREFORE, MECG respectfully objects to KCPL’s compliance tariffs and Staff’s affidavits. Furthermore, MECG requests that the Commission schedule a hearing for the purpose of providing the parties an opportunity for cross-examination and for the receipt of any evidence regarding the appropriateness of KCPL and GMO’s compliance tariffs. Finally, MECG asks that the Commission comply with Section 386.266.4 and 4 CSR 240-20.090(1)(I) by requiring the fuel adjustment clause tariff become effective on the first of a calendar month.

Respectfully submitted,



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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.



David L. Woodsmall

Dated: September 15, 2015