

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

In the Matter of the Application of KCP&L)
Greater Missouri Operations Company for)
Approval of a Special Incremental Load)
Rate for a Steel Production Facility)
In Sedalia Missouri.)

Case No. EO-2019-0244

**STAFF’S REPLY TO MECG’S RESPONSE TO
STAFF’S MOTION TO DISMISS PURPORTED PARTY AND
STAFF’S MOTION TO QUASH PURPORTED OBJECTION**

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Reply to MECG’s Response to Staff’s Motion to Dismiss Purported Party and Motion to Quash Purported Objection*, states as follows:

Statement of the Case:

1. This matter arose on July 12, 2019, when KCP&L Greater Missouri Operations Company filed its *Application* for authority to serve Nucor, a steel producer, pursuant to a special incremental load rate under its proposed SIL Tariff.

2. On the same day, the Commission issued its *Order Directing Notice, Establishing Time To Intervene, And Scheduling A Procedural Conference*.

3. On July 22, 2019, MECG filed its *Application to Intervene*, stating that it “is an incorporated association representing the interests of large commercial and industrial users of electricity” and “[a]s a group of large commercial and industrial customers of KCPL-GMO, MECG’s interest in this case is different than that of the general public.”

4. On September 19, 2019, the Company filed a *Non-Unanimous Stipulation and Agreement*, which Staff had joined, disposing of all issues in the case.

5. On September 24, 2019, MECG filed its objection to the *Non-Unanimous Stipulation and Agreement*.

6. Also on September 24, 2019, Staff filed its *Motion to Dismiss Purported Party and Motion to Quash Purported Objection*.

7. On October 4, 2019, MECG filed its *Response to Staff's Motion to Dismiss Purported Party and Motion to Quash Purported Objection*.

MECG's Initial Arguments are Simply Untrue:

8. In its *Response*, MECG characterizes Staff's motions as "baseless" and demands that they "be summarily rejected" because, MECG asserts, they are "simply designed to harass MECG for exercising its right to object to the GMO / Staff settlement and inform the Commission of the unlawful nature of that settlement." Additionally, MECG charges, "these motions are the latest example of Staff's lack of objectivity and refusal to broaden its views to consider the interests of customers as well as those of KCPL / GMO * * * Staff is apoplectic that MECG would dare to object to the latest in a long line of settlements that Staff has executed with KCPL / GMO that are detrimental to consumers. Rather than allow MECG the opportunity to explain to the Commission the unlawful nature of this settlement, Staff instead seeks to dismiss MECG as a party to this case and then to quash MECG's pending objection. The practical effect of these legal machinations is to clear the way for the latest detrimental Staff / GMO settlement."¹

9. Are these accusations true? Let's examine them. Stripped of Mr. Woodsmall's characteristic hostile rhetoric, MECG asserts that (1) the proposed SIL tariff is unlawful and (2) that it is detrimental to consumers. Actually, neither of MECG's

¹ MECG's *Response*, ¶¶2-3.

claims is true. The proposed SIL tariff is a species of economic development tariff, not dissimilar to GMO's existing economic development tariff and the arrangements specifically authorized by § 393.355, RSMo. If GMO's existing economic development tariff is lawful, then the proposed SIL tariff is lawful. Nor is the proposed SIL tariff detrimental to consumers. In fact, where § 393.355.2(2), RSMo., provides "[a]fter approval of the special rate, the commission allocates in each general rate proceeding of the electrical corporation serving the facility the reduced revenues from the special rate as compared to the revenues that would have been generated at the rate the facility would have paid without the special rate **to the electrical corporation's other customers through a uniform percentage adjustment to all components of the base rates of all customer classes,**" the *Non-Unanimous Stipulation and Agreement* filed in this case provides, "[i]f Nucor's revenues do not exceed Nucor's costs as reflected in the revenue requirement calculation through the true-up period, GMO will make an additional revenue adjustment covering the shortfall to the revenue requirement calculation through the true-up period, to ensure that non-Nucor GMO customers will be held harmless from such effects from the Nucor service. In no event shall any revenue deficiency (that is, a greater amount of Nucor incremental costs compared to Nucor revenues) be reflected in GMO's cost of service in each general rate proceeding for the duration of Nucor service during the terms of the contract between GMO and Nucor (Confidential Schedule DRI-2 of GMO witness Darrin Ives)."² In other words, while the ratepayers are on the hook for any shortfall under a § 393.355, RSMo., arrangement, GMO will hold them harmless from any shortfall under the Nucor

² *Non-Unanimous Stipulation and Agreement*, ¶18.

agreement. On the other hand, should the Nucor arrangement yield excess revenue, the excess will be used to reduce the revenue requirement otherwise payable by the ratepayers.³ Clearly, there is no detriment to consumers.

Intervention at the PSC:

10. The Commission's rule on intervention at 20 CSR 4240-2.075 provides:

(3) The commission may grant a motion to intervene or add new member(s) if—

(A) The proposed intervenor or new member(s) has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.

11. The Commission's rule makes clear that intervention may be granted on either of two bases: Either because the intervention applicant has an interest different from that of the general public that may be adversely affected by the outcome of the case, or because the participation of the intervention applicant would serve the public interest. The former, which may be considered intervention as a matter of right, is founded on traditional notions of Due Process and standing.⁴ The latter, which may be considered permissive intervention, allows the Commission to benefit from the participation of entities, not otherwise entitled to intervene, which nonetheless bring useful insights and information to the proceeding. An example of the latter type of intervenor is Consumers Council, some of whose members are customers of the utility,

³ *Id.*

⁴ The Due Process clause prohibits governmental entities from inflicting the deprivation of a property interest without providing appropriate procedural protections to the property's owners; "standing" refers to a legal doctrine that requires a party to a lawsuit to have sufficient connection to the subject of the suit that its participation is appropriate.

but whose interest is identical to that of the general public. The general public is represented by the Office of the Public Counsel.

12. In its *Application to Intervene* in this case, MCEG sought intervention under both prongs of Rule 20 CSR 4240-2.075(3).

MCEG Does Not Qualify For Intervention as a Matter of Right:

13. MCEG applied for intervention under Rule 20 CSR 4240-2.075(3)(A), thereby placing at issue the facts supporting its claim that it “is an incorporated association representing the interests of large commercial and industrial users of electricity”⁵ and “a group of large commercial and industrial customers of KCPL-GMO, MCEG’s interest in this case is different than that of the general public.” Note that MCEG never pleaded that its interest is subject to an adverse impact, thus failing to plead a *prima facie* case for intervention under Rule 20 CSR 4240-2.075(3)(A).

14. Staff indeed now understands that MCEG is a corporation and does not represent any specific customers of GMO. As the Commission has found, “it is already quite clear that MCEG does not claim to represent any entity other than itself.”⁶ What Staff is unable to understand is how that fact can be reconciled with MCEG’s assertion in its *Application to Intervene* filed in this case that “[a]s a group of large commercial and industrial customers of KCPL-GMO, MCEG’s interest in this case is different than that of the general public.”⁷ The quoted statement undeniably asserts that MCEG does represent specific customers of GMO,⁸ but the Commission has found that the

⁵ *Application to Intervene*, ¶1.

⁶ *Order Granting Motion to Quash Deposition*, issued October 1, 2019, p. 4.

⁷ *Application to Intervene*, ¶2.

⁸ Which is what Staff had intended to investigate via the deposition noticed for October 2, 2019. Note that no *subpoena* was ever issued or served.

statement is untrue. It follows that MEEG, which admits that it is not itself a customer of GMO,⁹ does not and cannot qualify for intervention as a matter of right.

15. In its *Response*, MEEG refers more than once to its “members” and actually compares itself to the NAACP when asserting that Staff has no right to its membership list.¹⁰ MEEG’s members, if any, are important only to the extent that MEEG relies upon their economic interest and susceptibility to adverse impact in seeking, and justifying, intervention in this matter.¹¹ MEEG now insists that it is not so relying and so its membership is irrelevant. However, Staff will point out that, on its public website, MEEG lists 52 “participating members,” while its *Articles of Incorporation* provide that it has no members.¹² Evidently this conflict is just another item concerning MEEG that is difficult to reconcile.

MEEG Does Not Qualify For Permissive Intervention:

16. As MEEG correctly notes, the Commission often grants intervention to applicants whose participation is considered to be in the public interest.¹³ These intervention applications are typically unopposed, as MEEG’s application was only fleetingly opposed in this case in the first instance.¹⁴ Permissive intervention under Rule 20 CSR 4240-2.075(3)(B) is a matter of the Commission’s sound discretion. But MEEG

⁹ MEEG’s *Response*, ¶10.

¹⁰ MEEG’s *Response*, ¶¶1, 5, 6, 7, 8, 12, 13, 14, and 15.

¹¹ When considering the standing of an incorporated association, the association’s standing is dependent on the standing of its members: “[i]n order for appellants to have standing in a representative capacity, ‘(1) the members must have standing to bring suit in their own right; (2) the interests the association seeks to protect must be germane to its purpose; and (3) neither the claim asserted nor the relief requested must require the participation of individual members in the lawsuit.’” ***Querry v. State Highway & Transp. Comm’n***, 60 S.W.3d 630, 634 (Mo. App., W.D. 2001).

¹² See Ex. B attached to MEEG’s *Motion to Quash Deposition*, Question 6; incorporated herein by reference.

¹³ MEEG’s *Response*, ¶11.

¹⁴ MEEG’s *Response*, ¶7.

is fundamentally dissimilar to the other entities granted permissive intervention in Commission proceedings.

17. Some public interest intervenors, such as Sierra Club, Consumers Council, and AARP, do have members that are, in some cases, at least, customers of the utility and who are united in some shared concern or viewpoint. The Sierra Club focuses on environmental concerns; AARP represents the interests of older and retired consumers; Consumers Council represents consumers generally. Renew Missouri promotes interest in renewable energy. These are all useful points of view in Commission cases and the public interest supports their participation.

18. The Missouri Industrial Energy Consumers (“MIEC”) is most similar to MIECG. Like MIECG, MIEC is a non-profit corporation with no members that was incorporated to “represent industry regarding energy matters.”¹⁵ Staff cannot recall that it has ever opposed intervention by MIEC.

19. Why shouldn’t MIECG be granted permissive intervention? Put another way, why should it be dismissed as a party? Two reasons. First, its *Application for Admission* is misleading; it characterized itself as “a group of large commercial and industrial customers of KCPL-GMO,”¹⁶ a statement of fact that the Commission has concluded was untrue.¹⁷ Second, the *Non-Unanimous Stipulation and Agreement* that MIECG opposes would hold the ratepayers harmless from any revenue deficiency and give them the benefit of any excess revenues.¹⁸ Under the circumstances, MIECG is not

¹⁵ *Articles of Incorporation*, ¶6, accessed online at the Office of the Missouri Secretary of State.

¹⁶ *Application to Intervene*, ¶2.

¹⁷ *Order Granting Motion to Quash Deposition*, issued October 1, 2019, p. 4.

¹⁸ *Non-Unanimous Stipulation and Agreement*, ¶8.

representing the interests of any ratepayer; nor does the public interest support its participation.

WHEREFORE, Staff prays that the Commission will **GRANT** *Staff's Motion to Dismiss Purported Party* and *Staff's Motion to Quash Purported Objection*; and grant such other and further relief as is just in the premises.

Respectfully submitted.

/s/ Kevin A. Thompson

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Certificate of Service

The undersigned certifies that the foregoing was served electronically upon all parties of record or their representatives pursuant to the Service List maintained for this case by the Commission's Data Center **on this 7th day of October, 2019.**

/s/ Kevin A. Thompson