

**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 General Rate Increase for Electric)
Service.) Case No. ER-2012-0175

RESPONSE TO OPC MOTION FOR RECONSIDERATION

COMES NOW, the Midwest Energy Consumers' Group ("MECG"), pursuant to the Commission's January 11, 2013 *Order Setting Time for Filing Responses to Motion for Reconsideration*, and for its Response to OPC's January 11, 2013 Motion for Reconsideration ("Motion"), respectfully states as follows:

1. As set forth in OPC's Motion, in its Report and Order, the Commission ordered that KCPL and GMO file compliance tariffs implementing the findings of its Report and Order on January 16, 2012. As originally envisioned in the Report and Order, the Commission would then allow until January 24 for other parties to review these compliance tariffs. Subsequently, however, in its *Order Regarding Filings Related to Compliance Tariffs*, the Commission reduced the time for parties to conduct this tariff review to January 22. Given the intervening weekend and federal holiday, this reduced period now only allows for two and a half days for parties to conduct this tariff review.

2. Prior to ruling on this motion, the Commission needs to realize the amount of work involved in a tariff review in these cases. Unlike other rate cases, parties are not simply expected to review a single set of tariffs. Rather, recognizing that this case involves both KCPL

and GMO, and since GMO has sought increases for both its MPS and L&P divisions, a tariff review in this case involves three separate tariff reviews (KCPL; GMO-MPS and GMO-L&P). Given the volume of tariff sheets already rejected by the Commission in its Report and Order, it is likely that any tariff review for these three cases will involve at least 125 separate tariff sheets.

3. Before actually getting to the point of reviewing tariffs, however, parties will have to: (1) calculate the exact revenue requirement contemplated by the Commission's Report and Order; (2) allocate the revenue requirement to the separate customer classes pursuant to any class cost of service resolution; (3) allocate each class revenue requirement to each of the separate charges (customer, demand, facilities and energy) pursuant to each class' rate design resolution; and (4) address the hours-use and seasonal variation in the energy charge for the various commercial and industrial rate schedules. Only after making these hundreds of calculations can the parties begin to review the tariffs to determine whether they accurately reflect the proper calculation of these hundreds of different rates. Clearly, this is not an easy task. More importantly, given the strictness of the filed rate doctrine, the implications of any mistake could be significant. While the Commission should seek to get new rates in place, now is not the time to introduce unnecessary haste into the process.

4. Therefore, MECG agrees with OPC's Motion for Reconsideration and its request to provide for an increased amount of time to conduct tariff reviews. As OPC properly recognizes, the Commission has fulfilled its statutory obligation with regard to KCPL and GMO's originally filed set of tariff sheets.¹ As such, the consideration and review of KCPL and GMO's newly filed compliance tariffs does not have to be completed by the operation of law date that applied to those original tariffs. Rather, the statutes expressly contemplate that the

¹ OPC Motion at page 2 ("The Commission has discharged its statutory obligation by timely acting upon the tariffs filed on February 27, 2012 and there is no legal obligation – or any other kind of obligation – to rush through an approval of a new request for a smaller rate increase.")

review of these compliance tariffs should take thirty days.² In fact, the Commission is empowered, in the event that it cannot complete this review in that thirty day period, to suspend these compliance tariffs to accommodate all of its statutory duties.³ MECG is not currently suggesting that the Commission should suspend such tariffs. Rather, MECG is simply pointing out that the statutes contemplate at least thirty days, with the possibility of a longer review, and not the unnecessarily expedited review contemplated by the Commission's *Order Regarding Filings Related to Compliance Tariffs*.

5. In a previous case, the Commission rushed its consideration of compliance tariffs under the mistaken belief that it was bound by the original operation of law date. In doing so, however, the Commission impermissibly sought to shorten other parties' opportunity to prepare and file applications for rehearing. In its consideration of that case, the Missouri Supreme Court made it clear that the Commission must provide for adequate time for all statutory duties even if this means that the compliance tariffs become effective after the original operation of law date.⁴

6. Indeed, learning from the Supreme Court decision and understanding that it was not bound by the operation of law date for the original tariffs, the Commission in GMO's last rate case approved the compliance tariffs well after that original operation of law date. In that case, the original operation of law date was June 4, 2011. GMO alleged that it would be "unlawful" for the Commission to approve compliance tariffs that became effective after this date.⁵ Recognizing that it was not bound to approve compliance tariffs by the original operation of law date, the Commission instead properly addressed all pending motions for clarification, reconsideration and rehearing. In fact, in order to address each of these motions, the

² Section 393.140(11).

³ Section 393.150.

⁴ See, *State ex rel. Office of the Public Counsel v. Public Service Commission*, 236 S.W.3d 632 (Mo.banc 2007).

⁵ See, *Motion for Expedited Consideration and Approval of Tariff Sheets Filed in Compliance with Commission Order on Less Than Thirty Days Notice*, Case No. ER-2010-0356, filed May 12, 2011, at page 2.

Commission actually suspended GMO's compliance tariffs twice pursuant to Section 393.150.⁶ Ultimately, GMO's compliance tariffs did not become effective until June 25, 2011 – three weeks after the operation of law date for the originally filed tariffs.⁷

7. KCPL and GMO should not be surprised or upset that its compliance tariffs may take longer than those for other utilities. As the Commission recognized early on, KCPL and GMO filed its case immediately on the heels of a rate filing by Ameren. The practical effect of KCPL and GMO's decision to file its case immediately after Ameren's case was to "overwhelm the resources of the Commission Staff, the Office of the Public Counsel and any other intervenor."⁸ In fact, undersigned counsel has repeatedly urged KCPL to stagger its rate case from that of GMO so that testimony, hearing, brief and compliance tariff filings are not simultaneously scheduled in the two cases. Despite such concerns and repeated urging, KCPL and GMO nevertheless unilaterally decided to file its case immediately after Ameren. Furthermore, rather than stagger the filing of the KCPL and GMO cases, those utilities decided to file those cases simultaneously. KCPL and GMO should not now act surprised that the practical effect of its decision to overwhelm the parties' resources is that its compliance tariffs are delayed temporarily while these parties work through this process. KCPL and GMO could have taken steps months ago to avoid this problem and refused.

WHEREFORE, MECG respectfully supports OPC's Motion for Reconsideration and, realizing that the Commission is not bound by the original operation of law date, urges the Commission to take the time necessary to address any pending motions for reconsideration / rehearing as well as to ensure the preparation and review of accurate compliance tariffs.

⁶ See, *Order Suspending Tariff Sheets and Directing Filing*, Case No. ER-2010-0356, issued June 2, 2011. See also, *Order Further Suspending Tariff Sheets*, Case No. ER-2010-0356, issued June 10, 2011.

⁷ See, *Order Approving Tariff Sheets and Setting Procedural Conference*, Case No. ER-2010-0356, issued June 15, 2011.

⁸ See, Letter from Chairman Gunn to KCPL and GMO, dated January 17, 2012.

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: January 15, 2013