

**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 RESPONSE TO STAFF MOTION TO DISMISS PURPORTED PARTY
AND MOTION TO QUASH PURPORTED OBJECTION**

COMES NOW, the Midwest Energy Consumers Group (“MECG”), by and through undersigned counsel, and for its Response to both the Staff Motion to Dismiss Purported Party as well as the Motion to Quash Purported Objection respectfully states as follows:

1. On September 24, 2019, Staff filed two motions in the above-captioned docket. In its first motion, the Motion to Dismiss Purported Party, Staff raises several misplaced assertions. ***First***, based upon its “doubts”, Staff suggests that MECG is not actually representing the interests of large commercial and industrial users of electricity. Rather, Staff concludes that MECG is simply an “alter ego” and is actually only representing the interests of MECG’s undersigned counsel. Given this conspiracy theory, Staff suggests that MECG’s Application to Intervene in this case was “misleading” and that MECG should be dismissed as a party. ***Second***, Staff asserts that, because MECG is not actually a customer of GMO, it does not have an “interest in this matter that can be adversely affected”. ***Third***, Staff suggests that MECG should defend itself against its reckless assertions by identifying MECG’s members so that “Staff can pursue discovery from them.” Simultaneous with the Motion to Dismiss Purported Party, and based upon that motion, Staff also filed its Motion to Quash MECG’s pending objection to the Staff / GMO / Nucor non-unanimous stipulation.

2. Through this pleading, MECG demonstrates that Staff's assertions are baseless. Given this, much like Staff's flawed Subpoena seeking the appearance of an MECG witness for a deposition, the Motions should be summarily rejected. As MECG has previously related, Staff's motions in this case 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. In this regard, 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.

3. As is apparent from its Motions in this as well as several other cases, 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.

MECG INTERVENED AS AN ENTITY CREATED BY STATUTE

4. While acknowledging that MECG has represented the interests of large commercial and industrial customers in the past, Staff "doubts" that MECG is representing such interests in this case. Based largely on the fact that MECG has refused to provide Staff the names of its member companies, Staff instead suggests that MECG is simply the "alter ego" of undersigned counsel.¹ Given this, Staff asserts that the MECG Application to Intervene was "misleading" and MECG should be dismissed as a party to this case.

¹ MECG will not address the obvious lack of economic sense it would make for an attorney to intervene and work on cases simply to satisfy his own utility regulation beliefs.

5. Staff fails to recognize that a corporation is not required to identify its member companies simply to assuage Staff’s “doubts” or to silence Staff’s conspiracy theories. As the Commission has repeatedly recognized, and what Staff still fails to grasp, is that MECG has not intervened as an organization on behalf of any specific customers of GMO. Rather, MECG sought and was granted intervention on behalf of itself as a corporation, “an entity created by statute.” As such, MECG is not required to satisfy Staff’s desire to know the names of the MECG members.

6. In its Motion, Staff conveniently directs the Commission’s attention to a limited portion of its Intervention rule. Had Staff reviewed the entirety of the intervention rule, it would realize the problems with its current assertions. Specifically, by limiting its review of the intervention rule, Staff fails to consider the provision related to the differences for the intervention of corporations as opposed to simply organizations. As 20 CSR 4240-2.075(2)(D) indicates, while organizations are required to produce a list of members, corporations and other “entities created by statute” are not required to produce such a membership list.

(2) A motion to intervene or add new member(s) shall include:

(D) If any applicant is an association, other than an incorporated association or other entity created by statute, a list of all of its members.

This distinction between a corporation and an organization as well as the need for an organization to provide a list of its members is understandable when one recognizes that, when the Commission grants intervention to an organization, it “is not granting intervention to the association, but is granting intervention to the individual members of the association.”² In contrast, because it is not identifying specific members, when the Commission grants

² 20 CSR 4240-2.075(4)

intervention to a corporation, it is permitting the intervention of only that legal entity and not of any individual members.

7. In its Application to Intervene, MECG clearly indicated that it was intervening as a corporation and not as an organization. Specifically, MECG indicated that it “is an incorporated association representing the interests of large commercial and industrial users of electricity.” Noticeably, MECG never sought to intervene on behalf of any specific customers of GMO. This fact was emphasized during the procedural conference in this matter when GMO sought the identification of MECG’s members.

GMO: Yeah. Who you're representing in this particular case that has an interest in our application?

MECG: MECG, the Incorporated entity.

GMO: Is it Wal-Mart? Is it someone -

MECG: None of them. MECG. I do not represent Wal-Mart. I represent MECG Incorporated Association. They are an entity of themselves.

GMO: And does GMO have a customer that you're representing?

MECG: No.³

Unlike Staff, GMO eventually dropped its objection and the Commission granted intervention to MECG as a legal entity.

8. Recently, the Commission again sought to educate Staff on this aspect of its intervention rules. On September 25, 2019, Staff issued a subpoena seeking the appearance of an MECG witness at a deposition for the purpose of disclosing “the identity of the large commercial and industrial electricity users whose interests MECG claims it is representing.” On October 1, 2019, the Commission issued its Order quashing that subpoena. There, the Commission stated:

³ Tr. 6-7.

[I]t is ***already quite clear*** that MECG does not claim to represent any entity other than itself. MECG was granted intervention on its own behalf as a corporate entity, not as an association for which it would be required to disclose its members, consistent with the Commission’s rule on intervention, 20 CSR 4240-2.075. Whether MECG has any “members” who may also be interested in this case, is irrelevant to any issue before the Commission regarding GMO’s application.⁴

9. Thus, despite Staff’s “doubts” to the contrary, it is clear that MECG has sought and been granted intervention as a separate legal entity, and not on behalf of any specific GMO customers. As such, MECG is not required to identify any specific GMO customers that may be affected by this matter and which are represented by MECG.

MECG DOES NOT NEED TO BE A CUSTOMER TO INTERVENE

10. Next, Staff takes offense with the fact that, while MECG represents the interests of commercial and industrial customers, it is not itself “even a customer of GMO.” Given this, Staff suggests that MECG is “not entitled to intervention in this matter.” While MECG readily acknowledges that it is not a customer of GMO, this fact is not necessary for it to intervene in this matter. In this regard the Commission’s intervention rule does not require an intervenor to identify a financial interest to be affected by a case. Rather, an intervenor must simply identify an “interest.”

(2) A motion to intervene or add new member(s) shall include:

(E) A statement of the proposed intervenor’s or new member’s interest in the case and reasons for seeking intervention or to be added

11. Based upon the identification of an “interest” and not an actual “financial interest”, the Commission has granted intervention to other utilities even though those intervening utilities were not a customer of the affected utility. For instance, the Commission has allowed Ameren Missouri to intervene in KCPL / GMO dockets in though Ameren is not a

⁴ *Order Granting Motion to Quash Deposition*, issued October 1, 2019, at page 4 (emphasis added).

KCPL / GMO customer.⁵ Similarly, the Commission has repeatedly granted the interventions of Renew Missouri; Consumers Council of Missouri; Sierra Club; and the Missouri Industrial Energy Consumers even though those incorporated entities are not actually customers of the affected utility. Frankly, if the Commission limited intervention solely to entities that are customers of the affected utility as Staff suggests, then the Commission would be severely limited in its ability to consider all viewpoints that serve to make up the public interest. Clearly then, given the clarity of the Commission’s intervention rule as well as the fact that the Commission has repeatedly granted intervention to corporations that don’t have an identifiable financial interest, Staff’s assertion that MECG is not a customer of GMO is not relevant to whether MECG has an “interest” in this docket.

STAFF IS NOT ENTITLED TO KNOW MECG’S MEMBERSHIP

12. Finally, based upon some vague notion that allowing a corporation the ability to intervene without identifying its membership would serve to violate Staff’s constitutional “due process rights”. “To allow the real parties in interest to meddle in this case anonymously, hidden behind the screen of this incorporated association, works a very real denial of the Due Process rights of every other party to this case.” Given Staff’s alleged “due process right”, Staff asserts that it has “a manifest right to discover those interests.”

13. As an initial matter, MECG would be interested to see Staff’s analysis regarding how the Commission granting party status to a corporation serves to deny “due process rights” to other parties. Under Staff’s misplaced constitutional theory, neither GMO nor Nucor should be permitted to participate in this case as a corporation. Rather, both of these corporations should only be permitted to participate after identifying each of its individual shareholders and, as Staff now seeks to do, subjecting those individual shareholders to discovery. Under Staff’s theory, it

⁵ See, *Order Approving Application to Intervene*, Case No. EU-2014-0077, issued November 26, 2013.

is not appropriate for these shareholders, as the real parties in interest “to meddle in this case anonymously.” Again, Staff fails to recognize that GMO, just like MECG, is a corporation which is an “entity created by statute.” As such, GMO and MECG can both have interests separate and apart from the interests of its members or shareholders.

14. Unlike Staff’s simple assertion that its constitutional rights are being denied, the U.S. Supreme Court has held that requiring MECG to identify its membership represents a violation of its member freedom of association as applied to the states through the Fourteenth Amendment. In *NAACP v. Alabama*,⁶ the state of Alabama sought to require the NAACP to produce its membership lists as a condition to operating in the state. There, the Supreme Court held that such a requirement would violate the members’ freedom of association and speech.

Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the “liberty” assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.

* * * * *

It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved. This Court has recognized the vital relationship between freedom to associate and privacy in one’s associations. When referring to the varied forms of governmental action which might interfere with freedom of assembly, it said in *American Communications Assn. v. Douds*: “A requirement that adherents of particular religious faiths or political parties wear identifying arm-bands, for example, is obviously of this nature.” Compelled disclosure of membership in an organization engaged in advocacy of particular beliefs is of the same order. Inviolability of privacy in group association may in many circumstances be

⁶ 357 U.S. 449 (U.S. 1958).

indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.

We think that the production order [of the corporation's membership lists], in the respects here drawn in question, must be regarded as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association. . . . We hold that the immunity from state scrutiny of membership lists which the Association claims on behalf of its members is here so related to the right of the members to pursue their lawful private interests privately and to associate freely with others in so doing as to come within the protection of the Fourteenth Amendment.

15. While MECG does not seek to compare the interests that it is representing to the interests represented by the NAACP in the 1950s, the Supreme Court clearly indicated that association pertaining to "economic" matters is protected. Further, the Court held that it would be a violation of the associating members for the state to compel production of membership lists. Clearly then, Staff's argument that it has a due process right to the MECG membership list is based upon a flawed understanding of the Constitution.

WHEREFORE, MECG respectfully requests that the Commission deny Staff's Motion to Dismiss Purported Party as well as the associated Motion To Quash Purported Objection.

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: October 4, 2019