

**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 AND GMO REPLIES

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

1. This whole disagreement started in a recent GMO case when MECG questioned Staff’s objectivity. Based upon a string of recent settlements between Staff and KCPL / GMO, customers have increasingly noticed that, while Missouri electric rates have increased, Staff has grown increasingly cozy with the utility that it is sworn to regulate. After KCPL / GMO bragged about the tremendous job that Staff did in a recent case (in which Staff once again agreed with GMO), MECG was left with no choice but to point out to the Commission its concerns with the Staff / GMO relationship. Rather than attempting to show that MECG’s concerns were misplaced, Staff instead took steps which show that the concerns are now undeniable. Specifically, instead of listening more intently to the concerns of customers, Staff instead has initiated a campaign to eliminate MECG from even participating in PSC cases. This problem will require actions that go beyond this case. For now, however, the Commission can show that Staff’s harassment campaign will not be countenanced and that, while Staff may not listen to customer concerns, the Commission wants to hear those concerns.

2. In its pleading, Staff argues that MECG's intervention should be withdrawn by the Commission because MECG's intervention was "misleading." Relying completely on MECG's application to intervene in which MECG regrettably indicated that it is "a group of large commercial and industrial customers of KCPL-GMO," Staff asserts that this "statement of fact" is "untrue" and, therefore, the MECG intervention should be withdrawn.

3. What Staff fails to recognize, however, is that MECG's application to intervene was clarified in a procedural conference.¹ Specifically, MECG informed the Commission that, despite the language of its application, it was not intervening as a "group" of commercial and industrial customers. Rather, MECG was seeking intervention on its own behalf as a Missouri corporation formed for the purpose of representing commercial and industrial interests. Based upon this clarification, the Commission granted intervention to MECG as a corporation. Thus, the Commission has been fully aware of the nature of MECG's intervention.

4. Not satisfied with this clarification, Staff sought to depose an MECG representative regarding the identification of MECG's "members". In an order quashing Staff's subpoena, the Commission pointed out that Staff's discovery was misplaced because MECG did not intervene on behalf of any members, but instead was granted intervention on its own behalf.

[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.²

5. Still Staff is not satisfied. As before, Staff refuses to recognize that MECG's intervention was clarified at the procedural conference. Ignoring this clarification as well as the

¹ GMO also fails to recognize this clarification. In its pleading, GMO also references MECG's application to intervene, but fails to reference the clarification that occurred at the procedural conference.

² *Order Granting Motion to Quash Deposition*, issued October 1, 2019, at page 4 (emphasis added).

findings of the Commission's order quashing Staff's deposition, Staff recklessly insists that MECG's application to intervene was "misleading" and MECG's intervenor status must be withdrawn by the Commission.

6. As it has done on numerous previous occasions, MECG once again points out that it did not seek intervention on behalf of any specific customers. Rather MECG sought and was granted intervention on its own behalf as a corporation created for the purpose of representing commercial and industrial interests. Contrary to Staff's current claims, nothing nefarious was intended through MECG's application to intervene. Recognizing that OPC generally represents residential and small commercial interests, MECG sought and was granted intervention for the purpose of representing large commercial and industrial customers. The only reason that Staff seeks to dismiss MECG from this case³ is to punish MECG for questioning its objectivity and daring to question the latest Staff / GMO settlement. The Commission should not countenance Staff's campaign of harassment.

7. Finally, MECG notes that Staff uses its pleading to argue the merits of this case. Specifically, Staff seeks to address concerns that the settlement is lawful and is not detrimental to customers. In this regard, Staff asserts that the settlement is "specifically authorized by §393.355." As MECG pointed out in its objection to the non-unanimous settlement, however, is that while Section 393.355 authorizes the Commission to establish an incremental cost rate for a steel mill, it also mandates that the Commission create a tracker to ensure that the utility's net income is neither increased or decreased.

Any commission order approving a special rate authorized by this section to provide service to a facility in the manner specified under subsection 4 of this section shall establish, as part of the commission's approval of a special rate, a

³ Undersigned counsel has practiced for 27 years and has appeared at various times in front of at least 14 state utility commissions. In that period, counsel has never seen a Commission Staff seek to dismiss a consumer representative from participating in a utility case.

tracking mechanism to track changes in the net margin experienced by the electrical corporation serving the facility with the tracker to apply retroactively to the date the electrical corporation's base rates were last set in its last general rate proceeding concluded prior to June 14, 2017. The commission shall ensure that the changes in net margin experienced by the electrical corporation between the general rate proceedings as a result of serving the facility are calculated in such a manner that the electrical corporation's net income is neither increased nor decreased.

This is the problem with the disputed settlement, it does not include the mandated tracker and provides GMO the opportunity to increase its net margin as a result of serving this customer. In fact, in its application GMO readily acknowledges that its mechanism does not comply with Section 393.355. There, GMO requests that the Commission implement a mechanism that is “significantly similar to Section 393.355 RSMo.”

WHEREFORE, MECG respectfully requests that the Commission deny Staff’s motion to dismiss MECG as a party to this proceeding.

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 8, 2019