

**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

**MOTION FOR SCHEDULING OF A HEARING**

COMES NOW the Midwest Energy Consumers Group (“MECG”) and for its Motion for Scheduling of a Hearing respectfully states as follows:

1. On January 22, 2013, Staff filed its recommendation regarding the compliance tariffs filed by KCP&L-GMO on January 16, 2013. Accompanying its recommendation, Staff presented the affidavit of Thomas Imhoff.
2. At this point, it is without question that this case remains a contested case.<sup>1</sup> Section 536.070 provides strict procedures to be followed in “any contested case.” The provisions of Chapter 536 apply to Commission proceedings.<sup>2</sup>
3. Section 536.070(12) governs the use of “an affidavit in evidence” and requires a hearing before the objected-to affidavit may be accepted into evidence.

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<sup>1</sup> KCPL and GMO have readily admitted that this must continue to be a contested case. Specifically, in their attempt to have tariffs approved in an unreasonably expedited fashion, KCPL and GMO have asserted that this is part of the same case as the Commission’s consideration of the originally filed tariff sheets. As such, given that this case became a contested case with the suspension of the original tariffs sheets, KCPL and GMO must concede that this remains a contested case. See, *Response of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company to Staff of the Missouri Public Service Commission and Midwest Energy Consumer’s Group*, filed January 16, 2013.

<sup>2</sup> See, *State ex rel. Noranda Aluminum v. Public Service Commission*, 24 S.W.3d 243 (Mo.App.W.D. 2000); *Utility Consumers Council v. Public Service Commission*, 562 S.W.2d 688 (Mo.App.E.D. 1978); *State ex rel. GS Technologies Operating Co. v. Public Service Commission*, 116 S.W.3d 680 (Mo.App.W.D. 2003); *Environmental Utilities, LLC. v. Public Service Commission*, 2007 Mo.App. Lexis 533 (Mo.App.W.D. 2007).

Any party or the agency desiring to introduce an affidavit in evidence **at a hearing** in a contested case may serve on all other parties (including, in a proper case, the agency) copies of such affidavit in the manner hereinafter provided, **at any time before the hearing**, or at such later time as may be stipulated. Not later than seven days after such service, or at such later time as may be stipulated, any other party (or, in a proper case, the agency) may serve on the party or the agency who served such affidavit an objection to the use of the affidavit or some designated portion or portions thereof on the ground that it is in the form of an affidavit; provided, however, that if such affidavit shall have been served less than eight days **before the hearing** such objection may be served at any time **before the hearing** or may be made orally **at the hearing**. If such objection is so served, the affidavit or the part thereof to which objection was made, may not be used except in ways that would have been permissible in the absence of this subdivision; provided, however, that such objection may be waived by the party or the agency making the same. Failure to serve an objection as aforesaid, based on the ground aforesaid, shall constitute a waiver of all objections to the introduction of such affidavit, or of the parts thereof with respect to which no such objection was so served, on the ground that it is in the form of an affidavit, or that it constitutes or contains hearsay evidence, or that it is not, or contains matters which are not, the best evidence, but any and all other objections may be made **at the hearing**. Nothing herein contained shall prevent the cross-examination of the affiant if he is present in obedience to a subpoena or otherwise and if he is present, he may be called for cross-examination during the case of the party who introduced the affidavit in evidence. . . .

4. Simultaneously and pursuant to the rights guaranteed by Section 536.070(12), MECG has filed its Objection to the Affidavit of Thomas Imhoff informing the Commission of its desire to cross-examine Mr. Imhoff. Consistent with its objection and request for cross-examination, MECG hereby requests that the Commission schedule a hearing so that the Commission can provide for such cross-examination and the receipt of any evidence.

5. As in any other contested case, the Commission's order must be both lawful and reasonable. In order for any Commission order approving compliance tariffs to be reasonable, it **must be supported by competent and substantial evidence**. Given MECG's objection to the Staff affidavit there is no evidence to support any finding that

the KCPL and GMO tariffs actually comply with the Commission's Report and Order. As such, MECG requests that the Commission immediately undertake an evidentiary hearing for the purpose of allowing cross-examination regarding Mr. Imhoff's affidavit as well as eliciting the evidence necessary to support a Commission finding that the KCPL and GMO tariff sheets actually comply with the Commission's Report and Order.

WHEREFORE, MECG respectfully 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.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David L. Woodsmall". The signature is written in a cursive, somewhat stylized font.

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David L. Woodsmall (MBE #40747)  
807 Winston Court  
Jefferson City, MO 65101  
(573) 797-0005 voice  
(573) 635-7523 facsimile  
E-mail:  
[david.woodsmall@woodsmalllaw.com](mailto: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.

A handwritten signature in black ink, appearing to read "David L. Woodsmall". The signature is written in a cursive style with a large initial "D".

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David L. Woodsmall

Dated: January 22, 2013