STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 28th day of May, 2014.

In the Matter of KCP&L Greater Missouri Operations Company's Application for Authorization to Suspend Payment of Certain Solar Rebates	)))	**File No. ET-2014-0277** Tariff No. JE-2014-0403

ORDER APPROVING TARIFF

Issue Date: May 28, 2014 Effective Date: June 8, 2014

Procedural History

On April 9, 2014[1], KCP&L Greater Missouri Operations Company ("GMO") filed the above-referenced application. The application included a tariff bearing an effective date of June 8.

GMO states that it should be entitled to suspend payment of certain solar rebates due to the Commission's approval of a Non-Unanimous Stipulation in File No. ET-2014-0059 ("Stipulation"). As such, GMO asked that the Commission allow the parties in File No. ET-2014-0059 to become parties in this file without the need to file motions to intervene.

The Commission allowed the parties from File No. ET-2014-0059 to be parties in this file without the need to file motions to intervene. The Commission further allowed an opportunity for other potential parties to intervene. The Commission received no further requests for intervention.

[1] Calendar references are to 2014 unless otherwise noted.

GMO points out that, pursuant to Section 393.1030(3) and the Stipulation, the Commission should approve the tariff. GMO states that it has received approximately $60 million in solar rebate applications.

Missouri Solar Energy Industries Association ("MOSEIA") responded on May 8. MOSEIA claims that solar installations done by the utility do not count towards the solar rebate cap contained in Section 393.1030.2. MOSEIA states that Kansas City Power & Light ("KCP&L"), GMO and KCP&L Solar have installed solar facilities. So, MOSEIA maintains, those facilities do not count toward the cap, and the Commission should reject the tariff.

The Staff of the Commission responded on May 9. Staff recommends that the Commission reject the tariff, and approve the application once GMO has actually paid the solar rebates. Staff states that the pending tariff language would allow GMO to pay beyond $50 million in solar rebates. Thus, Staff argues, approving that language would lend credence to the argument that payment of those solar rebates would be prudent, even though contrary to the stipulation. In other words, Staff believes that if the Commission approves solar rebates beyond the $50 million cap, then those rebates must be prudent, and GMO would be entitled to recover those rebates in rates.

Brightergy, LLC, ("Brightergy") responded on May 16. Brightergy echoes MOSEIA's argument about KCP&L, GMO and KCP&L Solar's installation of solar facilities not counting toward the rebate cap. Further, Brightergy states that GMO has preapproved solar rebate applications that, if successfully completed, would bind GMO to pay some $55 million of solar rebates. Brightergy argues that if the Commission fails to allow GMO to meet those commitments, Missouri solar customers would lose about $5 million in solar rebates.

Prudence of the amount GMO spends on solar rebates is for another day, Brightergy counters. The Commission can address prudence in a general rate case.

GMO responded on May 19. GMO states that solar rebates are to be paid to qualified customers as the solar systems become operational. Because the customer must complete installation, GMO does not know if or when customers might fail or succeed in ultimately installing their solar systems. The Commission can decide the prudence of the expenditures in a Renewable Energy Standard Rate Adjustment Mechanism ("RESRAM") case or a general rate case.

GMO counters MOSEIA and Brightergy's argument about recalculating the solar rebate cap by stating that Section 393.1030.2 does not apply to the solar installations in question. GMO says that the statute requires that the Commission ignore a utility's investment in solar-related projected initiated, owned or operated by the utility. GMO claims the statute does not apply because KCP&L Solar is a distinct company and not a utility. And, even though KCP&L and GMO are utilities, they do not initiate, own or operate the solar facilities in question. The ratepayers installing them do. Thus, GMO states it has calculated the maximum retail rate increase correctly.

Earth Island Institute d/b/a Renew Missouri responded on May 23. Renew Missouri echoed the comments of MOSEIA and Brightergy.

Discussion

This case is a "non-contested" case. This is a bit of a misnomer, as the distinction between contested and non-contested does not depend on whether a party is opposed to the relief requested. Instead a non-contested case is one in which there is no legal

requirement that an agency hold a hearing before granting relief.[2] Not every case in which there is a contest about rights, duties or privileges is a contested case.[3]

Section 393.1030 gives no hearing rights. In fact, no party even requested a hearing. Thus, this is a non-contested case. And, because this is a non-contested case, the Commission is not required to make findings of fact.[4]

The Commission is an administrative body of limited jurisdiction, having only the powers expressly granted by statutes and reasonably incidental thereto.[5] The statute allowing the relief GMO requests is Section 393.1030 RSMo.

Section 393.1030(3) states in pertinent part:

> **If the electric utility determines** the maximum average retail rate increase provided for in subdivision (1) of subsection 2 of this section will be reached in any calendar year, the electric utility shall be entitled to cease paying rebates to the extent necessary to avoid exceeding the maximum average retail rate increase if the electrical corporation files with the commission to suspend its rebate tariff for the remainder of that calendar year at least sixty days prior to the change taking effect. The filing with the commission to suspend the electrical corporation's rebate tariff shall include the calculation reflecting that the maximum average retail rate increase **will be reached** and supporting documentation reflecting that the maximum average retail rate increase **will be reached**. The commission shall rule on the suspension filing within sixty days of the date it is filed. **If the commission determines that the maximum average retail rate increase will be reached, the commission shall approve the tariff suspension** (emphasis supplied).

To sum up, Section 393.1030(3) allows an electric utility to determine when its maximum average retail rate increase will be reached. Upon the utility's finding that the maximum will be reached, it may give the Commission sixty days' notice that it will cease

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[2] *See, e.g., Benton-Hecht Moving and Storage, Inc. v. Call*, 782 S.W.2d 668, 670-71 (Mo. App. W.D. 1989); State ex. rel. Coffman v. PSC, 121 S.W.3d 534,539 (Moapa. W.D. 2003).

[3] See *Call* at 782 S.W. 2d at 670-671.

[4] See, e.g., *State ex. rel. Public Counsel v. Public Service Comm'n*, 259 S.W.3d 23, 29 (Mo. App. W.D. 2008).

[5] See, e.g., State ex. rel. City of St. Louis v. Missouri Public Service Comm'n, 73 S.W.2d 393, 399 (Mo. banc 1934); State ex. rel. Kansas City Transit, Inc. v. Public Service Comm'n, 406 S.W.2d 5, 8 (Mo. 1966).

paying solar rebates. If the Commission finds that the maximum average retail rate increase will be reached, it shall approve the tariff suspension within those sixty days.

Upon review of the pleadings, the Commission finds that the maximum average retail rate increase will be reached. GMO has correctly calculated the maximum average retail rate increase because, as GMO explained, KCP&L Solar, KCP&L and GMO's solar projects do not fit within the definition of Section 393.1030(2). Hence, GMO meets the standard elicited in Section 393.1030(3). The Commission will approve the tariff.

THE COMMISSION ORDERS THAT:

1. The following tariff sheet filed by KCP&L Greater Missouri Operations Company on April 9, 2014, and assigned Tariff No. JE-2014-0403, is approved to become effective on June 8, 2014:

PSC Mo. No. 1

3rd Revised Sheet No. R-62.19, Cancelling 2nd Revised Sheet No. R-62.19

2. Nothing in this order shall be considered a finding by the Commission of the reasonableness or prudence of the expenditures herein involved, or of the value for ratemaking purposes of the properties herein involved, or as acquiescence in the value placed on said property.

3. The Company shall file a notice in this case, with supporting documentation, when it has reached the $50 million rebate payment limit specified in the Non-Unanimous Stipulation in File No. ET-2014-0059.

4. This case shall be closed ten days after the Company files said notice.

5. This order shall become effective on June 8, 2014.

BY THE COMMISSION

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Pridgin, Deputy Chief Regulatory Law Judge