

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 2nd day of
March, 2016.

Staff of the Missouri Public Service
Commission,

Complainant,

v.

KCP&L Greater Missouri Operations
Company,

Respondent.

File No. EC-2016-0012

**ORDER GRANTING MOTION TO HOLD IN ABEYANCE AND
DIRECTING KCP&L GREATER MISSOURI OPERATIONS COMPANY
TO HOLD FUNDS AS INTERIM, SUBJECT TO REFUND**

Issue Date: March 2, 2016

Effective Date: March 2, 2016

The Commission's Staff filed this complaint against KCP&L Greater Missouri Operations Company (GMO) on July 13, 2015, alleging that GMO has failed to provide the appropriate avoided cost information to its independent evaluation, measurement and verification contractors. Those contractors are responsible for calculating GMO's Program Year 2014 annual net shared benefits for use in determining the company's performance incentive award for Program Year 2013 through Program Year 2015. At the request of the parties, the Commission held this matter in abeyance until Staff's similar complaint against Union Electric Company, d/b/a Ameren Missouri (File No. EC-2015-0315) was resolved.

The Commission granted Staff's motion for summary determination against Ameren Missouri, effective on December 18, 2015. The Commission denied rehearing of that order

effective January 31, 2016, and Ameren Missouri's appeal is currently pending at the Missouri Court of Appeals, Western District.

On February 3, 2016, the Commission ordered the parties to this complaint to file a proposed procedural schedule by February 19. Two days later, on February 5, Staff filed a motion for summary determination. Responses to that motion are due by March 7.

Rather than file a proposed procedural schedule, GMO filed a motion on February 17 asking the Commission to again hold this complaint in abeyance until judicial resolution of the pending appeal of the Commission's order granting summary determination in favor of Staff in its complaint against Ameren Missouri. GMO offers to treat any amounts collected as a performance incentive while the appeal is pending as interim, subject to refund until the courts reach their determination. GMO's motion represented that Staff does not object to holding this complaint in abeyance, and the next day, Staff confirmed that representation in its motion to excuse the filing of a proposed procedural schedule.

On February 19, the Office of the Public Counsel filed a response opposing GMO's motion to hold this complaint in abeyance. Public Counsel explains that despite the pending appeal, the Commission's order granting summary determination against Ameren Missouri remains in effect during that appeal. Public Counsel contends the Ameren Missouri order establishes the controlling interpretation of the Commission's rules. Unless and until the reviewing court establishes some other interpretation, GMO must comply with that interpretation, and has no right to collect a performance incentive under a different interpretation, even if the sums collected are subject to refund. GMO filed a reply to Public Counsel's response on February 29.

Section 386.520.1, RSMo 2000 provides that the pendency of an appeal of a Commission order does not itself stay or suspend the operation of the order or decision of

the Commission. Under that statute, the appellate court may choose to stay or suspend the operation of the Commission's order if it determines that the appellant would otherwise suffer "great or irreparable damage". But the Court of Appeals has not suspended the Commission's order, and it is in effect.

Nevertheless, there is no compelling reason for the Commission to waste its resources, and those of the parties, by pushing Staff's complaint to resolution while the Commission's interpretation of its regulation is subject to appeal. Holding the matter in abeyance pending a decision of the reviewing court is sensible and appropriate, if GMO is held to its promise to treat any amounts collected as a performance incentive while the appeal is pending as interim, subject to refund, including interest. The Commission will require GMO to do so as part of this order.

THE COMMISSION ORDERS THAT:

1. KCP&L Greater Missouri Operations Company's Motion to Hold in Abeyance is granted.
2. Staff's Motion to Excuse Proposed Procedural Schedule is granted.
3. KCP&L Greater Missouri Operations Company shall hold any amounts collected as a performance incentive while the appeal is pending as interim, subject to refund, including interest until the Commission reaches a decision in this case.
4. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur.

Woodruff, Chief Regulatory Law Judge