

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 19th day
of February, 2009.

In the Matter of the Tariff Schedules Filed to)	
Adjust the Fuel Adjustment Clause Rate of)	<u>Case No. EO-2009-0254</u>
KCP&L Greater Missouri Operations Company)	Tariff No. JE-2009-0490

**ORDER DENYING MOTION TO REJECT, AND APPROVING TARIFF TO
ADJUST RATE SCHEDULES FOR FUEL ADJUSTMENT CLAUSE**

Issue Date: February 19, 2009

Effective Date: March 1, 2009

On December 30, 2008, Kansas City Power and Light Greater Missouri Operations Company (KCP&L-GMO) submitted a tariff to adjust rate schedules related to KCP&L-GMO's Fuel Adjustment Clause (FAC). That tariff carries an effective date of March 1, 2009.¹

The Commission's rule regarding FACs requires the Commission to either approve or reject the company's tariff within 60 days of its filing.² To that end, the rule requires the Commission's Staff to submit a recommendation within 30 days indicating whether the proposed FAC tariff complies with applicable statutes, regulations, and the company's FAC mechanism.³ On January 29, 2009, Staff filed its recommendation indicating KCP&L-GMO's tariff complies with the Commission's order that established the company's FAC and with applicable Commission rules. Staff advises the Commission to approve

¹ KCP&L-GMO filed a substitute tariff sheet on January 22, 2009, and corrected the substituted tariff sheet on January 23, 2009.

² 4 CSR 240-20.090(4).

³ Id.

KCP&L-GMO's tariff as an interim rate adjustment, subject to true-up and prudence reviews.

On February 9, AG Processing, Inc., and Sedalia Industrial Energy Users' Association (Industrial Intervenors) filed a motion urging the Commission to reject KCP&L-GMO's proposed tariff. The motion does not challenge Staff's determination that KCP&L-GMO's tariff complies with the Commission's previous order and applicable rules. Rather the motion is based entirely on an argument that Section 386.266, RSMo (Supp. 2008), the statute that authorizes the Commission to approve an FAC, is unconstitutional.

The declaration of the validity or invalidity of a statute is purely a judicial function.⁴ This Commission is not a court and thus has no authority to declare a statute unconstitutional.⁵ There are no related factual issues that require the Commission's attention. Therefore, the Commission does not need to further address the movants' constitutional argument, and will deny the motion to reject the tariff.

In the testimony of Tim Rush, which KCP&L-GMO filed along with its tariff, KCP&L-GMO asks the Commission to relieve it of a long-standing obligation to file a monthly surveillance report to Staff. KCP&L-GMO contends the monthly surveillance report is duplicative of the quarterly surveillance report required by the Commission's FAC rules. In its recommendation, Staff argues KCP&L-GMO's request is beyond to scope of its tariff filing and should not properly be considered in this action. Staff also indicates the monthly surveillance reports provide Staff with additional information beyond what is required by the quarterly surveillance report, and asks the Commission to deny KCP&L-GMO's request to

⁴ *State Tax Com'n. v. Administrative Hearing Com'n.*, 641 S.W.2d 69, 75 (Mo. 1982).

⁵ *State ex rel. Missouri Southern Railroad v. Public Service Com'n.*, 259 Mo. 704, 727, 168 S.W. 1156, 1164 (Mo. banc 1914).

stop filing the monthly reports. On February 18, the Industrial Intervenors filed a response in which they also express opposition to KCP&L-GMO's request for a waiver.

The Commission agrees with Staff and the Industrial Intervenors, KCP&L-GMO's request to stop filing monthly surveillance reports is not properly before the Commission in this tariff action. Therefore, the Commission will take no action on that request at this time.

THE COMMISSION ORDERS THAT:

1. The Motion to Reject Tariffs filed by AG Processing, Inc., and Sedalia Energy Users' Association is denied.

2. The tariff issued on December 30, 2008, by Kansas City Power & Light Greater Missouri Operations Company, and assigned Tariff No. JE-2009-0490, is approved, as substituted and corrected, to be effective March 1, 2009, as an interim rate adjustment, subject to true-up and prudence reviews. The tariff approved is:

P.S.C. MO No 1

3rd Revised Sheet No. 127, Canceling 2nd Revised Sheet No. 127

3. This order shall become effective on March 1, 2009.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Clayton, Chm., Murray, Davis,
Jarrett, and Gunn, CC., concur.

Woodruff, Deputy Chief Regulatory Law Judge