

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

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| The Staff of the Missouri Public Service Commission, |) | |
| |) | |
| |) | |
| Complainant, |) | |
| |) | |
| vs. |) | <u>Case No. EC-2016 -</u> |
| |) | |
| KCP&L Greater Missouri Operations Company, |) | |
| |) | |
| |) | |
| Respondent. |) | |

STAFF COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission and for its *Complaint*, states as follows:

Introduction:

1. This matter concerns the failure of Respondent KCP&L Greater Missouri Operations Company ("GMO") to comply with the requirement of Commission Rule 4 CSR 240-20.093(1)(F) to provide its independent evaluation, measurement and verification contractors with the most recent avoided cost information needed for the calculation of the portion of the annual net shared benefits that are to be awarded to GMO as a performance incentive as a result of the energy efficiency savings the Company has achieved from its Missouri Energy Efficiency Investment Act ("MEEIA") demand-side programs for Program Year ("PY") 2014.

Complainant:

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Staff Counsel as authorized by Commission Rule 4 CSR 240-2.070(1).

Respondent:

3. GMO is a Delaware corporation with its principal office and place of business at One Kansas City Place, 1200 Main, Kansas City, Missouri 64105. GMO is duly authorized to operate in Missouri. GMO is a wholly-owned subsidiary of Great Plains Energy, Inc., a publicly-traded public utility holding company with its principal office and place of business at One Kansas City Place, 1200 Main, Kansas City, Missouri 64105. Great Plains is a Missouri general business corporation. GMO's registered agent is CSC-Lawyers Incorporating Service Company, 221 Bolivar Street, Jefferson City, Missouri 65101.

Jurisdiction

4. GMO is primarily engaged in the business of generating, transmitting, distributing, and selling electric energy for light, heat and power in portions of western Missouri. GMO is thus an "electrical corporation" and a "public utility" as defined in § 386.020, (15) and (43), RSMo., and is subject to the regulatory jurisdiction of this Commission under chapters 386 and 393, RSMo.

5. The Commission has jurisdiction over the subject matter of this Complaint because it involves GMO's obligations under a statute administered by the Commission, the Missouri Energy Efficiency Investment Act ("MEEIA") at § 393.1075, RSMo.,

under Commission rules,¹ and under Commission orders as described below. GMO's obligations to administer its MEEIA programs for PY 2013 – PY 2015 are set forth by the Commission's aforesaid rules and are imposed by the Commission's *Order Approving Non-Unanimous Stipulation and Agreement Resolving KCP&L Greater Missouri Operations Company's MEEIA Filing* in Case No. EO-2012-0009.² This *Order* directs GMO to comply with the provisions of the *2012 Stipulation* which the Commission approved.³

6. Section 386.390.1, RSMo, authorizes the Commission to hear and determine complaints:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission

7. The Commission has by Rule 4 CSR 240-2.070(1) authorized the Staff Counsel to bring complaints on the behalf of the Staff: "A complaint may also be filed by ... the commission staff through the staff counsel"

8. Section 386.570.1, RSMo, provides for a penalty between \$100.00 to \$2,000.00 per offense for any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law or which fails, omits or neglects to obey, observe or comply with any order, decision,

¹ Commission Rules 4 CSR 240-3.163, 4 CSR 240-3.164, 4 CSR 240-20.093 and 4 CSR 240-20.094.

² Hereinafter, "*the 2012 Order*."

³ Hereinafter, "*the 2012 Stipulation*."

decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission” Section 386.570.2, RSMo., provides that each day that a continuing violation persists is counted as a separate offense. Section 386.570.3, RSMo., provides that in the case of a corporate respondent, the acts and omissions of its officers, agents and employees are deemed to be the acts and omissions of the corporation. Section 386.590, RSMo., provides that all penalties are cumulative.

Complaint:

9. The gravamen of Staff’s *Complaint* is that GMO has failed and refused to provide the required avoided costs, being those used in GMO’s most recently-adopted preferred resource plan,⁴ to its independent evaluation, measurement and verification (“EM&V”) contractors (independent EM&V contractors are hereinafter referred to as “Evaluators”)⁵ so that the Evaluators could correctly calculate the PY 2014 annual net shared benefits⁶ for use in determination of GMO’s performance incentive award for PY 2013 through PY2015.

10. On April 30, 2015, GMO’s Evaluators provided their draft PY2014 EM&V evaluation simultaneously to GMO and to the other parties to Case No. EO-2012-0009, including Staff, for review and comment, as required by the *2012 Stipulation* and Rule 4 CSR 240-20.093.

⁴ ***In the Matter of the Resource Plan of KCP&L Greater Missouri Operations Company***, Case No. EO-2015-0252 (*KCP&L Greater Missouri Operations Company (GMO) Integrated Resource Plan*, 4 CSR 240-22.010 (NP and HC), filed April 1, 2015).

⁵ Commission Rule 4 CSR 240-20.094(1)(R) provides: “Evaluation, measurement, and verification, or EM&V, means the performance of studies and activities intended to evaluate the process of the utility’s program delivery and oversight and to estimate and/or verify the estimated actual energy and demand savings, utility lost revenue, cost effectiveness, and other effects from demand-side programs[.]”

⁶ See Footnote 8, below.

11. Staff reviewed the draft PY2014 EM&V evaluation provided by the Evaluators and, on June 8, 2015, advised the Evaluators, GMO, and the other parties that the PY2014 net shared benefits⁷ were calculated by the Evaluators using the avoided costs in GMO's previous adopted preferred resource plan⁸ and not the avoided costs in GMO's most recently-adopted preferred resource plan,⁹ adopted as a result of GMO's April 1, 2015, Chapter 22 triennial compliance filing in Case No. EO-2015-0252.

12. The Evaluators used the avoided costs supplied to them by GMO to calculate the PY2014 annual net shared benefits.

13. Commission Rule 4 CSR 240-20.093(1)(F) states:

Avoided cost or avoided utility cost¹⁰ means the cost savings obtained by substituting demand-side programs for existing and new supply-side resources. Avoided costs include avoided utility costs resulting from demand-side programs' energy savings and demand savings associated with generation, transmission and distribution facilities including avoided probable environmental compliance costs. **The utility shall use the same methodology used in its most recently-adopted preferred resource plan to calculate its avoided costs.** (Emphasis added).

14. On June 8, 2015, Staff requested that GMO provide to the Evaluators and to Staff the compliant avoided costs input files beginning with 2014 avoided costs and that the Evaluators recalculate all program and portfolio level benefits and net benefits

⁷ Commission Rule 4 CSR 240-20.093(1)(C) states: Annual net shared benefits means the utility's **avoided costs measured and documented through evaluation, measurement, and verification (EM&V) reports** for approved demand-side programs less the sum of the programs' costs including design, administration, delivery, end-use measures, incentives, EM&V, utility market potential studies, and technical resource manual on an annual basis. (Emphasis added.)

⁸ *In the Matter of the Resource Plan of KCP&L Greater Missouri Operations Company*, Case No. EO-2012-0324 (*KCP&L Greater Missouri Operations Company (GMO) Integrated Resource Plan*, 4 CSR 240-22.010 (NP and HC), filed April 9, 2012).

⁹ See Footnote 4, above.

¹⁰ The same definition of "avoided cost" or "avoided utility cost" is contained in 4 CSR 240-3.163(1)(C), 4 CSR 240-3.164(1)(A) and 4 CSR 240-20.094(1)(D).

using the compliant avoided costs and provide to all parties updated PY2014 EM&V draft reports by June 22, 2015.

15. On June 24, 2015, GMO responded, “Right now, we are not planning to have Navigant¹¹ to recalculate the net benefits. For Thursday’s meeting, Navigant intends to review the EM&V results that reflect the originally filed avoided cost assumptions.”

16. On June 24, 2015, Staff counsel contacted GMO counsel by email to inform the Company that failure to comply with 4 CSR 240-20.093(1)(F) could result in Staff filing a complaint against GMO with the Commission. GMO has not replied to this warning.

17. GMO’s conduct described in Paragraphs 9 through 16, above, constitutes a violation of § 393.1075.3 and .4, RSMo., Commission Rule 4 CSR 240-20.093(1)(F), and the 2012 Order.

WHEREFORE, Staff prays that the Commission will provide statutory notice to Respondent, convene a hearing on Staff’s *Complaint*, and, after hearing, determine that GMO has violated a statute and Commission rules and orders as alleged herein by Staff, and will then authorize its General Counsel to seek appropriate penalties for those violations in Circuit Court; and grant such other and further relief as is just in the circumstances.

¹¹ Navigant is the Evaluator.

Respectfully submitted,

/s/ Kevin A. Thompson

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