

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
v.)	File No. EC-2016-0012
)	
KCP&L Greater Missouri Operations Company,)	
)	
Respondent.)	

**PUBLIC COUNSEL’S RESPONSE IN OPPOSITION TO MOTION
TO HOLD IN ABEYANCE AND PROPOSED PROCEDURAL**

COMES NOW the Office of the Public Counsel (“Public Counsel”) and submits its response in opposition to KCP&L Greater Missouri Operations Company’s (“GMO”) motion to hold in abeyance and offers its proposed procedural schedule as follows:

Response in Opposition to GMO’s Motion to Hold in Abeyance

1. In this case, the Commission’s staff (“Staff”) has filed a complaint against GMO because the company did not provide its contractors the updated avoided cost inputs to use when calculating net shared benefits for purposes of GMO’s performance incentive. The Staff’s complaint alleges that Commission Rule 4 CSR 240-20.093(1)(F) requires GMO to use the updated avoided costs used in GMO’s most recently-adopted preferred resource plan.

2. In that regard, this complaint is similar to the Staff’s complaint against Union Electric Company d/b/a Ameren Missouri (“Ameren Missouri”) in EC-2015-0315. In that case, the Commission granted summary determination in favor of Staff’s position, stating:

Thus, it is appropriate that the calculation of the utility’s performance incentive should reflect the most current market price information available when avoided costs are calculated. That is the result obtained when the requirements of

Commission Rule 4 CSR 240-20.0093(1)(F) are interpreted correctly, as described in Staff's complaint.

(Order Granting Staff's Motion for Summary Determination, and Denying Ameren Missouri's Motion for Summary Determination, File No. EC-2015-0315, Doc. No. 45, p. 7, *Iss'd* Nov. 18, 2015). Ameren Missouri has filed a notice of appeal at the Missouri Court of Appeals – Western District. Importantly, the Commission's order remains the law. Unless and until the Court rules otherwise, Ameren is bound to abide by the Commission's decision. This means that if Ameren Missouri begins to collect its performance incentive prior to the resolution of its appeal – it must use the updated avoided costs when calculating the amount to collect as directed by the Commission.

3. Because this complaint against GMO is so similar to the Staff's complaint against Ameren Missouri, this case was held in abeyance pending the outcome of the Ameren complaint. As explained above, that case is now resolved. On February 3, 2016, the Commission issued an order in this case, EC-2016-0012, directing the parties to file a proposed procedural schedule (Doc. No. 24).

4. On February 17, 2016, GMO filed its motion requesting the Commission hold this case in abeyance pending the judicial review of the Commission's order in File No. EC-2015-0315. Public Counsel opposes that motion.

5. The resolution of this case requires a legal determination – whether the Commission's rule requires a utility to “use the same methodology used in its most recently adopted preferred resource plan to calculate its avoided costs.” Commission Rule 4 CSR 240-20.093(1)(F). The Commission has already made that determination in the Ameren Missouri

case. The Commission has determined that the correct interpretation of that rule requires the use of the updated information for purposes of the performance incentive.

6. As noted in GMO's motion, if this case continues to be held in abeyance "it is possible that GMO will begin to collect the performance incentive for MEEIA Cycle 1...prior to the resolution of this matter[.]" (Doc. No. 27, p. 2). The company then states that it agrees that any amounts collected prior to the resolution of this case will be collected on an interim basis, subject to refund. *Id.* The problem with this proposition is that GMO has *no right*, legal or otherwise, to collect a performance incentive that is not calculated consistent with the rule as interpreted by the Commission in EC-2015-0315. Because the company has no right to collect that money subjecting it to a refund effectively means that ratepayers are forced to give GMO an interest-free loan, and offers no real protection to ratepayers.

7. If the facts of this case are so different from the Ameren Missouri case that applying the law to GMO would lead to a different result, then a procedural schedule is appropriate. However, if the facts would lead to the same result, it would be appropriate for the Commission to grant the Staff's pending motion for summary determination. Commission Rule 4 CSR 240-20.093(1)(F), as interpreted by the Commission in EC-2015-0315, is the law. GMO cannot collect money from ratepayers that it is not due under the law. Continuing to hold this case in abeyance would permit the company to so do, and should be denied.

Proposed Procedural Schedule

8. The Commission issued an order directing the parties to file a proposed procedural schedule by February 19, 2016 (Doc. No. 24). Public Counsel asks that the Commission adopt a schedule similar to that in the Staff's prior complaint against Ameren Missouri and suggests the following:

Responses to motion for summary determination	March 7, 2016 ¹
Replies to responses to motion for summary determination	March 18, 2016
Oral Argument	March 31, 2016

WHEREFORE, Public Counsel requests that the Commission reject GMO's motion to hold this case in abeyance and offers its proposed procedural schedule.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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¹ The Commission established this deadline in a previous order (Doc. No. 26).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 19th day of February 2016:

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