

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 20<sup>th</sup> day  
of March, 2013.

In the Matter of 2013 Annual Update of	)	
KCP&L Greater Missouri Operations Company	)	<b><u>File No. EE-2013-0389</u></b>
Pursuant to 4 CSR 240-22	)	

**ORDER GRANTING APPLICATION FOR VARIANCE**

Issue Date: March 20, 2013

Effective Date: March 30, 2013

On February 7, 2013<sup>1</sup>, KCP&L Greater Missouri Operations Company ("GMO") asked the Commission to grant it variances from certain requirements of the Commission's Integrated Resource Planning Rule, 4 CSR 240-22. GMO asks the Commission to extend the date for filing its 2013 Annual Update Report and its 2013 Annual Update Workshop by three months.

The Commission issued notice of this application on February 7, and gave interested parties until February 21 to respond. Dogwood Energy, LLC ("Dogwood") responded, asking the Commission to impose the condition that GMO would not enter into commitments contrary to the results of the studies it has agreed to perform in connection with the 2013 Annual Update Report. GMO responded, stating that the condition is acceptable only as it applies to resources sought in the January, 2013 RFP, and that the condition should expire with the filing of the 2013 Annual Update Report in June, 2013.

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<sup>1</sup> Calendar dates are 2013 unless otherwise noted.

The Staff of the Commission (“Staff”) filed its Recommendation on February 21. Staff recommends that the Commission approve the application.

Commission Rule 4 CSR 240-2.060(4) permits applications for variances from Commission Rules. Such an application shall set out a “complete justification setting out the good cause for granting the variance.”

Although the term “good cause” is frequently used in the law,<sup>2</sup> the rule does not define it. Therefore, it is appropriate to resort to the dictionary to determine its ordinary meaning.<sup>3</sup> “Good cause” has been judicially defined as a “substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.”<sup>4</sup>

Of course, not just *any* cause or excuse will do. To constitute *good* cause, the reason or legal excuse given “must be real not imaginary, substantial not trifling, and reasonable not whimsical.”<sup>5</sup> And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.<sup>6</sup>

Based upon KCP&L’s verified application, Staff’s Recommendation, and Dogwood’s response, the Commission finds good cause to grant KCP&L its requested variance. The Commission finds compelling GMO’s assertion that it needs to be in a position to manage its business and move forward with its planned activities following the filing of the 2013 Annual Update.

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<sup>2</sup> *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

<sup>3</sup> See *State ex rel. Hall v. Wolf*, 710 S.W.2d 302, 303 (Mo. App. E.D. 1986) (in absence of legislative definition, court used dictionary to ascertain the ordinary meaning of the term “good cause” as used in a Missouri statute); *Davis*, 469 S.W.2d at 4-5 (same).

<sup>4</sup> *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) (“[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

<sup>5</sup> *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

<sup>6</sup> See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F. Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).

**THE COMMISSION ORDERS THAT:**

1. The Commission grants KCP&L Greater Missouri Operations Company the requested variance described above.
2. The Commission will impose the condition that KCP&L Greater Missouri Operations Company will not enter into commitments contrary to the results of the studies it has agreed to perform in connection with the 2013 Annual Update Report. The condition applies only to resources sought in the January, 2013 RFP, and the condition shall expire with the filing of the 2013 Annual Update Report in June, 2013.
3. This order shall become effective on March 30, 2013.
4. This case shall be closed on March 31, 2013.

**BY THE COMMISSION**



Shelley Brueggemann  
Acting Secretary

R. Kenney, Chm., Jarrett, Stoll,  
and W. Kenney, CC., concur.

Pridgin, Senior Regulatory Law Judge