

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

In the Matter of Kansas City Power & Light            )  
Company’s Request for Authority to Implement        )  
a General Rate Increase for Electric Service         )        Case No. ER-2012-0174

In the Matter of KCP&L Greater Missouri            )  
Operations Company’s Request for Authority to        )  
Implement General Rate Increase for Electric         )  
Service.                                                         )        Case No. ER-2012-0175

**OBJECTION TO AFFIDAVIT**

COMES NOW the Midwest Energy Consumers Group (“MECG”) and for its  
Objection to Affidavit respectfully state as follows:

1. On January 22, 2013, Staff filed its recommendation regarding the  
compliance tariffs filed by KCP&L-GMO on January 16, 2013. Accompanying its  
recommendation, Staff presented the affidavit of Thomas Imhoff.

2. At this point, it is without question that this case remains a contested  
case.<sup>1</sup> Section 536.070 provides strict procedures to be followed in “any contested case.”  
The provisions of Chapter 536 apply to Commission proceedings.<sup>2</sup>

3. Section 536.070(12) governs the use of “an affidavit in evidence” and  
provides the parties with the ability to object to the receipt of any affidavit into evidence.

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<sup>1</sup> KCPL and GMO have readily admitted that this must continue to be a contested case. Specifically, in their attempt to have tariffs approved in an unreasonably expedited fashion, KCPL and GMO have asserted that this is part of the same case as the Commission’s consideration of the originally filed tariff sheets. As such, given that this case became a contested case with the suspension of the original tariffs sheets, KCPL and GMO must concede that this remains a contested case. See, *Response of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company to Staff of the Missouri Public Service Commission and Midwest Energy Consumer’s Group*, filed January 16, 2013.

<sup>2</sup> See, *State ex rel. Noranda Aluminum v. Public Service Commission*, 24 S.W.3d 243 (Mo.App.W.D. 2000); *Utility Consumers Council v. Public Service Commission*, 562 S.W.2d 688 (Mo.App.E.D. 1978); *State ex rel. GS Technologies Operating Co. v. Public Service Commission*, 116 S.W.3d 680 (Mo.App.W.D. 2003); *Environmental Utilities, LLC. v. Public Service Commission*, 2007 Mo.App. Lexis 533 (Mo.App.W.D. 2007).

Not later than seven days after such service, or at such later time as may be stipulated, any other party (or, in a proper case, the agency) may serve on the party or the agency who served such affidavit an objection to the use of the affidavit of some designated portion or portions thereof on the ground that it is in the form of an affidavit. . . . If such objection is so served, the affidavit of the part thereof to which objection was made, may not be used except in ways that would have been permissible in the absence of this subdivision.

That statutory section also provides that “[n]othing herein contained shall prevent the cross-examination of the affiant.”

4. MECG, pursuant to the rights guaranteed by Section 536.070(12) hereby object to the receipt of the affidavit of Thomas Imhoff. Furthermore, MECG hereby notify the Commission of its desire to exercise its right to cross-examine Thomas Imhoff as provided by Section 536.070(12). Consistent with this request for cross-examination, MECG has simultaneously filed its Motion for Scheduling of a Hearing in this proceeding so that the Commission can provide for such cross-examination and the receipt of any evidence.

5. The scheduling of the requested hearing will also allow the Commission the opportunity to build the evidentiary bases to support any finding that the tariffs actually comply with the Commission’s Report and Order. As a contested case, any Commission Order regarding the compliance tariffs must not only be lawful, it must also be reasonable. In order to satisfy the reasonableness prong, the Commission’s Order regarding compliance tariffs must be supported by competent and substantial evidence. Given MECG’s objection to the Staff affidavit there is no evidence to support any finding that the KCPL and GMO tariffs actually comply with the Commission’s Report and Order. Instead, such evidence must be elicited through an evidentiary hearing.

WHEREFORE, MECG respectfully informs the Commission of its objection to the affidavit of Thomas Imhoff and its intent to cross-examine Mr. Imhoff on the contents of his affidavit.

Respectfully submitted,



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ATTORNEY FOR THE MIDWEST  
ENERGY CONSUMERS' GROUP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



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David L. Woodsmall

Dated: January 22, 2013