

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 3rd
day of March, 2010.

In the Matter of the Application of KCP&L Greater)
Missouri Operations Company for Authority to Sell) **File No. EO-2010-0211**
its Liberty Service Center)

**ORDER APPROVING THE SALE OF KCP&L GREATER MISSOURI
OPERATIONS COMPANY'S LIBERTY SERVICE CENTER**

Issue Date: March 3, 2010

Effective Date: March 13, 2010

Background

On January 14, 2010, KCP&L Greater Missouri Operations ("GMO") filed an application seeking approval to sell its Liberty Service Center ("LSC").¹ The LSC was closed on November 7, 2008; following the Commission approved acquisition of Aquila, Inc. (now GMO) by Great Plains Energy.² GMO closed the LSC when it consolidated its service centers to increase operational efficiency and represents that the synergy savings from the sale will be passed along to customers in future rate cases.

Controlling Law

Section 393.190 requires Commission approval before a public utility may sell, transfer or otherwise encumber any of its assets that are necessary or useful in the performance of its duties to the public. However, the statute also states:

¹ The application was filed pursuant to Section 393.190, RSMo 2000, and Commission Rules 4 CSR 240-2.060 and 4 CSR 240-3.110. All statutory references are to RSMo 2000, and its amendments and revisions, unless otherwise noted.

² See File Number EM-2007-0374.

Nothing in this subsection contained shall be construed to prevent the sale, assignment, lease or other disposition by any corporation, person or public utility of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such corporation, person or public utility shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value.

If a proposed sale requires Commission approval, the Commission must make a determination that the sale is not detrimental to the public interest.³

Staff's Recommendation

On February 16, 2010, the Commission's Staff filed its recommendation to approve the KCP&L Greater Missouri Operations Company's ("GMO") application for approval to sell its Liberty Service Center. While it is unclear how a vacant and non-operational building is necessary and useful in the performance of GMO's duties to the public, Staff maintains the Commission has jurisdiction over GMO's request because GMO could choose to make the facility useful in the performance of its duties, and because the Commission's exercise of jurisdiction would be in the "spirit" of Section

³ No standard is outlined in Section 393.190 so the Commission looks to the relevant case law for guidance and concludes that the Missouri Supreme Court delineated this standard and prescribed its application for cases filed pursuant to Section 393.190 in *City of St. Louis v. Public Service Com'n of Missouri*, when it stated:

The state of Maryland has an identical statute with ours, and the Supreme Court of that state in the case of *Electric Public Utilities Co. v. Public Service Commission*, 154 Md. 445, 140 A. 840, loc. cit. 844, said: "To prevent injury to the public, in the clashing of private interest with the public good in the operation of public utilities, is one of the most important functions of Public Service Commissions. It is not their province to insist that the public shall be benefited, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public detriment. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public.'"

State ex rel. City of St. Louis v. Public Service Com'n of Missouri, 73 S.W.2d 393, 400 (Mo banc 1934).

The Missouri Supreme Court based its determination on a review of Section 393.190's predecessor, Section 5195, RSMo 1929. *Id.* No Missouri court has deviated from that ruling in terms of it being the proper standard to apply for applications filed pursuant to Section 393.190.

386.610's direction to liberally construe the provisions of Chapter 386 with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities.

Staff's recommendation for approval; however, was made contingent upon the Commission ordering certain conditions and commitments by GMO. Those conditions are:

1. Staff makes no ratemaking decision in this case relative to the sale of the Liberty Service Center and the Staff recommends the Commission include in its ordered section that no ratemaking decision is being made in this case relative to the sale of the Liberty Service Center and the parties will address the proper ratemaking treatment for this transaction in future KCPL and KCPL GMO rate cases.⁴
2. KCPL-GMO and KCPL will immediately notify the Commission's Engineering and Management Services Department Manager in the event that the 24 hour, seven day a week continual customer service coverage is discontinued relative to the portion of its service territory historically covered by the Liberty Service Center.
3. KCPL-GMO and KCPL shall supplement its customer service to the rural areas formerly served by the Liberty Service Center to the extent necessary to provide safe and adequate service.
4. KCPL-GMO and KCPL will notify the Managers of the Commission's Energy Department and Engineering and Management Services Department before any changes to the more rural service areas formally served by the Liberty Service Center take place.
5. In accordance with Commission Orders in Case Nos. ER-2004-0034 and EO-2005-0329, KCPL-GMO and KCPL will continue to submit monthly service quality reporting data to the Staff, including System Average Interruption Duration Index (SAIDI), System Average Interruption Frequency Index (SAIFI) and Customer Average Interruption Duration Index (CAIDI) metrics. KCPL-GMO and KCPL will also notify the Managers of the Commission's Energy Department and Engineering and Management Services Department of all specific customer complaint information regarding service provided in each of the service areas

⁴ Indeed, the Commission's Staff may present its position, offer evidence and make recommendations. Staff does not make findings of fact, conclusions of law, or make decisions for the Commission.

formerly served by the Liberty and Platte City Service Centers, and currently served by the Northland Service Center.

6. KCPL-GMO and KCPL are statutorily required to request Commission approval for both the sale and disposition of any future utility property involving other service centers, or prior to the discontinuance of operations at any service center.

The Staff further based its recommendation for approval of the LSC sale as long as KCPL-GMO and KCPL make the following commitments:

1. KCPL-GMO and KCPL will not discontinue providing the Northland and Lee's Summit Service Center functions to the companies' customers identified in this case without receiving prior Commission approval.

2. KCPL-GMO and KCPL will provide 24 hours, seven days per week coverage to the Applicant's service territory formerly covered by the Liberty service center.

GMO's Reply

On February 26, 2010, GMO filed its reply to Staff's recommendation. GMO indicates that it has been in consultation with Staff and that the parties have agreed to amend the language of some of the above conditions. Specifically, the parties have agreed to modify the language as follows:

a. Conditions 1, 3 and 4 do not change.

b. Condition 2 should now read:

KCPL-GMO and KCPL will notify the Commission's Engineering and Management Services Department Manager prior to the discontinuance of the 24 hour, seven day a week continual customer service coverage relative to the portion of its service territory historically covered by the Liberty Service Center.

c. Condition 5 should now read:

In accordance with Commission Orders in Case Nos. ER-2004-0034 and EO-2005-0329, KCPL-GMO and KCPL will continue to submit monthly service quality reporting data to the Staff, including System Average Interruption Duration Index (SAIDI), System Average Interruption

Frequency Index (SAIFI) and Customer Average Interruption Duration Index (CAIDI) metrics. KCPL-GMO will provide monthly service quality reports (SAIDI, SAIFI, CAIDI metrics and specific customer complaint information) consistent with the Commission Order in Case No. EO-2009-0148.

d. Condition 6 should now read:

KCPL-GMO and KCPL agree to seek Commission approval for future service center sales.

e. New Condition 7 should read:

KCPL-GMO and KCPL agree to inform the Staff of the discontinuance of the operations of any service center prior to the discontinuance of operations.

GMO does not contest the Commission's jurisdiction over the LSC sale.

Decision

The Commission has reviewed GMO's verified application and Staff's verified recommendation and memorandum. No party has objected to the application or the modified proposed conditions for approval of the application. No party has requested an evidentiary hearing.⁵

The Commission finds the proposed transaction not to be detrimental to the public interest because the transaction will have no affect on GMO's customers other than generating synergy savings for the customers in future rate cases. Consequently,

⁵ Neither Section 393.190, nor any other law, requires the Commission to hold a hearing in these matters. Consequently, this is not a contested case pursuant to 536.010(4) because it does not involve a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing." Additionally, no party requested a hearing or the opportunity to present evidence so as to convert this case into a contested matter. The term "hearing" presupposes a proceeding before a competent tribunal for the *trial of issues* between *adversary parties*, the presentation and the consideration of proofs and arguments, and determinative action by the tribunal with respect to the issues ... 'Hearing' involves an *opposite party*; ... it contemplates a listening to facts and evidence for the sake of *adjudication* ... The term has been held synonymous with 'opportunity to be heard'. (Emphasis added.) *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Com'n of State of Mo.* 776 S.W.2d 494, 495 -496 (Mo. App. 1989).

to the extent the Commission has jurisdiction over GMO's request it will grant GMO's application.⁶

THE COMMISSION ORDERS THAT:

1. KCP&L Greater Missouri Operations Company's application for authority to sell its Liberty Service Center is granted, as conditioned in the ordered paragraphs below.

2. KCP&L Greater Missouri Operations Company is authorized to do and perform, or cause to be done and performed, such other acts and things, as well as make, execute and deliver any and all documents as may be necessary, advisable and proper to the end that the intent and purposes of the approved transaction may be fully effectuated.

3. KCP&L Greater Missouri Operations Company shall comply with the conditions and commitments delineated by the Commission's Staff in its February 16, 2010 Recommendation, as modified in KCP&L Greater Missouri Operations Company's February 26, 2010 Response to Staff's Recommendation.

⁶ The Commission notes that because this is a noncontested case there is no evidentiary record and no findings of fact or conclusions of law are required to support its order. In noncontested cases, the Commission acts on its discretion. As stated by the Court of Appeals in *State ex rel. Public Counsel v. Public Service Com'n*, 210 S.W.3d 344 (Mo. App. 2006):

"In a noncontested case ..., the administrative body acts on discretion or on evidence not formally adduced and preserved." *Phipps v. School District of Kansas City*, 645 S.W.2d 91, 94-95 (Mo. App. 1982). Given the nature of a noncontested case, requiring a showing that an agency's decision is supported by competent and substantial evidence would be "inherently contradictory." 1 MO. ADMINISTRATIVE LAW, *Public Service Commission*, Section 12.30 (Mo. Bar 3rd ed. 2000). This is because, in noncontested cases, "there is no record from the administrative body." *State ex rel. Fortney v. Joiner*, 797 S.W.2d 848, 852 (Mo. App. 1990).

Id. at 353 -355.

4. So that the Commission may know when the approved transaction is completed, KCP&L Greater Missouri Operations Company shall file an appropriate notice in this File Number upon the closing of the approved transaction.

5. Nothing in this order shall be considered a finding by the Commission of the value of these transactions for ratemaking purposes. The Commission reserves the right to consider the ratemaking treatment to be afforded these transactions in any later proceeding.

6. This order shall become effective on March 13, 2010.

7. This File shall be closed on March 14, 2010.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

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

Stearley, Senior Regulatory Law Judge