

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

In the Matter of the Application of KCP&L )  
Greater Missouri Operations Company for )  
Approval of a Special Incremental Load ) **Case No. EO-2019-0244**  
Rate for a Steel Production Facility )  
In Sedalia Missouri )

**STAFF’S REPLY BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Reply Brief*, states herein as follows:

***Introduction:***

Five parties filed post-hearing briefs in this case; only one of them in opposition. That party, MECG, evidently opposes only the fact that the Company and Nucor are pursuing a special contract outside of § 393.355, RSMo. In its *Initial Brief*, MECG stated:

[T]he Commission lacks the authority to approve the 10 year term set forth in the GMO / Nucor special contract. While newly enacted Section 393.355 would provide such authority, the Signatories expressly acknowledge that approval is not sought pursuant to Section 393.355. Indeed, the special contract does not comply with Section 393.355 in that it does not contact a tracker to ensure that GMO’s net income does not increase or decrease. Absent compliance with Section 393.355, including the mandated tracker mechanism, the Commission lacks statutory authority to bind future commissions to the rates and terms of the GMO / Nucor special contract for the stated 10 year term. Indeed, in response to a question during opening statements, counsel for GMO appeared to acknowledge that the Commission lacked the authority to bind a future commission and that future commissions could review the GMO / Nucor special contract despite the suggested 10 year term.<sup>1</sup>

Staff disposed of all of the questions raised, and arguments made, by MECG in *Staff’s Initial Brief*. The only matter requiring additional discussion is MECG’s insinuation that the 10-year term authorized in § 393.355, RSMo., is binding on the Commission itself

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<sup>1</sup> MECG *Initial Brief*, pp. 1-2.

in some way that a contract approved under § 393.150.1, RSMo., is not. However, it is not.

***Argument:***

**Does § 393.355, RSMo., create a special rate that the Commission cannot modify for up to ten years?**

No, it does not. Section 393.355.5, RSMo., provides:

To receive a special rate, the electrical corporation serving the facility, or facility if the facility is located outside of the electrical corporation's certified service territory, shall file a written application with the commission specifying the requested special rate and any terms or conditions proposed by the facility respecting the requested special rate and provide information regarding how the requested special rate meets the criteria specified in subdivision (1) of subsection 2 of this section. A special rate provided for by this section shall be effective for no longer than ten years from the date such special rate is authorized. The commission may impose such conditions, including but not limited to any conditions in a memorandum of understanding between the facility and the electrical corporation, on the special rate as it deems appropriate so long as it otherwise complies with the provisions of this section.

(Emphasis supplied). The emphasized sentence does not actually authorize 10-year long special contracts – it does not mention contracts at all – but rather caps special rates at ten years. Nowhere does § 393.355, RSMo., specify that the Commission itself will be bound for ten years. In view of the nature and purpose of the Commission, it is unlikely that the legislature intended that the special rate of up to ten years' duration be exempt from Commission action for its term.

The Commission is vested with the police power of the state; “[i]ts supervision of the public utilities of this state is a continuing one and its orders and directives with regard to any phase of the operation of any utility are always subject to change to meet changing conditions, as the commission in its discretion, may deem to be in the public interest.”

***State ex rel. Gulf Transport Co. v. Public Service Com'n of State***, 658 S.W.2d 448, 472 (Mo. App., W.D. 1983), quoting ***State ex rel. Chicago, R.I. & P.R. Co. v. Public Service Commission***, 312 S.W.2d 791, 796 (Mo. banc 1958). Therefore, even special contract rates set pursuant to § 393.355, RSMo., are subject to review by the Commission and modification if necessary to protect the public interest. “To rule otherwise would make [§ 393.355, RSMo.] of questionable constitutionality as it potentially could prevent alteration of rates confiscatory to the company or unreasonable to the consumers. ***State ex rel. Jackson County v. Public Service Commission***, 532 S.W.2d 20, 29-30 (Mo. banc 1975); ***McGrew v. Missouri Pacific Ry. Co.***, 230 Mo. 496, \_\_\_, 132 S.W. 1076, \_\_\_ (1910). The foregoing quote originally referred to § 393.270(3), RSMo., which provides:

The price fixed by the commission under sections 393.110 to 393.285 shall be the maximum price to be charged by such corporation or person for gas, electricity or water for the service to be furnished within the territory and for a period to be fixed by the commission in the order, not exceeding three years, except in the case of a sliding scale, and thereafter until the commission shall, upon its own motion or upon the complaint of any corporation or person interested, fix a higher or lower maximum price of gas, electricity, water or sewer service to be thereafter charged.

Thus, in the case of a 3-year rate, the ***Jackson County*** Court held that Due Process requires that the Commission have the power to adjust a fixed rate where changing circumstances make it impermissibly high or impermissibly low. This consideration obviously applies with even more force to a 10-year special rate.

***Conclusion:***

So, what does the 10-year term of the § 393.355, RSMo., special rate mean? Or the 10-year term of the Nucor special contract? It means a rate that, while excluded from normal ratemaking, is nonetheless subject to Commission modification if conditions

change such that it becomes unlawful. For both of these rates, normal ratemaking treatment is obviated by the explicit “hold harmless” provision, provided at the expense of the ratepayers in the case of the § 393.355, RSMo., special rate (see § 393.355, .2(2) and .3, RSMo.), and at the expense of the shareholders in the case of the Nucor special contract (see *Non-Unanimous Stipulation and Agreement*, ¶8). As for the 10-year special contract, while it binds the parties, it does not bind the Commission.

**WHEREFORE**, Staff prays that the Commission will determine each of the issues presented by this case in accordance with Staff’s positions, and approve the now unanimous *Stipulation and Agreement*, approve the SIL Tariff and the Nucor Special Contract, and grant such other and further relief as is just and reasonable in the circumstances.

Respectfully submitted.

/s/ Kevin A. Thompson  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing was served electronically upon all parties of record or their representatives pursuant to the Service List maintained for this case by the Commission's Data Center **on this 8<sup>th</sup> day of November, 2019.**

/s/ Kevin A. Thompson