

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 17th day of December, 2014.

In the Matter of KCP&L Greater Missouri Operations)
Company's Application for Authority to Establish a) **File No. EO-2014-0151**
Renewable Energy Standard Rate Adjustment)
Mechanism)

ORDER DENYING RELIEF

Issue Date: December 17, 2014

Effective Date: January 16, 2015

On November 5, 2014, the Commission issued an *Order Approving Partial Stipulation and Agreement, Rejecting Tariff, and Establishing Procedural Schedule*, approving a stipulation and agreement ("Agreement") signed by KCP&L Greater Missouri Operations Company ("GMO"), the Office of the Public Counsel, Staff of the Commission, and Earth Island Institute d/b/a Renew Missouri ("Renew Missouri"). The Agreement stated that the Commission should approve a renewable energy standard rate adjustment mechanism ("RESRAM") for GMO and grant variances from the Commission's renewable energy standard rule. The Agreement also identified two remaining issues, raised by Renew Missouri, for Commission determination, as follows:

- a) Is the Company [GMO] required to calculate and report the financial benefits (including avoided costs) as savings achieved associated with costs incurred in meeting the requirements of the RES, specifically (1) costs of customer-owned solar generation and (2) costs of landfill gas used at the St. Joseph landfill gas plant?

- b) If so, how should such avoided costs and/or benefits be quantified?

GMO filed tariff sheets to establish a RESRAM in compliance with the Agreement and Commission order, which were subsequently approved by the Commission and became effective on December 1, 2014. No party has filed an application for rehearing of the Commission's orders pursuant to Section 386.500, RSMo 2000. At a prehearing conference on November 9, 2014 to discuss a procedural schedule for resolution of the remaining issues identified in the Agreement, the presiding officer ordered the parties to file briefs addressing the Commission's authority to grant the relief requested by Renew Missouri.

Renew Missouri argues in its brief that the GMO application for a RESRAM tariff violates Commission rules because it did not adequately quantify the benefits associated with its renewable energy standard costs. In addition, Renew Missouri states that the Commission should rule on how such benefits should be calculated before GMO's next rate case, where that issue may next arise. Renew Missouri encourages the Commission to make such determinations now because it would benefit other utilities who may be filing RESRAM proceedings in the future.

GMO's previous RESRAM application

With regard to Renew Missouri's criticism of GMO's previous application for a RESRAM, which tariff was approved by the Commission and became effective on December 1, 2014, GMO claims that this request for relief constitutes an impermissible and unlawful collateral attack upon the Commission's order in violation of Section 386.550, RSMo 2000.¹ Since the two issues raised by Renew Missouri were included in the Agreement between the parties, the Commission concludes that the current proceedings

¹ "In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive."

addressing those issues are ancillary to the RESRAM proceeding, rather than collateral, and so are not precluded by Section 386.550, RSMo 2000.² As the regulatory power of the Commission is such that it continues over time and is not limited to a single proceeding, the Commission may decide to re-visit previously-decided issues and has the legal authority to modify or vacate its orders³, including GMO's RESRAM tariff. However, the Agreement states that GMO's costs and revenues from compliance with the renewable energy standard are currently being flowed through GMO's fuel adjustment clause, which cannot be changed outside of a general rate proceeding.⁴ Therefore, to the extent that Renew Missouri requests that the Commission reconsider GMO's RESRAM tariff that it previously approved, the Commission declines to do so in this proceeding.

Since no law requires a hearing on this request for relief, this is a non-contested case.⁵ The Commission does not need to hear evidence before reaching a decision and does not need to make findings of fact and conclusions of law in announcing that decision.⁶ The Commission concludes that the relief requested by Renew Missouri to modify GMO's existing RESRAM tariff should be denied.

² See, *Fischer v. Public Service Commission*, 670 S.W.2d 24, 27 (Mo. App. 1984),

³ Section 386.490.2, RSMo (Supp. 2013), "Every order or decision of the commission shall of its own force take effect and become operative thirty days after the service thereof, except as otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission, unless such order be unauthorized by this law or any other law or be in violation of a provision of the constitution of the state or of the United States." (emphasis added)

⁴ File No. ER-2014-0373, *Order Approving Tariff to Change Fuel Adjustment Clause Rates*, issued on August 27, 2014.

⁵ Section 536.010(4), RSMo Supp. 2013, defines a "contested case" as "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing."

⁶ *State ex rel. Public Counsel v. Public Service Commission*, 259 S.W.3d 23, 29 (Mo App. 2008).

Future RESRAM proceedings

The RESRAM rule⁷ does not explain how benefits resulting from renewable energy standard compliance should be quantified, if at all. Renew Missouri urges the Commission to make such a determination now in order to prevent litigation and delay in future rate cases and RESRAM proceedings. But since the present controversy would involve only an examination of hypothetical costs and benefits, such a determination would constitute an advisory opinion, which the Commission is not authorized to issue.⁸

Moreover, conducting an evidentiary hearing to resolve these issues would not result in an adjudication on a specific set of accrued facts.⁹ Rather, the prospective relief sought by Renew Missouri would result in a statement of general applicability that implements, interprets or prescribes law or policy, or in other words, a rule.¹⁰ Agencies cannot engage in this type of rulemaking by an adjudicated order.¹¹ Pursuing such a change in the Commission's interpretation and implementation of its RESRAM rule requires compliance with the more stringent and lengthy process of rulemaking as required under Section 536.021, RSMo. While not every generally-applicable statement or announcement of intent by a state agency is a rule, an agency declaration that has the potential, however slight, of impacting the substantive or procedural rights of some member of the public is a rule.¹²

The Commission concludes that Renew Missouri's request for prospective relief does not

⁷ Commission rule 4 CSR 240-20.100(6).

⁸ *State ex rel. Laclede Gas Co. v. Public Service Commission*, 392 S.W.3d 24, 38 (Mo. App. 2012).

⁹ In contrast to a rule, an adjudication is "[a]n agency decision which acts on a specific set of accrued facts and concludes only them." *HTH Companies, Inc. v. Missouri Dept. of Labor and Indus. Relations*, 157 S.W.3d 224, 228 -229 (Mo. App. 2004).

¹⁰ Section 536.010(6) defines a rule as "each agency statement of general applicability that implements, interprets, or prescribes law or policy." A rule is "[a]n agency statement of policy or interpretation of law of future effect which acts on unnamed and unspecified persons or facts." *Missourians for Separation of Church and State v. Robertson*, 592 S.W.2d 825, 841 (Mo.App.1979). *HTH Companies, Inc. v. Missouri Dept. of Labor and Indus. Relations*, 157 S.W.3d 224, 228 -229 (Mo. App. 2004); *Greenbriar Hills Country Club v. Director of Revenue*, 47 S.W.3d 346, 357 (Mo. banc 2001).

¹¹ *Greenbriar Hills Country Club v. Director of Revenue*, 47 S.W.3d 346, 357 (Mo. banc 2001).

¹² *Baugus v. Director of Revenue*, 878 S.W.2d 39, 42 (Mo. banc 1994).

state a claim upon which the Commission may grant relief and should be dismissed. The appropriate method for Renew Missouri to obtain the relief that it seeks is a petition for rulemaking filed with the Commission pursuant to Commission rule 4 CSR 240-2.180. The Commission will cancel the existing procedural schedule in a subsequent order.

THE COMMISSION ORDERS THAT:

1. Earth Island Institute d/b/a Renew Missouri's request for relief regarding the two issues identified in the stipulation and agreement approved by the Commission on November 5, 2014, is denied.
2. This order shall be effective on January 16, 2015.
3. This file shall be closed on January 17, 2015.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff". The signature is written in a cursive, flowing style.

Morris L. Woodruff
Secretary

R. Kenney, Chm., Stoll, W. Kenney,
Hall, and Rupp, CC., concur.

Bushmann, Senior Regulatory Law Judge