

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

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

**STAFF RECOMMENDATION TO APPROVE RESRAM WITH VARIANCE,
REJECT CERTAIN TARIFF SHEETS AND
ORDER COMPLIANCE TARIFF SHEETS AND CUSTOMER NOTICE**

COMES NOW Staff of the Missouri Public Service Commission, by and through the undersigned counsel, and files this Recommendation with the Missouri Public Service Commission to state as follows:

OVERVIEW

1. On April 10, 2014,¹ KCP&L Greater Missouri Operations Company (“GMO”) filed an *Application* with supporting testimony and tariff sheets to establish the recovery of Renewable Energy Standard (“RES”) costs using a renewable energy standard rate adjustment mechanism (“RESRAM”). The Commission assigned the tariff sheets Tracking No. YE-2014-0407.

2. On April 30, the Commission issued an Order that directed notice and set a procedural conference for May 19. At the procedural conference, and by subsequent Order, the presiding Regulatory Law Judge ordered Staff to file a report regarding its examination and analysis of the *Application* no later than August 8. This filing complies with the Commission’s Order.

¹ All dates herein refer to calendar year 2014 unless otherwise specified.

ANALYSIS AND RECOMMENDATION

3. This is the first *Application* before the Commission to establish a RESRAM for the recovery of costs and pass-through of benefits as a result of GMO's compliance with the RES requirements. Section (6) and Subsection (6)(A) of the Commission's RES rule, 4 CSR 240-20.100, set forth the filing requirements and parameters of a RESRAM, respectively.

4. Staff has completed an examination of the *Application* and its associated discovery and provides its recommendation in the *Memorandum* and supporting Appendices attached hereto. Staff recommends the Commission approve the establishment of a RESRAM to recover RES costs, as adjusted by Staff, appearing as a RESRAM charge on the customer's bill. Although not requested, Staff recommends the Commission grant GMO a variance to apply a RESRAM charge of 1% of the customer's taxable retail bill. Good cause for this variance is discussed below.

5. Further, Staff recommends the Commission reject Tariff Sheets 137 and 137.1, part of Tracking No. YE-2014-0407, and order GMO to file compliance tariff sheets in line with the Staff's recommendation.

6. Finally, to increase transparency and customer awareness of this new charge, Staff recommends the Commission order GMO to include customer notice along with the first bill cycle on which the RESRAM charge will appear, with the form of the notice being that of Appendix A attached to the *Memorandum*.

GOOD CAUSE

7. Rule 4 CSR 240-20.100 (10) allows the Commission to grant a variance from a provision of the RES rule for good cause shown.

8. Although the term “good cause” is frequently used in the law,² the rules allowing waivers or variances typically do not define it. Therefore, it is appropriate to resort to the dictionary to determine the term’s ordinary meaning.³

9. Good cause “...generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.”⁴ Similarly, “good cause” has also been judicially defined as a “...substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.”⁵ Similarly, it can refer “...to a remedial purpose and is to be applied with discretion to prevent a manifest injustice or to avoid a threatened one.”⁶

10. 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...”⁷ Moreover, some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁸

11. GMO’s proposed allocation and billing method results in substantially different charges on a percent-of-bill basis to customers than the allocation to customers as a result of calculating the RESRAM as a percentage of the customer’s energy charge. Staff recommends the Commission grant a variance from

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

³ 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.

⁴ Black’s Law Dictionary, p. 692 (6th ed. 1990).

⁵ *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See *Central. 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.”)

⁶ *Bennett v. Bennett*, 938 S.W.2d 952 (Mo. App. S.D. 1997).

⁷ *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).

⁸ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975).

Rule 4 CSR 240-20.100 (6)(A)10. as a reasonable compromise between the rule as promulgated, administrative ease, and customer understandability.

OTHER MATTERS

12. Staff has verified that GMO has submitted its 2013 calendar year annual report and is current on the payment of Commission assessments.

13. The RES rule provides for a prudence review of costs incurred for RES compliance as part of a general rate case proceeding. Staff's recommendation in this matter does not recommend any finding on the prudence of the costs GMO incurred for RES compliance. Staff will review the costs for prudence as part of GMO's next general rate case proceeding. Staff recommends the Commission's Order specifically state that nothing in the Order shall be considered a finding by the Commission of the reasonableness or prudence of the expenditures herein involved.

14. Staff is aware of the following cases that a Commission order in this matter may affect, or be affected by: EO-2014-0373 and AP14AC-CC00133.

WHEREFORE, Staff recommends the Commission issue an order that allows GMO to establish a RESRAM for the recovery of RES compliance costs, grant the variance recommended by Staff, reject tariff sheets 137 and 137.1, and order GMO to file new tariff sheets and issue customer notice in compliance with the Commission's order.

Respectfully submitted,

/s/ Jennifer Hernandez

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been emailed this 8th day of August, 2014 to all counsel of record in this proceeding.

/s/ Jennifer Hernandez