

**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 Rate for a Facility Whose Primary Industry Is the Production or Fabrication of Steel in or Around Sedalia, Missouri))))))	<u>File No. EO-2019-0244</u> Tariff No. YE-2020-0002
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ORDER GRANTING MOTION TO QUASH DEPOSITION

Issue Date: October 1, 2019

Effective Date: October 1, 2019

On September 25, 2019, the Staff of the Commission issued a Notice of Deposition indicating its intent to depose a designated representative of the Midwest Energy Consumers Group (MECG). The deposition is scheduled to take place at 9:00 a.m. on October 2, 2019.

On September 30, 2019, MECG filed a motion asking the Commission to quash that deposition, arguing Staff's proposed deposition is not intended to elicit any relevant information, but rather is intended to punish MECG for opposing a non-unanimous stipulation and agreement entered into by the other parties to this case.

The Commission required that any party wishing to respond to the motion to quash do so by 9:00 a.m. on October 1, 2019. Staff filed a timely response, as did KCP&L Greater Missouri Operations Company (GMO). Both oppose the motion to quash.

Staff's Notice of Deposition makes it clear that Staff's purpose for seeking to depose a representative of MECG is to seek the identity of the large commercial and industrial electricity users whose interests MECG claims to represent. The day before it filed the Notice of Deposition, on September 24, 2019, Staff filed a motion asking the Commission to dismiss MECG as a party because Staff doubts MECG's claim to

represent any entity other than itself. On the same date, Staff filed a separate motion to quash MCEG's objection to a stipulation and agreement entered into by Staff, GMO, and Nucor that would fully resolve this case. Those motions are not yet before the Commission as responses to them are not due until ten days after they were filed, October 4, 2019.

Some background information about this case is necessary to understand the arguments of the parties. This case began on July 12, 2019, when GMO filed an application seeking authority from the Commission to implement a special incremental load rate for a steel production facility in Sedalia, Missouri. The steel production facility will be owned and operated by Nucor Steel Sedalia, LLC.

MCEG applied to intervene on July 22, 2019. MCEG's application to intervene represents that it is an incorporated association representing the interests of large commercial and industrial users of electricity. The application also represents that "as a group of large commercial and industrial customers of KCPL-GMO, MCEG's interest in this case is different than that of the general public." Further, the application represents that "MCEG's intervention will serve the public interest by assisting the record for the Commission's decision in this case."

A procedural conference was held on July 23, 2019. At that time, while on the record, the presiding officer took up MCEG's application to intervene.¹ GMO initially questioned MCEG's claim to intervene and asked MCEG's legal counsel which large commercial and industrial customers of GMO it represented in this case.² Counsel for MCEG indicated at that time that he represented MCEG as a corporate entity, not any

¹ Transcript, Page 5, Lines 3-8.

² Transcript, Page 5, Lines 9-13.

particular customers.³ After a brief recess to allow GMO's legal counsel to consult with his client, GMO indicated on the record that it did not object to MCEG's application to intervene.⁴ Staff did not oppose MCEG's intervention request at that time. The presiding officer then granted MCEG's unopposed application to intervene.⁵ Thereafter, MCEG participated in this case as a party.

On September 19, 2019, GMO, Staff, and Nucor filed a non-unanimous stipulation and agreement that would resolve all aspects of this case, and would, if approved by the Commission, allow GMO's special rate for Nucor to go into effect. MCEG filed a timely objection to the stipulation and agreement on September 24, 2019. The Office of the Public Counsel, the only other party to the case, did not object to the non-unanimous stipulation and agreement. If not for MCEG's objection, the stipulation and agreement could be presented to the Commission for approval as a unanimous stipulation and agreement. Staff responded to MCEG's objection by filing the previously described motion to dismiss MCEG as a party and to quash its objection to the stipulation and agreement. It also issued the notice of deposition that is the subject of MCEG's motion to quash.

The Commission does not have a procedural rule specifically dealing with a motion to quash a deposition. However, Commission Rule 20 CSR 4240-2.090(1) provides that discovery at the Commission "may be obtained by the same means and under the same conditions as in civil actions in the circuit court." Civil Rule 56.01(C) provides that in response to a request for a protective order, the court may "make any order which justice

³ Transcript, Page 6, Lines 20-24.

⁴ Transcript, Page 10, Lines 18-20.

⁵ Transcript, Page 10, Lines 21-23.

requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had.”.

Staff’s notice of deposition, and its response to MECG’s motion to quash, make it clear that Staff intends to question MECG’s representative in an attempt to establish either that MECG does not represent any customer of GMO, or if it does represent such a customer, to seek further discovery from that customer. The problem for Staff’s position is that it is already quite clear that MECG does not claim to represent any entity other than itself. MECG was granted intervention on its own behalf as a corporate entity, not as an association for which it would be required to disclose its members, consistent with the Commission’s rule on intervention, 20 CSR 4240-2.075. Whether MECG has any “members” who may also be interested in this case, is irrelevant to any issue before the Commission regarding GMO’s application.

That is particularly true given the procedural status of this case. GMO has prefiled direct testimony of several witnesses to support its application. But the deadline for the filing of rebuttal testimony passed on September 27, 2019, with no party, including MECG, having filed rebuttal testimony. Since there was no rebuttal testimony, there can be no surrebuttal testimony. Thus, this matter will go to hearing on October 17 and 18, 2019, on the unrebutted direct testimony presented by GMO. MECG will be able to cross-examine GMO’s witnesses, and will be able to present any legal arguments to the Commission through its briefs. Neither activity by MECG would give Staff the right to seek discovery from MECG regarding its members or supporters.

Furthermore, Staff has already filed its motions to dismiss MECG as a party and to quash MECG's objection to the nonunanimous stipulation and agreement, so it has shown no need to conduct discovery to support those motions.

There has been careless talk exchanged between the parties through these motions and responses implying that one or more parties have acted improperly. In issuing this order, the Commission specifically does not find that anyone has acted improperly. Rather, after carefully considering the matter, the Commission finds that the deposition should not proceed and the Motion to Quash Deposition should be granted.

THE COMMISSION ORDERS THAT:

1. Midwest Energy Consumers Group's Motion to Quash Depositions is granted.
2. The deposition noticed for October 2, 2019 is quashed.
3. This order shall be effective when issued.

BY THE COMMISSION



Morris L. Woodruff

Morris L. Woodruff
Secretary

Morris L. Woodruff, Chief Regulatory
Law Judge, by delegation of authority pursuant
to Section 386.240, RSMo 2016.

Dated at Jefferson City, Missouri,
on this 1st day of October, 2019.