

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of the Determination of Carrying)
Costs for the Phase-In Tariffs of KCP&L Greater)
Missouri Operations Company)

File No. ER-2012-0024

REPORT AND ORDER

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TABLE OF CONTENTS

Appearances	2
Procedural History	3
General Findings of Fact	5
General Conclusions of Law	7
The Issues	9
I. Jurisdiction.....	10
II. All relevant factors	14
III. Carrying costs	15
IV. Future tariff schedules.....	18
Ordered Paragraphs.....	19

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Missouri Operations Company) **File No. ER-2012-0024**

REPORT AND ORDER

APPEARANCES

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REGULATORY LAW JUDGE: **Ronald D. Pridgin, Senior**

Procedural History

On May 4, 2011, the Commission issued its *Report and Order* in GMO's last rate case, File No. ER-2010-0356. In its *Report & Order*, the Commission determined that it was appropriate to adopt a different method of allocating the costs of latan 2 between the MPS and L&P divisions than that proposed by GMO, based largely upon the recommendations of the Commission Staff.¹

In its findings of fact, the Commission specifically found: "The latan 2 Allocation is more akin to a rate design issue since it determines the relative amount of the rate increase that will be received by both the MPS and the L&P service areas rather than the overall revenue requirement impact of latan 2."² As a result of this rate design determination, a larger increase was adopted for the L&P division than originally proposed by GMO.

Timely applications for rehearing were filed by GMO, Ag Processing Inc., a cooperative ("AGP"), the Office of the Public Counsel ("OPC"), and Dogwood Energy, LLC on various issues. After receiving additional responses and arguments, the Commission held an on-the-record question and answer session on May 26, 2011, to better understand the requests for rehearing and clarification regarding the latan allocation issue.

On May 27, 2011, the Commission issued its *Order of Clarification and Modification* in which it determined that:

Because of the magnitude of the rate increase and the effects on the ratepayers in the L&P service area, the Commission determines in its discretion that a just and reasonable method of implementing this large

¹ *Report and Order*, pp. 195-204.

² *Id.*

increase is by phasing it in over a reasonable number of years. The Commission further concludes that rates for L&P service area should initially be set at an amount equal to the \$22.1 million originally proposed by GMO with the remaining increase plus carrying costs being phased-in in equal parts over a two year period.³

Following that order, GMO filed tariffs (Tariff File Nos. YE-2011-0608, YE-2011-0609, and YE-2011-0610) to implement the phase-in, including carrying costs. OPC and AGP objected to the proposed carrying costs and additional filings were made regarding the subject.

On June 24, 2011, GMO filed its Writ of Review of the Commission's *Report & Order* in File No. ER-2010-0356 with the Cole County Circuit Court appealing issues not related to the phase-in plan. On or about June 30 and July 20, 2011, respectively, AGP and Public Counsel filed their Writ of Review with the Cole County Circuit Court. On August 1, 2011, the Circuit Court issued its Order Consolidating Cases. (Consolidated Case Nos. 11-ACCC00415, 11 AC-CC00432, and 11AC-CC00474)

On June 25, 2011, the Commission issued its *Order Approving Tariff Sheets and Setting Procedural Conference* stating that additional evidence was needed to determine the appropriate carrying costs. On June 28, 2011, a procedural conference was held and the parties who participated at the conference filed a joint proposed procedural schedule, including the filing of pre-filed testimony, a list of issues, order of witnesses, order of cross-examination, and evidentiary hearings.

On July 25, 2011, the Commission issued its *Notice of Opening Case, and Notice Opening a New File and Adopting Procedural Schedule* in File No. ER-2012-0024. The Commission also filed in File No. ER-2012-0024 various tariffs and pleadings that had

³ *Order of Clarification and Modification*, p. 7.

been previously filed in GMO's last rate case, File No. ER-2010-0356. On July 25, 2011, the Commission also issued its *Notice Closing File* in File No. ER-2010-0356.

On August 16, 2011, GMO file its Motion to Suspend Procedural Schedule to allow the parties to discuss settlement of the case. On August 17, 2011, the Commission issued its Order Granting Motion to Suspend Procedural Schedule.

On September 2, 2011, GMO and Staff filed a Non-Unanimous Stipulation and Agreement ("the Stipulation") which recommended that the Commission approve the use of a 3.25 percent carrying cost in GMO's phase-in tariffs. In addition, the Stipulation recommends that the Commission should order that the attached tariff schedules for the second, third and fourth year of the phase-in plan shall become effective automatically in each subsequent year on June 25 without further order of the Commission, unless suspended by the Commission for good cause shown.

OPC, Robert Wagner, Dogwood, the Missouri Department of Natural Resources and Union Electric Company d/b/a Ameren Missouri have indicated that they do not oppose the Stipulation. On September 8, 2011, AGP filed its Objection to the Stipulation, and requested a hearing.

General Findings of Fact

1. Because, as discussed above in the Procedural History, the Commission has ordered a phase-in of rates, GMO will recognize a cash flow detriment during the phase-in.⁴

⁴ Ex. 2, p. 3.

2. The first year rate increase that the Commission has allowed GMO is \$22,101,088, which is \$7,671,708 less than what GMO would have received absent the phase-in.⁵

3. By ordering the phase-in, the Commission has effectively denied GMO the right to earn a full return on investment during the first year of its rate increase, unless appropriate carrying costs are allowed to be recovered during the phase-in.⁶

4. GMO and the Staff of the Commission have filed a Non-Unanimous Stipulation and Agreement (“the Stipulation”) that resolves their dispute on the amount of the carrying costs. GMO and Staff agree that GMO should have a carrying cost rate of 3.25 percent.⁷

5. GMO and Staff included exemplar tariffs with the Stipulation. The amount of rate increase reflected by these tariffs for June 25, 2012 is a \$11,756,983 increase above the June 25, 2011 tariffs. That reflects the phase-in rate increase of one half of the difference between \$29,772,796 and \$22,101,088 (\$3,835,854), the deferred revenue during the period of June 25, 2011 through June 24, 2012 (\$7,671,708), and the carrying costs agreed to in the Stipulation (3.25 percent) on the deferred revenue of \$7,671,708 (\$249,331).⁸

6. To effectuate the June 25, 2013 phase-in, GMO and Staff have included exemplar tariffs. These tariffs reflect the remaining phase-in rate increase of one half of the difference between \$29,772,796 and \$22,101,088 (\$3,835,854), the deferred revenue during the period of June 25, 2012 through June 24, 2013 (\$3,835,854), and

⁵ *Id.*

⁶ *Id.*

⁷ Ex. 1.

⁸ Ex. 3, p. 3.

the carrying costs (3.25 percent) on the deferred revenue of \$3,835,854 (\$124,665). This increase is offset by the reversal of the prior years' deferred revenues and the prior year's carrying costs.⁹

7. To effectuate the June 25, 2014 phase-in, GMO and Staff have included exemplar tariffs. These tariffs complete the phase-in and establish the rates for GMO's Light & Power ("L&P") division at \$29,772,796, which is the amount of the rate increase as ordered prior to phase-in.¹⁰

General Conclusions of Law

1. The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact and conclusions of law. The positions and arguments of all of the parties have been considered by the Commission in making this decision.

2. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision. When making findings of fact based upon witness testimony, the Commission will assign the appropriate weight to the testimony of each witness based upon their qualifications, expertise and credibility with regard to the attested to subject matter.¹¹

⁹ *Id.*

¹⁰ *Id.*

¹¹ Witness credibility is solely within the discretion of the Commission, who is free to believe all, some, or none of a witness' testimony. *State ex. rel. Missouri Gas Energy v. Public Service Comm'n*, 186 S.W.3d 376, 389 (Mo. App. 2005).

Conclusions of Law Regarding Jurisdiction

3. GMO is an electric utility and a public utility subject to Commission jurisdiction.¹² The Commission has authority to regulate the rates GMO may charge for electricity.¹³

4. In making its determination, the Commission may adopt or reject any or all of any witnesses' testimony.¹⁴ Testimony need not be refuted or controverted to be disbelieved by the Commission.¹⁵ The Commission determines what weight to accord to the evidence adduced.¹⁶ "It may disregard evidence which in its judgment is not credible, even though there is no countervailing evidence to dispute or contradict it."¹⁷ The Commission may evaluate the expert testimony presented to it and choose between the various experts.¹⁸

5. The Staff of the Commission is represented by the Commission's Staff Counsel, an employee of the Commission authorized by statute to "represent and appear for the commission in all actions and proceedings involving this or any other law [involving the commission.]"¹⁹ The Public Counsel is appointed by the Director of the Missouri Department of Economic Development and is authorized to "represent and

¹² Section 386.020(15), (42) RSMo 2006 (all statutory cites to RSMo 2006 unless otherwise indicated).

¹³ Section 393.140(11).

¹⁴ *State ex rel. Associated Natural Gas Co. v. Public Service Commission*, 706 S.W.2d 870, 880 (Mo. App., W.D. 1985).

¹⁵ *State ex rel. Rice v. Public Service Commission*, 220 S.W.2d 61, 65 (Mo. banc 1949).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Associated Natural Gas, supra*, 706 S.W.2d at 882.

¹⁹ Section 386.071.

protect the interests of the public in any proceeding before or appeal from the public service commission[.]”²⁰ The remaining party is an association of industrial consumers.

The Issues

On December 21, 2011, the parties filed an Issues List. The issues the parties present to the Commission for resolution are:

1. Does the Commission have jurisdiction in this case?
2. Does the Commission decision consider all relevant factors?
3. Should GMO’s carrying costs in the phase-in tariff schedules filed in this proceeding be 3.25 percent per year?
4. Should the Commission order that the tariff schedules filed with the Non-Uniform Stipulation and Agreement on September 2, 2011 for the second, third and fourth year of the phase-in plan be allowed to become effective automatically in each subsequent year on June 25 without further order of the Commission, unless suspended by the Commission for good cause shown?

²⁰ Sections 386.700 and 386.710.

Discussion

Issue 1 - *Does the Commission have jurisdiction in this case?*

Findings of Fact

8. In GMO's most recent rate case, AGP's counsel repeatedly urged the Commission to phase in the rate increase.²¹

9. AGP's counsel stated, among other things, that "(t)he statute allows for phase-ins for unusually large rate base additions. No question that this qualifies."²²

10. He also asked the Commission to "(o)rder GMO to file their next tariffs in a certain period of time and reflect at that time their carrying costs."²³

11. Further, he urged the Commission to "(j)ust do the right thing and phase in the additional amount."²⁴

12. He also argued that "(w)e have a solution to continue to recognize that customers have made budgeting decisions, and that is the phase-in."²⁵

Conclusions of Law

6. Pursuant to Missouri statutes, all orders of the Missouri Public Service Commission ("Commission" or "PSC") shall be in force and shall be prima facie lawful and reasonable until found otherwise.²⁶

²¹ Commission File No. ER-2010-0356, Oral Argument, Tr. pp. 4973-74, 4982-83, 4986, 4989, 4992-93, 5005-06 (May 26, 2011).

²² Id. at 4973.

²³ Id. at 4975.

²⁴ Id. at 4986.

²⁵ Id. at 5005.

²⁶ Section 386.270.3 RSMo (2000).

7. Orders of the Commission remain in force until changed by the Commission or found to be unlawful.²⁷

8. A party's dissatisfaction with a Commission order and the pendency of any appeal of that order has no bearing on its effect. Commission orders remain in effect despite a pending application for rehearing.²⁸

9. The Commission's orders also remain in effect despite a pending writ of review.²⁹

10. "Unquestionably, the orders of the Commission were presumptively valid under the provisions of § 386.270 prior to the ruling of the circuit court."³⁰

11. Orders of the Commission enjoy a presumption of validity throughout their review.³¹

12. Even an adverse ruling on a Commission order by the circuit court does not invalidate that order while the appeal continues.³²

13. A party aggrieved by a Commission decision has the right to protect its interests by applying to the circuit court for a stay of enforcement of the Commission's order pursuant to Section 386.520.³³

²⁷ Section 386.490.3.

²⁸ Section 386.500.3.

²⁹ Section 386.520.1.

³⁰ *State ex rel. GTE North, Inc. v. PSC*, 835 S.W.2d 356, 366 (Mo. App. W.D. 1992).

³¹ See *State ex rel. Kansas City Power & Light Co. v. PSC*, 76 S.W.2d 343, 350 (Mo. 1934); *State ex rel. Midwest Gas Users' Assoc. v. PSC*, 976 S.W.2d 470, 476 (Mo. App. W.D. 1998).

³² See *Kansas City Power & Light Co. v. PSC*, 76 S.W.2d at 368.

³³ *State ex rel. GTE North, Inc. v. PSC*, 835 S.W.2d 356, 366-67 (Mo. App. W.D. 1992).

14. “This section provides the opportunity to stay the Commission’s order upon issuance of a stay order by the circuit court and the filing of a bond.”³⁴

15. No stay has issued in this case. Thus, the Commission’s May 4, 2011 *Report and Order* and the May 27, 2011 *Order of Clarification and Modification* in File No. ER-2010-0356 both remain effective and valid.

16. The Commission has express statutory authority to direct a utility to file tariffs reflecting the phase-in of rates authorized in a rate case after the conclusion of the rate case hearing:

If, after hearing, the commission determines that any electrical corporation should be allowed a total increase in revenue that is primarily due to an unusually large increase in the corporation’s rate base, the commission, in its discretion, need not allow the full amount of such increase to take effect at one time, but may instead phase in such increase over a reasonable number of years. Any such phase-in shall allow the electrical corporation to recover the revenue which would have been allowed in the absence of a phase-in and shall make a just and reasonable adjustment thereto to reflect the fact that recovery of a part of such revenue is deferred to future years. In order to implement the phase-in, the commission may, in its discretion, approve tariff schedules which will take effect from time to time after the phase-in is initially approved.³⁵

17. The Commission has acted upon this statutory authority in previous rate cases.³⁶

18. The Commission does not lose its jurisdiction to exercise such ministerial functions after the filing of the notice of appeal. In Union Electric Company’s 1984 rate

³⁴ Id. at 367.

³⁵ Section 393.155.1.

³⁶ See *Report and Order*, In the Matter of the Determination of In-Service Criteria for the Union Electric Co.’s Callaway Nuclear Plant and Callaway Rate Base and Related Issues, File Nos. EO-85-17, ER-85-160, 27 Mo. P.S.C. (N.S.) 183, 318 (Mar. 29, 1985); *Report and Order*, In the matter of Kansas City Power & Light Company for authority to file tariffs increasing rates for electric service provided to customers in the Missouri service area of the Company, and the determination of in-service criteria for Kansas City Power & Light Company’s Wolf Creek Generating Station and Wolf Creek rate base and related issues, File Nos. ER-85-128, EO-85-185, EO-85-224, 28 Mo. P.S.C. (N.S.) 228, 424 (Apr. 23, 1986).

case, the Commission issued its report and order by which it phased-in the utility's increased rates over a period of eight years.³⁷ Several industrial users intervened in the rate proceeding. After the Commission issued its report and order, those industrial users filed a petition for writ of review in the Circuit Court of Cole County. Nevertheless, the Commission continued to implement its report and order, phasing-in the utility's rates until it issued a report and order in 1987 in which it determined that the phase-in should be ended.³⁸

19. In addition, it is very common for the Commission to spin off dockets from rate cases in order to examine additional issues. For example, the Commission has ordered the creation of new dockets to review rate design, tree trimming policies and other issues related to previously decided rate cases and other complaint proceedings.³⁹

20. A party may not encourage a tribunal to take a specific action and then complain on appeal that the specific action adopted is unlawful.⁴⁰

³⁷ See *Report and Order*, In the Matter of the Determination of In-Service Criteria for the Union Electric Co.'s Callaway Nuclear Plant and Callaway Rate Base and Related Issues, File Nos. EO-85-17, ER-85-160, 27 Mo. P.S.C. (N.S.) 183, 3271-72 (Mar. 29, 1985).

³⁸ See *Report and Order*, Staff of the PSC vs. Union Electric Co., File Nos. EC-87-114, EC-87-115 (Dec. 21, 1987).

³⁹ See e.g., *In re Aquila*, 2005 WL 2039745, File Nos. ER-2005-0436 (August 23, 2005); *Re Kansas City Power & Light Company*, File No. ER-94-199 and ER-94-197; File No. ET-97-113 (June 13, 1997); *Re Union Electric Company, Order Regarding Union Electric's Tree Trimming Policies and Closing Case*, File No. EW-2004-0583, 2005 WL 742841 (April 10, 2005); *Re St. Louis County Water Co., Report and Order*, File No. WO-98-223 (February 13, 2001).

⁴⁰ See *Rosencranz v. Rosencranz*, 87 S.W.3d 429 (Mo.App. 1982); *State ex rel. American Standard Ins. Co. of Wisconsin v. Clark*, 243 S.W.3d 526, 531-32 (Mo. App. WD 2008); *Lindahl v. State of Missouri*, ___S.W. 3d ___, 2011 WL 3273469 (Mo.App. W.D.) (Opinion Filed: August 2, 2011).

Decision

In GMO's most recent rate case, counsel for AGP acknowledged that this Commission has the statutory authority to phase in the rate increases and repeatedly urged the Commission to do so. We agree. Due to the plain language of Section 393.155 RSMo, the Commission finds this issue in favor of GMO and Staff. Section 393.155 RSMo clearly allows the Commission to phase in rate increases. The Commission has jurisdiction in this case.

Issue 2 - Does the Commission decision consider all relevant factors?

Findings of Fact

There are no additional findings of fact.

Conclusions of Law

21. Courts do not assume the legislature intends a statute to have an absurd or unreasonable effect.⁴¹

22. The customer rates the Commission approved in File No. ER-2010-0356 are presumptively correct until the Commission again considers all relevant factors for new customer rates in a subsequent general electric rate proceeding, or a court holds them to be unlawful and/or unreasonable.⁴²

⁴¹ See *State ex. rel. County of Jackson v. Public Service Commission*, 14 S.W.3d 99, 102 (Mo.App. 2000)

⁴² Sections 386.490.2 RSMo 2000, 386.510 RSMo 2000 (repealed); see also *State ex. rel. AG Processing, Inc.*, 276 S.W.3d 303, 605-06; see also Sections 386.510, .520 RSMo Supp. 2011.

23. In order to implement the phase-in, the commission may, in its discretion, approve tariff schedules which will take effect from time to time after the phase-in is initially approved.⁴³

24. The Commission has previously ordered phase-ins of rate increases.⁴⁴

Decision

The Commission finds this issue in favor of GMO and Staff. The Commission's decision applies Section 393.155.1 RSMo to arrive at carrying costs; the Commission considered all relevant factors in GMO's prior rate case, which is File No. ER-2010-0356.

Issue 3 - Should GMO's carrying costs in the phase-in tariff schedules filed in this proceeding be 3.25 percent per year?

Findings of Fact

13. Both Staff and GMO have taken the position the rate of 3.25 percent per year should be used to determine the "just and reasonable adjustment" to reflect deferral to the future of the recovery of revenue which would have been allowed in the absence of the phase-in.⁴⁵

⁴³ Section 393.155.1 RSMo 2000.

⁴⁴ See *In the Matter of Kansas City Power & Light Company*, 28 Mo.P.S.C. (N.S.) 228, 419 (Report and Order, April 23, 1986); *In the Matter of Kansas City Power & Light Company*, 29 Mo.P.S.C. (N.S.) 295 (Order Approving Joint Recommendation, November 23, 1987).

⁴⁵ Ex. 1.

14. Sixteen banks have committed to provide advances to GMO totaling up to \$450 million at interest rates specified in the facility.⁴⁶

15. Those interest rates are primarily 2.75 percent plus the British Bankers Association LIBOR rate for an equivalent term loan or 1.75 percent plus the highest of (a) the Federal Funds Rate plus one-half of one percent (1/2%), (b) Bank of America's publicly announced "prime rate" in effect and (c) the Eurodollar base rate plus one percent (1%).⁴⁷

16. Although past interest rate experience does not assure similar future rates, the fact that the Federal Reserve has assured financial markets that it will maintain the Federal Funds rate at its current level for the next couple of years provides some certainty the current level of short-term rates will continue in the near future.⁴⁸

17. GMO has been taking one month advances at LIBOR plus 2.75 percent and, over the phase-in period, that one month advances rate would range from 2.95 to 3.10 percent.⁴⁹

18. Based on the three-month LIBOR rates since January 2010, interest on three-month advances to GMO during the phase-in period could be as high as 3.25 percent.⁵⁰

⁴⁶ Ex. 2, p. 6.

⁴⁷ Ex. 4, p. 3.

⁴⁸ *Id.* at 4.

⁴⁹ *Id.* at 3.

⁵⁰ *Id.* at 4.

19. The “prime rate” has been 3.25 percent for about the immediately past three years; therefore, the alternative rate GMO might pay during the phase-in period is 3.25 percent plus 1.75 percent or 5.00 percent.⁵¹

20. Based on Staff witness Murray’s analysis of GMO’s weighted average cost of short-term debt through May 2011, GMO took an advance on May 11, 2011, at an interest rate of 5.00 percent.⁵²

21. If the Commission uses GMO’s cost of short-term debt for determining the “carrying costs” for the revenue increase phase-in, 3.25 percent is a “fair and reasonable” rate to use for that purpose.⁵³

22. GMO’s fuel adjustment clause states that “interest at [GMO’s] short-term borrowing rate”— average interest paid on short-term debt — is used to calculate the “carrying costs” for the under- or over-collection of the costs and revenues that flow through that clause as required by § 386.266.4(2),RSMo 2011.⁵⁴

23. GMO’s average interest on short-term debt used in its fuel adjustment clause, which changes monthly, ranged from just under two percent to just under four percent per year over the twenty months of January 2010 to August 2011.⁵⁵

Conclusions of Law

There are no additional conclusions of law for this issue.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 5.

⁵⁴ Ex. 6, p.1.

⁵⁵ *Id.* at 2.

Decision

The Commission finds this issue in favor of GMO and Staff. GMO's carrying costs for the phased-in rates shall be 3.25 percent per year

Issue 4 - Should the Commission order that the tariff schedules filed with the Non-Unanimous Stipulation and Agreement on September 2, 2011 for the second, third and fourth year of the phase-in plan be allowed to become effective automatically in each subsequent year on June 25 without further order of the Commission, unless suspended by the Commission for good cause shown?

Findings of Fact

24. The exemplar tariff schedules marked as Exhibit A of the Non-Unanimous Stipulation and Agreement filed in this case on September 2, 2011, are designed to implement, and would implement, a "just and reasonable adjustment" to reflect deferral to the future of the recovery of revenue which would have been allowed in the absence of the phase-in base on a rate of 3.25 percent per year for "carrying costs."⁵⁶

Conclusions of Law

There are no additional conclusions of law for this issue.

Decision

The Commission finds this issue in favor of GMO and Staff.

⁵⁶ Ex. 1, Ex. 3, pp. 2-4, Ex. 7, pp. 1-2.

THE COMMISSION ORDERS THAT:

1. AG Processing, Inc's. evidentiary objections are overruled.
2. The proposed tariff sheets filed by KCP&L Greater Missouri Operations Company on May 31, 2011, Tariff No. YE-2011-0608, YE-2011-0609 and YE-2011-0610, are rejected.
3. KCP&L Greater Missouri Operations Company shall file tariffs that comport with this Report and Order.
4. All pending motions and other requests for relief not granted are denied.
5. This Report and Order shall become effective on April 6, 2012.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Jarrett and Kenney, CC.,
concur and certify compliance with
the provisions of Section 536.080,
RSMo. 2000.

Dated at Jefferson City, Missouri,
on this 7th day of March, 2012.