

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

In the Matter of Kansas City Power & Light)	File No. ER-2012-0174
Company's Request for Authority to Implement)	Tariff No. YE-2012-0404
a General Rate Increase for Electric Service.)	

and

In the Matter of KCP&L Greater Missouri Operations)	File No. ER-2012-0175
Company's Request for Authority to Implement a)	Tariff No. YE-2012-0405
General Rate Increase for Electric Service.)	

APPLICATION FOR REHEARING OF AARP

COMES NOW AARP, on behalf of residential electric consumers 50 years of age and over, pursuant to Section 386.500 RSMo. and 4 CSR 240-2.160, and respectfully applies for a rehearing and reconsideration of the Missouri Public Service Commission's ("Commission's") Report and Order issued in the above-styled matter on January 9, 2013, with an effective date¹ of January 19, 2013 ("Report and Order").

This Report and Order is unlawful, unjust, unreasonable, arbitrary, capricious, and unsupported by competent and substantial evidence on the whole record, in the manner in which it approved a continuation of KCPL Greater Missouri Operations' ("GMO's") request for an extension of its Fuel Adjustment Clause ("FAC"). In contravention of Missouri law, the Report and Order flipped the applicable burden of proof that applies in a general rate case, incorrectly stating that consumer advocate

¹ See "Order Correcting Effective Date Of Report And Order", also issued on January 9, 2013.

parties must bear a burden of proof when arguing for the rejection or discontinuation of an FAC, rather than recognizing that the applicant utility bears the burden of arguing for any extension of an existing FAC in any general rate case. Moreover, the Report and Order states a new standard of review that is not found in the law, a standard of review that is patently unreasonable and would be quite nearly “impossible” for consumer advocates to meet.

Furthermore, the Report and Order approves a perpetuation of the unreasonable 95%/5% risk-sharing incentive provision in the current GMO FAC mechanism, whereby consumers continue to bear 95% of the risk of fuel volatility that the utility manages—risk for which consumers have no control whatsoever.

Burden of Proof

The Report and Order would decide the preliminary FAC issue with these words:

AARP and CCoMO argue for an end to GMO’s FAC, and all FACs, on policy grounds. But the General Assembly has determined that the Commission shall have discretion to order an FAC. AARP and CCoMO have not shown that an FAC for GMO makes safe and adequate service at just and reasonable rates impossible, so the Commission will not grant AARP and GMO’s request.

Report and Order, p. 60. . [emphasis added].

Missouri’s FAC Law, Section 386.266 RSMo., clearly describes an electric utility’s ability to charges consumers through a FAC mechanism as a privilege, not a right, and as a privilege for which an electric utility must apply for continuance, whenever it files a rate case. The Commission does have the authority and discretion to “approve, modify, or reject” an application for a FAC, upon the utility successfully meeting its burden to showing that such a mechanism is just and reasonable.

Subsection 386.266 (4) RSMo. After a FAC has been initially approved, then such mechanism stays in place until the electric utility's next general rate case or complaint proceeding, at which time the Commission must consider "modification, extension, or discontinuance of the mechanism". Subsection 386.266 (5) RSMo. The law contemplates that the FAC will be reviewed in each subsequent general rate case, even requiring that a utility must file a general rate case to determine the reasonableness of the FAC at least every four years, if it has been granted the privilege of a FAC mechanism. Subsection 386.266 (3) RSMo.

In a general "all relevant factors" rate case such as this one, the applicant public utility files proposed tariffs, arguing for an increase in rates, and as the applicant bears the burden of proof for each element of its case and as to approval of all of its tariffs and charges. Section 393.140(11) RSMo. It is unlawful and unreasonable for the Report and Order to place a burden of prove rejection of GMO's application for an extension of its FAC upon the parties opposing that continuance (in this case, AARP and the Consumers Council of Missouri).

Moreover, regardless of which party bears the burden of proof in a general rate case regarding the future status of an electric utility's FAC, the standard itself that must be applied is whether the proposed FAC is "just and reasonable"² and otherwise compliant with the additional requirements of the FAC Law regarding reasonable design of the mechanism.³ Counsel is unaware of any Missouri statute or case law that has elucidates a burden requiring proof that just and reasonable rates would be "impossible" without a particular proposed tariff or utility charge. The Missouri Legislature did not

² Section 393.130.1 RSMo.

³ Section 386.266 (1), (3) RSMo.

intend for a previously-approved FAC to become so firmly ensconced that it challengers must prove an *impossibility* to ever have it discontinued. Such a burden would be so extremely high as to be patently unfair and unreasonable.

Incentive “Sharing” Mechanism

In addition, the Report and Order’s summary decision to continue the currently lop-sided 95%/5% “sharing” incentive provision⁴ contained within GMO’s FAC tariff is unreasonable. It is clearly unreasonable and unfair to require consumers to bear any more than 50% of the risk of volatility in fuel and purchased costs going forward. The Commission’s Report and Order does not contain adequate findings of fact on this critical and essential sub-issue, failing to even address the testimony of GMO witness Tim Rush, who acknowledged at hearing that consumer have *no control* over these costs:

Q: And do you believe that the customers of GMO have any control over fuel and purchased power practices?

A [Rush]. **I think I would agree with you that they do not.**

Q. And does GMO have at least some control over fuel and purchased power prices?

A [Rush]. **We have a tremendous amount of control over fuel and purchased power prices.**⁵

FAC prudence review cases do not normally involve the intervention of as many parties nor provoke the same level of scrutiny over expenses as occurs in general rate cases. The enormous administrative difficulty that the Commission Staff faces in

⁴ Report and Order, p. 62.

⁵ Tr. 798.

investigating fuel procurement practices through a FAC prudence filing renders it a poor substitute to the inherent incentive that is at work to encourage cost efficiency when a utility has a significant amount at risk (a 100% incentive for utilities without any FAC). Staff witness Barnes makes a compelling case for the fact that the current 95%/5% sharing mechanism is not providing enough incentive (“skin in the game”) to ensure that the utility is engaging in the most cost efficient fuel and purchased power practices, proposing a modest change to an incentive sharing plan of 85%/15%.⁶ Mr. Barnes testified in this case that GMO’s reluctance to rebase the base energy costs in its previous two rate cases demonstrates GMO’s willingness to use its FAC to its advantage and to the disadvantage of its customers.⁷

The Commission’s Report and Order rejected even Staff’s modest 15% proposal to realign FAC incentives, implying that it would nearly take a finding of imprudence to convince the Commission to ever modify or discontinue a previously approved FAC. However, the actual standard is whether the proposed extension of the current FAC is “just and reasonable” and whether any incentive provisions are properly designed to “improve the efficiency and cost-effectiveness of its fuel and purchased-power procurement activities”.⁸ The standard is not whether any imprudence has been discovered. Even when imprudence occurs, it is extremely hard to discover and prove. Even if GMO has been operating its fuel and purchased power practices in a prudent manner, that does not mean that the “efficiency and cost-effectiveness” of those activities could not be improved upon with greater and more reasonably balanced incentives.


⁶ Ex. 259, p. 270.

⁷ *Id.*

⁸ Section 386.266 (1), (3) RSMo.

WHEREFORE, based upon the foregoing arguments, the Commission is urged to rehear and reconsider its FAC decision in this case, and accordingly reject GMO's request for an extension of its FAC, or in the alternative, to modify the current GMO FAC incentive provision to reflect a more balanced 50%/50% sharing.

Respectfully submitted,

A handwritten signature in blue ink that reads "John B. Coffman". The signature is written in a cursive style and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties on the official service list for these cases on this 18th day of January 2013.