



5. On May 20, 2015, the Commission issued its *Order and Notice*, directing the Staff to file a report of its review of the KCP&L's RES Report on or before June 5, 2015.

### Waiver Request

6. 4 CSR 240-20.100(10) states "Upon written application, and after notice and an opportunity for hearing, the commission may waive or grant a variance from a provision of this rule for good cause shown."

7. Although without a precise definition, good cause "generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law."<sup>1</sup> 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."<sup>2</sup>

8. To constitute good cause, the reason or excuse given "must be real not imaginary, substantial not trifling, and reasonable not whimsical."<sup>3</sup> And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.<sup>4</sup>

9. In 2014, KCP&L requested and the Commission granted an *Order Granting Waiver* on a similar showing by KCP&L for its 2013 RES Compliance Report.<sup>5</sup>

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<sup>1</sup> *Black's Law Dictionary* 692 (6<sup>th</sup> ed. 1990).

<sup>2</sup> *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective "ordinary person" standard. See, e.g., *Cent. 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.")

<sup>3</sup> *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).

<sup>4</sup> See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).

10. Based on its review of the information provided by KCP&L and other sources, Staff recommends the Commission grant KCP&L a limited waiver from the requirements of Rule 4 CSR 240-20.100(7)(A)1.I.(V) to substitute invoices or another reasonable substitute when meter readings are not available for energy purchases from Spearville 3 and Cimarron. Staff recommends the Commission grant KCP&L a limited waiver from the requirements of Rule 4 CSR 240-20.100(7)(A)1.I.(V) for RECs purchased from aggregators that are lawfully registered in another renewable energy registry.

#### Staff Report

11. Rule 4 CSR 240-20.100(7)(A)1.A. through N. specify what information the RES Compliance Report shall provide.

12. Rule 4 CSR 240-20-100(7)(D) provides that:

The staff of the commission shall examine each electric utility's annual RES compliance report and RES compliance plan and file a report of its review with the commission within forty-five (45) days of the filing of the annual RES compliance report and RES compliance plan with the commission. The staff's report shall identify any deficiencies in the electric utility's compliance with the RES.

13. In its *Memorandum*, attached hereto and labeled as Attachment A, Staff reports on its review of the KCP&L Annual RES Report. Based on its review, Staff has identified multiple deficiencies associated with KCP&L's failure to request certification of the S-RECs produced by its customer-generators or track S-RECs in a Commission-approved tracking system, as required by Rule 240-20.100(3)(A).

14. Rule 4 CSR 240-20.100(7)(A)1.E. requires that an Annual RES Compliance Report account for "[t]he number of RECs acquired, sold, transferred, o

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<sup>5</sup> File Nos. EO-2014-0289.

retired by the utility during the calendar year.” KCP&L has failed to account for S-RECs acquired from customer-generators through its rebate program as identified in its tariff, and therefore has failed to comply with this requirement.

15. Rule 4 CSR 240-20.100(7)(A)1.F. requires that an Annual RES Compliance Report disclose “[t]he source of all RECs acquired during the calendar year.” KCP&L has failed to identify the source for S-RECs purchased from customer-generators through its rebate program as identified in its tariff, and therefore has failed to comply with this requirement.

16. Rule 4 CSR 240-20.100(7)(A)1.G. requires that an Annual RES Compliance Report disclose “[t]he identification, by source and serial number, of any RECs that have been carried forward to a future calendar year.” KCP&L has failed to identify the source and serial number for S-RECs purchased from customer-generators through its rebate program as identified in its tariff that it is carrying forward to a future calendar year, and therefore has failed to comply with this requirement.

17. Staff raised similar concerns with KCP&L in last year’s RES Compliance Report, and has observed progress on KCP&L’s part to comply with these requirements.

18. KCP&L’s failure to track S-RECs acquired through their solar rebate program has resulted in the supererogatory purchase of S-RECs beyond the standards required by Rule 4 CSR 240-20.100.

19. Because KCP&L's 2014 Report is incomplete, Staff is unable to make the determination that the 2014 Report is in compliance with the requirements of the Commission's rule for the reasons discussed in paragraphs 13 through 16 above.

20. Once KCP&L cures its filing deficiencies by supplying to the Staff the information that it omitted as required by 4 CSR 240-20.100(7)(A)1.E, F, and G, the Staff will review that information together with the information previously submitted by the Company and file an updated report with the Commission.

21. The Staff is unaware of any other case currently pending before the Commission that a decision in this file will directly affect, or be affected by.

**WHEREFORE**, the Staff submits this *Staff Report* for the Commission's consideration, and moves that the Commission order KCP&L to file with the Commission a complete report that includes the information required by 4 CSR 240-20.100(7)(A)1.E, F, and G no later than August 31, 2015.

Respectfully submitted,

**/s/ Hampton Williams**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed with first-class postage, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 5th day of June, 2015.

**/s/ Hampton Williams**