

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 3rd day of January, 2013.

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

In the Matter of the Application of KCP&L Greater)
Missouri Operations Company for Authority to)
Implement Rate Adjustments Required by 4 CSR) **File No. ER-2013-0341**
240-2.090(4) and the Company's Approved Fuel)
Fuel Adjustment Clause)

ORDER GRANTING WAIVER

Issue Date: January 3, 2013

Effective Date: January 4, 2013

On December 21, 2012, KCP&L Greater Missouri Operations Company ("GMO") filed an Application for Waiver or Variance of 4 CSR 240-20.100(6)(A)16, for landfill gas costs for its St. Joseph Landfill Gas Facility. That regulation provides that RES compliance costs may only be recovered through a RESRAM or as part of a general rate proceeding. Such costs may not be recovered through a fuel adjustment clause.

GMO further asks for expedited treatment of its request. GMO asks that the Commission rule upon its request no later than January 4, 2013, so that it can make any necessary filings in its rate case, File No. ER-2012-0175.

In recent days, a question has arisen as to whether some or all of the cost of landfill gas purchased from the owner of the landfill and used to operate the landfill gas

facility is a RES compliance cost. The parties to this case assumed that the cost of such gas would be recovered through the fuel adjustment clause. The treatment of these landfill gas costs would have a very small impact on this case, but recalculating many of the agreed upon particulars of the fuel adjustment clause at this late date would be difficult.

Because of those difficulties, GMO asks the Commission to grant it a waiver from the rule provision to allow it to continue to flow the cost of the landfill gas through its fuel adjustment clause. GMO agrees that in the future it will work with Staff and other interested parties to resolve the issues surrounding the landfill gas. The application represents that Staff supports the company's request for waiver of the rule provision. It also represents that GMO has contacted all other parties to this case and that none of them object to the application.

On December 24, the Commission issued an order establishing December 26 as the deadline for any interested party to respond to the application. Staff responded on December 26, indicating its support for the requested waiver for purposes of this case only. No other response has been filed.

Commission Rule 4 CSR 240-20.100(10) allows the Commission to waive a rule in Chapter 20 for good cause shown. Although the term "good cause" is frequently used in the law,¹ the rule does not define it. Therefore, it is appropriate to resort to the dictionary to determine its ordinary meaning.²

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

² 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 (same).

Good cause “generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.”³ 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.”⁴

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.”⁵ And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁶

After reviewing GMO’s application and Staff’s response, the Commission finds good cause to waive the rule, and will waive application of the rule provision as requested.

THE COMMISSION ORDERS THAT:

1. The Motion for Expedited Treatment is granted.
2. Commission Rule 4 CSR 240-20.100(6)(A)(16) is waived for purposes of these cases.

³ *Black’s Law Dictionary* 692 (6th ed. 1990).

⁴ *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.”)

⁵ *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).

⁶ 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).

3. This order shall become effective on January 4, 2013.

BY THE COMMISSION

A handwritten signature in cursive script that reads "Shelley Brueggemann".

Shelley Brueggemann
Acting Secretary

(S E A L)

Gunn, Chm., Jarrett, Kenney,
and Stoll, CC., concur.

Pridgin, Senior Regulatory Law Judge