

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 29th day of September, 2015.

In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service)
)
)

File No. ER-2014-0370, et al.

ORDER DENYING MECG OBJECTIONS AND REQUEST FOR HEARING

Issue Date: September 29, 2015

Effective Date: September 29, 2015

On September 2, 2015, the Commission issued a report and order that rejected Kansas City Power & Light Company's ("KCPL") tariffs to increase the company's annual revenues for its provision of electric service. However, the Commission authorized KCPL to file new tariff sheets sufficient to recover revenues as determined in that report and order. KCPL filed its compliance tariff sheets on September 8, 2015, to become effective on October 8, 2015. KCPL filed substitute tariff sheets on September 11, 2015.

The report and order directed the Commission's Staff to file a recommendation regarding KCPL's compliance tariff sheets by September 14, 2015 and directed any other party wishing to file a recommendation regarding the compliance tariff sheets to do so no later than September 14, 2015. The Commission's Staff filed its timely recommendation, which concluded the compliance tariff sheets did not comply with the Commission's report and order concerning two provisions of the fuel adjustment clause ("FAC") and advised the Commission to reject or suspend those tariff sheets. The Office of the Public Counsel

concluded with Staff's recommendation. No other party filed a response or objection to the compliance tariff sheets.

On September 8, 2015, KCPL filed a motion for clarification or reconsideration regarding those two provisions in its FAC tariff and a motion for expedited treatment requesting that the compliance tariff sheets become effective on or before September 29, 2015. After negotiations among the parties, Staff and KCPL filed a Joint Motion for Approval of Compliance Tariff Sheets, verified with affidavits from three Staff members, which supported compromise language concerning the FAC tariff provisions that had been in dispute. As a result of that agreement, KCPL withdrew the disputed FAC tariff sheets and submitted new FAC tariff sheets containing the agreed-upon language. The Commission issued an order on September 16, 2015 granting the KCPL motions and approving the substituted and revised compliance tariff sheets to become effective on September 29, 2015.

Despite having not provided any evidence at the hearing or briefing on the issues relating to the disputed FAC tariff provisions and not filing a timely objection to the compliance tariff sheets, on September 15, 2015, the Midwest Energy Consumers Group ("MECG") filed an Objection to Tariffs, Objection to Affidavits and Request for Hearing. MECG argues that 1) there was insufficient evidence under Section 536.140, RSMo, to support the Commission order approving compliance tariffs; 2) since they were objected to by MECG, the Staff affidavits cannot constitute competent and substantial evidence under Section 536.070(12), RSMo, so the affidavits cannot support approval of the compliance tariffs in a contested case; 3) the Commission must delay approval of any compliance tariffs until October 1 because MECG alleges that a fuel adjustment clause must become

effective on the first day of a month; and 4) MECG was not given sufficient notice of the Commission's actions.

The arguments presented by MECG are not correct at this stage of the case. A proceeding is a contested case only when the agency is required by law to hold a hearing.¹ There is no protected property interest at stake in a particular utility rate.² The issue of the approval of the compliance tariffs is not a contested case because the original KCPL tariff sheets that were suspended have already been rejected by the Commission, and the compliance tariff sheets were never suspended.³ Approval of the compliance tariffs is not a contested case, so the legal requirements of a contested case in Sections 536.140 and 536.070(12) are not applicable. The Commission may in its discretion approve those tariffs without conducting a hearing.⁴ In addition to its affidavits, Staff filed accounting schedules without objection based on the Report and Order which demonstrate the amount of the annual revenue requirement, the percentage increase in revenue requirement, and the calculation of the rate case expense to be recovered and support the compliance tariffs. The Commission has the authority to approve the compliance tariffs without granting MECG's request for a hearing.

In addition, MECG is incorrect that a fuel adjustment clause must be effective on the first day of a month. Commission Rule 4 CSR 240-20.090(1)(I) clearly contemplates

¹ Section 536.010(4), RSMo; *State ex rel. Coffman v. Pub. Serv. Comm'n of State*, 121 S.W.3d 534, 539 (Mo. Ct. App. 2003).

² *State ex. rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 31 (Mo. banc 1975).

³ Sections 393.150.1 and 393.140(11), RSMo; *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n*, 535 S.W.2d 561, 566 (Mo. App. 1976).

⁴ *Id.*

situations where an FAC does not begin on the first day of a month.⁵ Therefore, it was lawful for the Commission to make KCPL's FAC tariff sheets effective on September 29.

MECG received adequate notice of the Commission's approval of the compliance tariffs because it had ample time to file an application for rehearing or reconsideration before that order became effective. The Report and Order findings relating to approval of a rate increase and fuel adjustment clause establish that good cause exists to approve the compliance tariffs on less than thirty days' notice.⁶ The Commission concludes that for the reasons stated above, the MECG motion should be denied.

THE COMMISSION ORDERS THAT:

1. The Midwest Energy Consumers Group's Objection to Tariffs, Objection to Affidavits and Request for Hearing, is denied.
2. This order shall become effective on September 29, 2015.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
Rupp, and Coleman, CC., concur.

Bushmann, Senior Regulatory Law Judge

⁵ "True-up year means the twelve (12)- month period beginning on the first day of the first calendar month following the effective date of the commission order approving a RAM unless the effective date is on the first day of the calendar month. If the effective date of the commission order approving a rate mechanism is on the first day of a calendar month, then the true-up year begins on the effective date of the commission order. The first annual true-up period shall end on the last day of the twelfth calendar month following the effective date of the commission order establishing the RAM. Subsequent true-up years shall be the succeeding twelve (12)- month periods. If a general rate proceeding is concluded prior to the conclusion of a true-up year, the true-up year may be less than twelve (12) months." (emphasis added)

⁶ Section 393.140(11), RSMo.