

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

In the Matter of KCP&L Greater Missouri)
Operations Company’s FAC Tariff) Case No. ER-2014-0373
Revision.)

PUBLIC COUNSEL’S REPLY
TO STAFF’S RESPONSE

COMES NOW the Missouri Office of the Public Counsel (“Public Counsel”) and for its Reply to the Staff’s Response states:

1. The statutory Renewable Energy Standard (“RES”) defines the term “renewable energy resources” to include methane gas recovered from landfills, and further requires electric utilities to derive a certain percentage of their energy portfolio from renewable energy resources. §§ 393.1025(5), 393.1030.1, RSMo.

2. Section 393.1030.2(4) requires the creation of a mechanism to permit utilities to recover “outside the context of a regular rate case...prudently incurred costs...by an electrical corporation in meeting the requirements...” of the RES.

3. Missouri law has a separate mechanism permitting electric utilities to recover “an interim energy charge” through “periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in...prudently incurred fuel and purchased-power costs....” § 386.266.1, RSMo.

4. The Missouri General Assembly passed the fuel adjustment charge statute – § 386.266 – in 2005.

5. In 2008, the voters of Missouri passed the RES – § 393.1020, et seq. – into law, which the General Assembly subsequently amended.

6. Thereafter, the Commission enacted rules establishing Renewable Energy Standard Rate Adjustment Mechanisms (“RESRAM”), consistent with statute. 4 CSR 240-20.100, *et seq.*

7. In this matter, a dispute exists with respect to whether it is ever permissible under current law to flow the costs associated with RES compliance through an interim rate mechanism other than the one specifically provided by the Renewable Energy Standard.

8. Public Counsel asserts that, to the extent this matter exposes a conflict between § 386.266 and § 393.1020, the Commission should and must resolve the issue in favor of applicability of the RES, it being the later-adopted statute and being the statute which treats renewable resource fuel costs specifically.

9. Public Counsel further asserts that permitting any RES compliance costs to flow through any interim rate mechanism other than that provided for by the RES is inconsistent with statute and exceeds the Commission’s authority.

10. Here, Staff recommends that the Commission continue to allow KCP&L Greater Missouri Operations (“GMO”) to flow through its Fuel Adjustment Clause (“FAC”) the landfill gas costs for the St. Joseph Landfill Gas Facility until the Company’s next general rate case.¹

11. Staff asserts this position despite recognizing that the proper accounting treatment of GMO’s St. Joseph Landfill gas costs is an issue that needs to be resolved.²

12. Consistent with the aforementioned RES, Commission rules require the inclusion of all compliance costs to be recovered through a RESRAM, or general rate

¹ *Staff’s Response to Public Counsel’s Reply to the Staff’s Recommendation*, p. 5.

proceeding. 4 CSR 240-20.100(6)(A)(16) (stating that RES compliance costs shall only be recovered through a RESRAM and not through a fuel adjustment clause).

13. It is true the Commission may grant variances from its own rules for good cause. 4 CSR 240-20.100(10). The Commission cannot, however, grant a variance or waiver from a statute.

14. A variance that allows certain RES compliance costs, such those associated with the St. Joseph Landfill gas, to be recovered in the FAC is incompatible with the law.

15. Now that GMO has filed this FAC case and has sought to establish a RESRAM, the time is right to require GMO to account for the landfill gas costs and benefits per statute and the Commission's rules.

16. In its *Response to Public Counsel's Reply to the Staff's Recommendation*, Staff argues that the FAC cannot be changed, even to remove *ultra vires*, improperly-included RES compliance costs.³

17. Staff takes this position asserting § 386.266.4, RSMo., limits the Commission's power to modify an approved FAC until a general rate proceeding.⁴

18. However, a cursory review of the plain language of the statute indicates that it does not contemplate, and so does not bear on, the situation presented here, which is how to correct treatment of a cost incorrectly included in the FAC which should have been included in a different interim rate mechanism.⁵

² Staff's *Recommendation to Approve RESRAM with Variance, Reject Certain Tariff Sheets and Order Compliance Tariff Sheets and Customer Notice*, Attachment 1, p. 5.

³ Staff's *Response to Public Counsel's Reply to the Staff's Recommendation*, pp. 3 - 5.

⁴ Staff's *Response to Public Counsel's Reply to the Staff's Recommendation*, p. 3.

⁵ The Renewable Energy Standard statute had been enacted at the time of GMO's application to include in the FAC St. Joseph landfill gas. Presently, any rationale that might have existed, however weak, for inclusion of the landfill gas costs in the incorrect interim rate mechanism has long since evaporated.

19. The St. Joseph landfill gas RES compliance costs included in the FAC can and should be remedied at the earliest opportunity, which is now, by transferring that cost treatment over to the RESRAM for interim rate recovery.

20. Accordingly, OPC respectfully requests the Commission: deny GMO continued variance, instruct the company to remove landfill gas costs from the FAC, and account for them in its RESRAM. GMO presently seeks authority to establish a RESRAM in Case No. EO-2014-0151, making this the earliest and best opportunity to account for and recover RES compliance costs in interim rates.

21. Alternatively, OPC asks the Commission to exercise its authority under Section 386.266.4(4), RSMo., to order a refund of any imprudently-incurred costs.

22. Now that GMO has filed for a RESRAM, it is imprudent to continue recovering landfill gas costs in violation of the law through the FAC.

23. Because GMO now seeks to establish a RESRAM, to be consistent with the law, RES compliance costs and benefits are prudently recovered only through that mechanism.

24. In conclusion, Public Counsel respectfully requests that the Commission disallow the St. Joseph Landfill gas costs from the costs that GMO seeks to recover through its FAC. The appropriate mechanism for recovering such landfill gas cost is through a RESRAM, or in the company's next rate case.

WHEREFORE, the Office of the Public Counsel submits this reply to the Staff's Response.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 18th day of August 2014:

/s/ Tim Opitz
