

FORM 1. CIVIL CASE INFORMATION FORM SUPPLEMENT

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

No. WD _____

[Please type or neatly print the information requested. This form must be filed with the Notice of Appeal (form 8-A) with the Circuit Clerk.]

Midwest Energy Consumers' Group
Plaintiff

David Woodsmall
Woodsmall Law Office
807 Winston Court
Jefferson City, MO 65101

vs.

Missouri Public Service Commission
Defendant

Shelley Brueggemann
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Date Notice filed in Missouri Public Service Commission: February 28, 2012

The Record on Appeal will consist of a:

_____ Legal File Only or Transcript and Legal File. (This will include records filed pursuant to Rules 81.13 and 81.16)

FACTUAL BACKGROUND: (Events Giving Rise to Cause of Action)

On January 23, 2013, the Missouri Public Service Commission issued its Order Granting Expedited Treatment, Overruling Objection and Approving Compliance Tariffs. By providing expedited treatment and rushing to approve the KCPL compliance tariffs, the Commission violated several statutory provisions contained in Chapters 393 and 536.

ISSUE(S):

(Anticipated to be Presented by the Appeal; Appellant is Not Bound by this Designation)

1. The Commission's January 23, 2013 Order is unlawful in that it unreasonably expedites the approval of compliance tariffs. Section 393.140(11) provides that all tariffs shall provide thirty days' notice and publication. While the statute provides that the Commission may make allow such tariffs to become effective prior to thirty days for "good cause shown," the Supreme Court has held that the Commission must still recognize and provide sufficient time for parties' statutory rights. In this case, KCPL completed its filing of compliance tariffs on January 18, 2013 and the Commission approved those tariffs on January 23, 2013. Therefore, parties had 2-3 business days to review the KCPL compliance tariffs. As such, the Commission's decision to expedite the approval of the KCPL compliance tariffs is unlawful, unreasonable and an abuse of discretion.

2. The Supreme Court has held that the Commission must allow for adequate time, prior to its orders becoming effective, for parties to prepare and file an application for rehearing. In this case, the Commission allowed an inadequate amount of time for the parties to review the Commission's January 23, 2013 Order, consult with clients, prepare and file an application for rehearing. As such, as the Supreme Court has previously held, the Commission's order is unlawful and an abuse of discretion.
3. The Commission's January 23, 2013 Order finding that the KCPL tariffs comply with its previous January 9 Report and Order fails to make adequate findings of fact in order for a reviewing court to determine that the compliance tariffs are actually in compliance with that Report and Order.
4. The Commission's January 23, 2013 Order finding that the KCPL tariffs comply with its previous January 9 Report and Order is not based upon competent and substantial evidence.
5. The Commission's January 23, 2013 Order finding that the KCPL tariffs comply with its previous January 9 Report and Order relies solely on a Staff affidavit. Section 536.070 provides certain due process rights that must be recognized in all contested cases. In this case, MEGC objected to Staff's affidavit under Section 536.070(12) and requested a hearing for the purpose of cross-examining the affiant. The Commission in issuing its January 23, 2013 Order overruled MEGC's objection and refused to recognize the statutory due process rights provided un Section 536.070(12).
6. The Commission's January 23, 2013 Order is unlawful in that it denied MEGC's request for a hearing at which MEGC sought to demonstrate that KCPL's tariffs did not comply with the Commission's January 9 Report and Order.
7. The Commission's January 23, 2013 Order is unlawful in that it failed to comply with Section 393.1075.7. Specifically, the Commission approved KCPL's compliance tariffs even though those tariffs failed to recognize that certain opt-out customers should not be charged for KCPL's energy efficiency costs.

[Two (2) typewritten pages maximum]

(Added June 25, 1987, effective Dec. 1, 1987. Amended effective June 23, 1988)

Party / Position / Attorney of Record

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