

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

STATE OF MISSOURI *ex rel.* KCP&L GREATER MISSOURI OPERATIONS COMPANY,  
AG PROCESSING, INC., and OFFICE OF THE PUBLIC COUNSEL,

Appellants,

v.

MISSOURI PUBLIC SERVICE COMMISSION and DOGWOOD ENERGY, LLC,

Respondents.

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**DOCKET NUMBER WD75038**  
(Consolidated with WD75057 and WD75058)

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** May 14, 2013

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**APPEAL FROM**

The Circuit Court of Cole County, Missouri  
The Honorable Daniel R. Green, Judge

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**JUDGES**

Division One: Pfeiffer, P.J., and Howard, J., CONCURRING.

Ahuja, J., CONCURRING IN PART AND DISSENTING IN PART IN  
SEPARATE OPINION.

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**ATTORNEYS**

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## MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI ex rel. KCP&L )  
GREATER MISSOURI OPERATIONS )  
COMPANY, AG PROCESSING, INC., and )  
OFFICE OF THE PUBLIC COUNSEL, )  
 )  
Appellants, )  
v. ) **OPINION FILED:**  
 ) **May 14, 2013**  
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MISSOURI PUBLIC SERVICE )  
COMMISSION and DOGWOOD )  
ENERGY, LLC, )  
 )  
Respondents. )

WD75038 (Consolidated with WD75057 and WD75058)

Cole County

**Before Division I Judges:** Mark D. Pfeiffer, Presiding Judge, and Victor C. Howard and Alok Ahuja, Judges

KCP&L Greater Missouri Operations Company (“KCP&L-GMO”) initiated this case by filing with the Public Service Commission (“PSC”) proposed tariff sheets designed to implement a general rate increase for electrical service in KCP&L-GMO’s Missouri service area. KCP&L-GMO’s proposed tariffs were designed to recover an additional \$75.8 million per year in rate revenues from its customers in the MPS rate district, and an additional \$22.1 million per year in rate revenues from its customers in the L&P rate district. The PSC rejected KCP&L-GMO’s request of a \$97.9 million rate increase in favor of a \$59.4 million rate increase, allocating \$30,142,949 to the MPS rate district and \$29,293,182 to the L&P rate district in a 2011 Report and Order.

Petitions for review were filed in the Circuit Court of Cole County by KCP&L-GMO, AG Processing, Inc. (“AGP”), and the Office of the Public Counsel (“OPC”). The circuit court issued its Judgment, finding that the PSC’s Report and Order was both lawful and reasonable, and affirming the Report and Order in all respects. The parties to the proceedings before the circuit court appealed.

In 2012, KCP&L-GMO again filed tariffs seeking revenue increases for its MPS and L&P rate districts. Because the tariffs that are the subject of this appeal have been superseded by tariffs approved by the PSC in a 2013 Report and Order, certain of the issues in this appeal are moot, but we have elected to exercise our discretion under the exception to the mootness doctrine to examine two issues in this case: PSC's disallowance of transmission costs from recovery in rates, and the difference between the PSC's rates and allocations and those requested by the utility.

**AFFIRMED IN PART; DENIED AS MOOT IN PART.**

**Majority Opinion holds:**

1. KCP&L-GMO challenged the PSC's disallowance of transmission costs associated with the delivery of power from Crossroads, an electric generation peaking plan in Mississippi, from KCP&L-GMO's rate base. The PSC found that it would be unjust and unreasonable to require KCP&L-GMO's customers in Missouri to pay for the added transmission costs of electricity generated at Crossroads, particularly since KCP&L-GMO does not incur any transmission costs for its other production facilities located in its MPS rate district that are used to serve customers in that district.

Because the PSC made the decision on the recoverability of transmission costs based on a prudence analysis that considered both the prudence of including the transmission costs and the resulting harm to the ratepayers if such costs were included, the PSC's decision denying recovery was lawful. Furthermore, the PSC's decision to deny KCP&L-GMO recovery of transmission costs was reasonable.

2. AGP challenged the PSC's adoption of a different method of allocating the supply/costs between the MPS and L&P rate districts than that proposed by KCP&L-GMO. We conclude that the PSC had the discretion to allocate costs between KCP&L-GMO's MPS and L&P rate districts in its rate design, and its cost allocation was reasonable and supported by the record.

AGP further asserted that the PSC erred in ordering the phase-in of a rate increase for the L&P service area in excess of the amount the utility sought in its filed tariffs. We find no support for AGP's argument that the rate set by the PSC is limited to the amount requested by the utility. The PSC's decision to allow a phased-in increase is lawful under section 393.150. Furthermore, the PSC's decision was reasonable to mitigate rate shock to customers in the L&P rate district.

**Majority Opinion by: Mark D. Pfeiffer, Presiding Judge**

May 14, 2013

**Concurring/Dissenting Opinion holds:**

Judge Ahuja concurs in part and dissents in part. Although Judge Ahuja does not take issue with the majority's substantive resolution of any of the merits issues, he believes that none of those issues should be addressed. As the majority recognizes, the appeal is moot. The issues

presented are fact-specific, and a decision of those issues will have little or no precedential effect in future cases. To the extent similar issues arise in the future, those issues would not evade appellate review in future proceedings, particularly in light of the legislature's enactment of § 386.520.2, RSMo Cum. Supp. 2012.

**Concurring/Dissenting Opinion by: Alok Ahuja, Judge**

May 14, 2013

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.