

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**IN THE MATTER OF KANSAS CITY  
POWER & LIGHT COMPANY'S  
REQUEST FOR AUTHORITY TO  
IMPLEMENT A GENERAL RATE  
INCREASE FOR ELECTRIC SERVICE**

**APPELLANT,**

**and**

**MIDWEST ENERGY CONSUMERS' GROUP,**

**APPELLANT,**

**v.**

**MISSOURI PUBLIC SERVICE COMMISSION**

**RESPONDENT.**

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DOCKET NUMBER WD79125 Consolidated with WD79143 and WD79189  
DATE: September 6, 2016

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Appeal From:  
Public Service Commission

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Appellate Judges:

Division Two: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

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Attorneys:  
David L. Woodsmall, Jefferson City, MO, for appellant MECG.  
Karl Zobrist, Kansas City, MO, for appellant KCP&L.  
Jennifer Heintz, Jefferson City, MO, for respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

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**v.**

**MISSOURI PUBLIC SERVICE COMMISSION,**

**RESPONDENT.**

No. WD79125 Consolidated with WD79143 and WD79189

Public Service Commission

Before Division Two: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

**Appeal of Kansas City Power & Light Company**

This case consolidates two appeals from a rate case involving Kansas City Power & Light Company's ("KCPL") request for a rate increase from the Public Service Commission ("PSC"). KCPL appeals from the Report and Order ("Report and Order") of the PSC in its most recent general rate case, pursuant to Section 386.510. KCPL raises five points on appeal, challenging the return on equity granted by the PSC, the methods used to calculate that rate of return, the rejection of a "tracker" accounting mechanism, the PSC's refusal to include certain transmission costs in a fuel adjustment clause, and the denial of certain rate case expenses.

Division Two holds:

**WE AFFIRM ON KCPL'S APPEAL AND DISMISS MECG'S APPEAL AS MOOT**

- (1) The PSC did not err in choosing a return on equity of 9.5%, as it was supported by substantial and competent evidence. The chosen return on equity was supported by the testimony of three experts who testified that a return on equity of 9.5% would maintain KCPL's financial integrity and ability to attract capital.
- (2) The PSC did not err in rejecting KCPL's request that trending principles and forecasts be considered in setting future rates. The PSC had the authority to reject KCPL's request to add projected costs to KCPL's revenue requirements because the request was not made until surrebutal testimony, violating the PSC's rule that requires that all evidence in the party's case-in-chief come in direct testimony. Further, contrary to KCPL's assertion that

the PSC solely relied on historical trends to calculate future rates, the PSC did consider future costs and trends in setting KCPL's rates.

- (3) The PSC did not err in denying KCPL's request to use a "tracking mechanism" to defer certain items of expense, as the PSC's determination that only extraordinary items of expense merit deferral is a discretionary judgment within the PSC's expertise and would affect the PSC's chosen method of determining rates.
- (4) The PSC's decision to only allow "true" purchased power to be included in the fuel adjustment clause does not run afoul of the Filed Rate Doctrine or the Supremacy Clause, as it does not foreclose KCPL's ability to recover those costs through the setting of its general rates. Nothing in the Filed Rate Doctrine or the Supremacy Clause requires that costs established by the Federal Energy Regulatory Commission be recoverable through a fuel adjustment clause.
- (5) The PSC did not err in denying KCPL the recovery of all its rate case expenses as its decision to allow KCPL to recover only those expenses that are just and reasonable for consumers to bear is within its power. Further, the formula crafted by the PSC did not constitute improper rule-making as it relied on the specific facts of this case in developing the formula and stated it was not announcing a rule of general applicability to all utilities.

### **Appeal of Midwest Energy Consumers' Group**

Midwest Energy Consumers' Group ("MECG") is an unincorporated association that is comprised of large consumers of energy, which was permitted to intervene in KCPL's rate case. MECG appeals from the Compliance Tariff Order, which implemented the Report and Order. MECG raises seven points of error, each challenging the September 16 Compliance Tariff Order that concluded the Final Compliance Tariff sheets filed by KCPL complied with the PSC's September 2 Report and Order. Each point of error challenges the process and procedure by which the PSC issued its Compliance Tariff Order.

### **MECG'S APPEAL IS DISMISSED AS MOOT**

- (1) Section 386.520.2 only applies to orders that involve the "establishment" of rates. We hold that rates are "established" in the Report and Order that is the culmination of the contested case. Subsequent orders approving tariffs filed to comply with the Report and Order constitute an uncontested proceeding and do not "establish" rates.
- (2) As Section 386.520.2 is inapplicable, the Filed Rate Doctrine precludes this Court from providing any effective relief. Further, we find that no exception to the mootness doctrine applies.

Opinion by Gary D. Witt, Judge

September 6, 2016

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