

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

In the Matter of the Application of Transource)
Missouri, LLC for a Certificate of Convenience)
and Necessity Authorizing it to Construct, Finance,) File No. EA-2013-0098
Own, Operate and Maintain the Iatan-Nashua and)
Sibley-Nebraska City Electric Transmission Projects)

In the Matter of the Application of Kansas City)
Power & Light Company and KCP&L Greater)
Missouri Operations Company for Approval To) File No. EO-2012-0367
Transfer Certain Transmission Property to)
Transource Missouri, LLC and for)
Other Related Determinations)

**JOINT SUGGESTIONS OF THE SIGNATORIES IN SUPPORT OF
AN ORDER BY THE COMMISSION APPROVING THE
UNANIMOUS STIPULATION AND AGREEMENT**

Transource Missouri, LLC (“Transource Missouri”),¹ Kansas City Power & Light Company (“KCP&L”), KCP&L Greater Missouri Operations Company (“GMO”)² (collectively, “Applicants”), the Staff of the Missouri Public Service Commission (“Staff”), and the Office of the Public Counsel (“OPC”) (collectively, the “Signatories”) provide these Joint Suggestions in Support of the Commission issuing an order approving the Unanimous Stipulation and Agreement (“Stipulation”).³

1. The Signatories provide these Joint Suggestions to respectfully urge the Commission to approve the Stipulation which was filed by the parties on April 12, 2013 -- over three months ago -- following extensive and complex negotiations. The underlying Applications were filed on August 31, 2012 and the Applicants expected that the Commission could approve those Applications by the third quarter of 2013, a year after they were filed. The Applicants

¹ Transource Missouri is the Applicant in File No. EA-2013-0098.

² KCP&L and GMO are the Applicants in File No. EO-2012-0367.

³ Intervenor Missouri Industrial Energy Consumers (“MIEC”) is not a signatory to the Stipulation or to its First Amendment. However, MIEC neither opposed nor timely objected to the Stipulation or the First Amendment. Because the Commission may treat the Stipulation and the First Amendment as unanimous under 4 CSR 240-2.115(2)(C), they are collectively referred to as a Unanimous Stipulation and Agreement.

have represented this expectation to various stakeholders and members of the public, including the financial community.

2. Today the Signatories are providing the Commission with a Second Joint Proposed Order Approving Unanimous Stipulation and Agreement (“Second Joint Proposed Order”) to be considered as an alternative to the Joint Proposed Order Approving Unanimous Stipulation and Agreement (“Joint Proposed Order”), filed on June 6, 2013. The Second Joint Proposed Order was prepared to respond to the oral directive of Regulatory Law Judge Daniel Jordan at the July 2, 2013 conference with the Signatories. Although the conference was scheduled to be a “brief, informal, off-the-record, procedural conference,”⁴ the Signatories and the Judge met in what turned out to be a fairly lengthy and detailed discussion regarding the apparent shortcomings of the Signatories’ Joint Proposed Order. The Second Joint Proposed Order represents the Signatories’ attempt to address these shortcomings and thereby facilitate Commission consideration of this matter.

3. Neither the Joint Proposed Order nor the Second Joint Proposed Order submitted by the Signatories are intended to be viewed literally as “take it or leave it” documents. Although both the Joint Proposed Order and the Second Joint Proposed Order contain the elements of the approval that the Stipulation requires, the Signatories are not so presumptuous to intend or believe that the Commission would necessarily approve and adopt each and every phrase in either of the Joint Proposed Orders, although the Commission could do so if it wished. The Signatories agreed that the Stipulation must be approved and adopted in its entirety by the Commission, and the Signatories ordered to comply with the Stipulation’s terms in order to be binding upon them.

⁴ Order Soliciting Conflict Dates (June 24, 2013).

4. The Signatories also presented to the Commission on June 6, 2013 a 28-page Joint Memorandum in Support of the Stipulation. This pleading included two charts that illustrated how rates would be charged and collected with and without the Stipulation. The Joint Memorandum explained in detail the views of the Signatories and provided direct responses to the series of questions submitted by the Commission. Those responses are consistent with the Second Proposed Order as well.

5. At the direction of the Judge, the Signatories have filed today a Second Joint Proposed Order. The Signatories understood that they were to submit a form of a “traditional” order where the Commission would take action consistent with its jurisdictional authority and grant conditional approval of KCP&L and GMO’s Transfer Application and Transource Missouri’s Certificate of Convenience and Necessity (“CCN”) Application, pursuant to the Stipulation.

6. The Signatories also understood, pursuant to the Judge’s July 2 instructions, that there should be presented a separate “consent order” in which the Commission would approve all the other provisions in the Stipulation agreed to by the Signatories, but would refrain from any decision on the merits. However, to avoid any confusion that two orders might create, the Signatories have included such approval provisions in a second section of the Second Joint Proposed Order. These provisions contain findings and conclusions pursuant to which the Commission would approve the Stipulation as being in the public interest. The Signatories have avoided findings and conclusions that reach the merits of these provisions.

7. For example, although the Stipulation calls for the implementation of proposed rate treatments in Section II(A), and requires the payment of certain sums in Section II(B)(6)-(7), the Second Joint Proposed Order clearly states that the Commission is not a party to the Stipulation and only approves the agreements that have been entered into *by the* Signatories. The

order proposes that the Commission find that these agreements are just, reasonable, and in the public interest.

8. The Signatories have noted orders⁵ that the Judge has issued in other proceedings which cite Section 536.060⁶ and its references to “consent order” and “consent agreement.” However, this statute discusses consent orders in the context of “[c]ontested cases and other matters involving licensees and licensing agencies described in Section 621.045,” and how they may be resolved. The statute also states that those licensing cases may be resolved “by stipulation.” As discussed below, the Signatories believe that a consent order is not mandated in the present circumstance, but they have nonetheless provided a Second Joint Proposed Order to be responsive to the Judge’s direction, and to expedite Commission consideration.

9. The subject proceedings, of course, do not involve licensing matters or the licensing agencies described in Section 621.045. Rather than a singular dispute on a licensing matter or an individual complaint, the issues in these proceedings involve the continuous exercise of the jurisdiction of the Commission over public utilities and its judgment of what is in the public interest under Section 386.250 and various provisions of Chapters 386 and 393, including Sections 386.310.1, 386.610, and 393.130 (safety and reliability), 393.140 (operations), 393.170 (CCNs), and 393.190 (transfer of property).

10. Section 536.060 does state that nothing in Sections 536.060 to 536.095 of the Missouri Administrative Procedure Act “shall be construed ... (4) to prevent stipulations or agreements among the parties (including, in a proper case, the agency).” While the Stipulation

⁵ Consent Order and Dismissal, In re Kansas City Power & Light Company’s Practices Regarding Customer Opt-Out of Demand-Side Management Programs, No. EO-2013-0359 (July 26, 2013); Consent Order and Dismissal with Prejudice, Superior Bowen Asphalt Co. v. Southern Union Co., No. GC-2011-0101 (May 9, 2012). See In re Kansas City Power & Light Company’s Request to Implement a General Rate Increase, No. ER-2012-0174, Report and Order at 9, 65 (Jan. 9, 2013).

⁶ All statutory citations are to the Missouri Revised Statutes (2000), as amended.

here by its express terms “does not constitute a contract with the Commission,”⁷ Section 536.060 clearly authorizes the Commission to approve the Stipulation, as do its own regulations.

11. Section 386.410.1 and its predecessors extending back to 1913 have authorized “rules to be adopted and prescribed by the commission.” Courts reviewing these rules and regulations have observed that cases coming before the Commission are not like Administrative Procedure Act cases.⁸ “Proceedings before the Public Service Commission are considerably different from and vastly more complicated than the type of proceedings” governed by the Administrative Procedure Act. *Id.* “The legislature has recognized these differences by creating the special and quite detailed statutes mentioned pertaining to proceedings conducted by the Commission. The authority under Section 386.410.1 for the Commission to adopt its own rules of procedures seems to be a rather uncommon grant to an administrative agency” *Id.* Thus the Commission may adopt a rule permitting as a form of discovery “data requests” when data requests are not recognized by Chapter 536 as a form of discovery. Chapter 536 supplements Chapter 386 regulating the Commission, except where in direct conflict with it. The procedures set out in Chapter 536 apply unless a contrary provision exists in Chapter 386.⁹

12. It is therefore significant that the Commission’s own rules contemplate the presentation of stipulations and agreements to the Commission for a decision. See 4 CSR 240-2.115 (Stipulations and Agreements); 4 CSR 240-2.150 (Decisions of the Commission). Missouri courts have recognized and approved the Commission’s authority to approve such stipulations and to interpret them. In Union Elec. Co. v. PSC, 136 S.W.3d 146, 148 (Mo. App.

⁷ Paragraph 35, Stipulation.

⁸ State ex rel. Southwestern Bell Tel. Co. v. PSC, 645 S.W.2d 44, 50 (Mo. App. W.D. 1982).

⁹ State ex rel. Utility Consumers Council v. PSC, 562 S.W.2d 688, 693 n. 11 (Mo. App. St. L. 1978), cert. denied, 439 U.S. 866, 99 S.Ct. 192, 58 L.Ed.2d 177 (1978).

W.D. 2004), the Court of Appeals affirmed the Commission's "interpreting and adjudicating the terms of an experimental alternative regulation plan ('EARP')" that was "created by Stipulations and Agreements signed" by the utility, Staff, OPC and other parties. The Court noted that "the Commission is not a signatory to the EARP and never relinquished its role as arbiter." Id. at 152. Observing that the provisions of the EARP adopted in the stipulation "provided a means to resolve issues in lieu of the formal complaint process," the Court found the Commission's role in the EARP "not as an abdication of the Commission's responsibility to regulate, but as embodiment of it." Id.

13. To the Signatories' knowledge, there is no discussion of "consent orders" in either Chapter 386 or Chapter 393. Even so, approval of the Stipulation here would not be inconsistent with the concept of a consent order, if that is how the Commission chooses to view these proceedings. Missouri courts have held that a judgment by consent "is based on an agreement between the parties as to the terms, amount or conditions of the judgment to be rendered." Fritzsche v. East Texas Motor Freight Lines, 405 S.W.2d 541, 544 (Mo. App. St. L. 1966). See Caldwell v. Heritage House Realty, Inc., 32 S.W.3d 773, 775-76 (Mo. App. W.D. 2000). In this context it is important to recognize: "Consent decrees do not arise from a judicial determination of the rights of the parties or the merits of the case, and some courts hold that a consent decree does not purport to represent the judgment of the court but is merely a recital of an agreement." 46 Am. Jur. 2d, § 186 Judgments at 531 (2006). It is also important to note: "A consent judgment needs no cause or consideration other than an adjustment of differences and a desire to set at rest all possibility of litigation. In exchange for the saving of cost and elimination of risk, the parties each give up something that they might have won had they proceeded with litigation." Id., § 191 at 535.

14. Although the Commission cannot enter a judgment because it is not a court, it clearly possesses the power and jurisdiction to approve stipulations and agreements in order to resolve “all or any part of a contested case.” See 4 CSR 240-2.115(1)(A)-(B).

15. The Signatories have expended substantial time and effort to reach the comprehensive and unanimous Stipulation in these proceedings, which has the support of both the affected utilities and the representatives of retail customers under the Commission’s jurisdiction. The Signatories have exerted significant additional efforts to provide the Commission with alternative versions of proposed orders to advance consideration and approval of the Stipulation. They have authored a lengthy Joint Memorandum in Support of the Stipulation stating how the Applicants have met their burden of proof to receive the conditional approvals provided in the Stipulation, and have responded to the Commission’s detailed questions regarding the Stipulation and the plans for constructing and operating the Projects. The Signatories sincerely and respectfully request that the Commission act to approve the Stipulation without undue delay.

16. In the event that the Commission or any individual Commissioner has questions or believe that the Second Joint Proposed Order has serious shortcomings, the Signatories request that the Commission convene a hearing so that the Signatories may appear and respond fully to such inquiries.

Respectfully submitted,

/s/ Karl Zobrist

Karl Zobrist, MBN 28325
Lisa A. Gilbreath, MBN 62271
Dentons US LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
(816) 460-2545
(816) 531-7545 (Fax)
karl.zobrist@dentons.com
lisa.gilbreath@dentons.com

Attorneys for Kansas City Power & Light
Company, KCP&L Greater Missouri
Operations Company, and Transource
Missouri, LLC

Roger W. Steiner, MBN 39586
Corporate Counsel
Kansas City Power & Light Company
1200 Main Street
Kansas City, MO 64105
(816) 556-2314
(816) 556-2787 (Fax)
roger.steiner@kcpl.com

Attorney for Kansas City Power & Light
Company and KCP&L Greater Missouri
Operations Company

Larry W. Brewer
Assistant General Counsel
American Electric Power Company, Inc.
400 West 15th Street, Suite 1500
Austin, TX 78701
(512) 481-3320
(512) 391-2978 (Fax)
lwbrewer@aep.com

Attorney for Transource Missouri, LLC

/s/ Steven Dottheim

Steven Dottheim, MBN 29149
Nathan Williams, MBN 35512
Missouri Public Service Commission
Jefferson City, MO 65102-0360
(573) 751-7489
(573) 751-9285 (Fax)
steve.dottheim@psc.mo.gov
nathan.williams@psc.mo.gov

Attorneys for the Staff of the
Missouri Public Service Commission

/s/ Lewis R. Mills

Lewis R. Mills, Jr., MBN 35275
Public Counsel
P.O. Box 2230
Jefferson City, MO 65102-2230
(573) 751-1304
(573) 751-5562 (Fax)
lewis.mills@ded.mo.gov

Office of the Public Counsel

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Joint Suggestions of the Signatories have been transmitted electronically to all counsel of record on July 19, 2013.

/s/ Steven Dottheim