BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light Company's Practices Regarding Customer Opt-Out of Demand-Side Management Programs and Related Issues	)))))	**EO-2013-0359**

REQUESTED COMMENTS FROM
MIDWEST ENERGY USERS' ASSOCIATION

I. FACTUAL SUMMARY.

On or about January 18, 2013 Kansas City Power & Light Company ("KCPL") and the Commission Staff ("Staff") jointly filed an Application (which was assigned this file number) seeking "to review KCPL's practices regarding customer opt-out of demand-side management programs . . . ." The Joint Application did not allege that any utility practices were violative of any statute, tariff, or Commission regulation or order.

Then, on January 23, 2013, the Commission issued an Order Directing Filing, again in this file number, requesting written argument regarding the application. Midwest Energy Users' Association ("MEUA") responds to that January 23, 2013 Order.

II. MEUA COMMENTS.

In its January 23 Order, the Commission rightly determined that the Joint Application did not seek relief that the Commission could provide. The Commission correctly noted that it cannot "issue an advisory opinion" but must deal with "real parties in interest with existing adversary positions," quoting from *Wasinger v. Labor & Industrial Relations Commission*,[1/] MEUA does not disagree with the Commission's position.

There is, however, a reason for the Commission to act so as to be certain that its rules regarding these matters are being followed.

Recently MEUA included several entities in the last KCPL rate case, ER-2012-0174, and also encompassed several additional parties in the accompanying KCP&L Greater Missouri Operations Company ("GMO") rate case, ER-2012-0175. Moreover, MEUA is the vehicle through which several additional (and different) entities are participating in the pending Empire District Electric Company rate case, ER-2012-0345. Across these three cases we have noted some differences in ratepayer treatment that suggests differing utility interpretations of relevant Commission rules. These differing interpretations may suggest the need for clarification of those rules, whether in this file number, or in another.

[1/] 316 S.W.3d 375, 384 (Mo. App., E.D. 1975).

A. "Pre-MEEIA" And "Post-MEEIA" Costs Are Both Subject To The Exemption.

The Commission's January 23, Order is unclear as to whether "pre-MEEIA" or "post-MEEIA" charges are to be addressed. We interpret the underlying Joint Application as addressing charges that arise under MEEIA. It would therefore appear that the exemptions under the MEEIA statute (§ 393.1075 RSMo) and related provisions would be relevant. There are three:

> 1. The customer has one or more accounts within the utility's service territory at least one of which presents a demand of 5,000 kW [5 mW] or more;
>
> 2. The customer operates an interstate pipeline pumping station regardless of size; or
>
> 3. The customer has accounts that present in the aggregate a load of 2,500 kW or more and
>
> a. has a comprehensive demand-side management or energy efficiency program of its own, and
>
> b. can demonstrate savings that are at least equal to those expected from utility-provided programs.

Although the underlying Joint Application appears to address "post-MEEIA" expenditures, the statutory subdivision dealing with exemptions does not appear to distinguish between them. It grants the above qualifying customers opt-out exemption, not only from MEEIA charges, but also ". . . . the costs of demand-side measures of an electric corporation offered under this section [§ 393.1075] ***or by any other authority*** . . . ." (Emphasis added). Accordingly, the costs of all demand-side

measures offered by an electric utility are subject to exemption through the opt-out process. "Pre-MEEIA" or "post-MEEIA" distinctions are irrelevant.[2/]

B. Communication To Customers Regarding Status Is Critical.

Under the Commission's rules, it appears that exemption under class 1 or class 2 is fairly simple. However, the utility is obligated to acknowledge or dispute the customer's opt-out notice by written response to the customer and the Commission Staff within 30 days of receipt. An exemption under class 3 is more complicated and requires that the Staff make a determination of the customer's qualification for the opt-out.

All classes, however, require some communication. In the past, that communication has been a problem with KCPL and GMO both. We have had members and participants make timely filings of opt-out requests, but have had spotty response from the utility insofar as acknowledgment of either the opt-out or the

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[2/] Indeed, if a timely notice of opt-out is given by a qualified customer, Commission Rules provide:

> . . . . none of the costs of approved demand-side programs of an electric utility offered pursuant to 4 CSR 240-20.093, 4 CSR 240-20.094, 4 CSR 240-3.163, and 4 CSR 240-3.164 or by other authority and no other charges implemented in accordance with section 393.1075, RSMo, shall be assigned to any account of the customer, including its affiliates and subsidiaries listed on the customer's written notification of opt-out.

4 CSR 240-20.094(6)(F). The Commission has chosen broad language to address the scope of this exemption. Thus there should not be arguments about the charges from which the qualified opt-out customer is exonerated.

process of dispute resolution. Some customers, whose internal billing records indicate qualification for the exemption, have been rejected by the utility without opportunity either for further discussion or challenge. They are then left with the more expensive and complicated process of mounting a "complaint."[3/]

C. Opt-Out Duration Is Subject To Different Treatment By Different Utilities.

The ***duration*** of the opt-out also appears to be in some question. We read the Commission's rule to allow qualified opt-outs to be effective for the balance of the calendar year in which the notice is given and "***each successive calendar year until the customer revokes*** the notice . . . ."[4/] Based on this regulation a customer's opt-out status is good until it is revoked by that customer. Seems clear enough.

Empire District Electric Company seems to agree with this interpretation. We understand that neither KCPL nor GMO so interpret it, each requiring customers to renew their opt-out requests each calendar year, and regardless of a change in customer circumstances. This differential suggests that a clarification of the rules, either through this file or through another file might be appropriate.

[3/] 4 CSR 240-20.094(6)(G).

[4/] 4 CSR 240-20.094(6)(F) (emphasis added).

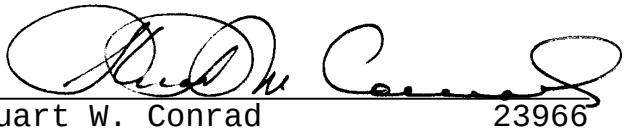
III. CONCLUSION.

Commission clarification of these different interpretations would be helpful. It would avoid needless litigation such as a complaint (suggested by the January 23 Order)[5/] that would present substantial expense to the customer while the utility would simply pass along the cost.

There may be other examples in which KCPL or GMO have actually violated Commission Rules or the MEEIA Statute. Those might come forward in a hearing. If that has occurred we believe that is a proper subject for Commission determination through the mechanism of a contested case.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.



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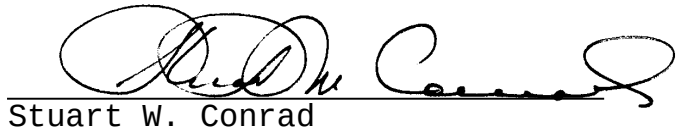
ATTORNEYS FOR MIDWEST GAS USERS' ASSOCIATION

[5/] 4 CSR 240-094(6)(G).

CERTIFICATE OF SERVICE

I CERTIFY that I have this day served the foregoing pleading by U.S. mail, postage prepaid, or by attachment to e-mail, addressed to all parties by their attorneys of record as disclosed by the pleadings and orders herein according to the record maintained by the Secretary of the Commission in EFIS.



Stuart W. Conrad

Dated: February 14, 2013