BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of KCP&L Greater Missouri Operations Company's Application for Approval of Demand-Side Programs and for Authority to Establish a Demand-Side Programs Investment Mechanism	)))))	**File No. EO-2012-0009**

KCP&L GREATER MISSOURI OPERATIONS COMPANY'S RESPONSE TO STAFF'S MOTION FOR COMMISSION DETERMINATIONS ON VARIANCES

COMES NOW KCP&L Greater Missouri Operations Company ("GMO" or "Company"), pursuant to the Commission's Order Directing Filing issued on February10, 2012, and hereby submits its Response To Motion For Commission Determinations On Variances filed by the Commission Staff ("Staff") on February 10, 2012. In support hereof, GMO states as follows:

1. On February 10, 2012, the Staff filed its Motion For Commission Variance Determinations And Motion For Expedited Treatment ("Motion") in which the Staff requested the following:

> **WHEREFORE**, Staff moves the Commission to determine as expeditiously as possible, ideally by February 17, 2012, (1) which variances, if any, from Rules 4 CSR 240-3.163, 3.164, 20.093, and 20.094 the Commission must grant GMO before the Commission can approve GMO's proposed demand-side programs and proposed DSIM; (2) whether GMO has shown good cause for the Commission to make decisions on each of those variances; (3) the 120-day decision time frame of Rule 4 CSR 240-20.094(3) does not apply until after the Commission determines whether to grant each of those variances, or, if the Commission finds the time frame does apply, toll it until after it determines whether to grant the variances; (4) and for each required variance for which GMO has not shown good cause, (i) order GMO to do so expeditiously, (ii) order Staff to file its recommendation on GMO's good cause showing within five business days after each is made and, thereafter, (iii) promptly rule on whether to grant each variance. (Motion, p. 21)

2. In support of its unprecedented request, Staff also stated:

> Staff is concerned with the abilities of the Commission and Staff to conduct a meaningful review of GMO's *Application* and associated required variances, and that the Commission will not have an adequate time to determine whether to grant the necessary variances, evaluate the proposed demand-side programs and proposed DSIM in light of its determination on those variances, and then approve, modify or reject the proposed demand-side programs and DSIM, even within the 180 days certain parties, including Staff and GMO, jointly proposed and the Commission adopted in the procedural schedule for this case. (Motion, pp. 19)

3. On February 10, 2012, the Commission issued its Order Directing Filing which directed GMO to respond to the Staff's Motion by February 17, 2012. This pleading is in compliance with the Order Directing Filing.

4. GMO adamantly opposes Staff's motion since the granting of the Motion at this time will substantially delay the implementation of GMO's demand-side management ("DSM") programs and the Demand-Side Programs Investment Mechanism ("DSIM") that are the subjects of this proceeding. More importantly, the Commission needs to review GMO's requests for variances as part of its overall review of the entire Company filing since the proposed variances are critical to the ability of GMO to support its implementation of the proposed DSM programs and its DSIM. In fact, if the Commission finds, after evidentiary hearings in the case, that GMO's requests for variances should not be granted or its proposed DSIM does not comport with the Commission's MEEIA rules, then there is a strong possibility that GMO will not be in a position to implement the DSM programs at the levels of investment proposed in its Application. It is therefore critical that the Commission carefully review the competent and substantial evidence in the record before it determines the merits of GMO's request for variances. In other words, the Company's requests for variances should be "taken with the case" and not reviewed in a vacuum, since it will be important for the Commission to understand the likely effect of an

order denying GMO's request for variances or a finding that GMO's DSIM proposal does not comply with the MEEIA statute and rules. GMO expects that this understanding will be developed as the Commission reviews the evidence in the record of this case.

5. It appears that one of the Staff's concerns is the amount of time that the Commission and the parties will have to "conduct a meaningful" review of GMO's Application and associated variance requests. (Motion, p. 19) As noted by Staff in its Motion, GMO has already agreed to the requests of Staff and other parties for an extension of the MEEIA rule's 120-day decision time frame in order to address this concern. In fact, in the Jointly Proposed Procedural Schedule filed on January 30, 2012, the parties jointly recommended an extension of the decision time in this case from 120 days to 180 days. In its Order Setting Procedural Schedule issued on February 7, 2012, the Commission found good cause to waive the 120-day requirement of the MEEIA rule, it adopted the jointly proposed procedural schedule, and further ordered that "the parties shall comply with it."

6. Given the additional time already incorporated into the procedural schedule, it is unnecessary to effectively bifurcate the hearing process which appears to be Staff's proposal to (1) review the requests for variances, as requested by Staff; and then (2) review the merits of the proposed DMS programs and the Company's proposed DSIM at a later time. As discussed above, since the Company's requests for variances are integrally and inextricably related to the proposed DSM programs and DSIM, they should be reviewed as a package in this proceeding.

Variances GMO Requests

7. The Staff takes issue with the adequacy of the Company's support for three specific variances from 4 CSR 240-20.093(4)(A), 4 CSR 240-20.093(2)(H)(3) and 4 CSR 240-

20.094(6)(J). GMO believes it would be important that the Commission hold evidentiary hearings and review the competent and substantial evidence related to these variances before ruling upon these requests for variance. Nevertheless, GMO will provide a brief explanation herein for the reasons that variances should be granted for these specific regulations.

8. First, GMO requests a variance from 4 CSR 240-20.093(4)(A) which requires that "[a]n electric utility with a DSIM shall file to adjust its DSIM rates once every six (6) months." As noted by Staff, GMO's proposal would recalculate DSIM rates annually, but includes the option to make a semi-annual filing to adjust the cost recovery revenue requirement, lost revenue requirement and utility incentive revenue requirement. As explained in the Direct Testimony of Tim M. Rush, GMO believes that a mandatory six month DSIM adjustment will be counterproductive until it has more experience with the MEEIA rule, the Evaluation, Measurement & Verification ("EM&V") process and the DSIM. (Rush Direct, p. 23)

9. Second, GMO requests a variance from 4 CSR 240-20.093(2)(H)(3) which requires that any utility incentive component of a DSIM shall be implemented on a retrospective basis and all energy and demand savings used to determine a DSIM utility incentive revenue requirement must be measured and verified through EM&V. The incentive component of GMO's proposed DSIM consists of a portion of the annual benefits reviewed on a prospective basis. The prospective portion of the annual shared benefits is critical to the success of the program since it helps to assure sufficient financial support for the overall DSM programs. The DSIM mechanism will initially include these shared benefits based on the filed plan, but these shared benefits will be trued-up on a retrospective basis to account for the actual experienced changes reflective of actual participants/measures achieved in the programs. All of the existing

DSM programs that the Company is requesting to be transitioned over to the MEEIA recovery mechanism have already had an EM&V performed and included in the MEEIA application. Additionally, the EM&V analysis has previously been shared and reviewed with the Staff and other parties under the Company's Comprehensive Energy Plan ("CEP") approved in Case No. EO-2005-0329. It is only the new DSM programs being proposed by the Company that have not had an EM&V performed on them.

10. The performance incentive is the portion of the proposed recovery mechanism that will be based on the results of EM&V after the EM&V is completed.

11. While the Company does not believe that its recovery mechanism in any way violates the MEEIA rules, out of an abundance of caution, it has requested a variance from 4 CSR 240-20.093(2)(H)(3). Any performance incentive is only recovered after an EM&V analysis of the programs and the portion of the annual benefits that the Company recovers is trued-up on a retrospective basis to reflect actual participant/measures achieved. The "prospective" aspect of the DSIM is critical to the financial success of the DSM programs, and therefore to GMO's ability to support substantial investments in the DSM programs. In the event the Commission finds that this aspect of GMO's plan is inappropriate for some reason, then it may jeopardize GMO's ability to implement the level of investment in the DSM programs, as planned. To the extent the Commission believes that this approach is in any way inconsistent with the "retrospective" language contained in 4 CSR 240-20.093(2)(H)(3), then the Company requests that it be granted a variance for good cause shown since, without the prospective portion of the annual shared benefits, the Company will not recover sufficient revenues to justify the investment in the DSM programs, as planned.

12. Third, GMO requests a variance from 4 CSR 240-20.094(6)(J) which requires that "[a] customer electing not to participate in an electric utility's demand-side programs under this section shall still be allowed to participate in interruptible or curtailable rate schedules or tariffs offered by the electric utility." GMO's proposal in this case provides that a customer exercising the opt-out provisions (and thereby avoiding being charged for DSM program costs) cannot participate in the DSM programs approved as part of the DSM portfolio. GMO's MPower program is a part of the DSM portfolio that is a subject of this proceeding. Good cause exists for such a variance since GMO's proposal ensures that those customers that are paying for the DSM programs get to participate in the programs, but those customers that opt-out to avoid such program costs do not receive the benefits of the DSM programs. Customers who opt-out of the DSM portfolio of programs will still be allowed to participate in other interruptible or curtailable rate schedules or tariffs that are not included in the DSM portfolio of programs. Examples of these traditional interruptible and curtailable rate schedules or tariffs include the Company's Special Interruptible Contracts tariff, Voluntary Load Reduction Rider, Standby Service for Sell-Generating Customers, and the Off-Peak Service Rider.

13. GMO believes that this proposal is consistent with 4 CSR 240-20.094(6)(J), and Section 393.1075(2)(10) which provides "[c]ustomers electing not participate in an electric corporation's demand-side programs under this section shall still be allowed to participate in interruptible or curtailable rate schedules or tariffs offered by the electric corporation." However, should the Commission determine that this rule permits participation in the MPower Program which is part of GMO's DSM portfolio, then GMO requests a variance from the rule since GMO proposal ensures that those customers that are paying for the DSM programs get to

participate in the programs, while those customers that "opt-out" are not permitted to be free-riders to the detriment of GMO and its other customers.

14. Staff also suggests that Staff does not believe the Commission has the authority to grant a variance from 4 CSR 240-20.094(6)(J), since this subsection of its rules results from the statutory requirements in Section 393.1075.10. (Motion, p. 4) GMO does not believe that Section 393.1075.10 requires that it make available to customers that "opt-out" of participation and funding of its proposed DSM portfolio of programs, the MPower Program which is part of its DSM portfolio. GMO does not believe that its MPower Program is a traditional "interruptible or curtailable rate schedules or tariffs offered by the electric corporation" as defined in Section 393.1076(2)(5) since the MPower Program is not "a rate under which a customer receives a reduced charge in exchange for agreeing to allow the utility to withdraw the supply of electricity under certain specified conditions." Instead, the MPower Program is a contracted load curtailment program for large C&I customers that provides a capacity and energy payment to participating customers to curtail their usage during summer months when high electric demand occurs. Customers are eligible to participate in the program by providing a minimum load reduction of 25 kW during GMO's high usage/high cost periods. Assuming the Commission approves the MPower Program in this proceeding, then it is GMO's position that the customers must agree not to opt-out in order to be eligible for the MPower Program.

Variances GMO is Not Requesting

15. Staff also argues that the Company did not request all the variances necessary for its DSIM proposal. While GMO believes its DSIM proposal fully complies with the provisions of the Commission's MEEIA rules, this is a topic that should be explored in the hearing process rather than in pleadings in this case. It is certainly not a matter that should delay the consideration of the merits of GMO's DSM programs and DSIM proposal. If there are some technical aspects of GMO's proposal which the Commission concludes do not comply with the MEEIA rules, then the Commission should

grant GMO a variance to cure any technical deficiencies. Nevertheless, GMO will briefly address below the Staff's points related to the variances that Staff believes the Company should have requested.

16. First, Staff argues that the Company should have requested variances from 4 CSR240-20.093(4) which requires that semi-annual adjustments to DSIM rates between general rate proceedings shall only include adjustments to the DSIM cost recovery revenue requirement and shall not include any adjustments to the DSIM utility lost revenue requirement or the DSIM utility incentive revenue requirement.

17. GMO does not believe it needs an additional variance from 4 CSR240-20.093(4) since it has already sought a variance from 4 CSR 240-20.093(4)(A), as discussed above, which requires that "[a]n electric utility with a DSIM shall file to adjust its DSIM rates once every six (6) months." To the extent that the Commission believes two variances are required from this provision, then GMO would respectfully request them.

18. Second, Staff argues that the Company should have requested variances from 4 CSR 240-3.164(2)(A) which requires the Company to file a current market potential study. Staff notes that "Staff understands that GMO and KCPL are currently conducting their own market potential studies, but that these studies will not be complete for another year. To prevent delay of a MEEIA filing until primary data is available, the Staff is not adverse to GMO using secondary studies, so long as GMO provides an analysis that shows why the secondary studies are comparable to the required current market potential study and are appropriate for use in the circumstances." (Motion, p. 14) Apparently, even Staff does not believe the Commission should delay implementation of DSM programs while awaiting the completion of a GMO-specific market potential study, but Staff wants "the Commission to order that GMO requires these variances and order GMO to show good cause for why the Commission should grant them." (Motion, p. 14) GMO frankly believes that the competent and substantial evidence will support the Commission's approval of its DSM Programs, notwithstanding the fact that GMO is currently completing a GMO-specific market potential study. If the Commission concludes that a variance needs to be granted

to address this provision, then the Company would hereby request a variance since it is not possible to complete the GMO-specific market potential study currently underway for approximately one year. The Company would point out that it has participated in over six (6) market potential studies over that last several years, all of which were attached to the MEEIA filing. Two reports had primary market research: RLW Analytics 2006 Missouri Statewide Residential Lighting and Appliance Efficiency Saturation Study and the KEMA 2010 KCP&L Multifamily Residential Energy and Demand Conservation Potential Analysis. Those studies, along with the information gleaned from the EM&V's performed on each of the current programs were used in developing this filing.

19. Third, the Staff raises what appear to be rather hyper-technical arguments regarding the fact that the Company discusses in its Application and DSIM proposal "annual shared benefits" rather than "annual net shared benefits." In the same vein, Staff suggests that the Company should have expressed a portion of the annual shared benefits as a percentage amount rather than a fixed dollar amount. (Motion, p. 15-16) If the method of presenting the annual shared benefits (i.e. percentage versus fixed dollar amount) is important to the Commission, then the Company will address this subject at the evidentiary hearings. The Company believes it is unnecessary to delay consideration of the merits of the DSM programs and DSIM proposal in order to convert a table that identifies the dollars of annual shared benefits into a table that contains percentages. While the rule may be somewhat confusing in places, it is the Company's opinion that the term "annual net shared benefit", as defined by the rule, includes program costs. The Company is not including program costs as a part of the annual shared benefit and thereby attempted to distinguish the difference. If Staff wants the Company to use the phrase "annual net share benefit", then the Company would need to include program costs in its calculation of annual net share benefits.

20. Finally, GMO must respectfully oppose Staff's Motion to find the 120-day decision time frame does not apply until the Commission issues findings on each of the variances, or, if the Commission finds the time frame does apply, toll it until after the issuance of its findings on the

variances. The MEEIA rules did not contemplate the bifurcated process being proposed by Staff, and it appears to be little more than a request for more time to review the Application and associated variance requests.

21. In conclusion, GMO would respectfully suggest that it has already agreed to the requests of Staff and other parties for an extension of the MEEIA rule's 120-day decision time frame in order to address this concern. In addition, the Company met on several occasions with the Staff in preparing its filing, to the point that the Company provided drafts of testimony, tariffs, solicited comment and concerns and tried to answer any and all questions in an effort to not be in the situation now suggested by Staff. No additional time should be added to the process by the Commission adopting the bifurcated approach being suggested by Staff in its Motion. In addition, the Commission should deny Staff's motion to find the 120-day decision time frame does not apply until the Commission issues findings on each of the variances, or, if the Commission finds the time frame does apply, toll it until after the issuance of its findings on the variances. This proposal is unnecessary and unreasonable.

WHEREFORE, KCP&L Greater Missouri Operations Company respectfully requests that the Commission deny the Staff's Motion For Commission Determinations On Variances filed on February 10, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 17th day of February, 2012, to all counsel of record.

/s/ James M. Fischer
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