

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the matter of)		
Kansas City Power & Light Company's)		
Request for Authority to Implement)	File No.	ER-2012-0174
A General Rate Increase for Electric)		
Service)		

MEUA-KC RESPONSE TO OFFICE OF PUBLIC COUNCIL MOTION TO STRIKE

Midwest Energy Users' Association-Kansas City ("MEUA-KC"), By and through counsel, pursuant to the Commission's December 12, 2012 Order Setting Time for Filing, and Response to the Office Of Public Council Motion to Strike, states as follows:

Public Council moves for an order to strike because it purportedly "is hearsay, and appears to disclose privileged and confidential statements made at a settlement conference."¹ MEUA-KC responds that Public Council characterization of Mr. Johnston's testimony and thus its basis for striking or disallowing it is just not true. Mr. Johnstone's comments were in regard to a non-confidential technical conference on August 30th not a settlement conference. Mr. Johnstone's Testimony was not objected to timely upon its submittal on September 4th, 2012 or at the October 29, 2012 evidentiary hearing. While not necessary, attached is Donald Johnstone's affidavit to clarify the record beyond a reasonable doubt his understanding the technical conference on August 30th.

In the evidentiary hearing, Mr. Rush under questioning by Mr. Bartels was examined in regard to the subject matter at the technical conference.² The statement was offered by MEUA-KC as an opposing party's admission.³ Mr. Rush was directed to read Mr. Johnstone's testimony regarding why non-space heat customers care about the level of the space heating rates and specifically the matter of discussion

¹ Office of the Public Council Post-Hearing Reply Brief P.7.

² KCP&L, Rush, Tr. V. 19. P1013.

³ Rule 801(d)(2) of the Federal Rules of Evidence.

at the August 30th Technical conference.⁴ Why KCP&L may be shooting itself in the foot if the rates are raised and the service is no longer purchased.⁵

A. "I read it."

Q. "Do you recall the technical conference that Mr. Johnstone addressed?"

A. "I sure do."

Q. "Okay. **Is Kansas City Power & Light reluctant to give space heating customers an above average increase as might be indicated by Mr. Normands's class cost of service study?**"

A. "We are, and **we've recommended that we not do that.** We think that there is some fallout that would harm others customers, both non-heating customers and other classes, particularly because of the margin contributions that would come from this and the fallout that would come from potentially losing customers and reducing load.

So we are concerned with increasing the space heating rate at a higher rate than the typical increase that we're looking at, the average of that increase, and we think that that is the wrong policy decision to go after."⁶

OPC declined to cross examine Mr. Rush regarding the statement in question. Mr. Rush clarified his definition with his testimony. In turn, Mr. Johstone's statement is not hearsay.

Mr. Rush was accompanied by KCP&L counsel Mr. Fisher at the technical conference. There have been no objections from KCP&L to date regarding MEUA-KC consistent reference to Mr. Rush's comment on Mr. Normand's BIP model. The objection for privilege is not for OPC but KCPL. The statement in question has not been objected to timely or rebutted as being hearsay, privileged and confidential by KCP&L.

WHEREFORE, MEUA-KC Respectfully asks the Commission deny OPC's Motion.

⁴ MEUA-KC, Johnstone Rebuttal Testimony, P. 3.

⁵ MEUA-KC, Johnstone Rebuttal Testimony, P. 4.

⁶ Tr. V. 19. P.1013-1014.

Respectfully submitted,

Bartels LLC

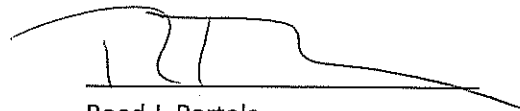


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by the Public Service Commission e-service on this 17, day of December 2012 to counsel for parties of record.



Reed J. Bartels

**BEFORE THE
PUBLIC SERVICE COMMISSION OF MISSOURI**

In the Matter of Kansas City Power & Light)
Company's Request for Authority to)
Implement A General Rate) ER-2012-0174
Increase for Electric Service)

Affidavit of Donald E. Johnstone

State of Missouri)
County of Jackson) SS

Donald E. Johnstone, being first duly sworn, on his oath states:

1. My name is Donald E. Johnstone. I am a consultant and President of Competitive Energy Dynamics, L. L. C. I reside at 384 Black Hawk Drive, Lake Ozark, MO 65049. I have been retained by MEUA.

2. I have been asked to clarify my rebuttal testimony that was filed in this matter on September 5, 2012.

a. At page 3 line 22 I state: "This was a matter discussed at the August 30 settlement conference." In fact it was not a settlement conference on August 30 but instead an "informal conference" according to the procedural order. (see the Commission April 26, 2012 order in this docket) Attached as Schedule 1 is a copy of an email from Staff counsel (via OPC counsel) that sets for a "rough list of issues" for what Staff characterized as "conference for rate design." The informal conference is distinguishable from the settlement conferences for which there were also provisions in the ordered schedule.

b. During the course of the August 30 informal conference and the discussion of the issues, Mr. Rush of KCPL made a statement to the effect that the company's class cost-of-service study should not be relied upon with regard to the electric space heating rates because it would be tantamount to shooting themselves in the foot. This seemed to me to be a very important admission. I asked for and received confirmation of my understanding of the statement.

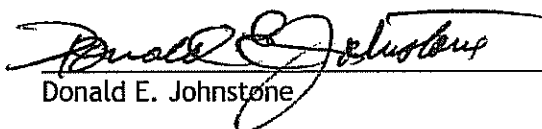
c. Before the conference adjourned I inquired as to whether or not it was the understanding of the participants that the conference was a privileged and confidential settlement conference. There was discussion and there was agreement

that it was not a privileged and confidential settlement conference but rather a technical conference that was not privileged or confidential. KCPL had an attorney present at the meeting.

d. On page 3 line 22 of my September 5, 2012 rebuttal testimony the phrase "settlement conference" is incorrect and it should instead read "informal conference."

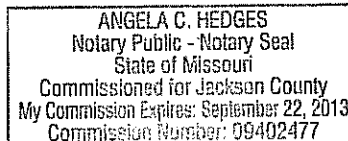
e. Attached hereto and made a part hereof for all purposes is Schedule 1, a 2 page copy of an email.

3. I hereby swear and affirm that these statements are true and correct and show the matters and things they purport to show to the best of my knowledge and belief.


Donald E. Johnstone

Subscribed and sworn to this 17 day of December, 2012.


Notary Public



Donald Johnstone

From: Baker, Christina [christina.baker@ded.mo.gov]
Sent: Wednesday, August 29, 2012 4:44 PM
To: donaldcedllc@sbcglobal.net
Subject: FW: Thursday KCPL & GMO conference for rate design

From: Kliethermes, Sarah
Sent: Wednesday, August 29, 2012 3:00 PM
To: 'James M Fischer'; 'Carl Lumley'; 'Vuylsteke, DianaM.'; 'david.woodsmall@woodsmalllaw.com'; Mills, Lewis; 'jfinnegan@fcplaw.com'; Young, Mary Ann; 'dcooper@brydonlaw.com'; 'Lowery@smithlewis.com'; 'Roger.Steiner@kcpl.com'; OPC Service; 'hrobertson@greatriverslaw.org'; 'stucon@fcplaw.com'; 'AmerenMOService@ameren.com'; 'john@johncoffman.net'; 'comley@ncrpc.com'; 'lisa.gilbreath@snrdenton.com'; 'Heather.Humphrey@kcpl.com'; 'karl.zobrist@snrdenton.com'; 'todd.jacobs@sug.com'; 'doug@healylawoffices.com'; 'arthur.bruder@hq.doe.gov'; 'samuel.miller@tyndall.af.mil'; 'tim.rush@kcpl.com'; 'Darrin.Ives@kcpl.com'; 'Roger.Steiner@KCPL.com'; 'donaldcedllc@sbcglobal.net'
Cc: Kliethermes, Sarah; Williams, Nathan; Keevil, Jeff; Featherstone, Cary; Beck, Dan; Oligschlaeger, Mark*; Voss, Cheryl; Hernandez, Jennifer; Thompson, Kevin; Dottheim, Steve; McCowry, Meghan; Borgmeyer, John; Alm, Tanya; Lewis, Rachel; Mantle, Lena; Scheperle, Mike; Vaught, Dianna
Subject: RE: Thursday KCPL & GMO conference for rate design

Please see below a rough schedule of topics. The discussions will be in GOB room 810 and by conference call on 573-526-6207 and 866-630-9356. We will begin at 10:00.

1. CCoS studies
2. Interclass revenues shifts
3. Intraclass shifts
4. Space Heating and All Electric rates
5. LED lighting
6. Miscellaneous tariffs
7. GMO rate study
8. FAC tariff

Thanks,

Sarah L. Kliethermes
Senior Staff Counsel
MoPSC ~ 573 751-6726
sarah.kliethermes@psc.mo.gov

1 of 2
Date Printed: 12/17/2012 4:28 PM

From: Kliethermes, Sarah

Sent: Tuesday, August 28, 2012 9:54 AM

To: 'James M Fischer'; Carl Lumley; Vuylsteke, DianaM.; david.woodsmall@woodsmalllaw.com; Mills, Lewis; jfinnegan@fcplaw.com; MaryAnn.Young@dnr.mo.gov; dcooper@brydonlaw.com; Lowery@smithlewis.com; Roger.Steiner@kcpl.com; OPCSERVICE@ded.mo.gov; hrobertson@greatriverslaw.org; stucon@fcplaw.com; AmerenMOService@ameren.com; john@johncoffman.net; comlevm@ncrpc.com; lisa.gilbreath@snrdenton.com; Heather.Humphrey@kcpl.com; karl.zobrist@snrdenton.com; todd.jacobs@sug.com; doug@healylawoffices.com; arthur.bruder@hq.doe.gov; samuel.miller@tyndall.af.mil; tim.rush@kcpl.com; Darrin.Ives@kcpl.com; Roger.Steiner@KCPL.com

Cc: Williams, Nathan; Keevil, Jeff; Featherstone, Cary; Beck, Dan; Oligschlaeger, Mark*; Voss, Cherlyn; Hernandez, Jennifer; Thompson, Kevin; Dottheim, Steve; McClowry, Meghan; Borgmeyer, John; Alm, Tanya; Lewis, Rachel; Mantle, Lena; Scheperle, Mike; Vaught, Dianna

Subject: Thursday KCPL & GMO conference for rate design

Will begin at 10. Room 810 will be available for those in Jefferson City. We'll be back on the 573-526-6207 and 866-630-9356 line.

I hope to circulate a list of issues to be discussed in a suggested order prior to the call. If your party has availability concerns but wishes to participate in a particular issue, please advise by reply email.

Thanks,

Sarah L. Kliethermes

Senior Staff Counsel
MoPSC ~ 573 751-6726
sarah.kliethermes@psc.mo.gov