

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

In the Matter of Kansas City Power & Light ) **File No. EO-2019-0132**  
Company's Application for Authority to Establish a ) Tariff No. JE-2019-0104  
Demand-Side Programs Investment Mechanism ) Tariff No. YE-2019-0103

In the Matter of KCP&L Greater Missouri Operations )  
Application for Authority to Establish a Demand- ) **File No. EO-2019-0133**  
Side Programs Investment Mechanism ) Tariff No. YE-2019-0102

**INITIAL BRIEF OF THE  
MIDWEST ENERGY CONSUMERS GROUP**

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October 11, 2019

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In the Matter of Kansas City Power & Light	)	<u>File No. EO-2019-0132</u>
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COMES NOW, the Midwest Energy Consumers Group ("MECG") and, pursuant to the Commission's *Order Granting Variance Setting Procedural Schedule And Other Procedural Requirements*, submits the following Initial Brief on the following issues:

5. Should Opt-Out Customers be eligible to participate in Business Demand Response programs?
  - a. MECG sub issue: "Should GMO be required to publish in its tariff the participation payment to customers that participate in the Business Demand Response programs?"

Issue 5: Should Opt-Out Customers be eligible to participate in Business Demand Response programs?<sup>1</sup>

In 2009, the General Assembly enacted the Missouri Energy Efficiency Investment Act (“MEEIA”). MEEIA provides a mechanism for regulated utilities to recover, between rate cases, its investment in energy efficiency. One provision of MEEIA, Section 393.1075.7, provides a mechanism by which certain large commercial and industrial customers may opt out of the utility’s energy efficiency programs and costs.

Provided that the customer has notified the electric corporation that the customer elects not to participate in demand-side measures offered by an electrical corporation, none of the costs of demand-side measures of an electric corporation offered under this section or by any other authority, and no other charges implemented in accordance with this section, shall be assigned to any account or any customer.

Despite this opt out ability, Section 393.1075(10) provides that such opt out customers “shall still be allowed” to participate in utility “interruptible or curtailable rate schedules”.

Customers electing not to 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.

In this case, KCPL / GMO propose, as part of its MEEIA programs, to include an interruptible program called Business Demand Response. KCPL / GMO submit that this Business Demand Response programs constitutes an interruptible or curtailment program within the meaning of Section 393.1075(10).<sup>2</sup> MEEIA agrees.

Commission Rule 20 CSR 4240-20.092(1)(BB) defines an “interruptible or curtailable rate” as a “tariffed rate under which a customer receives a reduced charge in exchange for

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<sup>1</sup> At the conclusion of the evidentiary hearing, the Regulatory Law Judge asked the parties to submit briefs on “whether the Business Demand Response rate schedule is or isn’t an interruptible or curtailable program within the meaning of Section 393.1075(10).” Tr. 532.

<sup>2</sup> Exhibit 104, KCPL / GMO Surrebuttal Report, pages 57-59 and Tr. 32.

agreeing to allow the utility to withdraw the supply of electricity under certain specified conditions.”

Under the terms of the Business Demand Response rate schedule, customers receive a reduced charge in exchange for agreeing to withdraw their supply of electricity under certain specified conditions. Specifically, the rate schedule implementing the Business Demand Response program<sup>3</sup> provides that “[p]articipants must show economic and technical feasibility for measureable and verifiable load curtailment during the Curtailment Season of June 1 to September 30 and within the designated Curtailment Hours of 12:00 p.m. to 8:00 p.m., Monday through Friday excluding Holidays.” In exchange for agreeing to curtail load during these periods, the customer receives a “reduced charge” in the form of a \$ / kW credit.

KCPL / GMO witness Ives provides a similar description:

Q. Can you tell me what the demand response program is? I'm sorry.

A. Yeah. I think generally it's a program available to -- to provide an incentive to -- to customers to -- to allow for the ability to utilize interruptible or curtailable load to -- to the benefit of managing peak demands.

Q. And when you say incentives, you're referring to financial incentives?

A. Yes.<sup>4</sup>

Thus, the Business Demand Response program fits the definition of an “interruptible or curtailable rate.” That is, the program is: (1) a tariffed rate; (2) the customer receives a reduced charge in the form of a \$ / kW credit; and (3) the customer not only agrees, but must verify, load curtailment. For this reason, the Business Demand Response program is an “interruptible or curtailable rate” within the scope of 20 CSR 4240-20.092(1)(BB) and Section 393.1075(10). Recognizing that the proposed Business Demand Response program is an “interruptible or

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<sup>3</sup> P.S.C. Mo. No. 2, First Revised Sheet No. 1.81

<sup>4</sup> Tr. 218-219.

curtailable” program within the meaning of Section 393.1075(10), opt out customers may participate in that tariffed program.

Opt out customers are not only legally permitted to participate in the Business Demand Response program, they should also be actively invited to participate in that program for policy reasons. As KCPL / GMO readily acknowledges, over 35% of the curtailable load in its current program is associated with opt out customers.<sup>5</sup> Thus, the success of this load curtailment program is, in large part, determined by the continued participation of opt out customers.

Moreover, the difficulty of operating a curtailment program is reduced if opt out customers are permitted to participate in the interruptible program. As KCPL / GMO readily indicate, its largest interruptible participant, an opt out customer, is willing to interrupt 6 MWs of load.<sup>6</sup> In contrast, KCPL / GMO’s smallest interruptible customer is only willing to interrupt 25 kW of load.<sup>7</sup> Thus, if KCPL / GMO sought to interrupt 6 MWs of load on a particular day, it could interrupt one single large opt out customer, or it could seek to cobble together 240 of the smaller non-opt out customers. Clearly then, the difficulty of administering an interruptible program is reduced if the larger opt out customers are permitted to participate.

The evidence indicates, however, that opt out customers will not participate in the KCPL / GMO load curtailment programs if such participation comes at the cost of forfeiting their opt out status. KCPL’s current MEEIA cost for non-residential customers is 0.252 ¢/kWh.<sup>8</sup> Therefore, an opt out customer that uses 50,000,000 kWh in a year,<sup>9</sup> will save \$126,000 by opting out of KCPL’s MEEIA programs and costs. If that same customer were willing to curtail

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<sup>5</sup> Exhibit 104, KCPL / GMO Surrebuttal Report, pages 58.

<sup>6</sup> Tr. 220.

<sup>7</sup> *Id.*

<sup>8</sup> Tr. 221.

<sup>9</sup> For instance, an 11 MW peak demand customer operating at a 52% load factor would use approximately 50,000,000 kWh in a year. (11,000 kW \* 8,760 hours / year \* .52 load factor =50,107,200 kWh).

6 MWs of its load,<sup>10</sup> that customer would only receive \$15,000 - \$27,000 in curtailment credits.<sup>11</sup> Thus, the benefit of opting out of energy efficiency costs is so much larger than any available interruptible credits that customers will not participate if it comes at the expense of foregoing the opt out benefits.

Clearly then, KCPL / GMO opt out customers are not only legally permitted to participate in the Business Demand Response program, the participation of these customers is necessary if this program is to succeed and provide benefits to all customers.<sup>12</sup>

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<sup>10</sup> KCPL's largest curtailment customer is 6 MWs. Tr. 220.

<sup>11</sup> KCPL / GMO curtailment credit is \$2.50 - \$4.50 / kW. Tr. 223.

<sup>12</sup> Tr. 219

Issue 5(a): Should GMO be required to publish in its tariff the participation payment to customers that participate in the Business Demand Response programs?

Section 393.140(11) provides that the Commission shall require electrical corporations to publish its rates and charges.

The Commission shall have power to require every. . . electrical corporation. . . to print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used.

That statute section applies not only to rates, but also extends to refunds or discounts.

No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation refund or remit in any manner or by any device any portion of the rates or charges so specified, nor to extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances.

Finally, Section 393.140(5) requires that all rates and service be provided in a non-discriminatory manner.

Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force.

Historically, KCPL / GMO published a rate schedule which included the level of compensation paid to customers participating in its interruptible or curtailment programs.<sup>13</sup> Recently, however, that level of compensation was removed from the rate schedules and was instead contained in individual customer contracts. The fact that compensation for interruptible / curtailment programs was removed from the rate schedules makes it impossible for interruptible customers to determine if KCPL / GMO are providing the same level of compensation to customers that are

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<sup>13</sup> Tr. 222-223.

similarly situation or, in the alternative, if KCPL / GMO are providing compensation to interruptible customers in a discriminatory manner. Given the directives of the statute, the Commission should require KCPL / GMO to include the levels of interruptible compensation in its tariffs.

Respectfully submitted,



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ATTORNEY FOR THE MIDWEST ENERGY  
CONSUMERS GROUP

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

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/s/ David Woodsmall  
David L. Woodsmall

Dated: October 11, 2019