

**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	)	Case No. ER-2012-0174
a General Rate Increase for Electric Service.	)	
	)	
In the Matter of KCP&L Greater Missouri	)	
Operations Company's Request for Authority to	)	Case No. ER-2012-0175
Implement a General Rate Increase for Electric	)	
Service.	)	

**OPPOSITION OF KANSAS CITY POWER & LIGHT COMPANY AND  
KCP&L GREATER MISSOURI OPERATIONS COMPANY TO  
THE MOTION TO APPROVE RECONCILIATION OF MISSOURI ENERGY  
CONSUMERS' GROUP AND THE OFFICE OF THE PUBLIC COUNSEL**

Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO") (collectively, the "Companies"), pursuant to the Commission's February 7, 2013 Order Setting Date for Filing Response, oppose the February 6, 2013 Motion to Approve Reconciliation ("Motion") filed by the Missouri Energy Consumers' Group ("MECG") and the Office of the Public Counsel ("OPC"):

**I. MECG and OPC's Motion Should Be Denied.**

1. The Motion should be denied as the purported "reconciliation" for which they seek approval is improper. The fourth sentence of Section 386.420.4<sup>1</sup> clearly provides that the Commission "shall cause to be prepared ... and shall approve ... a detailed reconciliation containing the dollar value and rate or charge impact of each contested issued decided by the commission ... [emphasis added]." As explained below, the two issues raised by the Motion were not decided by the Commission, and there is no provision in the statute that permits the filing of a reconciliation regarding issues that that the Commission did not resolve.

2. Moreover, the purpose of the reconciliation is to provide a reviewing court and the Commission on remand with the ability to determine any rate adjustments in accordance with

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the Missouri Revised Statutes (2000), as amended.

the procedures of Section 386.520. However, the issues that the Movants include in their purported reconciliation do not arise from the Commission's Report and Order. Therefore, Movants have failed to raise any issue related to the rate-setting determinations made in the Report and Order that could assist a reviewing court hearing an appeal under Section 386.510, *et seq.*

3. Section 386.420.4 states in its entirety (with each of its six sentences here set forth as separate paragraphs):

A full and complete record shall be made of all proceedings before the commission or any commissioner on any formal hearing had, and all testimony shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney.

Preparation of a printed transcript may be waived by unanimous consent of all the parties.

In case of an action to review any order or decision of the commission, a transcript of such testimony, together with all exhibits or copies thereof introduced and all information secured by the commission on its own initiative and considered by it in rendering its order or decision, and of the pleadings, record and proceedings in the cause, shall constitute the record of the commission; provided, that on review of an order or decision of the commission, the appellant and the commission may stipulate that a certain question or questions alone and a specified portion only of the evidence shall be certified to the reviewing court for its judgment, whereupon such stipulation and the question or questions and the evidence therein specified shall constitute the record on review.

In any proceeding resulting in the establishment of new rates for a public utility that is not classified as a price-cap or competitive company, the commission shall cause to be prepared, with the assistance of the parties to such proceeding, and shall approve, after allowing the parties a reasonable opportunity to provide written input, a detailed reconciliation containing the dollar value and rate or charge impact of each contested issue decided by the commission, and the customer class billing determinants used by the commission to calculate the rates and charges approved by the commission in such proceeding.

Such information shall be sufficient to permit a reviewing court and the commission on remand from a reviewing court to determine how the public utility's rates and charges, including the rates and charges for each customer class, would need to be temporarily and, if applicable, permanently adjusted to provide

customers or the public utility with any monetary relief that may be due in accordance with the procedures set forth in section 386.520.

In the event there is any dispute over the value of a particular issue or the correctness of a billing determinant, the commission shall also include in the reconciliation a quantification of the dollar value and rate or charge impact associated with the dispute. [emphasis added].

4. The issues the Movants raise are not “contested issues decided by the commission,” and are not proper issues for inclusion in any reconciliation. The first issue listed in the Movants’ Reconciliation is the Commission’s failure to segregate KCP&L energy efficiency costs to opt-out customers. However, this was an issue that the Commission did not decide. On page eight of the Report and Order, the Commission stated that Staff and KCP&L had “filed notice of a new issue: which demand-side programs a customer may opt out of under the Missouri Energy Efficiency Investment Act (‘MEEIA’).” It then observed that Staff had recommended “that the Commission not address the new issue because it is too late to develop evidence and arguments.” The Commission concluded: “Staff is correct and the Commission will not address that matter in these actions.” See Report and Order at 8.

5. The second issue listed on the Movants’ “reconciliation” was not an issue at all, but rather an allegation that the compliance tariffs were approved without affording them sufficient time to prepare an application for rehearing. This was not a contested issue decided by the Commission in these proceedings.

6. The Commission must also recognize the context in which this Motion is filed by Co-Movant OPC, which has generally now absented itself from the post-decisional process. OPC filed no Application for Rehearing in either of these rate cases. To be specific, OPC failed to apply for rehearing on the Commission’s Report and Order, and it failed to file for rehearing on the Commission’s orders approving compliance tariffs. Consequently, OPC failed to preserve even one issue for appellate review.

7. Nonetheless, OPC has raised the procedural tariff issue noted in the pending Motion in a Petition for Writ of Mandamus, filed on February 6, 2013 at the Missouri Court of Appeals, Western District in Case No. WD76079. OPC, thus, seeks to insert this procedural tariff issue in both the reconciliation process before the Commission, as well as in an extraordinary writ at the Court of Appeals. Such a desperate, last-ditch maneuver is a thinly-veiled and improper attempt to cure OPC's critical omissions on rehearing.

8. The Motion's objection to the manner in which the tariffs were approved is an allegation of procedural error by the Commission. Accordingly, it is not a proper matter for reconciliation of "dollar value and rate or charge impact of each contested issue decided by the commission" under Section 386.420.4. OPC's effort to resuscitate this issue, now barred from appellate review, by boot-strapping it into the reconciliation process must be rejected.

9. Finally, because the Commission did not address these issues in the Report and Order, no dollars can attach to these issues for the purposes of a reconciliation. As noted above, the Commission did not decide any MEEIA opt-out issues because they were raised too late in the case, and the tariff compliance issue did not arise until well after the Report and Order was issued.

10. Section 386.520.2(1) provides that a reviewing court shall calculate rate adjustments "based on the record evidence in the proceeding under review and the information contained in the reconciliation and billing determinants provided by the commission under subsection 4 of section 386.420." As these issues were not decided by the Commission, there is no record upon which a reviewing court may rule. Movants' allegations regarding matters that were not decided in the Commission's Report and Order are insufficient for a reviewing court to determine an adjustment in the event of error under Section 386.520.

WHEREFORE Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company respectfully request that the Commission deny the Motion to Approve Reconciliation of Missouri Energy Consumers' Group and the Office of the Public Counsel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing was served upon counsel of record on this 13th day of February, 2013.

/s/ Roger W. Steiner  
Attorney for Kansas City Power & Light  
Company and KCP&L Greater Missouri  
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