

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

In the Matter of Kansas City Power & Light)	
Company's Practices Regarding Customer)	Case No. EO-2013-0359
Opt-Out of Demand-Side Programs and Related Issues)	

**KANSAS CITY POWER & LIGHT COMPANY'S
RESPONSE TO ORDER DIRECTING FILING**

Kansas City Power & Light Company ("KCP&L" or "Company") hereby files its *Response To Order Directing Filing* which was issued on January 23, 2013. In support of its response, KCP&L states as follows:

1. On January 23, 2013, the Commission issued its *Order Directing Filing* which directed, *inter alia*, that KCP&L and the Commission's Staff file by February 14, 2013 "written argument describing the relief sought in a Commission decision on KCPL's practices." The purpose of this pleading is to comply with the Commission's *Order Directing Filing*.

2. From KCP&L's perspective, the purpose of this investigatory proceeding is to allow the Commission to review the existing practices of the Company regarding customer opt-out of demand-side management ("DSM") programs, and affirm that the Company's existing practices are consistent with the Missouri Energy Efficiency Investment Act ("MEEIA") codified at § 393.1075 RSMo (Supp. 2011), and the Commission's opt-out rules promulgated in 4 CSR 240-20.094(6) ("MEEIA Rules"). In addition, the Commission should approve in this proceeding a specific mechanism that would allow the Company to recover any foregone revenues associated with customers who exercise their right to opt-out of the DSM programs under the Commission's rules. This mechanism may take the form of an accounting authority order ("AAO"), DSM tracker, or some other mechanism that would allow the Company to remain whole in the event that customers opt-out of participation in DSM programs.

BACKGROUND OF PROCEEDING

3. During the recently completed KCP&L rate case, Case No. ER-2012-0174, the Commission Staff raised concerns with the Company regarding its existing practices regarding customer opt-out of DSM programs. In order to resolve these concerns, the Company and Staff filed on January 18, 2013, a *Joint Application To Establish A Proceeding To Review Kansas City Power & Light Company's Practices Regarding Opt Out Of Demand-Side Management Programs And Associated Programs' Costs And Revenue Impacts* ("Joint Application"). The *Joint Application* requested that the Commission establish a proceeding to determine the appropriate application of Section 393.1075 of MEEIA and the applicable MEEIA Rules.

NATURE OF THE DISPUTE

4. The Company and the Staff have an apparent difference of opinion over whether eligible customers may opt-out of past DSM program costs now, as suggested by Staff, or alternatively, whether eligible customers may opt-out of DSM program costs prospectively and avoid paying DSM costs of those programs when the DSM program costs are reflected in rates in a future rate case, as interpreted by KCP&L.

5. MEEIA codified at § 393.1075 RSMo (Supp. 2011) became law in May, 2009. Section 393.1075.3. states:

3. It shall be the policy of the state to value demand-side investments equal to traditional investments in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivering cost-effective demand-side programs. In support of this policy, the commission shall:

- (1) Provide timely cost recovery for utilities;
- (2) Ensure that utility financial incentives are aligned with helping customers use energy more efficiently and in a manner that sustains or enhances utility customers' incentives to use energy more efficiently; and
- (3) Provide timely earnings opportunities associated with cost-effective measurable and verifiable efficiency savings.

While the law establishes policy for the alignment of demand-side investments with traditional investments, and timely recovery for utilities of those investments, the law also provides a provision which allows large electrical users the ability to “opt-out” of paying for those investments under certain conditions. Those conditions are found in Sections 393.1075.7, .8, .9, and .10 which state:

7. 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 of any customer, including its affiliates and subsidiaries, meeting one or more of the following criteria:

- (1) The customer has one or more accounts within the service territory of the electrical corporation that has a demand of five thousand kilowatts or more;
- (2) The customer operates an interstate pipeline pumping station, regardless of size; or
- (3) The customer has accounts within the service territory of the electrical corporation that have, in aggregate, a demand of two thousand five hundred kilowatts or more, and the customer has a comprehensive demand-side or energy efficiency program and can demonstrate an achievement of savings at least equal to those expected from utility-provided programs.

8. Customers that have notified the electrical corporation that they do not wish to participate in demand-side programs under this section shall not subsequently be eligible to participate in demand-side programs except under guidelines established by the commission in rulemaking.¹

9. Customers who participate in demand-side programs initiated after August 1, 2009, shall be required to participate in program funding for a period of time to be established by the commission in rulemaking.²

10. 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

¹ Guidelines are established in 4 CSR 240-20.094(6)(H): “Revocation. A customer may revoke an opt-out by providing written notice to the utility and commission two to four (2-4) months in advance of the calendar year for which it will become eligible for the utility’s demand-side program’s costs and benefits. Any customer revoking an opt-out to participate in a program will be required to remain in the program for the number of years over which the cost of that program is being recovered, or until the cost of their participation in that program has been recovered.”

² Guidelines are established in 4 CSR 240-20.094(6)(I): “A customer who participates in demand-side programs initiated after August 1, 2009, shall be required to participate in program funding for a period of three (3) years following the last date when the customer received a demand-side incentive or a service.”

curtailable rate schedules or tariffs offered by the electric corporation. The Commission was directed in the legislation to establish rules and provide oversight for the implementation of this law. As such, the Commission has enacted rules governing this bill.

6. Consistent with the law, in May 2011, the Commission established rules governing MEEIA.

7. 4 CSR 240-20.094(6)(F) mandates the procedures that are required to be utilized by eligible customers to elect not to participate in demand-side measures offered by an electrical corporation. Under this Commission rule, eligible customers must provide a customer notice to the utility indicating their intention to “opt-out” of DSM programs no earlier than September 1 and not later than October 30 to be effective for the following calendar year. 4 CSR 240-20.094(6)(F) states:

(F) Timing and Effect of Opt-Out Provisions. A customer notice shall be received by the utility no earlier than September 1 and not later than October 30 to be effective for the following calendar year. For that calendar year and each successive calendar year until the customer revokes the notice pursuant to subsection (6)(H), 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. (emphasis added)

8. KCP&L is presently following the procedures required by 4 CSR 240-20.094(6)(F). As a result, eligible customers who provide the customer notice during the mandated September 1-October 30 period may opt-out of participation of KCP&L’s DSM programs for the following calendar year and successive calendar years. Such customers will be exempted from paying any costs associated with DSM programs following the opt-out election when those DSM program costs are otherwise included in KCP&L’s rates.

9. KCP&L has received requests from four customers to opt-out under 4 CSR 240-20.094(6)(F). KCP&L has responded to those customers that we currently do not have any DSM programs established under the MEEIA provisions.

10. In Case No. ER-2012-0174, which became effective January 26, 2013, recovery of DSM investments included in rates were for program costs up through August 2012. All program costs for programs after August 2012, will be placed in a regulatory asset and addressed in a future rate case. Thus for KCP&L, no DSM costs for programs after August 2012 are included in rates for existing DSM programs. These current program costs will be addressed in a future rate case.

11. It is important to understand that there are no costs associated with the Company's 2013 DSM programs ("the following calendar year") or successive calendar years reflected in the KCP&L's current rates. The only DSM program costs which are included in the KCP&L's current rates relate to the amortization of costs of the demand-side programs that were implemented in past years.

12. In the past, KCP&L was authorized in the Regulatory Plan Stipulation and Agreement approved in Case No. EO-2005-0329 to implement certain demand-side programs. Initially, the costs of these programs were authorized to be deferred and placed into a regulatory account, and amortized over a ten (10) year period. See Report & Order, Case No. EO-2005-0329, Attachment No. 1, p. 49. The Commission further explained the cost recovery mechanism as follows in the April 12, 2011 *Report and Order* in the Company's 2010 rate case:

251. Under the existing cost recovery mechanism, KCP&L first funds the DSM programs and the costs are placed into a regulatory asset account for consideration of recovery in the next rate case. Assuming the DSM costs are determined to be recoverable, those costs are then amortized over a ten-year period without the inclusion in rate base.

See Report & Order, Case No. ER-2010-0355, p. 83.³

13. The Staff apparently believes that eligible customers should be allowed to opt-out of KCP&L's DSM program costs for past years. This belief is inconsistent with the Commission's approved "opt-out" rules contained in 4 CSR 240-20.094(6)(F), and the Company's approved cost recovery mechanism which includes amortization of past DSM program costs to be considered for recovery in a future rate case.

14. Under the Commission's approved "opt-out" procedures contained in 4 CSR 240-20.094(6)(F), any eligible customers, for example, who exercised their opt-out election in the September 1-October 30 2012 period, would be opting out of participating in DSM programs for the upcoming 2013 calendar year. These customers would not be retroactively opting-out of past DSM programs of the Company, as suggested by Staff.

15. Since none of the costs of the 2013 DSM programs (or subsequent years) are included in the Company's existing rates, it is unnecessary and inappropriate for the Commission to order the Company to develop a separate rate element to separate out the DSM programs costs at this time, as may be suggested by Staff or possibly industrial intervenors. There are no costs in the current KCP&L rates related to DSM programs for 2013 or subsequent years for customers to opt-out of.⁴ In KCP&L's next rate case, it intends to implement a separate rate element that would be applicable to DSM programs that will be reflected in the proposed rates in

³ The amortization period was subsequently modified in the Company's 2010 rate case to six (6) years for DSM program costs subsequent to December 31, 2010: "The Commission . . . will direct that DSM program costs for investments made from December 31, 2010, until a future recovery mechanism is in place shall be placed in a regulatory asset account and amortized over six years with a carrying cost equal to the AFUDC rate applied to the unamortized balance." See Report & Order, Case No. ER-2010-0355, p. 93.

⁴ Unlike KCP&L, KCP&L Greater Missouri Operations Company's ("GMO") existing rates have program costs associated with its 2013 DSM program included in the rate structure, and there is a separate rate element associated with these programs contained in the GMO approved-tariffs. This separate rate element is consistent with the MEEIA *Stipulation And Agreement* approved by the Commission in Case No. EO-2012-0009 on November 15, 2012.

that proceeding. It is inappropriate to develop a separate rate element for the DSM program costs until those DSM program costs are actually expected to be recovered in rates.

RELIEF REQUESTED

16. KCP&L seeks an order from the Commission finding and concluding that its existing practices are consistent with the MEEIA codified at § 393.1075 RSMo (Supp. 2011), and the MEEIA Rules promulgated in 4 CSR 240-20.094(6).

17. In addition, the Company is requesting in this proceeding approval of a mechanism (e.g. AAO, DSM tracker, or similar accounting mechanism) that would give the Company the opportunity to quantify and recover in a future rate proceeding the foregone revenues associated with customers that elect to opt-out of the DSM programs. This mechanism is needed to ensure that the Company recovers the appropriate level of DSM program costs from its participating customers. Without this type of mechanism, when eligible customers opt-out of DSM programs, the Company would not have a method of recovering the foregone revenues associated with customers who exercised their election to not participate in the DSM programs. The Company requests that the Commission consider the revenue impacts of its DSM opt-out procedures, and approve a mechanism that would ensure the Company recovers all appropriate DSM program costs from participating customers.

CONCLUSION

18. In conclusion, the Company is not seeking an advisory opinion from the Commission in this proceeding. Instead, the Company is requesting that the Commission resolve an existing dispute over the proper interpretation of the MEEIA statute and the MEEIA Rules as they relate to the opt-out practices of the Company for its DSM programs. In addition, the Company is requesting that the Commission consider the revenue impacts of its existing opt-out procedures, and specifically approve a mechanism in the form of an AAO, DSM tracker or

similar accounting mechanism that would permit the Company to recover the foregone revenues associated with customers who opt-out of the DSM programs. This mechanism is necessary to ensure that the Company recovers all appropriate DSM program costs from the participating customers.

Respectfully submitted,

/s/ Roger W. Steiner

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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 14th day of February, 2013.

/s/ Roger W. Steiner

Attorney for Kansas City Power & Light Company