

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

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

**KANSAS CITY POWER & LIGHT COMPANY'S  
INITIAL PLEADING AND NOTICE OF RELIEF REQUESTED**

COMES NOW Kansas City Power & Light Company ("KCP&L"), pursuant to the Commission's *Notice Of Contested Case And Procedural Schedule* issued on March 27, 2013, hereby complies with the following directive of the Commission: "An initial pleading shall state the relief sought, legal authority for that relief, and facts relevant under that authority." (Notice, p. 8) Initial Pleading and Notice of Relief Requested states as follows:

**Introduction And Procedural History**

1. 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 contested case to determine the appropriate application of Section 393.1075 of MEEIA and the applicable MEEIA Rules." (*Joint Application*, p. 3)

2. On January 23, 2013, the Commission issued its *Order Directing Filing* in this proceeding 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.”

3. On February 14, 2013, KCP&L and Staff filed pleadings describing the relief sought in this proceeding by them.

4. The Commission granted the intervention requests of the Missouri Department of Natural Resources (“MDNR”), Midwest Energy Users’ Association (“MEUA”), Midwest Energy Users’ Group (MEUG”), and Midwest Industrial Energy Consumers (“MIEC”).

On March 27, 2013, the Commission issued its *Notice Of Contested Case and Procedural Schedule* (“*Notice*”) which adopted a procedural schedule, including the filing of an initial pleading stating relief sought, legal authority for that relief, and facts relevant under that authority. This pleading is designed to comply with this *Notice* to file an initial pleading, as described in the *Notice*.

## **RELEVANT FACTUAL BACKGROUND**

### ***Jurisdiction:***

5. KCP&L is a Missouri corporation with its principal office and place of business at 1200 Main Street, Kansas City, Missouri 64105. KCP&L is primarily engaged in the business of generating, transmitting, distributing, and selling electric energy in portions of eastern Kansas and western Missouri. KCP&L is an electrical corporation and public utility as defined in Section 386.020, Mo. Rev. Stat. (2000), as amended. KCP&L holds Certificates of Convenience and Necessity from the Commission to transact business as an electric public utility in certain areas of the State of Missouri and is principally engaged in the generation, transmission, distribution and sale of electric power and energy.

6. By virtue of its activities described in Paragraph 1, above, KCP&L is an “electrical corporation” within the intendments of § 386.020(15), RSMo, and a public utility within the intendments of § 386.020(43), RSMo, and therefore "subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter[.]"

***Missouri Energy Efficiency Investment Act (“MEEIA”):***

7. 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.

8. MEEIA provides a provision which allows large electrical users the ability to “opt-out” of paying for DSM 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.<sup>1</sup>

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.<sup>2</sup>

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 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.

9. In May 2011, the Commission established rules governing MEEIA. 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

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<sup>1</sup> 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."

<sup>2</sup> 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."

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)

10. 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.

11. During the September 1-October 30, 2013 opt-out period, KCP&L received requests from the following four customers to opt-out under 4 CSR 240-20.094(6)(F):

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\_\_\_\_\_.\*\* The Company determined that \*\*.\_\_\_\_\_\*\*. \*\* was not an eligible customer under Sections 393.1075.7, .8, .9, and .10.

12. 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. No DSM costs for KCP&L programs after August 2012 are included in

rates for existing DSM programs. These current program costs will be addressed in a future rate case.

13. 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.

14. 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.<sup>3</sup>

15. The Company believes that all eligible customers who notified the Company of their desire to opt-out of future DSM programs during the September 1, 2012 to October 30, 2012 notification period may opt-out of DSM program costs for 2013 DSM programs and subsequent years when these DSM program costs are reflected in the Company's rates in the future. Such DSM program costs for programs in 2013 and subsequent years are not expected to

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<sup>3</sup> 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.

be reflected in KCP&L's rates until the effective date of tariffs in the Company's next Missouri rate case.

16. The Staff and other parties apparently believe that eligible customers should be allowed to opt-out of KCP&L's DSM program costs for past years. KCP&L believes this position 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.

17. 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.

18. 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.<sup>4</sup> 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 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.

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<sup>4</sup> 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.

## **RELIEF REQUESTED**

19. KCP&L seeks an order from the Commission finding and concluding that its 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”).

20. 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 customer who exercised their election to not participate in the DMS 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 customer.



## STATUTORY AUTHORITY FOR RELIEF REQUESTED

21. The statutory authority for this relief is found in Sections 386.250<sup>5</sup> and 393.140<sup>6</sup> RSMo.

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<sup>5</sup>Section 386.250 states in part:

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:

(1) To the manufacture, sale or distribution of gas, natural and artificial, and electricity for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; and to gas and electric plants, and to persons or corporations owning, leasing, operating or controlling the same;

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(7) To such other and further extent, and to all such other and additional matters and things, and in such further respects as may herein appear, either expressly or impliedly.

<sup>6</sup> Section 393.140 states in part:

The commission shall:

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(4) Have power, in its discretion, to prescribe uniform methods of keeping accounts, records and books, to be observed by gas corporations, electrical corporations, water corporations and sewer corporations engaged in the manufacture, sale or distribution of gas and electricity for light, heat or power, or in the distribution and sale of water for any purpose whatsoever, or in the collection, carriage, treatment and disposal of sewage for municipal, domestic or other necessary beneficial purpose. It may also, in its discretion, prescribe, by order, forms of accounts, records and memoranda to be kept by such persons and corporations. Notice of alterations by the commission in the required method or form of keeping a system of accounts shall be given to such persons or corporations by the commission at least six months before the same shall take effect. Any other and additional forms of accounts, records and memoranda kept by such corporation shall be subject to examination by the commission.

**WHEREFORE,** KCP&L its Notice Of Relief Requested for consideration by the Commission.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 15th day of May, 2013.

/s/ James M. Fischer  
James M. Fischer