

**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     )  
A General Rate Increase for Electric Service     )

**Case No. ER-2012-0174**

**JOINT NOTICE OF DISPUTE BETWEEN STAFF AND KANSAS CITY POWER &  
LIGHT COMPANY REGARDING CUSTOMER OPT OUT OF DEMAND-SIDE  
MANAGEMENT PROGRAMS AND ASSOCIATED PROGRAMS' COSTS**

**COME NOW** Staff of the Missouri Public Service Commission ("Staff") and Kansas City Power & Light Company ("KCPL" or "Company") and file this Joint Notice of their dispute on the interpretation of who Section 393.1075.7, RSMo (Supp. 2011) allows to opt out of participation in demand-side management ("DSM") programs offered by the Company and avoid paying the costs associated with those DSM programs. For the Joint Notice, Staff and KCPL state to the Missouri Public Service Commission ("Commission") the following:

1. Part of the Missouri Energy Efficiency Investment Act ("MEEIA"), Section 393.1075, paragraphs .7, .8, .9 and .10, RSMo (Supp. 2011) 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 sections hall still be allowed to participate in interruptible or curtailable rate schedules or tariffs offered by the electric corporation.

(Emphasis added).

2. Commission rule 4 CSR 240-20.094(6)(F), which became effective May 30, 2011, requires that written notice of customer elections must be received by the electric corporation between September 1 and October 31 to be effective the following calendar year. During October of 2012 three KCPL customers did so.

3. Staff was notified of those elections and follow-up inquiries in November, but it was not until December 10 that KCPL explicitly provided its interpretation and Staff became aware that KCPL and Staff interpret Section 393.1075.7 differently.

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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."

4. KCPL interprets Section 393.1075.7 to only allow customers to opt out of DSM programs the Commission has approved under the MEEIA and the Commission's MEEIA rules.<sup>3</sup> Staff interprets Section 393.1075.7 to not have that limitation.

5. Staff interprets the "or by any other authority" language within Section 393.1075 (as highlighted above) to include the DSM programs the Commission addressed on pages 90-94 of its April 12, 2011 *Report and Order* in Case No. ER-2010-0355, KCPL's DSM programs the Commission has not approved under the MEEIA. In other words, Staff interprets Section 393.1075 to allow a customer, who otherwise qualifies, to opt out of DSM programs that the Commission has not approved under the MEEIA and the Commission's MEEIA rules and, therefore, not pay the costs of those programs.

6. Starting November 30, 2012, Staff and KCPL had multiple discussions regarding their different interpretations of who is eligible to opt out of DSM programs. Despite those discussions, they still disagree.

7. As the Commission is aware the main evidentiary hearing was held during the scheduled dates of October 17-30, 2012, and the true-up hearing was held on November 19, 2012. This issue was not included in the list of issues filed October 11, 2012, nor has any party raised it as an issue the Commission is to address in this case.

8. Although the Staff believes the Commission could address this issue in this case, the Staff recommends the Commission not do so because the issue has arisen so late and it would require opening the record in this case. Further, since § 393.1075.7 provides that "none of the costs of demand-side measures of an electric

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<sup>3</sup> The Commission's MEEIA rules include 4 CSR 240-3.163, 4 CSR 240-3.164, 4 CSR 240-20.093 and 4 CSR 240-20.094.

corporation . . . and no other charges implemented in accordance with this section, shall be assigned to any account of any customer, including its affiliates and subsidiaries,” it is Staff’s view the elimination of those costs and charges to qualifying customers who elect to not participate in DSM programs can be addressed outside of a general electric rate case, i.e., it is not required they be addressed for KCPL in this case.

9. Staff and KCPL anticipate filing a separate joint pleading to open a separate contested case putting before the Commission this issue of which customers have the right under Section 393.1075.7 to elect to opt out of participation in DSM programs KCPL offers and avoid the costs associated with those DSM programs, and to explore the revenue impacts on KCPL associated with customers who opt out.

**WHEREFORE** Staff and KCPL file this Joint Notice of their dispute as to who qualifies to opt out of KCPL’s DSM programs and payment of the costs associated with them under Section 393.1075.7, RSMo (Supp. 2011) for the Commission’s information and consideration.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served electronically on this **24<sup>th</sup> day of December, 2012**, to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

**/s/ Jennifer Hernandez**