

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

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

**STAFF'S RESPONSE TO APPLICATION TO INTERVENE BY MIEC**

**COMES NOW** Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel, and files this Response with the Missouri Public Service Commission ("Commission"). For its Response, Staff states as follows:

Background

1. On February 19, 2013,<sup>1</sup> the Commission issued its *Order Setting Dates For Filings And Directing Notice* and established March 1 as the deadline to file any application for intervention.

2. On March 13, counsel for the Missouri Industrial Energy Consumers ("MIEC") filed an *Application To Intervene Out Of Time Of The Missouri Industrial Energy Consumers* ("Application"). The *Application* stated in part that "...the members of the MIEC are large industrial customers of Kansas City Power & Light Company ("KCPL")" and "As large industrial customers of KCPL, the interest of the MIEC and each of its members are different than that of the general public and may be adversely affected by a final order arising from this case."

3. In regard to good cause, MIEC states "It was unclear to the MIEC whether intervention was required as the MIEC was on the initial service list in this case. Out of abundance of caution, MIEC submits its application to intervene. Intervention by the

---

<sup>1</sup> All dates refer to calendar year 2013, unless otherwise noted.

MIEC and its members will serve the public interest by assisting the Commission's record for decision in this case."

4. In its January 23 *Order Directing Filing* issued in this case, the Commission ordered the following:

1. The Commission's Data Center shall deliver a copy of this order to each party to the actions in either File No. ER-2012-0174 or File No. EO-2012-0008.

\* \* \* \*

3. No later than February 14, 2013, written argument as described in the body of this order shall be filed by KCPL and the Commission's staff, and may be filed by any person described in paragraphs 1 or 2 of this order.

MIEC was a party to both Case No. ER-2012-0174 and Case No. EO-2012-0008.

5. On February 14, MIEC, along with the Midwest Energy Consumers' Group, filed written argument as to why this case is a contested case in response to the Commission's January 23 *Order Directing Filing*.

#### Applicable Standard

6. Rule 4 CSR 240-2.075 (3) states:

The commission may grant a motion to intervene or add new member(s) if—

- (A) The proposed intervenor or new member(s) has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or
- (B) Granting the proposed intervention would serve the public interest.

7. If the Commission views MIEC's February 14, 2013 joint pleading with MECG to be a limited intervention then, since MIEC filed its *Application* after the intervention deadline, the Commission must also find good cause to grant the *Application*. Rule 4 CSR 240-2.075 (10) states:

Motions to intervene or add new member(s) filed after the intervention date may be granted upon a showing of good cause. Any motion so filed must include a definitive statement whether or not the entity seeking intervention or to be added as a new member accepts the record established in that case, including the requirements of any orders of the commission, as of the date the motion is filed.

8. Good cause “generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.”<sup>2</sup> Similarly, “good cause” has also been judicially defined as a “substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.”<sup>3</sup>

9. Not just any cause or excuse will do. To constitute “good cause” the reason or legal excuse given “must be real not imaginary, substantial not trifling, and reasonable not whimsical.”<sup>4</sup> And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.<sup>5</sup>

#### Recommendation

10. A Commission decision in this matter may affect the opt-out process of MIEC’s members as allowed by the Missouri Energy Efficiency Investment Act (“MEEIA”) Section 393.1075, RSMo (Supp. 2012), and the Commission’s MEEIA Rules.<sup>6</sup>

11. In regard to MIEC’s *Application*, Staff supports the *Application* and MIEC’s participation in this case. MIEC intervened, at least for the purpose of asserting

---

<sup>2</sup> *Black’s Law Dictionary* 692 (6th ed. 1990).

<sup>3</sup> *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) (“[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

<sup>4</sup> *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

<sup>5</sup> See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).

<sup>6</sup> 4 CSR 240-3.163, 4 CSR 240-3.164, 4 CSR 240-20.093 and 4 CSR 240-20.094.

this case is a contested case, well before the intervention deadline. Further, MIEC's members have an interest in this matter different from that of the public and that interest—how and whether they may opt-out under the MEEIA—may be adversely affected by any Commission order issued in this proceeding. MIEC's participation may also assist in the development of a record for the Commission's decision in this case.

12. Staff recommends the Commission find that, if it finds MIEC has not already intervened in this case sufficiently to participate on all issues, MIEC has shown good cause as to why its *Application* was late, and that MIEC has accepted the requirements of the Commission's orders as MIEC has participated in this case since the beginning, made filings in this case and has confirmed with the undersigned its agreement as to the date of the prehearing conference set in this matter.

**WHEREFORE**, Staff files this Response for the Commission's information and consideration, and recommends the Commission confirm or allow the general intervention of the Missouri Industrial Energy Consumers.

Respectfully submitted,

**/s/Jennifer Hernandez**

Jennifer Hernandez  
Senior Staff Counsel  
Missouri Bar No. 59814

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751- 8706 (Telephone)  
(573) 751-9285 (Fax)  
[jennifer.hernandez@psc.mo.gov](mailto:jennifer.hernandez@psc.mo.gov)

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing was served electronically on this **18<sup>th</sup> day of March 2013**, 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**