

**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        )

**REPLY TO RESPONSES OF STAFF AND KCPL TO  
INDUSTRIAL INTERVENORS' OBJECTION TO TARIFF**

COMES NOW, the Midwest Energy Consumers' Group ("MECG") and for its Reply to Responses of Staff and KCPL to Industrial Intervenors' Objection to Tariff, respectfully states as follows:

1.        On January 17, 2013, the Industrial Intervenors filed their Objection to the KCPL compliance tariffs submitted on January 16, 2013. In its Objection, the Industrial Intervenors pointed out, with statutory authority, that KCPL's compliance tariffs are unlawful. Specifically, the Industrial Intervenors note that, contrary to Section 393.1075.7, KCPL's compliance tariffs seek to charge opt-out customers for KCPL's energy efficiency costs.

2.        On January 18, 2013, Staff and KCPL both filed responses to the Industrial Intervenors' Objection to Tariff. In those responses, neither KCPL nor Staff argues that the Industrial Intervenors are incorrect in their allegation. Instead, both KCPL and Staff ask that the Commission simply forego consideration of the Industrial Intervenors' objection because of their recent request to establish a separate contested case to consider a multitude of issues related to the implications of the Missouri Energy Efficiency Investment Act on opt-out customers. Both KCPL and Staff, however, fail to provide any legal authority for their position that the Commission can simply ignore the directives of Section 393.1075.7 because it will be considering ancillary issues associated with those same provisions in another docket. The issue is ripe and pending in the immediate docket. The Commission must approve or reject KCPL's

tariffs based upon whether they are lawful including whether they comply with this statutory section. There is no reason to believe that the Commission may approve tariffs that are otherwise unlawful simply because it is considering this issue in another docket. **The Commission must rule now!**

3. Ultimately, it is unquestioned that Section 393.1075.7 places an affirmative duty on KCPL not to charge opt-out customers for its energy efficiency costs. Effectively, KCPL has sought to make the Commission an accessory to its violation of Section 393.1075.7 by having it approve tariffs that do not comport to that statute. The Commission should not allow itself to become an accessory to such a blatant violation of law.

4. KCPL's request to ignore Section 393.1075.7 and charge opt-out customers for its energy efficiency costs is fundamentally unfair. In most cases, these large industrial and commercial customers were investing in demand response and energy efficiency measures long before the utility even became aware of such opportunities. These customers made these investments in efficient lighting, high efficiency motors and pumps and other operational improvements because they made economic sense. Given the penetration of energy efficiency measures in these industrial applications, however, there now is little benefit to be realized from the utility's elementary energy efficiency measures. In fact, very few if any of KCPL's measures are even targeted at these large commercial and industrial customers. For this reason, the General Assembly found that it was unfair for these customers to pay for utility energy efficiency costs after already paying for their own, more extensive, energy efficiency investments. Nevertheless, KCPL seeks to charge these opt-out customers for energy efficiency programs that offer these customers no benefit.

5. The implications of KCPL's request to charge these opt-out customers are not inconsequential. Quantification of KCPL's energy efficiency costs are approximately \$0.001 / kWh. Members of the Industrial Intervenors have annual energy usage of as much as 250,000,000 kWh. As such, KCPL's request will cost individual industrial customers as much as \$250,000 per year. Effectively, this constitutes an additional rate increase over and above that already authorized by the Commission's Report and Order. While KCPL asks that the Commission defer any questions regarding the opt-out customers right to avoid its energy efficiency costs, KCPL offers no remedy in the event that it is determined that the customers should have never paid such charges. Rather, KCPL implicitly suggests that such customers would simply be out such money.

6. Interestingly, KCPL is the only utility that has had a problem interpreting and applying the provisions of the opt-out statute. Ameren, Empire and even GMO have all understood the scope of this provision and have agreed not to charge opt-out customers for their pre-MEEIA energy efficiency costs. Yet, KCPL struggles with this same provision. This is not surprising, in the context of its recently withdrawn MEEIA filing, KCPL sought to deny opt-out customers the right to participate in curtailable or interruptible programs in contravention of Section 393.1075.10. It is becoming increasingly apparent that KCPL wants to abide by the MEEIA statute only to the extent that it comports with KCPL's own sense of how energy efficiency should be done in Missouri.

7. Finally, KCPL attempts to obfuscate the issue by drawing a distinction between energy efficiency costs already incurred and those to be incurred in the future. (See KCPL Response at paragraphs 11-14). Such a distinction is irrelevant. Section 393.1075.7 does not

distinguish between past and future energy efficiency costs. Rather, the statute allows for qualifying customers to opt out of all costs.

8. The Commission should not be deterred from rejecting KCPL's tariffs simply because of the late date in which this issue has arisen. Counsel for the Industrial Intervenors contacted KCPL on December 27 with their belief that any compliance tariff must segregate the energy efficiency costs so that they could be avoided by opt-out customers. Now, four weeks later, KCPL has ignored the Industrial Intervenors and filed unlawful tariffs. KCPL proceeded at its own peril. The Commission should not limit its duty to insist on lawful tariffs simply because of notions of expediency caused by KCPL's refusal to comply with this straight-forward tariff. As Missouri Courts have repeatedly held "neither convenience, expediency or necessity are proper matters for consideration in the determination of" whether or not an act of the commission is authorized by the statute." State ex rel. Kansas City v. Public Service Comm'n, 257 S.W. 462 (banc 1923).

WHEREFORE, MECG respectfully renews its request that the Commission reject KCPL's compliance tariffs and order KCPL to file new compliance tariffs that comply with Section 393.1075.7.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



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David L. Woodsmall

Dated: January 22, 2013