BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Consideration and Implementation of Section 393.1075, the Missouri Energy Efficiency Investment Act.	)))	Case No. EX-2010-0368

APPLICATION FOR REHEARING
AND REQUEST FOR STAY

COMES NOW Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO") (collectively the "Companies"), by and through the undersigned counsel, pursuant to §386.500, RSMo., 4 CSR 240-2.080 and 4 CSR 240-2.160, and hereby submit their Application for Rehearing and Request for Stay of the Missouri Public Service Commission's ("Commission") Orders of Rulemaking issued February 9, 2011, in the above-captioned proceeding, in which the Commission adopts the four following rules, to-wit: 4 CSR 240-3.163, 4 CSR 240-3.164, 4 CSR 240-20.093 and 4 CSR 240-20.094. In support thereof, the Companies respectfully state as follows:

1. On February 9, 2011, the Commission issued four (4) separate Orders of Rulemaking in the captioned case, to be effective March 11, 2011.[1] By its Orders of Rulemaking, the Commission adopts rules 4 CSR 240-3.163 (Electric Utility Demand-Side Programs Investment Mechanisms Filing and Submission Requirements); 4 CSR 240-3.164 (Electric Utility Demand-Side Programs Filing and Submission Requirements); 4 CSR 240-20.093 (Demand-Side Programs Investment Mechanisms)

[1] Section 393.490.3 provides that "(e)very order or decision of the commission shall of its own force take effect and become operative thirty days after the service thereof, except as otherwise provided."

and 4 CSR 240-20.094 (Demand-Side Programs), purporting to implement Senate Bill 376 ("SB 376"), codified at Section 393.1075, RSMo. Cum Supp. 2009, and known as the Missouri Energy Efficiency Investment Act ("MEEIA" or the "Act").[2] The Companies believe the Orders of Rulemaking and the rules contained therein are unlawful, unjust and unreasonable and arbitrary and capricious, and therefore request reconsideration and rehearing and a stay of the effectiveness of said Orders, for the following reasons.

2. At its foundation, the MEEIA became law on the principle that greater implementation of cost-effective energy efficiency programs will be beneficial to all Missourians. The Act specifically recognizes this fact and includes provisions designed to align the interests of electric service providers and their customers in achieving this goal. Section 393.1075.3, RSMo. sets forth the underlying policy of the Act and provides positive language that eliminates some of the existing barriers to the implementation of energy efficiency faced by utilities:

> 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.

[2] Each of the respective Orders of Rulemaking note that "All of these rules were promulgated to implement Section 393.1075, RSMO, the Missouri Energy Efficiency Investment Act ("MEEIA"). Any comments directed towards [each rule] may be interrelated with these other proposed rules and the interplay between these proposed rules may need to be addressed in the context of this order or rulemaking; . . ." Orders, pages 1-2.

Indeed, the Commission itself "believes that the express language in Section 393.1075, RSMo unequivocally requires the commission provide timely cost recovery for utilities when effectuating the declared social policy of valuing demand-side investments equal to traditional investments in supply and delivery infrastructure. MEEIA contemplates non-traditional investments and mandates timely cost recovery." (Order or Rulemaking, 4 CSR 240-093, p. 2).

3. Section 393.1075.11, RSMo, provides in part:

> The **Commission** shall provide oversight and **may adopt rules** and procedures and approve corporation-specific settlements and tariff provisions, independent evaluation of demand-side programs, as necessary, **to ensure that electric corporations can achieve the goals of this section. Any rule or portion of a rule**, as that term is defined in section 536,010, that is created under the authority delegated in this section **shall become effective only if it complies with and is subject to all of the provisions of chapter 536** and, if applicable, section 536.028. . . . (Emphasis added).

In addition, Section 536.014, RSMo, provides:

> No department, agency, commission or board rule shall be valid in the event that: (1) There is an absence of statutory authority for the rule or any portion thereof; or (2) The rule is in conflict with state law; or (3) The rule is so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on persons affected.

4. While the Commission determines that the MEEIA authorizes provisions for the recovery of lost revenues, the definition of lost revenue adopted by the Commission in the Orders of Rulemaking and the rules set forth therein, is unlawful, unjust, unreasonable, arbitrary and capricious, and contrary to the spirit and letter of the enabling legislation. The Commission adopts the following definition of lost revenue:

> Lost revenue means the net reduction in utility retail revenue, taking into account all changes in costs and all changes in any revenues relevant to the Missouri jurisdictional revenue requirement that occurs when utility demand-side programs approved by the commission in accordance with 4

> CSR 240-20.094 cause a drop in net system retail kWh delivered to jurisdictional customers below the level used to set the electricity rates. Lost revenues are only those net revenues lost due to energy and demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240-20.094 Demand-Side Programs and measured and verified through EM&V;

4 CSR 240-3.163(1)(Q); 4 CSR 240-3.164(1)(M); 4 CSR 240-20.093(1)(Y); and 4 CSR 240-20.094(1)(U).

5. As the Companies advocated in written comments and at the public hearing held in this matter, the definition of "lost revenue" should be modified to conform to the definition included in the Commission's Chapter 22 rules. Commission Rule 4 CSR 240-22.020(38) reads: "Lost margin or lost revenues means the reduction between rate cases in billed demand (kW) and energy (kWh) due to installed demand-side measures, multiplied by the fixed-cost margin of the appropriate rate component."[3] As explained during the hearing in this matter, by adopting the Staff's approach to the definition of lost revenue, the Commission is creating disincentives to the funding of energy efficiency programs in contravention of the policy objectives of the Act. (Tr. 82, 87-90, 149-156).

6. The Commission adopted the language changes advocated by the Staff of the Commission in 4 CSR 240-20.093(2)(G), (Lost Revenue Adjustment Mechanism). This section reads as follows:

> (G) Any utility lost revenue component of DSIM shall be based on energy or demand savings from utility demand-side programs approved by the commission in accordance with 4 CSR 240- 20.094 Demand-Side Programs and measured and verified through EM&V.

[3] Companies would note that the recently issued Order of Rulemaking in Case No. EX-2010-0254, would modify said definition, to-wit: "4 CSR 240-22.020(36) Lost revenues means the reduction between rate cases in billed demand (kW) and energy (kWh) due to installed end-use measures, multiplied by the fixed-cost margin of the appropriate rate component."

> 1. A utility cannot recover revenues lost due to utility-demand side programs unless it does not recover the fixed cost as set in the last general rate case, i.e. actual annual billed system kWh is less than the system kWh used to calculate rates to recover revenues as ordered by the Commission in the utility's last general rate case.
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> 2. The commission shall order any utility lost revenue component of a DSIM simultaneously with the programs approved in accordance with 4 CSR 240-20.094 Demand-Side Programs.
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> 3. In a utility's filing for demand-side program approval in which a utility lost revenue component of a DSIM is considered there is no requirement for any implicit or explicit utility lost revenue component of a DSIM or for a particular form of a lost revenue component of a DSIM.
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> 4. The commission may address lost revenues solely or in part, directly or indirectly, with a performance incentive mechanism through a utility incentive component of DSIM.
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> 5. Any explicit utility lost revenue component of a DSIM shall be implemented on a retrospective basis and all energy and demand savings to determine a DSIM utility lost revenue requirement must be measured and verified through EM&V prior to recovery.

During the hearings, the Companies, however, objected to the language now contained in 4 CSR 240-20.093(2)(G) sections 1, 3, 4 and 5, as not being consistent with the statute's goal of aligning utility financial incentives. As promulgated, this section does not provide for the full and timely recovery of revenues lost due to the impact of its energy efficiency programs, and thus is not in compliance with the Act. It is inconsistent for the Commission to approve a three-year plan with a budget, targets, cost recovery and incentives, then only allow the lost revenue component to be retrospective, and only after a net reduction in utility retail revenue below the net system kWh delivered below the level used to set electricity rates. Customer rates should be updated to include the Commission approved plan, which would include forecasts for cost recovery, lost revenues and incentives. The rules are unnecessarily restrictive for lost revenues and will

ultimately prevent the pursuit and achievement of all cost-effective energy efficiency. In adopting Staff's clarifying language for 4 CSR 240-20.093(2)(G), the Commission's Order of Rulemaking and the rule set forth therein, are unlawful, unjust, unreasonable, arbitrary and capricious, and contrary to the spirit and letter of the enabling legislation.

7. The provisions of 4 CSR 240-20.093(4) (Requirements for Semi-Annual Adjustments of DSIM Rates), as adopted by the Commission's Order of Rulemaking, is unlawful, unjust, unreasonable, arbitrary and capricious, and contrary to the spirit and letter of the enabling legislation. This language, which sets forth the requirements for semi-annual adjustments of DSIM, should have been modified to apply not only to the cost recovery component of DSIM, but to all components of DSIM: cost recovery, lost margins or lost revenues, and incentive. In order to comply with the intent of the MEEIA, in particular – timely cost recovery to utilities, aligning utility financial incentives with helping customers use energy efficiently, and providing timely earnings opportunities associated with cost-effective energy efficiency – adjustments of DSIM rates between general rate proceedings should apply to all components of the DSIM. These three cost components must be addressed in concert to provide a sustainable business model for utilities to pursue DSM programs and both benefit customers and satisfy shareholders. As noted in the hearing testimony of Companies' Witness Curtis Blanc:

> The current language would appear to limit the ability to change the rate through a DSIM to just the timely cost recovery, and that change is to expand what Mr. Kidwell described as the three "shalls" in the statute: Timely cost recovery, timely earnings opportunities, and aligning the financial incentives, so just to make sure that the clause, that adjustment, applied to all three of the "shalls" and not just cost recovery. (Tr. 159-160).

8. Due to these substantive errors on the part of the Commission, there is an absence of statutory authority for the above-described rules as adopted by the Commission; said rules are in conflict with state law; and said rules, as adopted by the Commission, are so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on those affected. Accordingly, the Orders of Rulemaking and the above-described rules set forth therein are in violation of the referenced Missouri statutes.

WHEREFORE, the Companies respectfully request that the Missouri Public Service Commission grant reconsideration and rehearing with respect to the matters set forth in detail above. Additionally, the Companies request that the Commission stay the effectiveness of its Orders until such time as the issues identified can be reheard and resolved in a manner consistent with the language and intent of the MEEIA.

Respectfully submitted,

/s/ Roger W. Steiner
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ATTORNEYS FOR KANSAS CITY POWER & LIGHT COMPANY AND KCP&L GREATER MISSOURI OPERATIONS COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on this 10th day of March, 2011 to:

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