

**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**

**RESPONSE TO MOTION FOR CLARIFICATION AND MOTION FOR
EXPEDITED TREATMENT**

COMES NOW the Office of the Public Counsel and for its Response to Motion for Clarification and Motion for Expedited Treatment states as follows:

1. In its Report and Order issued on January 9, 2013, the Commission did not appear to explicitly address a matter contained in a nonunanimous stipulation and agreement to which objections had been filed. On January 10, 2013, the Midwest Energy Consumers Group filed a Motion for Clarification and Motion for Expedited Treatment, which asks the Commission to treat a portion of the objected-to nonunanimous stipulation and agreement as though it were unanimous.

2. The objected-to agreement, entitled "Non-Unanimous Stipulation and Agreement Regarding Class Cost of Service / Rate Design" was filed on October 29, 2012, and Public Counsel timely filed its objection pursuant to 4 CSR 240-2.115(2)(B) on November 2, 2012. 4 CSR 240-2.115(2)(B) provides: "(B) Each party shall have seven (7) days from the filing of a nonunanimous stipulation and agreement to file an objection to the nonunanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing." 4 CSR 240-2.115(2)(C) and (D) provide:

(C) If no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.

(D) A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

The Non-Unanimous Stipulation and Agreement Regarding Class Cost of Service / Rate Design itself provides at paragraph 9 that:

If the Commission does not unconditionally approve this Stipulation and Agreement without modification, ... any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Stipulation and Agreement shall ... be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

3. It is clear from the Commission January 9 Report and Order that it did not unconditionally approve the nonunanimous stipulation and agreement. So, pursuant to the nonunanimous stipulation and agreement itself, nothing in the evidentiary record can be used to support it directly. And pursuant to its rules, the Commission may treat the nonunanimous stipulation and agreement as unanimous only if there have been no objections, which is not the case here. Nothing in the Commission's rules allows the Commission to single out a paragraph or two in an objected-to nonunanimous stipulation and agreement and treat those paragraphs as a separate and deemed-unanimous stipulation and agreement.¹

¹ Even apart from the impact on non-signatories, such treatment may be unfair to some of the signatories. Every stipulation and agreement contains trade-offs, and if the Commission were to approve just certain paragraphs, some signatories might get only the detriments they were willing to accept without any of the benefits that made them willing to accept those detriments. Indeed the Non-Unanimous Stipulation and Agreement Regarding Class Cost of Service / Rate Design explicitly recognizes that dynamic, and provides at paragraph 8 that:

This Stipulation and Agreement has resulted from extensive negotiations among the Signatories and the terms hereof are interdependent. If the Commission does not approve this Stipulation and Agreement unconditionally and without modification, then this Stipulation and Agreement shall be void and no Signatory shall be bound by any of the agreements or provisions hereof, except as explicitly provided herein.

4. Public Counsel does not object to the Large General Service and Large Power rate design changes proposed by Mr. Brubaker in his prefiled testimony. Public Counsel did and still does object to the Non-Unanimous Stipulation and Agreement Regarding Class Cost of Service / Rate Design, and objects to any attempt to have the Commission use it as a vehicle to approve the Large General Service and Large Power rate design changes. Public Counsel takes no position on whether the Commission can or should find some other basis in the record to implement changes to the design of the Large General Service and Large Power rates.

WHEREFORE, Public Counsel respectfully offers this response and requests that the Commission not treat one portion of the objected-to Non-Unanimous Stipulation and Agreement Regarding Class Cost of Service / Rate Design as though it were a unanimous agreement.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Lewis R. Mills, Jr.
Lewis R. Mills, Jr. (#35275)
Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-1304
(573) 751-5562 FAX
lewis.mills@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 10th day of January 2013.

By: /s/ Lewis R. Mills, Jr.