

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

In the matter of Kansas City Power & Light)	
Company's Filing for Approval of Demand-)	
Side Programs and for Authority to Establish a)	EO-2014-0095
Demand-Side Programs Investment Mechanism)	
)	

**RESPONSE TO KANSAS CITY POWER & LIGHT COMPANY'S SUGGESTIONS IN
OPPOSITION TO THE APPLICATION TO INTERVENE OF
MC POWER COMPANIES, INC.**

On January 24, 2014, Kansas City Power & Light Company ("KCP&L") filed Suggestions in Opposition to the Application of MC Power Companies, Inc. ("MC Power") to Intervene. In it, KCP&L objected to MC Power's application to intervene claiming without any proof or any case law whatsoever that MC Power has not stated sufficient reasons to justify intervention. In such Suggestions, KCP&L speculated as to the facts and cited no case law to support its position.

1. Response to Paragraph 10 of KCPL's Suggestions.

In the first place in Paragraph 10 of KCP&L's Suggestions, it claims that MC Power states in Paragraph 6 of its application "that it has an interest in the outcome of this case due to the potential impact on 'its present and potential future customers as well as upon the general public.'" It then claims without any proof whatsoever, that "This interest will be represented by

Staff and OPC."¹ Since neither Staff nor Public Counsel have filed any testimony, KCPL is clearly speculating without any real proof.

Further, KCP&L failed to include all of the quote, which reads as follows. It eliminated the portion of the pleading before the language KCP&L quoted in which MC Power averred that:

"For purposes of 4 C.S.R. 240-2.075(2), MC POWER states that it has an interest in the outcome of this proceeding since it is deeply involved in the provision of energy efficiency programs and the impact of the Commission's decision in this case on MC POWER and its present and potential future customers as well as upon the general public."

Clearly, MC Power did not base its claim of interest in the proceeding only on the out-of-context portion of the sentence that KCP&L quoted, i.e., "its present and potential future customers as well as upon the general public." Such was only part of the interest which drove MC Power to intervene in an attempt to have some input in what the Commission decided. MC Power is interested not only in its own behalf but also in behalf of its customers and potential customers. since any adverse ruling, such as eliminating or lowering the rebates, incentives and discounts would not only impact its customers but it also would impact MC Power's ability to provide products that would reduce the reliance on KCP&L power. KCP&L also conveniently forgot to mention the last sentence of MC Power's Paragraph 6, following immediately after the truncated portion KCP&L cited, where MC Power set forth the caveat:

"However, analysis of KCPL's application has just begun and MC POWER is unable to be more specific pending that review and analysis of materials that are designated as highly confidential and

¹ Apparently, according to KCP&L, MC Power's being represented by an attorney steeped in PSC law, is trumped by KCP&L's supposition that Staff and OPC will represent MC Power's interests without them even knowing what its interest is, so being represented by an attorney and participating is never necessary.

have not been disclosed to MC POWER representatives at this time".

Not only was MC Power unable to review the access to KCP&L's HC testimony when it filed its Application to Intervene, it has been denied access to the HC testimony in this case on two recent attempts to access it. Without full knowledge, MC Power cannot be expected to make a more specific declaration of interest.

2. Response to Paragraph 11 of KCPL's Suggestions.

Furthermore, in its Paragraph 11, KCP&L argued without any facts or case law that any impact on MC Power's provision of solar or energy efficient lighting is also not a sufficient basis for intervention, apparently responding to MC Power's Paragraph 4 of its Application, in which MC Power also clearly stated that its interest is different than that of the general public and may be adversely impacted by a final order in this case:

"4. As a provider of solar generation equipment and energy efficient lighting, MC POWER'S interest is different from that of the general public and may be adversely impacted by a final order in this case".

Apparently, KCP&L had not reviewed the case law of Missouri to find out what is a sufficient basis for intervention at the PSC, because if it had, it would not even be bringing this frivolous motion as is shown by the controlling 1944 Supreme Court decision delineating what interest a party needed to allow it to intervene as a party in a PSC proceeding. In *State ex rel. Consumers Public Service Co. v. Public Service Commission*, 180 S.W. 2d 40 (Mo. banc 1944), the Supreme Court, en banc, ruled with respect to who has the right to intervene as a party before the Commission as follows at 180 S.W. 2d 46:

Considering the Public Service Commission Act as a whole, it seems apparent that parties to cases before the Commission, whether as complainants or **intervenors are not required to have a pecuniary interest, or property or other rights, which will be directly or immediately affected by the order** sought or even its enforcement. The reasonable construction seems to be that the interest necessary to authorize intervention should be the same as that required to become a complainant upon whose complaint a case is commenced. **Any local partisan interest in the situation involved, such as a customer, representative of the public in the locality or territory affected** (State ex rel. City of St. Louis v. Public Service Comm., 317 Mo. 815, 296 S.W. 790);... is surely sufficient to show an interest... and, therefore, is likewise a sufficient basis for intervention. [Emphasis added].

This case law is still the law of the state. It has not been changed by any subsequent case law. Consequently, an intervenor may have but does not need to have a pecuniary interest, or property or other rights, which will be directly or immediately affected by the order. The same interest necessary to authorize intervention should be the same as that required to become a complainant. In addition, any local partisan interest in the situation involved, such as a customer is sufficient to show an interest and, therefore, is a sufficient basis to intervene. Thus, the Court has clearly held that interventions should be liberally construed in favor of the applicant being granted intervention.

Under Section 386.390.1, RSMo., a "corporation" is among the named list of who can bring a complaint, thus, since MC Power, is a corporation and a customer of KCP&L, it follows that it is qualified to file a complaint at the PSC against a utility, and, therefore, under *Consumers*, it also has a right to intervene.

Furthermore, MC Power is a customer of KCP&L and many of its customers and prospective customers are also or will be customers of KCP&L. Thus, while not required to have a pecuniary interest to be an intervenor, since Mo Power derives a substantial part of its revenues

from such customers, it also has a pecuniary interest in KCP&L's proposal to throw out the bulk of KCP&L's existing tariffs and replacing them with a whole new set of tariffs pertaining to DSM and in the impact of these new tariffs on the existing rebates, incentives and discounts offered by KCP&L, which are very instrumental in getting customers to reduce their usage of KCP&L generated power and that supplied it by the grid.

Also, in Paragraph 11 of KCP&L's Opposition, KCP&L makes some outlandish claims that if MC Power is allowed to intervene, somehow MC Power could potentially (perish the thought) provide input into the DSM decision making. MC Power definitely hopes that it can have some input in this case, that is why it is seeking to intervene and have a part in the decision making process and not wait until it is decided without any input on its part. After all a large amount of its revenues and its property rights are possibly dependent on how the Commission rules. This is not a bad thing as KCP&L would have the Commission believe. As *Consumers* also held, a direct effect on property rights is a basis for intervention as well:

"So also it should certainly be sufficient to authorize intervention if the ultimate enforcement of the order sought would **directly affect property rights.**"

KCP&L's fear that permitting MC Power to intervene "may in fact provide an advantage to them over other providers of similar products **which may not be in the interest of Missouri customers,**" is **completely without any basis in fact and most** certainly underestimates the ability of the Commission to consider all relevant facts in the case from all sources and still rule in the public interest.

Clearly, by objecting to the interventions of three intervenors, KCP&L fears intervenors being allowed to participate in the case may not be beneficial to KCP&L's case and it would

rather be rid of those pesky intervenors altogether so it can attempt to steamroll a decision in its favor, which the Commission is also not going to allow to happen.

3. Response to Paragraph 12 of KCPL's Suggestions.

In Paragraph 12, KCP&L without any facts and without prescience outlandishly claims that the intervention of MC Power will not advance the record in this case. Whether this is fact or wishful thinking on KCP&L's part can only be found out if MC Power is allowed to intervene.

4. Response to Paragraph 13 of KCPL's Suggestions.

In its Paragraph 13, KCP&L again without facts or foreknowledge claims that there are important policy considerations that support limiting the intervention of an applicant that is using intervention to promote the sale of its energy efficiency products. Of course, KCP&L does not state the source of such policy considerations, likely because the policy considerations were well stated in *Consumers* and the policy considerations according are just the opposite of what KCP&L baldly contends. Without conceding that MC Power is using this intervention to promote the sale of its energy efficiency equipment, a claim that MC Power denies, even if it were, since *Consumers* holds that pecuniary interests and property rights are a sufficient basis for intervention there obviously no important policy considerations being violated by MC Power in its attempt to intervene and participate in the proceeding.

In conclusion, MC Power once again, based on its Application to Intervene and the arguments and additional assertions herein set forth, requests that the Commission follows the dictates of the

Consumers case and liberally grant interventions and permit MC Power to intervene herein and be made a party with all the rights available to a participant.

Respectfully submitted,
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ATTORNEYS FOR MC POWER
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Certificate of Service

I hereby certify that on this 28th day of January, 2014, I have emailed a copy of the foregoing pleading to all parties on the Commission's Service List.


Jeremiah D. Finnegan