

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 Programs)
and Related Issues)

File No. EO-2013-0359

ORDER DIRECTING FILING

Issue Date: January 23, 2013

Effective Date: January 23, 2013

The Missouri Public Service Commission is directing notice of the application,¹ and ordering briefing on procedure, including how the relief sought will be more than an advisory opinion.

The application asks the Commission to give notice of this action and institute a contested case. A contested case, according to the statutes, is the procedure by which someone:

. . . seeks such **action** as by law can be taken by the [Commission] only after opportunity for hearing, **or** seeks a hearing for the purpose of obtaining a **decision** reviewable upon the record of the proceedings and evidence at such hearing [. ²]

When the action or decision sought is:

. . . affirmative relief [, the application] shall state what relief is sought or proposed and the reason for granting it [. ³]

The only relief sought or proposed in the application is:

¹ *Joint Application to Establish a Proceeding to Review Kansas City Power & Light Company's Practices Regarding Customer Opt-Out of Demand-Side Management Programs and Associated Programs' Costs and Revenue Impacts* filed on January 18, 2013.

² Section 536.063(1), RSMo Supp. 2012 (emphasis added).

³ Section 536.063(2), RSMo Supp. 2012 (emphasis added).

... to review KCPL's practices regarding customer opt-out of demand-side management programs and associated programs' costs and revenue impacts. [⁴]

The application does not allege that those practices violate any statute, tariff, or Commission regulation or order, as the Commission would determine by complaint, in which the statutes require a contested case.⁵

The Commission cannot issue an advisory opinion. "The function of [the Commission and reviewing courts] is to resolve disputes properly presented by real parties in interest with existing adversary positions."⁶ The Commission should not issue decisions with "no practical effect and that are only advisory as to future, hypothetical situations."⁷ A request for relief in an administrative action "must present a 'real, substantial, presently existing controversy admitting of specific relief as distinguished from an advisory or hypothetical situation.'"⁸

Therefore, the Commission will give notice of this action as requested and order the filing of written argument describing the relief sought in a Commission decision on KCPL's practices.

THE COMMISSION ORDERS THAT:

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.

⁴ Application, page 1, first paragraph. The application also asks for certain interlocutory orders, setting an intervention deadline, and setting a pre-hearing conference, but does not describe the relief sought in a final order.

⁵ Section 386.330, RSMo 2000.

⁶ *Wasinger v. Labor & Indus. Relations Comm'n*, 701 S.W.2d 793, 794 (Mo. App., E.D. 1985).

⁷ *State ex rel. Mo. Parks Assoc. v. Mo. Dept. of Natural Res.*, 316 S.W.3d 375, 384 (Mo. App., W.D. 2010).

⁸ *Akin v. Dir. of Revenue*, 934 S.W.2d 295, 298 (Mo. banc 1996).

2. No later than February 1, 2013, Kansas City Power & Light Company ("KCPL") shall provide notice of this action to customers who:

- a. Are not otherwise provided notice under paragraph 2; and
- b. Have requested since August 2009 to opt-out under:
 - i. Section 393.1075, RSMo Supp. 2012; or
 - ii. 4 CSR 240-20.094(6)(A) or (B).

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.

4. This order is effective immediately upon issuance.

BY THE COMMISSION



Shelley Brueggemann
Acting Secretary

(S E A L)

Daniel Jordan, Senior Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 23rd day of January, 2013.