

**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)	<u>File No. EO-2014-0029</u>
of Demand-Side Programs and Related Issues)	Tariff Nos. YE-2014-0169
		YE-2014-0170

STAFF RECOMMENDATION TO APPROVE TARIFF SHEETS

COMES NOW Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel, and submits this Staff Recommendation ("Recommendation") to the Missouri Public Service Commission ("Commission"). In support of the Recommendation, Staff respectfully states the following:

Background

1. On September 23, 2013,¹ Kansas City Power & Light Company ("KCPL"), Staff, Midwest Energy Consumer Group and Missouri Industrial Energy Consumers filed a *Non-Unanimous Stipulation and Agreement* ("*Agreement*") in this case. The Midwest Energy Users' Association, Missouri Division of Energy and the Office of the Public Counsel stated they would not oppose the *Agreement* or request a hearing in this matter.

2. In its October 3 *Order Approving Stipulation and Agreement* the Commission stated that it will treat the stipulation and agreement as unanimous, and that KCPL could file the agreed upon tariff sheets in this case.

3. On October 10, KCPL filed tariff sheets identical in content to those attached to the September 23 *Agreement* and a *Motion For Expedited Treatment* for approval of the tariff sheets on less than thirty days' notice.

¹ All dates herein refer to calendar year 2013, unless otherwise specified.

4. On the same day, the Commission issued an *Order Establishing Time To File Recommendation* that directed Staff to file a recommendation regarding the tariff sheets no later than October 16.

Recommendation and Authority

5. In Staff's *Memorandum*, attached hereto as Appendix A and fully incorporated herein, Staff recommends the Commission approve the tariff sheets as filed by KCPL to become effective on October 20 for good cause.

6. Section 393.140 (11), RSMo 2000 requires utilities to file a tariff or tariff sheets with an effective date of at least 30-days from issuance. However, the same section provides that the Commission may allow changes to go into effect with less than thirty days' notice for good cause and under such conditions as the Commission prescribes.

7. Rule 4 CSR 240-2.065 (2) provides that a utility shall file a motion for expedited treatment and comply with Rule 4 CSR 240-2.080 (14) when making such request.

8. Section 393.1075.7, RSMo, as well as Rule 4 CSR 240-20.094 (6), allow KCPL customers meeting certain criteria to opt-out of payment of demand-side programs' costs upon providing notification to the utility. Eligible customers can opt-out between September 1 and October 30 to be effective for the following and each successive calendar year until the customer revokes the notice.

9. Good cause "...generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law."² Similarly, "good cause" has also been judicially defined as a "...substantial reason or cause which would cause

² Black's Law Dictionary, p. 692 (6th ed. 1990).

or justify the ordinary person to neglect one of his [legal] duties.”³ Similarly, it can refer “...to a remedial purpose and is to be applied with discretion to prevent a manifest injustice or to avoid a threatened one.”⁴

10. Of course, not just any cause or excuse will do. To constitute good cause, the reason or legal excuse given “...must be real not imaginary, substantial not trifling, and reasonable not whimsical...”⁵ Moreover, some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁶

11. KCPL’s *Motion For Expedited Treatment* states good cause exists for approval of the tariff sheets on less than 30-days “...since all of the parties have already reviewed and approved the tariffs. There will be no harm to the general public if this motion is granted.” Staff agrees with KCPL’s analysis and states the compliance tariff sheets are identical in content to those filed with the *Agreement* on August 23.

12. Further, Staff believes good cause exists for the Commission to approve the tariffs to become effective on October 20, because this will allow for eleven (11) days in the calendar year 2013⁷ opt-out period for customers of KCPL - who may or may not be aware of the *Agreement* - to apply for opt-out beginning calendar year 2014.

³ *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See *Central. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) (“...[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

⁴ *Bennett v. Bennett*, 938 S.W.2d 952 (Mo. App. S.D. 1997).

⁵ *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

⁶ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975).

⁷ The Company’s proposed P.S.C. MO No. 2 Fourth Revised Sheet No. 1.28 Cancelling Third Revised Sheet No. 1.28 includes in its 8.09 NON-MEEIA OPT-OUT PROVISIONS: a) eligibility requirements to opt-out, b) period of time each year (no earlier than September 1 and not later than October 30) an eligible customer may elect to opt-out, and c) the non-MEEIA rate of \$0.00081 per kWh that qualified opt-out customers can avoid.

13. Staff has verified KCPL has filed its calendar year 2012 Annual Report and paid its first quarterly installment of its fiscal year 2014 assessment.

WHEREFORE, Staff files this Recommendation for the Commission's information and consideration and recommends the Commission approve the filed tariff sheets with Tariff Tracking Nos. YE-2014-0169 and YE-2014-0170 to go into effect on October 20, 2013.

Respectfully submitted,

/s/ Jennifer Hernandez

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served electronically on this 16th day of October, 2013 to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Jennifer Hernandez

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
File No. EO-2014-0029, Tariff Tracking Nos. YE-2014-0169 and YE-2014-0170
Kansas City Power & Light Company

FROM: John Rogers, Utility Regulatory Manager

/s/ Natelle Dietrich 10/16/2013 /s/ Jennifer Hernandez 10/16/2013
Director of Tariff, Safety, Economic Staff Counsel's Office / Date
& Engineering Analysis / Date

SUBJECT: Staff Recommendation for Approval of Tariff Sheets Concerning Kansas City
Power & Light Company's Practices Regarding Customer Opt-Out of Demand-
Side Programs and Related Issues

DATE: October 16, 2013

On October 10, 2013, Kansas City Power & Light Company ("KCPL" or "Company")
filed the following eight (8) tariff sheets bearing a proposed effective date of November 9, 2013:

P.S.C. MO No. 2 Fourth Revised Sheet No. 1.28 Cancelling Third Revised Sheet No. 1.28
P.S.C. MO No. 7 Second Revised Sheet No. 9E Cancelling First Revised Sheet No. 9E
P.S.C. MO No. 7 Second Revised Sheet No. 10E Cancelling First Revised Sheet No. 10E
P.S.C. MO No. 7 Second Revised Sheet No. 11E Cancelling First Revised Sheet No. 11E
P.S.C. MO No. 7 Second Revised Sheet No. 14E Cancelling First Revised Sheet No. 14E
P.S.C. MO No. 7 Third Revised Sheet No. 17D Cancelling Second Revised Sheet No. 17D
P.S.C. MO No. 7 Third Revised Sheet No. 18E Cancelling Second Revised Sheet No. 18E
P.S.C. MO No. 7 Third Revised Sheet No. 19D Cancelling Second Revised Sheet No. 19D

The Company's October 10, 2013, proposed P.S.C. MO No. 2 Fourth Revised Sheet No.
1.28 Cancelling Third Revised Sheet No. 1.28 was filed in Tariff Tracking No. YE-2014-0169,
and the Company's other seven (7) proposed tariff sheets were filed in Tariff Tracking No.
YE-2014-0170. The tariff sheets filings in Tariff Tracking Nos. YE-2014-0169 and
YE-2014-0170 are made in compliance with the Non-Unanimous Stipulation and Agreement¹

¹ Signatories to the Non-Unanimous Stipulation and Agreement in File No. EO-2014-0029 include: KCPL, Staff, Midwest Energy Consumers Group and Missouri Industrial Energy Consumers (collectively "Signatories"). Rule 4 CSR 240-2.115(2)(C) states "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." In paragraph 7 of the Non-Unanimous Stipulation and Agreement, Midwest Energy Users' Association, Division of Energy and the Office of the Public Counsel state that they will not oppose the Non-Unanimous Stipulation and Agreement or request a hearing in this matter. In its October 3, 2013 *Order Approving Stipulation and Agreement* in File No. EO-2014-0029 the Commission states that it will treat the stipulation and agreement as unanimous.

(“Agreement”) which was filed on September 23, 2013, in File No. EO-2014-0029 and which was approved by the Commission on October 3, 2013.

Also, on October 10, 2013, KCPL filed its Motion for Expedited Treatment in which the Company states:

3. On October 3, 2013, the Commission filed its Order Approving Stipulation and Agreement with an effective date of October 13, 2013. The tariffs filed contemporaneously with this pleading bear a 30-day effective date. KCP&L requests that the tariffs become effective in 10 days (i.e. October 20, 2013) since all of the parties have already reviewed and approved the tariffs. There will be no harm to the general public if this motion is granted. This pleading was filed as soon as it could have been after the tariffs were filed.

Staff of the Missouri Public Service Commission (“Staff”) is a party to the Agreement. The Agreement’s Attachment A contains a set of eight (8) redline exemplar tariff sheets which were agreed to by the Signatories and which includes a non-MEEIA² energy efficiency charge of \$0.00081 per kWh that qualified opt-out customers can avoid. The calculation of the non-MEEIA energy efficiency charge of \$0.00081 per kWh is contained in Attachment B of the Agreement. Staff has compared the set of eight (8) proposed tariff sheets in Tariff Filing Nos. YE-2014-0169 and YE-2014-0170 with the set of eight (8) redline exemplar tariff sheets in Attachment A of the Agreement and finds that the content of both sets are identical.

Staff supports KCPL’s request that the proposed tariff sheets filed on October 10, 2013, become effective in ten (10) days (i.e., October 20, 2013) for the good cause stated in paragraph 3 of the Company’s October 10, 2013 Motion for Expedited Treatment. Further, while the Agreement has an effective date of October 13, 2013, and while some of KCPL customers³ are aware of the Agreement, Commission approval of the requested October 20, 2013, effective date

² MEEIA is the Missouri Energy Efficiency Investment Act of 2009 which is contained in 393.1075, RSMo, Supp. 2012.

³ Attachment C of the Agreement identifies five (5) KCPL customers who had each notified KCPL, pursuant to the MEEIA before the effective date of the Commission’s MEEIA rules or the procedures specified in 4 CSR 240-20.094(6) after the effective date of the MEEIA rules, to opt-out of continuing to prospectively pay for energy efficiency costs incurred by KCPL.

will result in the eight (8) tariff sheets being effective for eleven (11) days in the calendar year 2013⁴ opt-out period for customers of KCPL - who may or may not be aware of the Agreement - to apply for opt-out beginning calendar year 2014.

Staff Recommendation

Staff recommends the Commission issue an order approving the following proposed tariff sheets, as filed on October 10, 2013, to become effective on October 20, 2013, as requested by KCPL:

P.S.C. MO No. 2 Fourth Revised Sheet No. 1.28 Cancelling Third Revised Sheet No. 1.28
P.S.C. MO No. 7 Second Revised Sheet No. 9E Cancelling First Revised Sheet No. 9E
P.S.C. MO No. 7 Second Revised Sheet No. 10E Cancelling First Revised Sheet No. 10E
P.S.C. MO No. 7 Second Revised Sheet No. 11E Cancelling First Revised Sheet No. 11E
P.S.C. MO No. 7 Second Revised Sheet No. 14E Cancelling First Revised Sheet No. 14E
P.S.C. MO No. 7 Third Revised Sheet No. 17D Cancelling Second Revised Sheet No. 17D
P.S.C. MO No. 7 Third Revised Sheet No. 18E Cancelling Second Revised Sheet No. 18E
P.S.C. MO No. 7 Third Revised Sheet No. 19D Cancelling Second Revised Sheet No. 19D

Staff has verified that KCPL is not delinquent on any assessment and has filed its 2012 Annual Report. Staff is not aware of any other matter before the Commission that affects or is affected by these filings.

⁴ The Company's proposed P.S.C. MO No. 2 Fourth Revised Sheet No. 1.28 Cancelling Third Revised Sheet No. 1.28 includes in its 8.09 NON-MEEIA OPT-OUT PROVISIONS: a) eligibility requirements to opt-out, b) period of time each year (no earlier than September 1 and not later than October 30) an eligible customer may elect to opt-out, and c) the non-MEEIA rate of \$0.00081 per kWh that qualified opt-out customers can avoid.

