

**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)	<u>File No. EO-2013-0359</u>
Programs and Related Issues)	

COMPLAINT

COMES NOW Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel of the Chief Staff Counsel's Office of the Missouri Public Service Commission, and pursuant to Section 386.390, RSMo 2000, respectfully states as follows:

Introduction

1. This Complaint arises from Kansas City Power & Light Company's (KCPL) denial of customers' notifications of opt-out of demand-side programs and demand-side programs' charges under Section 393.1075.7, RSMo (Supp. 2012), and Missouri Public Service Commission ("Commission") Rule 4 CSR 240-20.094 (6).

2. Staff and KCPL initiated this contested case on January 18, 2013, by filing a joint application to establish a proceeding to review KCPL's practices regarding customer opt-out of demand-side management programs and associated programs' costs and the revenue impacts.

3. On March 27, 2013, the Commission issued its *Notice Of Contested Case And Procedural Schedule* in this matter. Staff files this Complaint in compliance with that Order.

Complainant

4. Complainant is Staff of the Commission, acting through the Commission's Chief Staff Counsel's Office as authorized by Section 386.390.1, RSMo 2000, and Commission Rule 4 CSR 240-2.070 (1). Section 386.390.1 provides that a "Complaint may be made....in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility....in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission...."

Respondent

5. KCPL is an electrical corporation and a public utility as those terms are defined in Section 386.020 (15) and (43), RSMo (Supp. 2012). As such, KCPL is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo 2000.

Allegations Common To Count I

6. The Missouri Energy Efficiency Investment Act of 2009 ("MEEIA") became effective on August 28, 2009.

7. MEEIA Section 393.1075, paragraphs .7, .8, .9 and .10, RSMo (Supp. 2012) state:

7. Provided that the customer has notified the electric corporation that the customer elects not to participate in demand-side measures offered by an electrical corporation, none of the costs of demand-side measures of an electric corporation offered under this section or by any other authority, and no other charges implemented in accordance with this section, shall be assigned to any account of any customer, including its affiliates and subsidiaries, meeting one or more of the following criteria:

(1) The customer has one or more accounts within the service territory of the electrical corporation that has a demand of five thousand kilowatts or more;

(2) The customer operates an interstate pipeline pumping station, regardless of size; or

(3) The customer has accounts within the service territory of the electrical corporation that have, in aggregate, a demand of two thousand five hundred kilowatts or more, and the customer has a comprehensive demand-side or energy efficiency program and can demonstrate an achievement of savings at least equal to those expected from utility-provided programs.

8. Customers that have notified the electrical corporation that they do not wish to participate in demand-side programs under this section shall not subsequently be eligible to participate in demand-side programs except under guidelines established by the commission in rulemaking.

9. Customers who participate in demand-side programs initiated after August 1, 2009, shall be required to participate in program funding for a period of time to be established by the commission in rulemaking.

10. Customers electing not to participate in an electric corporation's demand-side programs under this sections shall still be allowed to participate in interruptible or curtailable rate schedules or tariffs offered by the electric corporation.

8. The Commission's MEEIA rules, Rules 4 CSR 240-3.163, 4 CSR 240-3.164, 4 CSR 240-20.093 and 4 CSR 240-20.094, became effective May 30, 2011.

9. Rule 4 CSR 240-20.094 (6)(F) states:

Timing and Effect of Opt-Out Provisions. A customer notice shall be received by the utility no earlier than September 1 and not later than October 30 to be effective for the following calendar year. For that calendar year and each successive calendar year until the customer revokes the notice pursuant to subsection (6)(H), none of the costs of approved demand-side programs of an electric utility offered pursuant to 4 CSR 240-20.093, 4 CSR 240-20.094, 4 CSR 240-3.163, and 4 CSR 240-3.164 or by other authority and no other charges implemented in accordance with section 393.1075, RSMo, shall be assigned to any account of the customer, including its affiliates and subsidiaries listed on the customer's written notification of opt-out.

10. Rule 4 CSR 240-20.094 (6)(H) states:

Revocation. A customer may revoke an opt-out by providing written notice to the utility and commission two to four (2-4) months in advance of the

calendar year for which it will become eligible for the utility's demand-side program's costs and benefits. Any customer revoking an opt-out to participate in a program will be required to remain in the program for the number of years over which the cost of that program is being recovered, or until the cost of their participation in that program has been recovered.

11. Rule 4 CSR 240-20.094 (6)(I) states:

A customer who participates in demand-side programs initiated after August 1, 2009, shall be required to participate in program funding for a period of three (3) years following the last date when the customer received a demand-side incentive or a service.

12. Rule 4 CSR 240-20.094 (6)(B) states "...Written notification of opt-out from customers meeting the criteria under paragraph (6)(A)3. shall be sent to the utility serving the customer and the manager of the energy resource analysis section of the commission or submitted through the commission's electronic filing and information system (EFIS) as a non-case-related filing."

13. KCPL began implementing Commission approved demand-side management programs in 2005 as the result of the stipulation and agreement for the KCPL Experimental Regulatory Plan in Case No. EO-2005-0329.

14. Included as part of KCPL's current revenue requirement approved by the Commission in its last rate case, Case No. ER-2012-0174, is an amortized amount of demand-side management programs' costs KCPL has incurred since 2005 and an amount for return on capital related to demand-side management programs' costs included in rate base.

15. KCPL has denied at least four eligible customers' elections under MEEIA and the Commission's MEEIA rules not to participate in KCPL's implemented demand-side management programs and associated incurred programs' costs.

**COUNT I - KCPL HAS FAILED TO COMPLY WITH MEEIA
AND THE COMMISSION'S MEEIA RULES**

16. Staff hereby adopts by reference and re-alleges the allegations set out in Paragraphs one (1) through fifteen (15) above.

17. Section 393.130.1, RSMo (Supp. 2011) states:

All charges made or demanded by any...electrical corporation...shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for...electricity...or in excess of that allowed by law or by order or decision of the commission is prohibited.

18. Section 393.270, RSMo (2000) allows the Commission after hearing to fix the lawful rate an electric corporation may charge for service.

19. In approximately September 2009, KCPL denied the customer's election (identified in Attachment A) to opt-out of KCPL's demand-side management programs and associated programs' costs.

20. Between September 1, 2011, and October 30, 2011, KCPL denied the customer's follow-up election (identified in Attachment A) to opt-out of KCPL's demand-side management programs and associated programs' costs.

21. The KCPL customer listed on Attachment A operates interstate pipeline pumping stations.

22. On November 7, 2012, KCPL denied the customer's election (identified in Attachment B) to opt-out of KCPL's demand-side management programs and associated programs' costs.

23. The KCPL customer listed on Attachment B has one or more accounts within the KCPL service territory that has a demand of five thousand kilowatts or more.

24. On November 19, 2012, KCPL denied the customer's election (identified in Attachment C) to opt-out of KCPL's demand-side management programs and associated programs' costs.

25. The KCPL customer listed on Attachment C has one or more accounts within the KCPL service territory that has a demand of five thousand kilowatts or more.

26. On November 19, 2012, KCPL denied the customer's election (identified in Attachment D) to opt-out of KCPL's demand-side management programs and associated programs' costs.

27. The KCPL customer listed on Attachment D has one or more accounts within the KCPL service territory that has a demand of five thousand kilowatts or more.

28. KCPL has violated MEEIA, the Commission's MEEIA rules and Section 393.130.1 by denying eligible customers' elections not to participate in KCPL's implemented demand-side management programs and associated incurred programs' costs.

WHEREFORE, Staff prays that after hearing the Commission will: find KCPL violated MEEIA, the Commission's MEEIA rules and Section 393.130.1 by denying eligible customer elections not to participate in KCPL's implemented demand-side management programs and associated incurred programs' costs; order KCPL to allow qualified customers to opt-out of such programs and costs without a MEEIA program plan approved by the Commission until such customers revoke their opt-out; order KCPL to credit the accounts of eligible customers that notified KCPL of their election to opt-out, but were denied opt-out and continued to pay the demand-side management programs' costs; and any other relief the Commission deems appropriate.

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 15th day of May 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