

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

In the Matter of the Application of Kansas City        )  
Power & Light Company for Approval to Make        )  
Certain Changes in its Charges for Electric Service    )  
to Continue the Implementation of its Regulatory     )  
Plan.    )

**Case No. ER-2010-0355**  
Tariff No. JE-2010-0692

**Staff’s Motion in Limine Regarding DSM Programs Cost Recovery**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and for its *Motion In Limine Regarding DSM Programs Cost Recovery* states:

1. In his verified direct testimony pre-filed June 4, 2010, on page 21, line 8, through page 27, line 3, Kansas City Power & Light Company employee Tim M. Rush, Director, Regulatory Affairs, testifies on behalf of Kansas City Power & Light Company (“KCPL” or “Company”) about KCPL’s demand-side management programs, the Missouri Energy Efficiency Investment Act (“MEEIA”) and cost-recovery mechanisms for demand-side programs.

2. In particular, on page 21 at lines 13 to 17, and on page 26 at lines 12 to 22, Mr. Rush testifies:

**Q: What has the Company done in this filing to address MEEI?**

A: The Company has not taken any action in this filing beyond what is currently in place and was established in the Regulatory Plan. KCP&L hopes that rules will become effective in sufficient time prior to the conclusion of this case and will become part of the outcome in this proceeding.

\* \* \* \*

**Q: Is KCP&L seeking to change the structure of its cost recovery mechanism in this proceeding?**

A: As I stated previously, the Company is not seeking to change the cost recovery mechanism in its initial filing. It is the Company’s hope that by the time the tariffs in this case are effective, a rulemaking will be implemented in the state

that addresses SB 376. At the writing of this testimony the Staff and other parties are holding workshops, and the Company is taking an active role in this rulemaking process.

The Company anticipates the new rules will address the uncertain environment of DSM programs by implementing a comprehensive cost recovery approach. *The Company hopes that the Commission changes the current method used to recover the costs of implementing these DSM programs.*

(emphasis added).

3. Commission Rule 4 CSR 240-2.130 (7) provides:

For the purpose of filing prepared testimony, direct, rebuttal, and surrebuttal testimony are defined as follows:

(A) Direct testimony shall include all testimony and exhibits asserting and explaining that party's entire case-in-chief;

(B) Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony;

(C) Where only the moving party files direct testimony, rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case; and

(D) Surrebuttal testimony shall be limited to material which is responsive to matters raised in another party's rebuttal testimony.

Commission Rule 4 CSR 240-2.130 (8) provides:

No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer or the commission. A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at the hearing. This provision does not forbid the filing of supplemental direct testimony for the purpose of replacing projected financial information with actual results.

4. KCPL is obligated to put on its case-in-chief in its direct testimony. Here KCPL is putting the Commission and parties on notice that it "hopes that the Commission changes the current method used to recover the costs of implementing these DSM programs," but explicitly states the Company "is not seeking to change the cost recovery mechanism in its initial filing."

5. Based on the Commission's October 5, 2010, transmittal of proposed rules 4 CSR 240-3.163, 4 CSR 240-3.164, 4 CSR 240-20.093 and 4 CSR 240-20-094, and its Notice of Hearing in File No. EX-2010-0368 for a hearing December 20, 2010, on these proposed rules, it is unlikely the Commission's DSM program cost recovery rules will become effective prior to March 30, 2011. The procedural schedule in this case has rebuttal testimony due December 8, 2010, and surrebuttal testimony due January 5, 2011. Using this time table, any proposal for a different cost recovery method pursuant to MEEIA would occur well beyond filed testimony, after the evidentiary hearing that is set to begin on January 18, 2011, and approximately a short month prior to the operation of law date on the Company's proposed tariffs. If the Commission allowed a different method than that asserted or explained as part of KCPL's case in chief, such change would violate Commission Rule 4 CSR 240-2.130.

6. In addition, the Staff and the interveners base the development of their case on the issues and testimony presented as part of the direct case. Such change would also deny the Staff and the other parties a full and fair opportunity to respond to such a proposal, i.e., due process. As such, the Staff requests that the Commission issue an order that finds the above-identified portions of Mr. Rush's pre-filed direct testimony irrelevant and inadmissible as evidence in this case.

**WHEREFORE**, the Staff requests that the Commission issue an order that finds the pre-filed direct testimony of Mr. Rush, filed on behalf of Kansas City Power & Light Company, irrelevant and inadmissible as evidence in this case starting on Page 21, line 8, through Page 27, line 3.

Respectfully submitted,

**/s/ Jennifer Hernandez**

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel/parties of record as identified on the Commission's EFIS service list for this case on this 24<sup>th</sup> day of November 2010.

**/s/ Jennifer Hernandez**