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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

March 20, 2013

Jefferson City, Missouri

Volume 1

In the Matter of Kansas City Power)
& Light Company's Practices)
Regarding Customer Opt-Out of)Case No. EO-2013-0359
Demand-Side Management Programs)
and Related Issues)

DANIEL JORDAN, Presiding
SENIOR REGULATORY LAW JUDGE

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1 P R O C E E D I N G S

2 JUDGE JORDAN: So we will go ahead and go on the
3 record. The Commission is calling the case in File
4 No. EO-2013-0359. I'm Daniel Jordan. I'm the Regulatory
5 Law Judge assigned to this action.

6 We're here for a prehearing conference on this
7 action. And we will be on the record with a reporter for
8 the first part. And then when I am done with what I have
9 to say, then we will go off the record.

10 The parties may continue discussing the subject
11 matters without me, and my absence should facilitate
12 discussions, I hope. Feel free to discuss information
13 that you don't want -- don't want me to hear in my
14 absence.

15 We have this phone line for two hours, but I'd
16 be surprised if it took longer than that. And, certainly,
17 anyone can let me know otherwise. When everyone is done,
18 I'll ask Staff to hang up the phone.

19 MS. HERNANDEZ: Okay.

20 JUDGE JORDAN: I will begin now with -- by
21 taking entries of appearance, and, also, introduction of
22 client representatives that are with us, either in person
23 or on the phone. Let's begin with the public utility that
24 is a party to this action, that is, Kansas City Power &
25 Light Company.

1 MR. FISCHER: On behalf of Kansas City Power &
2 Light Company, I am James Fischer, Fischer & Dority, PC,
3 101 Madison, Suite 400, Jefferson City, Missouri, 65101.

4 And today with me, I have Mr. Tim Rush from
5 Kansas City Power & Light.

6 JUDGE JORDAN: Thank you. And for Staff?

7 MS. HERNANDEZ: Jennifer Hernandez, Nathan
8 Williams and Amy Moore appearing on behalf of the Staff of
9 the Missouri Public Service Commission. Our address is
10 P.O. Box 360, Jefferson City, Missouri, 65102.

11 And here today on Staff is John Rogers, Mike
12 Scheperle, Natelle Dietrich and Seoung Joun Won. Okay.

13 JUDGE JORDAN: Do you need a spelling for that?

14 THE COURT REPORTER: Yes.

15 MS. HERNANDEZ: Do you know how to spell --

16 MR. ROGERS: W-o-n -- oh, the first name?

17 No. MS. HERNANDEZ: Spell your name.

18 MR. WON: S-e-o-u-n-g J-o-u-n W-o-n.

19 JUDGE JORDAN: Thank you. And for the Office of
20 the Public Counsel?

21 MR. MILLS: On behalf of the Office of the
22 Public Counsel and the public, my name s Lewis Mills. My
23 address is Post Office Box 2230, Jefferson City, Missouri,
24 65102.

25 JUDGE JORDAN: Thank you, Counsel. Did you have

1 any representatives -- or representatives from your office
2 with you today?

3 MR. MILLS: I do not.

4 JUDGE JORDAN: Okay. Very good. We also have
5 some Intervenor in this action. I'll begin with Missouri
6 Department of Natural Resources.

7 I have issued a -- I have been in communication
8 with Jessica Blome, who is the attorney for Missouri
9 Department of Natural Resources, and she asked to be
10 excused today. So I am excusing her from appearing. But
11 she told me that she would have client representatives
12 available.

13 MS. YOUNG: Thank you, Judge. Mary Ann Young
14 and Adam Bickford from Missouri Department of Natural
15 Resources, Division of Energy.

16 JUDGE JORDAN: Thank you. Let's go next to the
17 Midwest Energy Users Association. Not hearing anyone from
18 here. Let's go to the Midwest Energy Consumers Group.

19 MR. WOODSMALL: David Woodsmall on behalf of
20 MECG. I've previously provided my address to the court
21 reporter, and there are no other representatives here.

22 JUDGE JORDAN: Thank you, Counsel. And Missouri
23 Industrial Energy Consumers?

24 MS. VUYLSTEKE: Diana Vuylsteke, Law Firm of
25 Bryan Cave, LLP, 211 North Broadway, Suite 3600,

1 St. Louis, 63102.

2 JUDGE JORDAN: Thank you, Counsel. A anyone
3 from your group representing today? Anyone else?

4 MS. VUYLSTEKE: Not at this -- not at this time,
5 Judge.

6 JUDGE JORDAN: Very good. Thank you. Thank
7 you. All right. There's a few things I want to discuss
8 regarding procedure in this action.

9 There's been some confusion -- a little bit of
10 confusion, and I've been trying to clarify that as to what
11 exactly this action is.

12 The application sought a contested case. But
13 other filings in this action have referred to it as an
14 investigatory proceeding. There has been some reference
15 to the complaint statute. And I wanted to clarify that.

16 Let me start by asking Staff if I understand
17 what kind of relief they will be seeking in this action.
18 I understand you're looking -- I understand Staff is
19 looking for an order to file a tariff; is that correct, a
20 tariff that will include with the statutes and
21 regulations?

22 MS. HERNANDEZ: Yes. That is one way, I think,
23 the company could comply with the opt-out procedures as we
24 interpret them under the MEEIA statute and the MEEIA
25 rules.

1 I think there are some other options that the
2 company -- other things the company could do to comply.
3 But you are correct that we will be seeking an order from
4 the Commission. And I guess the procedure is somewhat
5 like a complaint case, but it's more of a friendly joint
6 filing between the -- the Staff and the -- and the
7 company, both wanting resolution of how to interpret the
8 provisions that we've listed in our filings.

9 And we will be hopefully doing some discovery in
10 this matter. And unless you have another question, I'll
11 leave my response at that.

12 JUDGE JORDAN: Okay. Does anyone else have
13 anything to say about that? Kansas City Power & Light?

14 MR. FISCHER: Well, Judge, I think I would
15 agree. We're looking for a resolution of the
16 interpretation of the MEEIA statute and the MEEIA rules
17 regarding opt-out.

18 And probably, in addition to that, we see a path
19 forward perhaps that would include an accounting authority
20 order or some other mechanism that would allow us to
21 recover -- work on revenues if people opt out.

22 JUDGE JORDAN: Okay. Does anyone else have
23 anything to say on -- on the kind of relief that we'll be
24 headed towards in this action?

25 MR. WOODSMALL: I will be addressing all of

1 those subjects raised by Staff and KCP&L because we will
2 certainly oppose some of KCP&L's proposals.

3 MECG, their primary purpose in this case is to
4 get KCP&L's tariffs in compliance with the statute such
5 that opt-out customers are not charged for any of KCP&L's
6 energy efficiency costs.

7 We raised that in the context of a re-hearing in
8 the rate case. And we are -- we have sought a Writ of
9 Review, I guess it's now called an appeal, on that point.

10 So, hopefully, we'll get some guidance from the
11 Missouri Court of Appeals on this issue as well. But,
12 ultimately, our purpose here and there is our clients not
13 to get charged for energy efficiency costs whether they be
14 a future MEEIA case or pre MEEIA energy efficiency costs.

15 JUDGE JORDAN: Okay. Does anyone else want to
16 throw in on this topic? I appreciate that clarification.
17 As you can tell from some of the Orders issued, the
18 Commission was unclear as to what exactly was to be the
19 outcome of this case.

20 It looked like a declaratory judgment was the
21 relief sought. And, of course, the Commission can't do
22 that. but this kind of clarification is helpful. So
23 that's what -- that's what we'll proceed with.

24 So I'd like the parties to discuss scheduling
25 once we're off the record. I'd like the parties to

1 produce a proposed procedural schedule, and I'd like Staff
2 to file that. And if you can't file it tomorrow, then
3 just file something telling me that you can't file it
4 tomorrow, and that would be fine. So either the proposed
5 schedule or status report would be helpful.

6 MS. HERNANDEZ: Okay.

7 JUDGE JORDAN: It seems like the usual practice
8 in any contested case seems to be some bleed-over from
9 general rate actions, that is, parties will often file an
10 issues list and a set of position statements. Those tend
11 to come late in these proceedings.

12 I think a more helpful procedure would be to
13 file something that looks more like pleadings, that is to
14 say, the Commission would like any party who wants some
15 relief to state what relief that is, cite the law that
16 applies to it, allege some facts that are relevant under
17 that law. And that is, in my experience, a good way to
18 narrow the issues and move the proceeding along quickly.

19 It also helps with prehearing motions regarding
20 discovery, for example, so the Commission can tell what's
21 relevant and what's not. So that would be the
22 Commission's preference.

23 Also, the Commission would like the parties to
24 file a Stipulation of Facts. And even if they're
25 rudimentary, that will eliminate some issues. So a date

1 for filing Stipulated Facts and also Dispositive Motions.

2 My sense is that there won't be a lot of
3 evidentiary facts at issue in this matter. Just looking
4 at the pleadings so far, that's -- that's the sense that I
5 get. So dispositive motions may -- may be helpful. I
6 sure hope the parties will include a date for filing of
7 Dispositive Motions.

8 And those are my reflections on this action so
9 far. Does anyone have any questions for me while we're on
10 the record?

11 MR. FISCHER: Judge, I guess I would just ask a
12 couple questions. We've stated in pleadings our -- the
13 relief that we -- that we sought, at least the Staff and
14 th company.

15 Are you looking for a statement by everybody in
16 the case or filing their separate pleadings again? Or
17 what -- what are you hoping to have there?

18 JUDGE JORDAN: You know, that's -- that's a fair
19 question because I have seen hints as to the relief that's
20 been asked for such that -- you mentioned an accounting
21 authority order earlier.

22 MR. FISCHER: Yes.

23 JUDGE JORDAN: KCP&L has said, Well, we may seek
24 an accounting authority order. I don't know if that's
25 really a request for that relief. My preference is if I

1 were looking at this, I would say, Well, tell me what you
2 want. Tell me what law gives it to us, and tell me the
3 facts under it.

4 If the parties file that, they can skip the
5 initial pleading stage since there has been this joint
6 application, there have been these Motions to Intervene,
7 well, maybe they can do that. But I need to know what --
8 what relief is at issue, what law is cited to support it
9 and the facts relevant under that law.

10 Now, if you can do that strictly by responsive
11 pleadings, okay.

12 MR. WOODSMALL: At what point -- this is
13 difficult because we haven't even discussed a schedule
14 yet.

15 JUDGE JORDAN: Right.

16 MR. WOODSMALL: Do you anticipate these
17 pleadings being early on or -- Staff mentioned needing to
18 do some ask discovery. Discovery can, you know, bring out
19 some issues. So it's -- it's tough to do these pleadings
20 as to all the relief that is sought until we know what all
21 the issues are, and it may not be able to identify all the
22 issues until we've done the discovery.

23 So I'm just a little hesitant to be able to do
24 this pleading that you're looking for early on in the
25 process, at least one that is definitive, you know,

1 that --

2 JUDGE JORDAN: I see what you're saying. And
3 there's also the possibility -- there's always the
4 possibility of amended pleadings, right?

5 MR. WOODSMALL: Okay.

6 JUDGE JORDAN: Here's the thing about that.
7 Here's my thinking on that. I've never encountered
8 actions outside this Commission where discovery precedes
9 the pleadings, which is basically what -- what happens
10 here.

11 Your issues list and your position statements
12 are as close as we get to pleadings sometimes. And
13 that's, in my experience, not the best way to frame a
14 case.

15 In any other action, one files a pleading and
16 then does discovery based on that. So that's what I'm
17 thinking as to that. The parties do have some -- some
18 idea of what they want. So I think they can frame these
19 pleadings.

20 For example, a party wants an order to file a
21 tariff. Okay? That party can say, We want an order
22 directing the utility to file a tariff. Here's the law
23 that says the Commission can do that. Here are the facts
24 relevant under that law. Pretty much like any other civil
25 action.

1 MR. WOODSMALL: Right. And -- and in a civil
2 action, generally, parties both have information. Here,
3 we have no information. KCP&L has the entirety of the
4 information. So for us to identify what all the issues
5 are until we've done discovery and -- and see the
6 information that they have is a little difficult. But as
7 long as we can amend those pleadings, I -- I think we can
8 get something done. It --

9 JUDGE JORDAN: Okay. Anything else on that?
10 I'm not hearing anything. Any other issue that anyone
11 wants to raise before we go off the record?

12 I saw counsel in the back having a discussion.
13 Is there something you wanted to chime in with?

14 MR. WILLIAMS: Are you talking to me?

15 JUDGE JORDAN: Yes. I am talking to you
16 Mr. Williams. Was there anything?

17 MR. WILLIAMS: No.

18 JUDGE JORDAN: Okay. All right. And there
19 being nothing else, we will go off the record. Thank you,
20 everyone.

21 (The proceedings were concluded at 11:15 a.m. on
22 March 20, 2013.)

23

24

25

1 REPORTER'S CERTIFICATE

2

3 STATE OF MISSOURI)

) ss.

4 COUNTY OF OSAGE)

5

6 I, Monnie S. Mealy, Certified Shorthand Reporter,
7 Certified Court Reporter #0538, and Registered
8 Professional Reporter, and Notary Public, within and for
9 the State of Missouri, do hereby certify that I was
10 personally present at the proceedings as set forth in the
11 caption sheet hereof; that I then and there took down in
12 stenotype the proceedings had at said time and was
13 thereafter transcribed by me, and is fully and accurately
14 set forth in the preceding pages.

15

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal on March 20, 2013.

18

19

20

21

Monnie S. Mealy, CSR, CCR #0539

22

Registered Professional Reporter

23

24

25

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