

**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 Programs and Related Issues ) ) **Case No. EO-2013-0359** ) )

**NON-UNANIMOUS STIPULATION AND AGREEMENT**

**COME NOW** Kansas City Power & Light Company (“KCP&L”), the Staff of the Missouri Public Service Commission (“Staff”), Midwest Energy Consumers Group (“MECG”) and Midwest Industrial Energy Consumers (“MIEC”) (collectively “Signatories”) and for their Non-Unanimous Stipulation and Agreement<sup>1</sup> (“Agreement”), respectfully state as follows:

1. During the recently completed KCP&L rate case, Case No. ER-2012-0174, Staff raised concerns with the Company regarding its existing practices regarding customer opt-out of DSM programs. In order to resolve these concerns, the Company and Staff filed on January 18, 2013, their *Joint Application To Establish A Proceeding To Review Kansas City Power & Light Company’s Practices Regarding Opt Out Of Demand-Side Management Programs And Associated Programs’ Costs And Revenue Impacts* (“*Joint Application*”). The *Joint Application* requested that the Commission “establish a contested case to determine the appropriate application of Section 393.1075 of MEEIA and the applicable MEEIA Rules.” (*Joint Application*, p. 3)

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<sup>1</sup>Rule 4 CSR 240-2.115 (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.” The non-signatories, named in paragraph seven (7) below, state herein that they will not oppose the Agreement or request a hearing in this matter. Thus, the Commission may treat this Agreement as unanimous.

2. On January 23, 2013, the Commission issued its *Order Directing Filing* in this proceeding which directed, *inter alia*, that KCP&L and Staff file by February 14, 2013 “written argument describing the relief sought in a Commission decision on KCPL’s practices.”

3. On February 14, 2013, KCP&L and Staff filed pleadings describing the relief sought in this proceeding by them.

4. The Commission granted the intervention requests of the Missouri Department of Natural Resources (“MDNR”), Midwest Energy Users’ Association (“MEUA”), MEEG and MIEC.

#### **AGREEMENTS AMONG THE SIGNATORIES**

5. On several occasions, the Signatories to this case met to discuss the *Joint Application* and related matters. As a result of these discussions, the Signatories agree that:

A. Prospective crediting of opt-out charges: KCP&L will file the revised rate schedules in Attachment A, which are agreed to by the Signatories and which include a non-MEEIA 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. This charge is inclusive of all energy efficiency costs currently included in rates for the time period September 1, 2009 through August 31, 2012 (the cut-off date for the true-up period in KCPL’s last general rate case—Case No. ER-2012-0174). Once those rate schedules become effective, qualified customers who have opted out, pursuant to the procedures specified in

4 CSR 240-20.094(6), will begin receiving a credit on monthly bills. Customers who qualify for opt-out pursuant to the provisions specified in 4 CSR 240-20.094(6) after the date of this Agreement will begin receiving a credit on monthly bills beginning on January 1 following their receiving acknowledgement of opt-out. A non-MEEIA energy efficiency charge (\$ per kWh) for qualified opt-out customers will be recalculated and will be included in appropriate rate schedules in KCP&L's next general rate case including all unamortized energy efficiency costs KCP&L incurred since 2005 to the end of the test year period in KCP&L's next general rate case.

B. Retroactive crediting of opt-out charges: In addition to the rate schedules in paragraph 5.A. above, the Signatories agree to the separate non-MEEIA energy efficiency charges as set out in Attachment B, that opt-out customers can avoid based upon data available for September 1, 2009 through December 31, 2010 (the end of the true-up period) in Case No. ER-2010-0355. No DSM programs' costs annualized amortization amount is included for the January 1, 2010 through May 3, 2011 period, so the non-MEEIA energy efficiency charge for this period is \$0.00000 per kWh. Beginning May 4, 2011 through January 25, 2013, the non-MEEIA energy efficiency charge for this period is \$0.00036 per kWh. From January 26, 2013, up until the effective date of the rate schedules as set out in paragraph 5.A., the non-MEEIA energy efficiency charge is \$0.00081 per kWh. KCP&L will provide a credit to those customers listed in Attachment C who have

notified KCP&L, 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, and would have been eligible to opt out of continuing to prospectively pay for energy efficiency costs incurred by KCP&L since September 1, 2009. Each qualified customer's retroactive credits will be calculated starting on January 1 of the year following the date on which the opt-out notice was provided up through the effective date of the rate schedules filed under paragraph 5.A. above. Additional customer's credits will be calculated starting on January 1 of the year following the date on which the opt-out notice was provided up to and including the month of the effective date of the rate schedules in paragraph 5.A. based upon monthly kWh billed and the separate non-MEEIA energy efficiency charge as set out in Attachment B.

C. Customer Confusion: In the event that KCP&L receives or has received an opt out notice from a customer that includes GMO accounts, KCP&L will not deny opt out on the basis that the opt out notice did not specifically designate the utility as KCP&L-GMO so long as the customer provides the specific account(s) to which the customer is requesting to be opted out.

D. Appeal: Once approved by the Commission, MECG will drop this appeal point from the pending KCP&L appeal in Case No. WD76164 before

the Missouri Court of Appeals, Western District.

E. Notwithstanding the settlement agreements in paragraphs 5.A. and 5.B. above, KCP&L agrees that under the MEEIA and the Commission's MEEIA rules, eligible customers that notify KCP&L of opt-out not only opt-out of demand-side management programs and the programs' associated costs approved by the Commission under the MEEIA and the Commission's MEEIA rules, but also all other Commission approved non-MEEIA demand-side management programs and the non-MEEIA programs' associated costs.

F. KCP&L agrees that under MEEIA and the Commission's MEEIA rules that an eligible customer's notification of opt-out remains in effect until the customer revokes such opt-out under the Commission's Rule 4 CSR 240-20.094(H).

G. KCP&L hereby requests that the Commission authorize the establishment of a deferred account to include all non-MEEIA amounts credited under paragraphs 5.A, and 5.B. The Signatories will not object to KCP&L creating a deferred account to include all non-MEEIA amounts credited under paragraphs 5.A. and 5.B.

H. The agreements in the last sentence of paragraph 5.A., all of paragraphs 5.E. and 5.F. are binding in this and all other proceedings before the Commission. The Signatories agree to the deferral solely to preserve this

issue to the next KCP&L rate case.

### **GENERAL PROVISIONS OF AGREEMENT**

1. This Agreement is being entered into solely for the purpose of settling the issues in this case explicitly set forth above. Unless otherwise explicitly provided herein, none of the Signatories to this Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any cost of service methodology or determination, depreciation principle or method, method of cost determination or cost allocation or revenue-related methodology, opt-out procedure and the potential request for recovery of lost revenues associated with opt-out under the MEEIA or the Commission's MEEIA rules. Except as explicitly provided herein, none of the Signatories shall be prejudiced or bound in any manner by the terms of this Agreement in this or any other proceeding, regardless of whether this Agreement is approved.

2. This Agreement is a negotiated settlement. Except as specified herein, the Signatories to this Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Agreement, or in any way condition its approval of same.

3. This Agreement has resulted from extensive negotiations among the Signatories, and the terms hereof are interdependent. If the Commission does not approve this Agreement unconditionally and without modification, then this Agreement shall be void and no Signatory shall be bound by any of the agreements or provisions hereof.

4. If approved and adopted by the Commission, this Agreement shall constitute a binding agreement among the Signatories. The Signatories shall cooperate in defending the validity and enforceability of this Agreement and the operation of this Agreement according to its terms.

5. If the Commission does not approve this Agreement without condition or modification, and notwithstanding the provision herein that it shall become void, (a) neither this Agreement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with RSMo. §536.080 or Article V, Section 18 of the Missouri Constitution, and (b) the Signatories shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Agreement shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

6. If the Commission accepts the specific terms of this Agreement without condition or modification, only as to the issues in these cases explicitly set forth

above, the Signatories each waive their respective rights to present oral argument and written briefs pursuant to RSMo. §536.080.1, their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, their respective rights to seek rehearing pursuant to §536.500, and their respective rights to judicial review pursuant to §386.510. This waiver applies only to a Commission order approving this Agreement without condition or modification issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding nor any matters not explicitly addressed by this Agreement.

7. The following parties are not Signatories, but have indicated that they will not oppose this Agreement, or request a hearing in this matter: MEUA, MDNR and the Office of the Public Counsel.

**WHEREFORE**, for the foregoing reasons, the Signatories respectfully request that the Commission issue an Order approving the terms and conditions of this Non-Unanimous Stipulation and Agreement.

Respectfully submitted,

STAFF OF THE MISSOURI PUBLIC  
SERVICE COMMISSION

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been electronically mailed, hand-delivered or mailed, First Class, U.S. Mail, postage prepaid this **4<sup>th</sup> day of June, 2013** to all counsel of record.

**/s/ Jennifer Hernandez**