 1   STATE OF MISSOURI

 2

 3   PUBLIC SERVICE COMMISSION

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 5

 6   TRANSCRIPT OF PROCEEDINGS

 7

 8   On-The-Record Conference

              August 27, 2013

 9   Jefferson City, Missouri

10   Volume 1

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18   (Starting time of conference: 10:00 a.m.)

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                   August 27, 2013

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12   In The Matter Of Kansas City)

     Power & Light Company's   )

13   Practices Regarding Customer) File No. EO-2014-0029

     Opt-Out Of Demand-Side   )

14   Management Programs And   )

     Related Issues   )

15

16

17   MORRIS L. WOODRUFF, Presiding

                    CHIEF REGULATORY LAW JUDGE

18

19

20   REPORTED BY:

21   Ms. Pamela S. Gentry, CCR

     Missouri CCR No. 426

22   Midwest Litigation Services

     3432 West Truman Boulevard

23   Suite 207

     Jefferson City, MO 65109

24   (573) 636-7551

25

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 1              A P P E A R A N C E S
 2       FOR THE STAFF OF THE MISSOURI PUBLIC SERVICE
         COMMISSION:
 3
         MS. JENNIFER HERNANDEZ
 4       MR. NATHAN WILLIAMS
         Legal Counsel
 5       STATE OF MISSOURI, DEPARTMENT OF ECONOMIC
         DEVELOPMENT, PUBLIC SERVICE COMMISSION
 6       Governor Office Building, Suite 800
         200 Madison Street
 7       P.O. Box 360
         Jefferson City, MO  65102-0360
 8       (573) 751-8706
         jennifer.hernandez@psc.mo.gov
 9       nathan.williams@psc.mo.gov
10       FOR THE PUBLIC COUNSEL AND THE PUBLIC:
11       MR. LEWIS MILLS
         Attorney at Law
12       MISSOURI PUBLIC SERVICE COMMISSION
         Governor Office Building
13       200 Madison Street
         P.O. Box 2230
14       Jefferson City, MO  65102
         (573) 751-4857
15       lewis.mills@ded.mo.gov
16       FOR KANSAS CITY POWER & LIGHT COMPANY:
17       MR. JAMES M. FISCHER
         Attorney at Law
18       FISCHER & DORITY
         101 Madison, Suite 400
19       Jefferson City, MO  65101
         (573) 636-6758
20       jfischerpc@aol.com
21       FOR MECG:
22       MR. DAVID WOODSMALL
         Attorney at Law
23       WOODSMALL LAW OFFICE
         807 Winston Court
24       Jefferson City, MO  65101
         (573) 797-0005
25       david.woodsmall@woodsmalllaw.com
```

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 1            A P P E A R A N C E S  (cont'd.)
 2         FOR MIEC:
 3         MS. CAROLE L. ILES
           MS. DIANA M. VUYLSTEKE
 4         Attorneys at Law
           BRYAN CAVE, LLP
 5         211 North Broadway
           Suite 3600
 6         St. Louis, MO  63102
           (573) 556-6621
 7         carole.iles@bryancave.com
           dmvuylsteke@bryancave.com
 8
 9         FOR MISSOURI DEPARTMENT OF NATURAL RESOURCES:
10         MR. TIMOTHY A. BLACKWELL
           Attorney at Law
11         STATE OF MISSOURI ATTORNEY GENERAL'S OFFICE
           221 West High Street
12         P.O. Box 899
           Jefferson City, MO  65102
13         (573) 751-8846
           Tim.Blackwell@ago.mo.gov
14
15         ALSO PRESENT:
16         Mr. Tim Rush   (via telephone)
           Mr. Roger Steiner   (via telephone)
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21
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 1   (Starting time of conference: 10:00 a.m.)

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

 3   JUDGE WOODRUFF: We're here for a conference in

 4 Case No. EO-2014-0029. This kind of grows out of an

 5 earlier case that I've closed which was EO-2013-0359, and

 6 we'll get into the reasons why I closed it a little bit

 7 later.

 8   But, for right now, let's take entries of

 9 appearance, beginning with Staff.

10   MS. HERNANDEZ: Good morning. Jennifer Hernandez

11 and Nathan Williams appearing on behalf of Staff of the

12 Missouri Public Service Commission. Our address is P.O.

13 Box 360, Jefferson City, Missouri, 65102.

14   JUDGE WOODRUFF: And for Public Counsel?

15   MR. MILLS: On behalf of the Office of Public

16 Counsel and the public, my name is Lewis Mills. My

17 address is Post Office Box 2230, Jefferson City, Missouri,

18 65102.

19   JUDGE WOODRUFF: And for KCPL?

20   MR. FISCHER: On behalf of the Company, let the

21 record reflect the appearance of James M. Fischer, Fischer

22 & Dority, P.C., 101 Madison, Suite 400, Jefferson City,

23 Missouri, 65101.

24   JUDGE WOODRUFF: Okay. And for Midwest Energy?

25   MR. WOODSMALL: David Woodsmall, MECG. I

 1   previously provided my address to the Court Reporter.

 2   JUDGE WOODRUFF: Okay. And for MIEC?

 3   MS. ILES: Carole Iles, also entering appearance

 4   for Diana Vuylsteke, of Bryan Cave, LLP, 211 North

 5   Broadway, St. Louis.

 6   JUDGE WOODRUFF: MDNR?

 7   MR. BLACKWELL: Tim Blackwell with the Missouri

 8   Attorney General's Office. My address is P.O. Box 899,

 9   Jefferson City, Missouri, 65102.

10   JUDGE WOODRUFF: Midwest Energy Users Association?

11   (No response.)

12   JUDGE WOODRUFF: I saw they were a separate party

13   in the other cases; is that right? Are they involved at

14   this point?

15   MR. WOODSMALL: I haven't seen -- there haven't

16   been any pleadings in this case, so I can't comment. I

17   don't know.

18   JUDGE WOODRUFF: Okay. Who was representing them?

19   MR. WOODSMALL: Stu Conrad.

20   JUDGE WOODRUFF: Stu. Okay. Okay. Well, I think

21   that takes care of all the entries of appearance.

22   And, first of all, I want to thank you all for

23   being here today. And we opened this new file when you

24   filed a motion indicating that the previous stipulation

25   agreement had fallen apart or was rejected by the

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 1   Commission, and I opened this as a new case simply to try

 2   and get a fresh start on this case, because it seemed like

 3   the old case kind of spun out of control, and we want to

 4   try and get started -- as I say, started afresh and see if

 5   we can still reach some sort of an agreement on this; or,

 6   if not, if we need to set a procedural schedule, we can do

 7   that as well.

 8   Mr. Fischer, explain to me what's going on.

 9   MR. FISCHER: Well, Judge, we had entered into a

10   non-unanimous stipulation agreement in that 0359 case

11   hoping to resolve the issues that were coming out of that

12   in an expeditious way. As you know, the MIA (ph) rules

13   have an opt-out window beginning September 1st through

14   October 30, and the parties can opt out of the DSM costs

15   that are associated with the company's DSM programs. And

16   we had -- we had reached an agreement in our companion

17   company, GMO, on a MIA filing that had some provisions

18   that related to this topic, but Kansas City Power & Light

19   Company did not have a MIA filing that is currently

20   pending, and a number of the parties had come to us with

21   concerns about how to resolve this.

22   We did reach a non-unanimous stipulation and

23   agreement which we thought would expeditiously resolve it.

24   It was before we had a full procedural schedule, before we

25   had testimony filed, but we thought this was the most

1   expeditious way to get the -- the issues resolved, and we

2   submitted to the Commission. One of the very important

3   parts of that, though, was the approval of the stipulation

4   and agreement, because, from the Company's perspective,

5   the approval of the deferred accounting that was

6   incorporated in the stipulation and agreement was, we

7   believed, essential for us to be able to do that, or

8   outside auditors were concerned if we didn't have

9   regulatory approval of that arrangement. And, whenever

10   the Commission chose to use a different procedure and not

11   approve the stipulation and agreement, that caused us to

12   have real concerns that we didn't have what we needed to

13   go forward.

14   So, I think that's, essentially, what has caused

15   -- and other parties might have a different perspective --

16   but I think that's, essentially, where we've come. And we

17   ask that you schedule another conference for us to talk

18   about it and to see if we need to go through a full-blown

19   procedural schedule and file testimony or if there was

20   another way to short circuit the process and get the deal

21   that we've agreed to be implemented. We still feel like

22   what we have in that non-unanimous stipulation and

23   agreement should work, but we do need to have an approval

24   of the Commission on that point.

25   JUDGE WOODRUFF: Okay. You mentioned a window

 1   from September 1st through October 31st. Is this

 2   something that you want in effect by September 1st of this

 3   year, if possible?

 4   MR. FISCHER: Well, I don't think it's critical,

 5   but I think that is one of the concerns that we had, that

 6   was out there, and I think we would get -- as if -- if the

 7   former agreement had been approved, there would have been

 8   a tariff in effect that people would be -- effectively be

 9   opting out of these rate elements that were associated

10   with these DSM costs. And, without that, it might be

11   difficult to do that. So, that was one of the other major

12   things that was happening as a result of the stipulation

13   and agreement.

14   JUDGE WOODRUFF: Okay.

15   MS. HERNANDEZ: If I can add something --

16   JUDGE WOODRUFF: Go ahead.

17   MS. HERNANDEZ: -- on the timing effect. I

18   believe Staff's position is, if it's at all possible, to

19   have this finished before -- or at least -- so that the

20   consumers out there would know what they would be opting

21   out of if the tariff was in effect. That's why we had

22   such an expedited schedule, procedural schedule, earlier

23   on in this case with the hopes to resolve this matter for,

24   if the potential customers wanted to opt out of paying DSM

25   charges, they would know what they were opting out of. I

 1 would say that's still our hope.

 2   JUDGE WOODRUFF: Obviously, we're not going to

 3 make it by September 1st at this particular time.

 4   MS. HERNANDEZ: Right.

 5   JUDGE WOODRUFF: It's coming fairly quickly.

 6   Anything else?

 7   (Indicating.)

 8   JUDGE WOODRUFF: Mr. Woodsmall?

 9   MR. WOODSMALL: A couple quick things. Mr.

10 Fischer mentioned the non-unanimous stipulation. The 10

11 days expired, so it could be treated as unanimous. I

12 don't believe -- there were no objections or any problems

13 there.

14   One of the things that necessitated, in my mind,

15 was coming out of the last rate case, my clients raised a

16 point that KCP&L should have segregated these costs so the

17 opt-out customers didn't have to pay them. And that was a

18 point of appeal and is now pending at the Court of

19 Appeals. So, it was our hope that by getting this

20 stipulation approved that we could get that taken out of

21 the Appellate case, too -- which would, you know,

22 certainly help the Commission in not having to address

23 that. So, that would be -- if we get that resolved, we

24 address that point of appeal as well.

25   And, then, we could go with what Ms. Hernandez

 1 said, representing many clients that are large enough to

 2 opt out, it's better if we can get these tariffs approved

 3 sooner rather than later. What they're trying to do is do

 4 a cost benefit analysis to see, Okay, here are the

 5 benefits we give up by opting out. What are the costs we

 6 are avoiding? And, until this tariff gets approved, we

 7 really don't know what those costs are.

 8   So, on behalf of the industrial customers, I would

 9 like to get this tariff approved so they can do an

10 accurate cost benefit analysis.

11   JUDGE WOODRUFF: Okay. And the consensus I'm

12 hearing is that everyone's still on board with this

13 stipulation agreement if the Commission will approve it.

14 No one's fighting to go off and have a hearing.

15   MR. FISCHER: I think, Judge, we would want to

16 approve it, make sure there are no changes, and tweak it.

17   JUDGE WOODRUFF: Sure.

18   MR. FISCHER: In the matter of the concept, the

19 Company still certainly supports resolution along this

20 manner.

21   JUDGE WOODRUFF: Now, one of the things I note the

22 Commission was concerned about at the time, aside from the

23 procedural brouhaha about this whole thing, was whether

24 there was any foundation within the record to justify

25 granting the deferred accounting which was referred to as

 1   an AAO.

 2   MR. FISCHER: Judge, it's correct that we don't

 3   have any testimony on file in the case, and if that's a

 4   requirement from the Commission standpoint, then we would

 5   have to go through a procedural schedule to do that.

 6   JUDGE WOODRUFF: I'm not sure we need to have

 7   testimony. We just -- the concern was we need to have

 8   something in the record to justify the Commission granting

 9   that. I think an affidavit from KCPL employees saying

10   this is why we need an AAO or deferred accounting. You've

11   never referred to it as an AAO.

12   MR. FISCHER: No. We refer to it as deferred

13   accounting. We do see a difference.

14   JUDGE WOODRUFF: I see the difference, too. But,

15   if there can be something either in the stipulation and

16   agreement or attached to a stipulation and agreement

17   saying this is why deferred accounting's appropriate, I

18   think that would be enough to satisfy the Commission.

19   Is that something you can do?

20   MR. FISCHER: The Company could certainly put,

21   from its perspective, an affidavit together on why it's

22   important that we have approval and what the benefits are.

23   Now, I would have to say that, in the stipulation as it's

24   drafted -- and other parties can certainly chime in --

25   they have -- the provisions are that they are not

1 objecting to the deferred accounting. They -- they're not

2 necessarily affirming a deferment in any way, but we can

3 put an affidavit together like that and submit that in

4 additional support of the stipulation if that's what the

5 Commission would like.

6   JUDGE WOODRUFF: Anyone have any problem with

7 that? On that, anyway? I'm sure you would want to --

8   MR. MILLS: Not with the concept. Might have

9 problems with the allegations in the affidavit.

10   JUDGE WOODRUFF: Okay.

11   MR. FISCHER: Could I ask my client, who happens

12 to be on the line, whether he sees any problem with that?

13   JUDGE WOODRUFF: Sure.

14   MR. FISCHER: Mr. Rush, are you on the line?

15   MR. RUSH: I am. Would you -- I heard parts of

16 it, of the request for affidavit associated with why we

17 need approval for deferred accounting, am I correct?

18   JUDGE WOODRUFF: That would be correct, yes.

19   MR. RUSH: I think we could do that. And it would

20 be in an affidavit form, as I understand it.

21   JUDGE WOODRUFF: Correct. And I wouldn't expect

22 the other parties to necessarily agree with it, but if

23 nobody objected to it, that would at least give the

24 Commission something to -- as a foundation for approving

25 it.

 1   MR. RUSH: Okay.

 2   JUDGE WOODRUFF: And, if you can -- as soon as you

 3 can get that to me, I will put it on the agenda.

 4   MR. FISCHER: Would you like for us to reformat in

 5 any way that non-unanimous stip that we filed or can we

 6 file what we did before?

 7   JUDGE WOODRUFF: I think just file it again with

 8 the new number on it --

 9   MR. FISCHER: Okay.

10   JUDGE WOODRUFF: -- with that affidavit as an

11 attachment.

12   MR. FISCHER: Okay.

13   MR. WOODSMALL: May I inquire, your Honor?

14   JUDGE WOODRUFF: Sure.

15   MR. WOODSMALL: I don't want to make things any

16 more complicated, and maybe there's no answer to this. Is

17 there anything that we should take out of the previous

18 order regarding consent orders, that type of thing, going

19 forward or should we --

20   JUDGE WOODRUFF: Since that order was issued about

21 consent orders, the Commission has made it quite clear in

22 several other cases that have gone through agenda where

23 they have approved stipulation agreements that they are

24 willing to approve stipulations and agreements without the

25 consent order language.

1   MR. WOODSMALL: Okay.

2   JUDGE WOODRUFF: So, I don't think that's going to

3   be something the Commission is going to look at in the

4   future.

5   MR. WOODSMALL: Okay. Great. Thank you.

6   MR. WILLIAMS: Judge? Judge, if I could ask for a

7   a little bit of clarification. Are you looking for a

8   caption completing -- it includes the prior stipulation

9   agreement or are you looking for another stipulation and

10 agreement with this case captioned? What I'm really

11 getting at, are you looking for a new document with new

12 signatures or is the prior document sufficient just to do

13 something to show it's filed in this case as in the prior

14 one?

15   JUDGE WOODRUFF: I think it would be -- if it's

16 not going to cause anybody too much problems, I think it

17 would be appropriate to file it with a new caption and a

18 new case with new signatures.

19   MR. WILLIAMS: And then he'll have another 120-day

20 waiting period?

21   JUDGE WOODRUFF: It's actually seven days --

22   MR. WILLIAMS: Oh, seven.

23   JUDGE WOODRUFF: -- under the rule, but it will

24 take about that long before we can get it through agenda

25 anyway.

 1   I want to make it clear that this is a new case.

 2   We're not revisiting the old case. That's to say we're

 3   starting over fresh in a new case.

 4   MR. WILLIAMS: That's why I'm asking for a new

 5   clarification.

 6   THE COURT REPORTER: Would you state your name?

 7   MR. WILLIAMS: Nathan Williams.

 8   JUDGE WOODRUFF: All right. Is there anything

 9   else anybody wants to bring up while we're on the record?

10   MR. FISCHER: Roger Steiner may be on the line,

11   too.

12   Is there anything, Roger, we need to talk about

13   with the Judge before we close?

14   MR. STEINER: No. I think we're good, Jim.

15   Thanks.

16   JUDGE WOODRUFF: Okay. Well, thank you all very

17   much for being here. I'll leave you to your discussions,

18   if you need any; and, with that, we're off the record.

19   MR. WOODSMALL: Just a quick point.

20   JUDGE WOODRUFF: On the record?

21   MR. WOODSMALL: No.

22   JUDGE WOODRUFF: Okay. We're off the record.

23   (Adjournment.)

24   (Whereupon, the record ended at 10:15 a.m.)

25   * * * * *

1   C E R T I F I C A T E

2   STATE OF MISSOURI   )

) ss.

3   COUNTY OF COLE   )

4   I, Pamela S. Gentry, Certified Court

5   Reporter with the firm of Midwest Litigation Services, do

6   hereby certify that I was personally present at the

7   proceedings had in the above-entitled cause at the time

8   and place set forth in the caption sheet thereof; that I

9   then and there took down in Stenotype the proceedings had;

10   and that the foregoing is a full, true and correct

11   transcript of such Stenotype notes so made at such time

12   and place.

13   Given at my office in the City of

14   Jefferson, County of Cole, State of Missouri.

15

16

17   _____

              Pamela S. Gentry, CCR #426

18

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