KCP&L Exhibit No. 85
Date 1-26-11 Reporter RT
File No. ER-2010-0355

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 15th day of April, 2009.

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-2009-0089** Tariff No. JE-2009-0192

ORDER REGARDING CONSTRUCTION AND PRUDENCE AUDITS OF THE ENVIRONMENTAL UPGRADES AT IATAN I, JEFFREY ENERGY CENTER AND THE SIBLEY GENERATING FACILITY

Issue Date: April 15, 2009 Effective Date: April 15, 2009

On September 5, 2008, Kansas City Power & Light Company ("KCPL") submitted to the Commission proposed tariff sheets intended to implement a general rate increase for electrical service provided in its Missouri service area. The proposed tariff sheets bore a requested effective date of August 5, 2009. This filing initiated a general rate proceeding; however, given the extended length of the tariff date, the Commission has not yet found it necessary to suspend the tariff. The evidentiary hearing in this matter is set to begin on April 20, 2009.

On February 11, 2009, Staff Witness Cary G. Featherstone prefiled his direct testimony. In his direct testimony he responds to a question concerning KCPL's major plant additions as follows:

> **Q. Is Staff currently looking at the construction costs for the major plant additions for KCPL?**
> A. Yes. Staff has been reviewing the construction costs for plant additions for environmental equipment being installed at the Iatan 1 generating facility.

EXHIBIT Henderson 6 12-07-10 FF

These plant additions involve two GPE entities-- KCPL has a 70% ownership share of Iatan 1 and is its operating partner. In addition, L&P has an 18% ownership share of Iatan 1 and the plant additions involve the cost increases for this GMO entity.[1]

Q. What construction projects is Staff reviewing?

A. The Iatan 1 project is the largest of the construction activities whose in service timeframe is likely involved in this rate case. A selective catalytic reduction (SCR) system and other environmental projects are being installed at Iatan 1, with construction completion and in-service expected by the end of first quarter 2009. Staff is also looking at plant additions for Sibley which is wholly owned by GMO, attributed to MPS,[2] and the three coal-fired generating units at the Jeffrey Energy Center which is operated by Westar Energy with MPS having an 8% ownership share. A SCR system is being installed at Sibley, with expected completion and in-service first quarter 2009. Westar has completed the Jeffrey Energy Center 1 and 3 SCR systems in 2008 and is expected to complete the SCR system for Unit 2 in the second quarter of 2009.

Q. Has Staff completed its review of the costs for these three construction projects?

A. No. The magnitude of these three construction projects involving Iatan 1, Sibley 3 and the three units at the Jeffrey Energy Center are very large. All three projects are nearing completion at the same time, but are not complete. This situation impacts the ability of Staff to review the construction costs of these projects and perform construction audits. In addition to these sizable investments, KCPL and GMO are currently building Iatan 2 with a completion and in-service sometime in the summer or fall 2010. Also, these projects are nearing completion while Staff as a result of the GPE acquisition of Aquila has to develop revenue requirements for essentially three electric rate cases for KCPL and GMO (MPS and L&P) and a steam case for L&P steam which makes it extremely difficult for Staff to conduct a review of construction costs. As such, Staff will not be able to complete and present the results of construction cost reviews for any of these projects in these rate cases either now or in the true-up following the March 31, 2009 true-up cutoff. The final costs of the construction projects will not be known for some time and as such, will not allow Staff to review all the costs in time for the true-up filing. Staff will review these construction costs and make its findings known in the next rate cases.

Q. When does Staff expect those next rate cases?

A. Staff expects KCPL, and GMO for MPS and L&P, to file rate cases later this year (likely shortly after the rates in the pending cases go into effect) to reflect their ownership in Iatan 2, which is expected to be fully operational and used for service in the summer or fall 2010.

---

[1] L&P and MPS are part of KCP&L Greater Missouri Operations Company.

[2] *Id.*

Q. Does Staff have a recommendation regarding how the Commission should address the prudency of construction costs of the Iatan 1 project in this case?

A. Yes. Because of the situation noted above, it is premature to address the prudency of Iatan 1 construction costs, Staff recommends the Commission either, (1) to the extent the costs of that project exceed KCPL's definitive estimate, make that portion of KCPL's rates interim subject to refund or (2) expressly state in its Report and Order in this case that it is not deciding for the purpose of setting rates in this case the issue whether the construction costs of the Iatan 1 project were prudently incurred and that it will take up the matter of the prudency of those costs in a future case, if a party properly raises the issue before the Commission in that case.[3]

Several of KCPL's witnesses extensively rebut Staff's position that the audits could not have been completed within the confines of this proceeding.[4] A good portion of this rebuttal focused on the timeline of reports shared with the Commission's Staff and with many visits Staff had made to inspect the construction sites.[5]

On April 6, 2009, the Commission held a motion hearing regarding procedural schedule modifications to the True-Up proceeding. At the hearing, the issue concerning Staff's ability to complete its construction and prudence audits was again raised. The Commission conducted an identical hearing for Cases ER-2009-0090 and HR-2009-0092 because the same issues applied in those cases with regard to Staff's ability to complete its audits and the issue was raised again in that proceeding.[6]

At the motion hearing for this case, Staff only identified issues with timely auditing costs and expenditures associated with Iatan I, *not with the Sibley or Jeffrey facilities*.[7]

---

[3] Direct Testimony of Cary G. Featherstone, pp. 34-36.

[4] Rebuttal Testimony of Steven Jones, Kris R. Neilsen, William H. Downey, Chris Giles, Carl Churchman, Brent Davis, Dan Meyer, Michael Cline.

[5] *Id.*

[6] Case Nos. ER-2009-0090 and HR-2009-0092, Transcript Volume 10, p. 31-33.

[7] Case No. ER-2009-0089, Transcript Volume 10, pp. 45-47. At the motion hearing for Case Nos. ER-2009-0090 and HR-2009-0092 KCPL's (GMO's) counsel represented that improvements to the Sibley and Jeffrey facility were on time and on budget. In fact, Counsel for the Industrial Intervenors, stated that if the

Counsel for Staff, when asked how long it would it would take to complete an audit and prudence review stated:

> I don't have an answer for you on that. I don't believe it's a matter of one or two or three months. And the Staff was not suggesting that the tariffs be suspended until the Staff completes a prudence audit of the latan 1 environmental enhancements. The Staff was planning to address that in the next case, which the Staff believes, by law, is possible.[8]

However, at the identical motion hearing conducted for Case Nos. ER-2009-0090 and HR-2009-0092, Staff auditors, through counsel, stated it would take in the neighborhood of six months to perform a prudence review of the latan I improvements.

Subsequent to the motion hearings, Staff witness Robert Schallenberg prefiled surrebuttal testimony where he states as follows:

> Q. On page 10, line 8 of Mr. Giles' rebuttal testimony he titles this section of his testimony as "Utility Services Division's Failure To Conduct A Prudence Review." Is this title accurate?
>
> A. No. First, the correct statement would be that the Staff did not complete a prudence or construction audit of the environmental upgrades at latan 1, Jeffrey Energy Center units 1 and 3, and the Sibley generating facility, unit 3. *It is a false statement that no work was conducted relative to the prudence of the expenditures in question. The correct statement would be that the Staff does not have anyone in its employ that will testify on its behalf that the expenditures being sought for recovery from ratepayers are prudent and reasonable because an audit has not been completed.* At this time we do not know what the total of these expenditures are, let alone whether the expenditures are prudent.[9]

Mr. Schallenberg later states in his prefiled testimony, "Staff *in its audit in this case* found inappropriate charges . . ."[10]

---

construction was complete at Sibley and Jeffrey, and they were in service, that the April 30, 2009 True-Up date would work for evaluating the prudence of their expenditures. Case Nos. ER-2009-0090 and HR-2009-0092, Transcript Volume 10, p. 48. Counsel qualified his response to say that he did not believe the same budget problem existed for these facilities as did with latan. *Id.* at p. 55.

[8] Case No. ER-2009-0089, Transcript Volume 10, pp. 116.

[9] Surrebuttal Testimony of Robert E. Schallenberg, pp. 5-6, filed on April 7, 2009 (emphasis added).

[10] *Id.* at p. 14 (emphasis added).

The direct and inherent contradictions between Staff's positions with regard to which construction updates are at issue, the timing of the completion for those construction projects, and the time required for the audit and prudence review do not escape the Commission. Clearly, KCPL has provided information to Staff, and Staff has never requested a discovery conference with the Regulatory Law Judges assigned to these matters or filed any motions to compel discovery claiming they had inadequate data from which to complete the audit. Nor has Staff approached the Commission to raise any issue regarding the need to hire additional expert consultants to assist with any audits involving these cases.

Staff obviously has some data upon which to complete a least a partial audit, even if that data is incomplete until True-Up. It appears that Staff, despite the case being filed on September 5, 2008, elected not to complete an audit of the information it received. Perhaps Staff felt constrained in its ability to complete the audit based upon its overall workload, but Staff raised no issue with the Commission with this regard. Nor did Staff utilize available options to correct any alleged discovery issues.

Staff indicates that it does not plan to conduct a construction audit or prudence review until sometime next year, in the context of a future rate case.[11] However, the Commission does not have the option to delay evaluating a relevant issue or factor in a case setting rates.[12] Consequently, the Commission shall direct its Staff, based upon the information Staff has received from KCPL to-date, to complete a construction audit and

[11] The Commission notes that two-hundred and twenty-two (222) days (7 months and 10 days) have passed between the date KCPL filed its case and the date of this order, a time period in which the Commission has confirmed that Staff has been receiving information it needs to complete its audit. See Case No. ER-2009-0089, Transcript Volume 10 and Footnote Number 4.

[12] Section 393.150; *State ex rel. AG Processing, Inc v. Pub Serv. Comm'n*, 120 S.W.3d 732, 734 (Mo banc 2003); *State ex rel. Pub Serv. Comm'n v. Fraas*, 627 S.W.2d 882, 886 (Mo. App 1981); *State ex rel. Missouri Gas Energy v. Pub Serv. Comm'n*, 186 S.W.3d 376, 384(Mo. App. 2005).

prudence review of the environmental upgrades to latan I.[13] The construction audit and prudence review shall include all additions necessary for these facilities to operate. Staff shall identify and explain, with particularity, any disallowances of expenses that it believes are justified.[14]

THE COMMISSION ORDERS THAT:

1. The Staff of the Missouri Public Service Commission shall complete and file the construction audit and prudence review of the environmental upgrades at latan I, including all additions necessary for these facilities to operate, no later than June 19, 2009.

2. The Staff of the Missouri Public Service Commission is directed to provide a specific rationale for each and every disallowance recommended in the construction audits and prudence reviews.

3. Kansas City Power and Light Company is directed to cooperate with the Commission's Staff by providing all pertinent invoices necessary for the completion of the environmental upgrades at latan I and shall expedite the provision of any invoices for the True-Up proceeding. All True-Up invoices shall be provided to the Commission's Staff for review no later than June 8, 2009.

4. In the event that Kansas City Power and Light Company provides all True-Up invoices to the Commission's Staff prior to June 8, 2009, Kansas City Power and Light Company shall immediately notify the Commission and all the parties in this case.

---

[13] Restricting the scope of this audit to latan I, and all equipment upgrades required for its operation, that should eliminate any issue with regard to any commingling of shared components between latan I and latan II. *Jeffrey Energy Center units* 1 and 3, and the Sibley generating facility, unit 3, shall be addressed in a separate order for Case Nos. ER-2009-0090 and HR-2009-0092.

[14] During the True-Up proceeding, the Commission shall consider whether additional time for hearings are required regarding Staff's report.

5. Any party wishing to file responses or rebuttal testimony to the report filed by the Commission's Staff shall file such responses or testimony no later than June 26, 2009.

6. This order is effective immediately upon issuance.

BY THE COMMISSION

Colleen M. Dale
Secretary

(S E A L)

Murray, Jarrett, and Gunn, CC., concur;
Clayton, Chm., dissents.
Commissioner Davis absent.

Stearley, Senior Regulatory Law Judge