

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

In the Matter of a Proposed Experimental)	
Regulatory Plan of Kansas City Power and)	EO-2005-0329
Light Company)	

**POST HEARING BRIEF OF INTERVENOR
US DEPARTMENT OF ENERGY**

COMES NOW, Intervenor United States Department of Energy ("DOE" or "USDOE") and files its POST HEARING BRIEF OF INTERVENOR US DEPARTMENT OF ENERGY states:

Hearings in this matter concluded on July 12, 2005 after the Commission reopened this matter by Order dated July 6, 2005. On July 8, 2005 the Commission issued an Order fixing July 21, 2005 as the date for the filing of Post Hearing briefs by the parties.

The instant case was commenced by the filing of a Stipulation and Agreement by Kansas City Power and Light Company (KCPL) and certain Signatory Parties including the Staff of the Commission and the Office of Public Counsel on March 28, 2005.¹

USDOE filed an Application to Intervene in this case on April 19, 2005 which Application was granted by the Commission by its Order of April 21, 2005.² On May 27, 2005 USDOE filed its "Response of Intervenor Department of Energy to Staff's Suggestions in Support of Stipulation and Agreement". On June 2, 2005 USDOE filed its Statement of Position" and on June 15, 2005 USDOE filed its "Response and Prehearing Brief" as required by the Commission's Order issued on June 6, 2005. USDOE participated in the hearings before the Commission

¹ The instant case was preceded by two earlier cases at the Commission, first EO-2004-0577, filed by KCPL on May 6, 2004 which was dismissed and then the Commission created a workshop in Case No. EW-2004-0596. The workshop case was dismissed by Order of the Commission effective on February 28, 2005. In none of the cases did the Commission indicate that it was not retaining jurisdiction over the subject matter or the parties who had intervened and otherwise participated in the earlier EO case.

² Although Intervenor, USDOE raised a number of issues in the earlier part of this proceeding the only issue USDOE intends to brief herein and the only issue of those set out by Staff in its "List of Issues et al." filed on May 31, 2005, which USDOE raised and which it believes needs to be resolved by the

and counsel made a closing argument to the Commission at the hearing on June 24, 2005. In that closing argument counsel for USDOE advised the Commission that USDOE did not object to the Commission approving the Stipulation and Agreement filed by KCPL and the Signatory Parties in this case. (Tr. Vol. 5, p.564, l. 22)

**AMORTIZATION TO SUPPORT KCPL'S FINANCIAL RATIOS (BOND
RATING)**

Following discovery and discussions with some of the parties to this case USDOE determined that the principal issue with which it was still concerned was the future treatment of the amortization that was to be used to support KCPL's bond rating (or as phrased in the Stipulation and Agreement, "Financial Ratios"). This was addressed in the Stipulation and Agreement in Section III B(i) Additional Amortization to Maintain Financial Ratios. The Stipulation and Agreement stated at page 20 that,

The Signatory Parties agree to support an additional amortization amount added to KCPL's cost of service in a rate case when the projected cash flows resulting from KCPL's Missouri jurisdictional operations, as determined by the Commission, fail to meet or exceed the Missouri jurisdictional portion of the lower end of the top third of the BBB range shown in Appendix E, for the Funds from Operations Interest Coverage ratio and the Funds from Operations as a Percentage of Average Total Debt ratio. The Signatory Parties agree to adopt an amortization level necessary to meet the Missouri jurisdictional portion of these financial ratios. [emphasis added]

USDOE's concerns regarding amortization expenses were raised when upon reviewing the Stipulation and Agreement in detail USDOE found that it did not make clear how the additional amortization expenses would be treated in the future; what, if any, assets were represented by an increase in amortization expenses; how an increase in amortization expenses of undesignated assets would be rationalized; or when, how or if KCPL's ratepayers would see a benefit from or return of the higher rates ratepayers would be required to pay due to increased amortization expenses.

Commission relates to the "Additional Amortizations" Issue. For reasons stated herein USDOE now believes the Commission should find "Additional Amortizations" to be reasonable.

A review of the prefiled direct testimony of KCPL witness Chris B. Giles, who testified to the Additional Amortization to Maintain Financial Ratios failed to reveal any further information addressing USDOE's concerns other than his statement, "In addition, the amortization will result in an offset to rate base, which will result in lower rates, attributable to the amortization offset to rate base, after the conclusion of the regulatory plan" (Exhibit 1, Giles Prefiled Direct Testimony, p. 17, l. 23)

At the hearings conducted by the Commission USDOE counsel cross-examined Mr. Giles relating to the issue identified by the Staff as "Additional Amortizations"³. In answer to USDOE counsel's question inquiring whether ratepayers benefit from increased amortization, Mr. Giles testified "The amortization is a reduction to rate base, and from the standpoint of a reduced rate case (sic.), customers do benefit."⁴ (Tr. Vol. 4, p. 87, l. 18.)

Russell W. Trippensee of the Office of Public Counsel filed testimony relating to the "Additional Amortizations" issue. In his testimony (Trippensee Direct Ex. 39 and Tr. Vol. 5 p. 556 – 564) Mr. Trippensee testified to how such amortizations would be determined and how they would be monitored and trued up in the next general rate case to be filed by KCPL in the first part of 2006.

Mr. Trippensee testified that, "[a] critical feature of this Agreement is that the customers will receive recognition of and credit for any additional cash flows provided through the regulatory process." (Trippensee Direct Ex. 39, p. 9, l. 1)

He also explained how increasing KCPL's revenues through increased amortization expense rather than increasing KCPL's level of earnings (an earlier, but rejected plan (Trippensee Direct Ex. 39, p. 9, l. 6)) would result in lower rates to ratepayers:

The reason for the higher rates would be the income taxes associated with receiving a dollar of earnings. Simply put, utilities pay income taxes **only** on their earnings. Therefore, to receive a \$1.00 of earnings, a utility must receive approximately \$1.62 of revenue from the customer. The amortization procedure included in this Agreement anticipates that

³ "List of Issues, Order of Witnesses To Be Heard Each Day, Order Of cross-Examination And Request For Waiver Of Rule." Filed May 31, 2005. Page 7, Issue No. 8.

⁴ In the last line "rate case" should be "rate base"

amortization expense (the accelerated recovery of past capital investments of the company) will be offset in the income tax calculation by the depreciation expense associated with the new investment. This will reduce or eliminate the 62 cents that must be recovered from the customer to provide a \$1.00 of cash flow to the Company during the construction phase.[emphasis in original] (Trippensee Dir. Ex. 39, p. 11, l. 1)

Mr. Trippensee explained why an increase in earnings would in addition cause a greater increase in rate base and thus higher revenue requirements while the planned increase in amortization expense would result in a lower rate base and thus lower revenue requirements;

The incremental [increased] earnings for cash flow would be recorded on the financial records, first as a revenue and, ultimately as an increase to stockholders equity. In turn, this supports the construction projects that, upon being placed in-service, will be investments that are included in rate base. Once included in rate base, the ratepayer would then be required to pay not only a return on the investment, but also a return of the investment supported by earnings from a prior period. Effectively, the customer would pay for a portion of the total investment twice plus pay a return on the total investment prior to it being fully depreciated. In contrast, the Additional Amortization expense included in the Agreement will result in an increase in the Accumulated Reserve for Depreciation in the future. It will be used [as] a reduction to rate base to recognize that the customer has already paid for the past investment and no longer has to pay a return on these past investments. As a result of this Agreement, the total rate base and the resulting future rates will be lower. (id. l. 12)

Mr. Trippensee explained, on questioning by Commissioner Clayton, that the Commission has only two ways it can address ratepayers increasing KCPL's cash flow and give ratepayers credit for the monies ratepayers have paid for the increased cash flow and that is either increased depreciation or increased amortization expenses. (Tr. Vol. 7 p. 760, beginning l. 12)

Mr. Trippensee also explained that when ratepayers pay a return of utility investment by way of amortization, the accumulation of those payments is a reduction in original cost of plant so that net cost of the plant, i.e. plant cost less amortization expenses paid by ratepayers, results in a lower rate-base upon which KCPL will earn a return. This will result in lower revenue requirements and lower rates. (Tr. Vol. 7, p. 762, beginning l. 21)

Mr. Trippensee explained that increased amortization expenses paid by ratepayers will be applied to existing plant accounts so that the increased amortization will provide KCPL additional cash flow by ratepayers providing KCPL with a return of KCPL's existing investment at a more rapid rate than its current depreciation (i.e. amortization) schedules. (Tr. Vol. 7, p. 764 beginning l. 14)

Staff witness, Robert E. Schallenberg also testified about the additional amortization to maintain financial ratios. The Stipulation and Agreement contains an agreement that "The 2006 Rate Case will include an amortization expense anticipated to be \$17 million on a Missouri jurisdictional basis and as (sic.) this amount may be adjusted to address the requirements as set out in Paragraph III.B.1.i." (Stipulation and Agreement p. 31, par. III.B.3.a.(iv))

In response to questions from Commissioner Clayton, Mr. Schallenberg explained both the criteria for adjusting the amortization and the source of the \$17 million amortization expense:

In prospective rate cases beginning with the first rate case that starts next year through the 2009 rate case, which is anticipated to be the time when latan 2 would be placed into service, the additional amortization works in a manner that when parties -- the signatory parties are making recommendations to the Commission. They will also look at the result of their amortizations in terms of its cash flow to meet the two targets that are specified in the agreement, which is free-- excuse me, free funds from operation in relation to debt and free funds from operations related to interest. To the extent their recommendations are inadequate to meet the Missouri proportion of that, they have agreed to adjust upward or downward, depending on the case, from the 17 million standard used to be a par-- a position for that party in a rate case. (Tr. Vol. 7, p. 807, l. 23)

The \$17 million number was a negotiated number that came -- it was derived from some financial scenarios that initially KCPL had. And then I think on further work, KCPL showed a lower number as a starting point. At the same time, there was an earnings review being done of KCPL to establish the adequacy of current rates. And that number was drifting around the \$17 million number as an amortization. So while we could never come to an agreement as a fixed amortization, we agreed to start with the \$17 million number as one the parties would be agreeable to start with using the ratios to give you the right to adjust it upward or downward. (Tr. Vol. 7, p. 808. l. 19)

Mr. Schallenberg explained that once the Commission had made a decision on the rate case issues the amortization adjustment would be made;

[O]nce we knew what the Commission's decisions were on the cost of service issues, it is anticipated and expected that the fallout would be what the amortization would be for the parties. Once they knew whatever issues they could not resolve, once they knew what that resolution would be, the -- the agreement is designed that the amortization requirement would be defined at that time. (Tr. Vol. 7, p. 810, l. 7)

Mr. Schallenberg explained, as had Mr. Trippensee, how the increased amortization expenses would be returned to ratepayers and how the amortization adjustment is of benefit to ratepayers;

The amortization is designed that whatever funds are provided during -- beginning with the 2006 rate case up until the establishment of rates from the 2009 case, it will be used to credit against the investment of which you set rates between that time period and I think there's a five-year grace period after the latan 2 case to give certainty that that benefit would last for five years beyond that. But the investment that would be used to set rates will be reduced by the monies raised through the amortization. (Tr. Vol.7, p. 811, l. 13)

In the long run, the customers will pay less for those investments than they would have if we filed the traditional regulatory approach. (Tr. Vol.7, p. 812, l. 3)

In terms of the amortization, the customers will not be charged the full return requirements that they would have been charged absent amortization. (Id. l. 10)

Conclusion

It is clear from the testimony of Mr. Giles, Mr. Trippensee and Mr. Schallenberg that the increased amortization expenses provided by KCPL's ratepayers will be identified to specific assets being amortized, that this increased amortization will reduce KCPL's ratebase and that this reduction in ratebase will reduce KCPL's cost of service, revenue requirements and rates KCPL's customers must pay.

At the commencement of this case USDOE was concerned that the Stipulation and Agreement did not adequately address how ratepayers would benefit from

the increased amortization expense, what assets were having their amortization rates increased and how the funds ratepayers supplied through increased amortization expenses to keep KCPL financially healthy would be returned to them. USDOE believes that the testimony elicited at the hearing fully satisfies USDOE's concerns. Therefore, USDOE submits that the Commission can find that the Additional Amortizations proposed in the Stipulation and Agreement are reasonable.

In the event the Commission decides to approve the Stipulation and Agreement, because clarification of the treatment of amortization to maintain financial ratios occurred in the testimony and not the Stipulation and Agreement USDOE respectfully suggests that the clarification contained in the testimony of Messrs. Giles, Trippensee and Schallenberg be made a part of the final order and, additionally, that the Commission assure effective monitoring of any amortization to maintain financial ratios and require that the rationale for any increase in amortization be submitted to the Commission in detail for review in the ratemaking process.

USDOE believes that the Stipulation and Agreement can be found by the Commission to be supported by competent and substantial evidence upon the whole record in this case and to be in the public interest.

Respectfully submitted this 21st day of July, 2005.

/S/ Paul W. Phillips
Paul W. Phillips, Esq.
United States Department of Energy
Office of General Counsel
1000 Independence Ave. SW
Washington, DC 20585
Voice: 202-586-4224, Fax: 202-586-7479
Email: Paul.Phillips@hg.doe.gov
Missouri Bar No. 21173
Attorney for Intervenor DOE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Post Hearing brief of USDOE by electronic means or by U.S. mail, postage prepaid, addressed to the legal representatives of all parties that have been identified as parties and petitioning interveners through the Commission's Electronic Filing and Information System (EFIS) as of this date.

/S/ Paul W. Phillips
Paul W. Phillips, Esq.
Attorney for Intervenor DOE

Dated: July 21, 2005