

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 20th day of November, 2008.

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	) ) ) ) ) )	<b><u>Case No. ER-2009-0089</u></b> Tariff No. JE-2009-0192
In the Matter of the Application of Aquila, Inc., d/b/a KCP&L Greater Missouri Operations Company, for Approval to Make Certain Changes in its Charges for Electric Service.	) ) ) ) )	<b><u>Case No. ER-2009-0090</u></b> Tariff No. JE-2009-0193
In the Matter of the Application of Aquila, Inc., d/b/a KCP&L Greater Missouri Operations Company, for Approval to Make Certain Changes in its Charges for Steam Heating Service.	) ) ) ) ) )	<b><u>Case No. HR-2009-0092</u></b> Tariff No. YH-2009-0195

**ORDER SETTING PROCEDURAL SCHEDULES**

Issue Date: November 20, 2008

Effective Date: November 30, 2008

On September 5, 2008, Kansas City Power & Light Company (KCPL) and Aquila Inc., d/b/a KCP&L Greater Missouri Operations Company (collectively referred to as “the Companies”) filed three general rate increase cases. The Companies filed proposed tariff sheets which bear an August 5, 2009 effective date.

The Commission issued notice of the rate cases and directed the parties and any potential intervenors to respond to the Companies’ proposed test year and proposed true-up dates no later than October 14, 2008. The parties were also directed to appear at an early prehearing conference on October 15, 2008, and after granting an extension of

time, the Commission directed the parties to file proposed procedural schedules by October 29, 2008.

Only the Staff of the Missouri Public Service Commission responded to the proposed test year and true-up date by October 14, 2008. Staff stated that it agreed to the Companies' proposed April 30, 2009 true-up date only if the parties were able to agree to a 2007 test year, September 30, 2008 update date, an April 30, 2009 true-up date, and an appropriate procedural schedule to implement those dates. The parties were not able to reach an agreement.

On October 29, 2008, Staff and the Companies filed separate proposals for procedural schedules in this matter. The Office of the Public Counsel and the Industrial Intervenors<sup>1</sup> filed a response to the proposed procedural schedules and a motion for leave to file out of time. The Commission will grant the motion.

The procedural schedules in these matters are complicated by several factors. The first complication is that three large utility rate cases were filed on the same date with the same effective date for each tariff. Because many of the same personnel and experts for Staff, Public Counsel, the intervening parties, and the Companies will necessarily be involved in all three cases, this puts a strain on the resources of the parties and on the Commission. On the other hand, since these companies are so closely intertwined, it makes sense to have the cases on a similar schedule.

Another complication to this procedural schedule, and one reason the parties could not agree about the schedule, has to do with the true-up date. Traditionally, when a

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<sup>1</sup> The Industrial Intervenors include: Praxair, Inc. and Midwest Energy Users' Association for Case No. ER-2009-0089; Ag Processing, Inc., Sedalia Industrial Energy Users' Association, and Wal-Mart Stores, Inc., for Case No. ER-2009-0090; and Ag Processing, Inc. for Case No. HR-2009-0092.

large utility files a request for a general rate increase, it files a tariff with a 30-day effective date. The Commission typically suspends the tariff for 120 days plus six months, thus completing a rate case within an eleven-month period. Because of previous agreements between some of the parties and KCPL, however, the Companies filed their tariffs with an effective date that was eleven months from the time of filing. Thus, the cases were set on an eleven-month time frame without any Commission action. As Staff explained in detail, the schedule for completing the cases within the eleven-month period is difficult if an April 30, 2009 true-up period is utilized. Having the true-up period as late as April 30, 2009, does not allow sufficient time for true-up testimony and hearings or for Commission deliberations and issuance of a Report and Order with an appropriate effective date if the tariff sheets are not suspended for at least one month.

Without suspending the tariff sheets, the true-up period would need to end on March 30, 2009. The Companies cannot, however, be certain that improvements at their Iatan I facility will be completed in time to satisfy the requirements of a March 31, 2009 true-up date. The Companies want to have the air quality control equipment and other improvements at Iatan I included in the true-up period.

The Companies have stated that delaying the effective date of the new rates would result in significant cost to them. An April 30, 2009 true-up period, however, would require that the Commission postpone the hearings in this matter approximately one month from what is currently scheduled.

The Companies have proposed two procedural schedules. The first of those schedules is based on an April 30, 2009 true-up date with an August 5, 2009 effective date for the tariff sheets. The second of these schedules assumes a March 31, 2009 true-up

date with an August 5, 2009 effective date for the tariff sheets. The first schedule is strongly objected to by Staff, Public Counsel, and the Industrial Intervenors because it tends to shorten the time between the true-up filings and proceedings and the resolution of the case so that deadlines would be difficult to meet.<sup>2</sup> The Commission also finds that schedule unacceptable. The second schedule is basically the same schedule as the proposal set forth by Staff.

The statutes set out that rate cases are to be the Commission's first priority and also set out a time frame in which those cases shall be decided. Thus, the Commission is reluctant to extend the effective date of the tariffs beyond the eleven-month time frame unless absolutely necessary. The Commission set its original hearing schedule so that it would have sufficient time for the filing and review of briefs, true-up hearings, deliberations, and sufficient time before the effective dates of its final orders. In balancing the benefits and detriments to all the parties and making certain that the Commission has sufficient time to hear all arguments, review all the evidence, and make a sound decision with a reasonable effective date, the Commission determines that the proposal as set out by the Companies and Staff is the most appropriate schedule with slight modifications. The Commission shall set the true-up period to end on March 31, 2009, and shall adopt Staff's proposed procedural schedule that includes the March 31, 2009 true-up date and August 5, 2009 tariff effective dates. The Commission recognizes, however, that the inclusion in the true-up period of the Iatan projects could be significant. Thus, the Commission shall also

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<sup>2</sup> For example, the schedule calls for true-up rebuttal testimony to be filed on Memorial Day, only four days after the true-up testimony was filed and the day before the true-up hearing begins.

set a date for the Companies to request that the Commission extend the true-up period, suspend the tariffs, and alter the procedural schedules.<sup>3</sup>

In addition to the procedural dates, the Commission will adopt the following Staff-proposed requirements for the true-up and data requests:

- (a) To be included in the true-up, standard monthly documentation must be available for all applicable items (i.e., monthly operating reports, KCPL general and plant ledgers, including accumulated depreciation reserve, Aquila general and plant ledgers, including accumulated depreciation reserve, and supporting invoices) which assure that the item in fact has occurred or is in service, has been booked, payment has been recorded in KCPL's, or Aquila's, accounts payable system and is auditable by the "Closed book true-up data" date specified.
- (b) The true-up shall include all major changes to revenue, expenses, rate base and capital structure occurring through the true-up date.
- (c) Where practical Case Nos. ER-2009-0089, ER-2009-0090 and HR-2009-0092 shall be consolidated for administrative purposes. Also, the evidentiary record for certain issues, for example pensions and OPEBs, likely will be the same for all three rate cases. Nonetheless, the evidentiary record for certain other issues will not be the same.
- (d) Answers to data requests submitted on or after the date established for rebuttal testimony shall be made within ten (10) business days of the request; however, objections and responses that additional time will be required to provide an answer shall be made within five (5) business days of the request.
- (e) Data request responses in one case may be used in any of the three cases—ER-2009-0089, ER-2009-0090 and HR-2009-0092.
- (f) All pleadings, testimony, exhibits and work papers shall be served on the parties electronically in a commonly used format (.PDF, .DOC, .WPD, .XLS), unless the document is not readily reducible to an electronic format, i.e., no party is required to scan a voluminous document not otherwise available electronically. These electronic service copies shall be served essentially contemporaneously with the filing of the pleading, testimony (associated testimony in the case of work papers) or exhibit with the Commission.

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<sup>3</sup> The Commission puts the Companies on notice that if the true-up period is extended, there is a possibility that the tariff effective date and true-up procedural schedules will also need to be extended.

- (g) While models that utilize spreadsheets may be filed with the Commission on the EFIS system in a protected or "locked" format where they cannot be readily manipulated, they shall, nevertheless, be provided to the attorneys for the parties in an "unlocked" and fully operable format with all formulas intact such that the respective consultants or experts for the parties will be able to inspect the formulas and modify and change the spreadsheets to model other results; further, such models included in work papers shall also be provided in an "unlocked" and fully operable format with all formulas intact.
- (h) Witness's work papers associated with their testimony shall be provided to the other parties (in an "unlocked" and fully operable electronic format with all formulas intact as provided earlier) within two business days following the filing of the respective testimony, without the necessity of other parties filing a request for such work papers. If no associated work papers exist, the party's attorney will so notify other parties within the same time period.
- (i) Parties making data requests shall serve the data request electronically on the attorneys for all parties contemporaneously with when the data request is served on the party from whom the response is requested. Any party seeking a copy of the response to a data request issued by another party shall serve that request on the party to whom the original request was directed.
- (j) Parties shall be required to make an effort not to include in data request questions either highly confidential or proprietary information. If either highly confidential or proprietary information must be included in data request questions, the highly confidential or proprietary information shall be appropriately designated as such.
- (k) Parties responding to data requests shall provide copies of their responses to the data requests contemporaneously to all parties that have requested the response before it is first due in response to the original request; and if the response to the original request is made before a request for a copy is served, then the response shall be made forthwith, i.e., responding parties shall not defer providing their response for the 20 or 10 day period (whichever is applicable) if the response is available, but shall provide the response forthwith.
- (l) Filings with the Commission shall be considered timely if made through EFIS by no later than 11:59 p.m. of the day that they are due.<sup>4</sup>

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<sup>4</sup> This is a slight modification from Staff's original proposal to make clear that filings must be made on the deadline date to be considered timely.

The Commission further finds that the following procedural conditions shall apply for each of the rate cases:

(A) The evidentiary hearings for these cases may be combined for administrative efficiency; however, the parties should make every attempt to keep the record clear as to which evidence pertains to which case.

(B) The Commission will require the prefiling of testimony as defined in 4 CSR 240-2.130. All parties shall comply with this rule, including the requirement that testimony be filed on line-numbered pages. The practice of prefiling testimony is designed to give parties notice of the claims, contentions and evidence in issue and to avoid unnecessary objections and delays caused by allegations of unfair surprise at the hearing.

(C) The parties shall file a joint list of issues to be determined herein by the Commission. The requirements for issue format set forth in 4 CSR 240-2.080(21) are waived. Staff shall be responsible for actually drafting and filing the list of issues and the other parties shall cooperate with Staff in the development thereof. However, the parties shall file a single, all-inclusive list of issues. Further, prerequisite questions or sub-issues that must be answered or addressed before or as a part of any listed issue must be set out as enumerated sub-issues under that issue. Any issue, or sub-issue, not included in the issues list will be presumed to not require determination by the Commission. If the evidence for an issue will be the same among two or more cases, that shall be noted in the issues list.

(D) Each party shall file a list of the witnesses to appear on each day of the hearings and the proposed order in which they shall be called. The parties shall propose the order of cross-examination and file a joint pleading or pleadings indicating the same.

With the exception of testimony which pertains to more than one case, the witnesses shall be scheduled so as to complete one case before beginning testimony regarding another case. The parties may suggest alterations to the scheduled hearing days for a particular case as set out in this order.

(E) Each party shall file a statement of its position on each disputed issue in the appropriate case. The position statements shall include a summary of the factual and legal points relied on by the party. Such statement shall be simple and concise, shall follow the issues set out in the issues list, and shall not contain argument about why the party believes its position to be the correct one. Each statement of position shall include, for each issue upon which a party intends to adduce evidence, the names of each witness offering testimony on that issue and a specific reference to the pages of the prefiled testimony containing that evidence.

(F) All pleadings and briefs shall be filed in accordance with 4 CSR 240-2.080. The briefs to be submitted by the parties shall follow the same list of issues as filed in the case. The briefs must set forth and cite the proper portions of the record concerning the unresolved issues that are to be decided by the Commission.

(G) All parties are required to bring an adequate number of copies of exhibits that they intend to offer into evidence at the hearing. If an exhibit has been prefiled, only one copy of the exhibit is necessary for the court reporter. If an exhibit has not been prefiled, the party offering it shall bring, in addition to the copy for the court reporter, copies for the five Commissioners, the Regulatory Law Judge, and all counsel.

(H) The daily hearing transcripts will be expedited to be available **no later than the third working day following that day's testimony**. If any party seeks to expedite the



filing of the transcripts further, such request shall be tendered in writing to the Presiding Judge at least five days prior to the date of the hearing.

(I) Each party may prepare and file proposed findings of fact and conclusions of law, including citations to prefiled testimony and other evidence, to be filed during the posthearing briefing schedule.

(J) In the event that the parties reach a settlement of all of the issues, such settlement shall not be grounds for a continuance of the hearing unless the agreement is final, has been submitted to the Commission in writing, and there are no objections to the agreement.

**THE COMMISSION ORDERS THAT:**

1. The motion to file response out of time of the Office of the Public Counsel and the Industrial Intervenors filed on October 30, 2008, is granted.
2. The attached procedural schedule for ER-2009-0089, ER-2009-0090, and HR-2009-0092 is adopted, including revised dates for hearings.
3. The parties are directed to comply with the procedural requirements, including those proposed by the Staff of the Public Service Commission, as set out above.
4. This order shall become effective on November 30, 2008.

( S E A L )

Davis, Chm., Murray, Clayton,  
Jarrett, and Gunn, CC., concur.

Dippell, Deputy Chief Regulatory Law Judge

**BY THE COMMISSION**



Colleen M. Dale  
Secretary