

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

In the Matter of Kansas City)	
Power & Light Company's Request)	Case No. ER-2014-0370
for Authority to Implement a General)	
Rate Increase for Electric Service)	

**MOTION TO STRIKE PLEADINGS,
REJECT TARIFF SHEETS, AND STRIKE TESTIMONY**

Come now, Missouri Industrial Energy Consumers ("MIEC") and Office of Public Counsel ("OPC"), and move the Commission to strike a portion of the pleadings, reject certain tariff sheets, and strike certain testimony. In support of this motion, MIEC and OPC state as follows:

1. On May 15, 2005, a stipulation and agreement ("Agreement") was entered into by the following parties in Case No. EO-2005-0329: MIEC; OPC; the Staff of the Missouri Public Service Commission; Missouri Department of Natural Resources; Praxair, Inc.; Ford Motor Company; Aquila, Inc.; the Empire District Electric Company; Missouri Joint Municipal Electric Utility Commission; Jackson County, Missouri; City of Kansas City, Missouri; and Kansas City Power & Light Company ("KCPL") (collectively, "Signatory Parties"). Because the Agreement was opposed by Concerned Citizens of Platte County and the Sierra Club, who were also parties to Case No. EO-2005-0329, the Commission considered the provisions of the Agreement pursuant to the procedures set out in 4 CSR 2.115(2) relating to Non-unanimous Stipulations and Agreements. *See In the Matter of a Proposed Regulatory Plan of Kansas City Power & Light Company*, Case No. EO-2005-0329, Report and Order, p. 9 (Effective date August 7, 2005). A copy of the Agreement is attached as Exhibit A.

2. The Agreement, paragraph III.B.1.c., included the following provision that limits KCPL's authority to request a fuel adjustment clause ("FAC") or other similar regulatory mechanisms:

KCPL agrees that, ***prior to June 1, 2015, it will not seek to utilize any mechanism in current legislation known as 'SB 179' or other change in state law that would allow riders or surcharges or changes in rates outside of a general rate case based upon a consideration of less than all relevant factors.*** In exchange for this commitment, the Signatory Parties agree that if KCPL proposes an Interim Energy Charge ("IEC") in a general rate case filed before June 1, 2015 in accordance with the following parameters, they will not assert that such proposal constitutes retroactive ratemaking or fails to consider all relevant factors: . . . (Emphasis added).

3. The term "SB 179" as used in the Agreement refers to Senate Bill 179, which was truly agreed to and finally passed by the General Assembly in 2005. Senate Bill 179 enacted section 386.266, RSMo, which among other things, gives electric corporations the authority to make an application to the Commission to approve rate schedules that include an FAC. Section 386.266, RSMo., authorizes the approval of rate schedules that include an FAC ***only*** upon application by an electric corporation. Therefore, unless requested by KCPL in its Application and proposed tariffs, an FAC cannot be granted to KCPL in this case.

4. The Agreement resulted from negotiations between the Signatory Parties, and its provisions are interdependent. *See Agreement* ¶10.e. The provisions of the Agreement demonstrate

that it was freely negotiated and consideration was given and received by the Signatory Parties. In addition, paragraph 10.f. of the Agreement provides:

When approved and adopted by the Commission, this Agreement ***shall constitute a binding agreement*** among the Signatory Parties hereto. The Signatory Parties shall cooperate in defending the validity and enforceability of this Agreement and the operation of this Agreement according to its terms. (Emphasis added).

5. As paragraph III.B.1.c. of the Agreement evidences, “in exchange for” KCPL’s agreement that prior to June 1, 2015, it would “not to seek to utilize” any mechanism authorized by section 386.266, RSMo, including an FAC, the Signatory Parties consented not to object to any IEC sought ***prior to*** June 1, 2015, if the IEC complied with the six requirements listed in the Agreement. If the Agreement is read to allow KCPL to seek an FAC prior to June 1, 2015 so long as the FAC is not effective until after June 1, 2015 (as advocated by KCPL), then there is no mutuality of consideration with respect to these two provisions, and this construction would be inconsistent with any reasonable intent of the parties. Clearly the intent was that in any rate case filed prior to June 1, 2015, KCPL would be prohibited from seeking an FAC but permitted to seek an IEC. Under KCPL’s incorrect reading of the Agreement, KCPL could request ***both*** an IEC and an FAC in any rate case, so long as the effective date of the FAC were on or after June 1, 2015. In addition, in return for this limitation on its right to file an application for an FAC and its other obligations under the Agreement, KCPL received a number of other concessions from the Signatory Parties, including their consent to a financial plan and an amortization designed to ensure that KCPL would have adequate resources for making its planned capital investments that included the construction of new generation capacity, Iatan 2.

6. The Commission reviewed the terms of the Agreement and approved and adopted all of the provisions of the Agreement in its Report and Order in Case No. EO-2005-0329. In particular, the Report and Order expressly adopted the limitation on KCPL's authority to seek an FAC by stating that "KCPL has agreed that before June 1, 2015, it will not seek to use any mechanism authorized in SB 179, enacted this year, or other change in state law that would allow riders or surcharges or changes in rates outside of a general rate case based upon a consideration of less than all relevant factors." Case No. EO-2005-0329, Report and Order, p. 15. The Commission also ordered the Signatory Parties to abide by all the terms and requirements of the Agreement. *Id.* at p. 42.

7. On October 30, 2014, KCPL filed an Application with the Commission, seeking changes to its rate schedules and initiating the instant general rate case, Case No. ER-2014-0370. Paragraph 9 of the Application states that KCPL "proposes to implement a fuel adjustment clause." Appendix 1 to the Application includes KCPL's Proposed Tariff Sheets, and Sheets 50 through 50.5 of the Proposed Tariff Sheets set out an FAC Rate Schedule.

8. On October 30, 2014 and May 7, 2015, KCPL filed direct and rebuttal testimony, respectively, which among other things, refer to and offer support for KCPL's request for an FAC.

9. KCPL's October 30, 2014 request for an FAC is barred by the express terms of this Commission's Report and Order in Case No. EO-2005-0329 and by the express terms of the Agreement. The FAC requested by KCPL is not an "Interim Energy Charge" as described in the paragraph B.1.c. of the Agreement, and therefore KCPL is barred from seeking the FAC prior to June 1, 2015.

10. This Commission has the authority to enforce the terms of its Report and Order in Case No. EO-2005-0329 and the Agreement by striking paragraph 9 of the Application, rejecting

KCPL's Proposed FAC Tariff Sheets, and striking the testimony filed by KCPL in support of its request for an FAC in this case. The Commission has exercised such authority in connection with a similar issue in the past. In Case No. ER-2006-0315, the Commission issued an order rejecting tariffs and striking testimony based on a Stipulation and Agreement entered into by the electric corporation. *See In the Matter of The Empire District Electric Company*, Case No. ER-2006-0315, Order Rejecting Tariffs and Striking Testimony (June 25, 2006). In addition, the Commission issued an order that expressly recognized that a Stipulation and Agreement that is freely negotiated, for which consideration is given and received, and that is approved by the Commission, is binding on the parties. If a utility submits pleadings and filings **making a request that it has consented not to make**, as is true in this instance, the Commission has the authority to remove such pleadings and filings. *See In the Matter of The Empire District Electric Company*, Case No. ER-2006-0315, Order Clarifying Continued Applicability of the Interim Energy Charge, p. 3 (May 12, 2006). The Commission's authority to enforce the Agreement is also supported by the Missouri Supreme Court's ruling in *State ex rel. Riverside Pipeline Co. v. Public Service Commission*, 215 S.W.3d 76 (Mo banc 2007), in which the Court ruled that a stipulation entered into by the pipeline company, the staff of the Commission, and other parties precluded the Commission from conducting an Actual Cost Adjustment prudence review. The Court ruled that by failing to disallow the prudence review as required by the terms of the stipulation, the Commission acted unlawfully. *Id.* at 85.

11. Based on the foregoing, paragraph 9 of the Application filed by KCPL should be stricken from the record in this case, in compliance with the express terms of the Report and Order in Case No. EO-2005-0329 and the Agreement.

12. In addition, in compliance with the express terms of the Report and Order in Case No. EO-2005-0329 and the Agreement, the following tariff sheets filed by KCPL should be rejected by this Commission:

- 1) P.S.C. Mo. No. 7, Second, Revised Sheet No. 50, Canceling P.S.C. Mo. No 7, First, Revised Sheet No. 50;
- 2) P.S.C. Mo. No. 7, Original Sheet No. 50.1;
- 3) P.S.C. Mo. No. 7, Original Sheet No. 50.2;
- 4) P.S.C. Mo. No. 7, Original Sheet No. 50.3;
- 5) P.S.C. Mo. No. 7, Original Sheet No. 50.4; and
- 6) P.S.C. Mo. No. 7, Original Sheet No. 50.5.

13. In addition, in compliance with the express terms of the Report and Order in Case No. EO-2005-0329 and the Agreement, the following testimony concerning KCPL's request for an FAC should be stricken from the record in this case:

- 1) Direct Testimony of Tim M. Rush:
Page 2, lines 19 – 20;
Page 6, lines 19 – 21;
Page 7, lines 10 – 14;
The words “the FAC” on Page 8, line 6;
Page 9, line 4 through page 27, line 11;
Schedules TMR-1, TMR-4, TMR-6;
Paragraph 5 on page 1, page 2 and page 3 of Schedule TMR-2.
- 2) Rebuttal Testimony of Tim M. Rush:
Page 6, line 14 through page 29, line 1.
- 3) Direct Testimony of Wm. Edward Blunk:
Page 20, line 16 through page 34, line 5.
- 4) Rebuttal Testimony of Wm. Edward Blunk:
Page 9, line 1 through page 35, line 7.
- 5) Direct Testimony of Burton L. Crawford:
Page 13, line 13 through page 16, line 18.

- 6) Rebuttal Testimony of Darrin R. Ives:
Page 8, line 4 through page 15, line 5.

14. In addition, any other testimony, schedule, tariff sheet or other information submitted to the Commission by KCPL that is based on or supports the imposition of an FAC in this case should be stricken from the record or revised by KCPL to comply with the Commission's Report and Order in Case No. EO-2005-0329 and the Agreement.

15. MIEC and OPC are mindful of the Commission's Report and Order in Case No. ER-2014-0258, in which the Commission ruled that it would not grant Ameren Missouri's motion to strike testimony on the solar rebate issue. *In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariff to Increase Its Revenues for Electric Service*, Case No. ER-2014-0258, Report and Order, p. 30. But as demonstrated by the Commission's rulings in *In the Matter of The Empire District Electric Company*, Case No. ER-2006-0315, and the Missouri Supreme Court's ruling in *State ex rel. Riverside Pipeline Co. v. Public Service Commission*, 215 S.W.3d 76 (Mo banc 2007), cited in paragraph 10, above, the Commission should grant this motion to enforce KCPL's agreement that prior to June 1, 2015, it would not seek to utilize an FAC.

WHEREFORE, based on the foregoing, MIEC and OPC respectfully request that the Commission: (1) strike from the record of this case paragraph 9 of the Application filed by KCPL; (2) reject the tariff sheets listed in paragraph 11 of this motion; (3) strike from the record of this case the testimony listed in paragraph 12 of this motion; and (4) strike from the record of this case any other testimony, schedule, tariff sheet or other information submitted to the Commission by KCPL that is based on or supports the imposition of an FAC or in the alternative, require that such documents be revised by KCPL to eliminate any references to an FAC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been transmitted by e-mail this 10th day of June, 2015, to all parties on the Commission's service list in this case.

/s/ Diana M. Vuylsteke