

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

In the Matter of Kansas City Power & Light Company’s Request for Authority to Implement a General Rate Increase for Electric Service)
)
) **File No. ER-2016-0285**
)

APPLICATION FOR REHEARING AND RECONSIDERATION

COMES NOW the Office of the Public Counsel (“OPC” or “Public Counsel”) pursuant to Section 386.500 RSMo and 4 CSR 240-2.160(2) and for its Application for Rehearing of the Public Service Commission’s (“PSC” or “Commission”) May 3, 2017 *Report and Order* in Kansas City Power & Light Company’s (“KCPL”) rate case states:

Introduction

1. Commission decisions must be lawful and must be reasonable. *State ex rel Atmos Energy Corp. v Pub. Serv. Comm’n*, 103 S.W.3d 753, 759 (Mo. banc 2003). An order is lawful if the Commission acted within its statutory authority. *City of O’Fallon v. Union Elec. Co.*, 462 S.W.3d, 442 (Mo. App. W.D. 2015). An order is reasonable if it is “supported by substantial, competent evidence on the whole record, the decision of the Commission is not arbitrary or capricious or where the [PSC] has not abused its discretion.” *State ex rel. Praxair, Inc. v. Mo. PSC*, 344 S.W.3d 178, 184 (Mo. banc 2011).
2. Review of the Commission’s *Report and Order* in conjunction with the evidentiary record and law applicable in this case establishes that portions of this *Report and Order* regarding (a) the costs and revenues included in KCPL’s Fuel Adjustment Clause (“FAC”) and (b) revenue adjustment for political survey questions are unlawful, unsupported by competent and substantial evidence upon the whole record, and unreasonable. Being unlawful and

unreasonable, the Commission's *Report and Order* should be reheard and reconsidered on these points.

Fuel Adjustment Clause

3. The Commission's *Report and Order* permits KCPL to continue to "flow costs and revenues through its FAC as it is doing through its current FAC" (*Report and Order*, p. 27). This decision permits KCPL to have an FAC that is inconsistent with Ameren Missouri's FAC approved by the Commission during the pendency of this case (*See Order Approving Unanimous Stipulation and Agreement*, Case No. ER-2016-0179, *Iss'd* Mar. 8, 2017; Union Electric Company tariff sheet Mo. P.S.C. Schedule No. 6, Original Sheet No. 74.1 included as **Attachment A**). Public Counsel seeks rehearing of the Commission's decision and findings of fact in paragraphs 64, 66, 67, and 69 for the reasons explained below.

4. In paragraph 64 the Commission states "OPC argues for 'the purest definition of fuel and transportation costs' that would exclude a variety of essential elements to KCPL's FAC" (*Report and Order*, p. 26). The citation included at this finding of fact is to Ex. 305 at page 6, the Direct testimony of OPC witness Lena Mantle. That citation does support the statement that OPC's recommendation is the "purest definition of fuel and transportation costs", but it does not support the Commission's finding that OPC's recommendation would exclude "essential elements" from KCPL's FAC. To the contrary, the overwhelming weight of the evidence shows that certain costs and revenues KCPL seeks to continue including in its FAC are *non-essential*. Ms. Mantle testified "[i]ndirect costs such as fuel adders, fuel handling, contractor costs, spinning reserve costs and start up costs *are not fuel costs, purchased power costs, or the cost of transportation of fuel or purchased power.*" (Ex. 307, p. 15)(emphasis added). There is no testimony in the record

to support the Commission’s finding that OPC’s position would exclude “essential elements” of an FAC. The Commission should rehear and reconsider its finding in paragraph 64.

5. In paragraph 66, the Commission states “OPC’s proposed definition of Fuel would also mean that KCPL would be required to stop using the inventory cost of fuel system.” (*Report and Order*, p. 26). This finding of fact is incorrect and unsupported by competent and substantial evidence. As explained in the testimony of OPC Witness John Riley, “where” a cost is recorded in the USOA and “whether” a cost should be included in an FAC are independent considerations (Ex. 318, p. 6). OPC’s proposal is that only the “fuel” items meeting the FERC USOA definitions for Account 151, *Fuel Stock* and USOA account 518, *Nuclear Fuel* be charged to the FAC (Ex. 318, pp. 10-11).¹ Limiting the eligibility for recovery of certain fuel costs through the FAC to Account 151 and Account 518 does not mean those costs will not ultimately be recorded in Accounts 501 and 547. Mr. Riley testified how the accounting process works:

FERC Account 151 is a current asset account charged with the cost of fossil fuel that is purchased by the utility. As the fuel Account 151 cost is consumed in the generation of electricity, the cost of this fuel is charged to the appropriate expense account. This would include Account 501 for coal, Account 547 for natural gas and oil.

(Ex. 318, p. 11). Notably, even KCPL’s own witness Ms. Herrington (cited by the Commission in support of paragraphs 66 and 67), after dismissing OPC’s proposal to use Account 151 as the

¹Public Counsel’s proposal would also permit recovery through the FAC of purchased power costs and the costs of transportation as previously defined by the Commission in its *Report and Order* in Case No. ER-2014-0370 at page 35 and the Western District Court of Appeals in *Union Electric Company v. PSC*, 422 S. W. 3d 358, 367 (Mo. Ct. App. W.D. 2013).

basis for inclusion, *relies* on Account 151 to justify including unit train depreciation expense in the FAC (Ex. 126, p. 11). The Commission should rehear and reconsider its findings in paragraph 66.

6. In paragraph 67, the Commission finds “such a change as proposed by OPC would increase the complexity of FAC accounting and require deviations from standard USOA procedure.” (Report and Order, p. 26). As explained above, OPC’s proposal would not require any deviation from standard USOA accounting procedure – it simply limits the “fuel” costs eligible to be recovered through the FAC rather than through base rates.² Moreover, the record in this case shows that OPC’s proposal on the fuel costs eligible to be included in the FAC is *consistent* with the way that FERC requires utilities with a FERC FAC to record fuel costs (*See* 18 CFR § 35.14(a)(6); Ex. 318, pp. 11-12; Ex. 304, p. 12; Ex. 307, pp. 7-9). So, too, is OPC’s proposal in this case consistent with the FAC agreed-to by Ameren Missouri in its recent rate case and approved by the Commission during the pendency of this case (Order Approving Unanimous Stipulation and Agreement, Case No. ER-2016-0179, *Iss’d* Mar. 8, 2017 and effective Mar. 18, 2017).³ For the Commission to find that OPC’s proposal regarding “fuel” costs in the FAC is a deviation from the USOA is against the weight of the evidence, contrary to the interpretation of FERC, and contrary to the Commission’s own order approving an FAC containing OPC’s proposed limitation for Ameren Missouri. The clear outlier, in both fact and

² Recall, under OPC’s proposal the company would have the opportunity to recover these costs through its base rates.

³ The Unanimous Stipulation and Agreement in ER-2016-0179 limits fuel costs to be recovered through Ameren Missouri’s FAC to the fuel costs listed in the account definition of FERC Account 151 and costs for nuclear fuel recorded in FERC Account 518.

policy, is KCPL's position. The Commission should rehear and reconsider its findings in paragraph 67.

7. In paragraph 69, the Commission states "KCPL sells and purchases power '24 hours a day, 7 days a week'" (*Report and Order*, p. 26). This conclusion is incorrect. The Company's native load requirements are met by KCPL's own generation. The interaction with SPP is a financial transaction; SPP provides a payment to KCPL and KCPL provides a payment to SPP (Tr. Vol. 10, pp. 668-69). Without SPP, KCPL's generation would still run to serve its native load. Furthermore, this paragraph is in direct conflict with the Commission's paragraph 62 in the *Report and Order* that references the term "true purchased power". As it relates to the FAC, the Commission has decided that simply because a company "sells all its power to MISO [an RTO] and buys all that power back, all such transactions are off-system sales and purchased power within the meaning of the FAC statute. The Commission does not accept this point of view." (*Report and Order*, Case No. ER-2014-0258, p. 115, *Iss'd* Apr. 29, 2015). The Commission should rehear and reconsider its finding in paragraph 69.

8. Based on the forgoing issues relating to the Commission's findings of fact underlying its decision on costs and revenues to include in KCPL's FAC, the Commission should rehear and reconsider its decision on that point.

9. The Commission's *Report and Order* permits KCPL to "continue the current practice of allowing KCPL to add cost and revenue types to its FAC between rate cases according to its current tariff" (*Report and Order*, p. 35). The Commission explains its intent that "this does not authorize KCPL to add new types of costs or revenues between rate cases, but designations for those costs or revenues may be updated as necessary" (*Id.*). The Commission should rehear and reconsider its decision to permit KCPL to use its existing tariff language on this point because

the current KCPL tariff sheet contains language that arguably permits KCPL to include new types of costs and charges. Public Counsel's suggested changes to the tariff sheet that would accomplish the Commission's intended result are included in **Attachment B**.

10. However, if the Commission wishes to limit the changes to the designations or names given to existing costs or revenues a simpler solution would require KCPL, upon the SPP changing the name or designation of the charge or revenue, to file a new tariff sheet reflecting the name change with a 30 day effective date. This notifies all parties of the change and permits other parties to file objections if they do not agree with the proposed change or if they believe it is a new charge or revenue verses a renaming or re-designation.

Revenue Adjustment for Political Survey Questions

11. The Commission's *Report and Order* determines it is not appropriate for ratepayers to fund a utility's political surveys and ordered a reduction in the revenue requirement (*Report and Order*, p. 48). Public Counsel agrees that ratepayers should not fund a utility's political surveys, but disagrees with the allocation method applied by the Commission. The adjustment amount is based on the percentage of political questions in the surveys conducted during the test-year. The Commission should rehear and reconsider its decision to base the adjustment on this method because it does not adhere to the requirements of the Commission's affiliate pricing standards contained at 4 CSR 240-20.015(2)(A).

12. During the hearing, KCPL's witness testified that once the surveys are conducted the company shares the information with its political action group (Tr. Vol. 12, p. 1496). Because the company's practice is to provide the survey information to its affiliate (the political action committee) the Commission's affiliate pricing rules dictate how any cost should be treated – not a calculation based on a percentage of particular questions asked. The Commission's *Report and*

Order, if left uncorrected encourages non-compliance with the affiliate pricing standards and the affiliate transaction rule. The Commission should rehear and reconsider its decision on this point to ensure KCPL will adhere to the affiliate pricing rule as it relates to its interactions with its affiliated political action committee.

WHEREFORE, the Office of the Public Counsel respectfully requests rehearing and reconsideration on these matters.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ **Tim Opitz**

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 12th day of May 2017:

/s/ Tim Opitz

RIDER FAC

FUEL AND PURCHASED POWER ADJUSTMENT CLAUSE (Cont'd.)

(Applicable To Service Provided On The Effective Date Of This Tariff Sheet And Thereafter)

FAR DETERMINATION (Cont'd.)

For each FAR filing made, the FAR_{RP} is calculated as:

$$FAR_{RP} = [(ANEC - B) \times 95\% \pm I \pm P \pm T] / S_{RP}$$

Where:

* ANEC = FC + PP + E ± R - OSSR

* FC = Fuel costs and revenues associated with the Company's generating plants that are listed in Federal Energy Regulatory Commission ("FERC") Account 151 and recorded in FERC Accounts 501 or 547, and all costs and revenues that are recorded in FERC Account 518. These include the following:

1. For fossil fuel plants:

*A. the following costs and revenues (including applicable taxes) arising from steam plant operations: coal commodity, gas, alternative fuels, Btu adjustments assessed by coal suppliers, quality adjustments related to the sulfur content of coal assessed by coal suppliers, railroad transportation, switching and demurrage charges, railcar repair and inspection costs, railcar depreciation, railcar lease costs, similar costs associated with other applicable modes of transportation, fuel hedging costs, fuel oil adjustments included in commodity and transportation costs, fuel additive costs included in commodity or transportation costs, oil costs, and expenses resulting from fuel and transportation portfolio optimization activities; and

*B. the following costs and revenues (including applicable taxes) arising from non-steam plant operations: natural gas generation costs related to commodity, oil, transportation, storage, capacity reservation, fuel losses, hedging, and revenues and expenses resulting from fuel and transportation portfolio optimization activities, but excluding fuel costs related to the Company's landfill gas generating plant known as Maryland Heights Energy Center; and

*2. The following costs and revenues (including applicable taxes) arising from nuclear plant operations: nuclear fuel commodity expense, waste disposal expense, and nuclear fuel hedging costs.

PP = Purchased power costs and revenues and consists of the following:

*1. The following costs and revenues for purchased power reflected in FERC Account 555, excluding all charges under Midcontinent Independent System Operator, Inc. ("MISO") Schedules 10, 16, 17 and 24 (or any successor to those MISO Schedules), and excluding generation capacity charges for contracts with terms in excess of one (1) year. Such costs and revenues include:

*Indicates Change.

FILED
Missouri Public
Service Commission
ER-2016-0179; YE-2017-0173

Issued pursuant to the Order of the Mo.P.S.C. in Case No. ER-2016-0179.
DATE OF ISSUE March 8, 2017 DATE EFFECTIVE April 1, 2017 ~~April 7, 2017~~

ISSUED BY Michael Moehn President St. Louis, Missouri
NAME OF OFFICER TITLE ADDRESS

Costs and revenues not specifically detailed in Factors FC, PP, E, TC, OSSR, or R shall not be included in the Company's FAR filings; provided however, in the case of Factors PP, TC or OSSR, the market settlement charge types under which SPP or another centrally administered market (e.g., PJM or MISO) bills/credits a cost or revenue need not be detailed in Factors PP or OSSR for the costs or revenues to be considered specifically detailed in Factors PP or OSSR; and provided further, should the SPP or another centrally administered market (e.g. PJM or MISO) ~~implement a new change its designation, schedule name or charge type cost or revenue name -market settlement charge type not~~ listed below or ~~a new schedule not listed~~ in TC:

- A. The Company may include the ~~new~~ schedule, charge type cost or revenue in its FAR filings if ~~the Company believes the new schedule, charge type cost or revenue possesses the characteristics of, and is of the nature of, the costs or revenues listed below or in the schedules is currently included~~ listed in PP, TC, or OSSR as the case may be, subject to the requirement that the Company make a filing with the Commission as outlined in B below and also subject to another party's right to challenge the inclusion as outlined in E. below;
- B. The Company will make a filing with the Commission ~~giving identifying to~~ the Commission ~~notice of~~ the ~~new~~ schedule or charge type no later than 60 days prior to the Company including the ~~new re-designated~~ schedule, charge type cost or revenue in a FAR filing. Such filing shall identify the proposed accounts affected by such change; ~~provide a description of the new charge type demonstrating that it possesses the characteristics of, and is of the nature of, the costs or revenues listed in factors PP, TC or OSSR as the case may be,~~ and identify the preexisting schedule, or market settlement charge type(s) which the ~~re-designated~~new schedule or charge type replaces or supplements;
- C. The Company will also provide notice in its monthly reports required by the Commission's fuel adjustment clause rules that identifies the ~~new re-designated~~ schedule, charge type costs or revenues by amount, description and location within the monthly reports;
- D. The Company shall account for the ~~new re-designated~~ schedule, charge type costs or revenues in a manner which allows for the transparent determination of current period and cumulative costs or revenues;
- E. If the Company makes the filing provided for in B above and a party challenges the inclusion, such challenge will not delay approval of the FAR filing. To challenge the inclusion of a ~~re-designated~~new schedule or charge type, a party shall make a filing with the Commission based upon that party's contention that the ~~new~~ schedule, charge type costs or revenues at issue should not have been included, because they ~~do not possess the characteristics of the schedules, costs or revenues are not included~~ listed in Factors PP, TC or OSSR, as the case may be. A party wishing to challenge the inclusion of a schedule or charge type shall include in its filing the reasons why it believes the Company did not show that the ~~new~~ schedule or charge type ~~possesses the characteristics of the costs or revenues listed~~ is ~~not included~~ in Factors TC, PP or OSSR, as the case may be, and its filing shall be made within 30 days of the Company's filing under B above. In the event of a timely challenge, the Company shall bear the burden of proof to support its decision to include a ~~re-designated~~new schedule or charge type in a FAR filing. Should such challenge be upheld by the Commission, any such costs will be refunded (or revenues retained) through a future FAR filing in a manner consistent with that utilized for Factor P; and
- F. A party other than the Company may seek the inclusion of a ~~re-designated~~new schedule or charge type in a FAR filing by making a filing with the Commission no less than 60 days before the Company's next FAR filing date of August 1 or February 1. Such a filing shall give the Commission notice that such party believes the ~~re-designated~~ new schedule or charge type should be included because it ~~possesses the characteristics of, and is of the nature of, the costs or revenues is~~ listed in factors PP, TC or OSSR, as the case may be. The party's filing shall identify the proposed accounts affected by such change, provide a description of the ~~re-designated~~new schedule or charge type demonstrating that it ~~possesses the characteristics of, and is of the nature of, the schedules, costs or revenues is~~ listed in factors PP, TC or OSSR as the case may be, and identify the preexisting schedule or market settlement charge type(s) which the ~~re-designated~~new schedule or charge type replaces or supplements. If a party makes the filing provided for by this paragraph F and a party (including the Company) challenges the inclusion, such challenge will not delay inclusion of the ~~new re-designated~~ schedule or charge type in the FAR filing or delay approval of the FAR filing. To challenge the inclusion of ~~the a new~~ schedule or charge type, the challenging party shall make a filing with the Commission based upon that party's contention that the ~~new~~ schedule or charge type costs or revenues at issue should not have been included, because they ~~do not possess the characteristics of the schedules, costs or revenues are not~~ listed in Factors PP, TC, or OSSR, as the case may be. The challenging party shall make its filing challenging the inclusion and stating the reasons why it believes the ~~new~~ schedule or charge type ~~does not possess the characteristic of the costs or revenues is~~ listed in Factors PP, TC or OSSR, as the case may be, within 30 days of the filing that seeks inclusion of the ~~new~~ schedule or charge type. In the event of a timely challenge, the party seeking the inclusion of the ~~new~~ schedule or charge type shall bear the burden of proof to support its contention that the ~~new~~ schedule or charge type should be included in the Company's FAR filings. Should such challenge be upheld by the Commission, any such costs will be refunded (or revenues retained) through a future FAR filing in a manner consistent with that utilized for Factor P.