

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

In the Matter of the Application of Kansas City)
Power and Light Company for Approval to Make)
Certain Changes in its Charges for Electric Service) **Case No. ER-2009-0089**
to Continue the Implementation of its Regulatory) Tariff No. JE-2009-0192
Plan.)

In the Matter of the Tariff Filing of Aquila, Inc.)
d/b/a KCP&L Greater Missouri Operations)
Company, to Implement a General Rate Increase for) **Case No. ER-2009-0090**
Retail Electric Service Provided to Customers in its) Tariff No. JE-2009-0913
Missouri Service Areas it formerly served as Aquila)
Networks—MPS and Aquila Networks—L&P.)
)

In the Matter of the Tariff Filing of Aquila, Inc.)
d/b/a KCP&L Greater Missouri Operations)
Company, to Implement a General Rate Increase for) **Case No. HR-2009-0092**
Retail Steam Heating Service Provided to Customers) Tariff No. YH-2009-0195
in its Missouri Service Area it formerly served as)
Aquila Networks—L&P.)

**STAFF’S RESPONSE TO PROPOSED PROCEDURAL SCHEDULES
OF KANSAS CITY POWER & LIGHT COMPANY AND AQUILA**

COMES NOW the Staff of the Missouri Public Service Commission and responds to statements made by Kansas City Power & Light Company and Aquila, Inc. in their pleading filed October 29, 2008 proposing procedural schedules, as follows:

1. First, the Staff states its agreement with Kansas City Power & Light Company (KCPL) and Aquila, Inc. that a significant question, but certainly not the only one, in crafting reasonable procedural schedules for these cases is the issue of whether an April 30, 2009 true-up date and an August 5, 2009 effective date for new rates provides the Commission enough time to deliberate and issue both a *Report and Order* and an *Order Approving Tariffs*. Another significant

question is whether the parties in the case will have adequate time to provide meaningful input to the Commission through testimony, pleadings and recommendations with an August 5, 2009 effective date for new rates if the true-up date is April 30, 2009.

2. The Companies' proposals are deficient because they do not provide the parties adequate time to provide meaningful input to the Commission.

3. As the Staff stated in the pleading where it proposed procedural schedules, the Staff does not believe it will have from KCPL and Aquila all the information necessary to perform a true-up until at least three weeks after the end of the true-up date. A true-up should comply with the matching principle and encompass all major items, not just plant additions. Significantly, the schedules KCPL and Aquila propose are silent on the crucial date by which they must provide true-up data to the Staff and other parties. In their Attachment 1, based on an April 30, 2009 true-up date and an August 5, 2009 effective date, KCPL and Aquila allow only twenty-one (21) days from the true-up date until true-up direct testimony is filed. Because KCPL and Aquila will not close their books until after the end of April, it is beyond overly ambitious to think the Staff and other parties will receive the requisite accounting data, digest it and draft testimony within the twenty-one (21) days KCPL and Aquila propose. As pointed out in the Staff's pleading where it proposes alternative schedules, KCPL and Aquila are not now providing end-of-month accounting data within three weeks of the close of the month. Further, this proposal would have the Staff and other parties filing true-up direct in the KCPL case the same day the true-up hearing in the Aquila steam case would begin.

4. Further, KCPL's and Aquila's preferred schedules provide only fifteen (15) days, and eight (8) days, between the filing of rebuttal (revenue requirement, and rate design and class cost of

service, respectively) and surrebuttal testimony. An inadequate period within which to review other parties' positions, perform discovery and draft responsive testimony, particularly for four (4) different revenue requirements—KCPL, Aquila-MPS, Aquila-L&P electric and Aquila-L&P steam.

5. KCPL's and Aquila's alternative schedules, presented in their Attachment 2 and based on an option to elect to move to schedules based on a September 5, 2009 effective date for new rates, would require a change in local public hearings as late as thirteen (13) days before they would begin (KCPL schedule), an inadequate amount of time for adequate public notice of the change if it were made. Further, if the election is not made, the proposal suffers from the problems already described.

6. As the Staff stated in the pleading with which it proposed alternative schedules developed from input with the parties, especially Public Counsel, the Staff has presented to the Commission what it views to be the best alternatives available in these circumstances.

7. The Staff also notes that the dates shown on Attachment 2 to KCPL's and Aquila's pleading based on a September 5, 2009 effective date for new rates has the same dates for events listed in that schedule as the schedule the Staff has proposed also based on a September 5, 2009 effective date for new rates, except that KCPL and Aquila have divided the four weeks for evidentiary hearings among the three cases, while the Staff has not. In the Staff's view, it would be better to know the contested issues before allocating the four weeks of hearing time among the cases.

8. In their pleading, while KCPL and Aquila accurately describe aspects of the rate cases described in the Stipulation and Agreement embodying the KCPL Experimental Regulatory Plan (Regulatory Plan), they have chosen to ignore other aspects. The Regulatory Plan contemplated that KCPL would file two rate cases and gave KCPL the option of filing up to two

additional rate cases—the first and last rate case are “mandatory,” the second and third are “optional.” The filing date of the rate case described in the Regulatory Plan that is closest to the September 5, 2008 filing date of Case No. ER-2009-0089 is one described as “RATE FILING #3 (2008 RATE CASE)“, one of the optional rate cases, which is set out on pages 37-41 of the Regulatory Plan and is based on a February 1, 2008 filing date. Included in the Regulatory Plan are the following provisions regarding “RATE FILING #3”:

(i) Schedule. Rate schedules with an effective date of January 1, 2009 may be filed with the Commission on February 1, 2008. The test year will be based upon a historic test year ending December 31, 2007, (initially filed with nine (9) months actual and three (3) months budget data), with updates for known and measurable changes, as of June 30, 2008, and with a true-up through September 30, 2008. On or about October 21, 2008, KCPL will file in a true-up proceeding a reconciliation as of September 30, 2008. The specific list of items to be included in the true-up proceeding shall be mutually agreed upon between KCPL and the Signatory Parties, or ordered by the Commission during the course of the rate case. However, the Signatory Parties anticipate that the true-up items will include, but not necessarily be limited to, revenues including off-system sales, fuel prices and purchased power costs, payroll and payroll related expenses, plant-in-service, depreciation and other items typically included in true-up proceedings before the Commission.

* * * *

v) Infrastructure. The 2008 Rate Case will include prudent expenditures for the installation of an SCR facility, a Flue Gas Desulphurization (“FGD”) unit and a Baghouse at Iatan 1; 100 MWs of wind generation; and the additions to transmission and distribution infrastructure identified in Appendix D that are in service prior to the agreed upon true-up date. The Signatory Parties agree that they will not take the position that these investments should be excluded from KCPL’s rate base on the ground that the projects were not necessary or timely, or that alternative technologies should have been used by KCPL, so long as KCPL proceeds to implement the Resource Plan described herein (or a modified version of the Resource Plan where the modified plan has been approved by the Commission) and KCPL is in compliance with Paragraph III.B.1(o) “Resource Plan Monitoring.” Nothing in this Agreement shall be construed to limit any of the Signatory Parties’ ability to inquire regarding the prudence of KCPL’s expenditures, or to assert that the appropriate amount to include in KCPL’s rate base or its cost of service for these investments is a different amount (e.g., due to imprudent project management) than that proposed by KCPL.

9. After execution of the Regulatory Plan the Commission started requiring more time for it to deliberate, issue its decision, consider compliance tariffs and approve compliance tariffs. That the Commission would do so is not contemplated in the rate case timeframes of the Regulatory Plan.

10. As they did in describing the rate cases in the Regulatory Plan, KCPL and Aquila also fail to fully describe the Staff's responses to their proposed true-up date proposal. They state the Staff "concurred with the April 30, 2009 true-up date." The Staff's concurrence in an April 30, 2009 true-up date was qualified, and the qualifications were not met. In each of its pleadings filed in each of Case Nos. ER-2009-0089, ER-2009-0090 and HR-2009-0092, the Staff stated:

WHEREFORE, the Staff submits its conditional concurrence in the use of an historical test year ending December 31, 2007 true-up through April 30, 2009, as adjusted and updated for any known and measurable changes through September 30, 2008 rather than October 31, 2008. The conditions being that the parties in this case agree upon (1) the use of a 2007 test year, September 30, 2008 update date and April 30, 2009 true-up date and (2) an appropriate procedural schedule in light of a 2007 test year, September 30 2008 update date and April 30, 2009 true-up date.

The parties were unable to reach agreement on an appropriate procedural schedule in light of a 2007 test year, September 30 2008 update date and April 30, 2009 true-up date.

11. The Staff is surprised and troubled by the first sentence of paragraph 5 of KCPL's and Aquila's pleading which states, "The parties were unable to agree on proposed procedural schedules primarily due to the uncertainty created by the appeal of a rate case involving The Empire District Electric Company." The Staff is surprised at KCPL's and Aquila's disclosure in light of the position KCPL took in opposing the Staff's limited disclosure of settlement communications to clarify the meaning of language in KCPL's last rate case, Case No. ER-2007-0291, where, in an

October 4, 2007 motion to exclude portions of the testimony of Staff witness Pyatte, KCPL, at paragraph 7, stated:

Setting aside the particular merits of the rate design controversy in this case, the unilateral disclosure of privileged information by Staff, from KCPL's perspective, is unfortunate and establishes a horrible precedent for parties' conduct in the future. The unilateral disclosure of such privileged information by any party, if countenanced by the Commission, will undoubtedly have a chilling effect upon frank and candid exchanges of information and compromise positions in the settlement process.

and in light of the Commission's December 6, 2007 *Report and Order* in that case where the Commission, at pages 65-66, said:

The Supreme Court of Missouri has enunciated a two-step process for determining admissibility of evidence; the evidence must be both logically and legally relevant. The disputed testimony is logically relevant; that evidence tends to support Staff's interpretation of the meaning of the disputed language in the stipulation. But there is a second hurdle Staff must clear, which is legal relevance.

Legal relevance weighs the probative value of the evidence against its costs, including unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or cumulativeness. Thus, logically relevant evidence is excluded if its costs outweigh its benefits. Using this balancing test, the Commission will sustain the objections and motions to strike launched by OPC and KCPL and joined in by Praxair. The Commission finds the cost of admitting settlement negotiations far outweighs any benefits.

The complexity of the issues and the number of parties often involved in rate cases can be staggering. Parties regularly engage in settlement negotiations, sometimes resolving their disputes with "black box" settlements. That is to say, the many parties arrive at, for example, a final revenue requirement number that they all find acceptable. But that settlement does not reveal *how* the parties arrived at that number, who moved how many dollars on what issue, etc. Indeed, given the sometimes frantic pace of negotiations as the Commission's operation of law date approaches, and the many people involved, the parties may not *know* exactly how they arrived at that number, and one representative of a party may not *know* what another representative of a party has promised someone.

If these parties, who employ attorneys, accountants, economists, engineers, as well as several other experts, cannot engage in candid and frank settlement

discussions without fear of those discussions being used against them, then the entire settlement process at the Commission could implode. Indeed, in the case at bar, despite the regulatory plan stipulation, a non-unanimous stipulation on pensions, and a non-unanimous stipulation regarding several rate base and expense issues, once sub-issues are counted as separate issues, this case has roughly thirty issues. If parties do not feel free to lay all of their cards on the table during settlement discussions, they could become even more entrenched in their positions. As a result, many more issues might the parties bring to the Commission for resolution.

Absent a statutory change, the absolute deadline for the Commission to resolve a rate case is fixed at 120 days plus six months beyond the tariff effective date. If the issues are not settled, the parties and the Commission would simply have to cram even more work and more issues into an already rather compressed time frame. Several weeks that are currently used for discovery and negotiation would instead have to be used for several weeks of hearings to accommodate the additional issues.

The Commission will not go down that road. The Commission will sustain the objections launched by OPC and KCPL regarding Staff's inclusion of settlement discussion in Staff witness Pyatte's testimony, and will strike from the record the portions of Ms. Pyatte's testimony to which OPC and KCPL objected.

(Citations omitted.)

12. The Staff is troubled by KCPL's and Aquila's disclosure, stated as fact and not opinion, that the parties did not reach agreement "primarily due to the uncertainty created by the appeal of a rate case involving The Empire District Electric Company" because, unlike the disclosure the Staff made in Case No. ER-2007-0291, the Staff sees no legitimate purpose for the disclosure of any information KCPL and Aquila obtained during the procedural schedule settlement discussions that took place in this case.

WHEREFORE, the Staff submits the foregoing in response to statements made by Kansas City Power & Light Company and Aquila, Inc. in their pleading filed October 29, 2008 proposing procedural schedules.

Respectfully submitted,

/s/ Nathan Williams

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 5th day of November 2008.

/s/ Nathan Williams