

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Proposed Rulemaking)	
Regarding Electric Utility Renewable)	Case No. EX-2010-0169
Energy Standard Requirements)	

APPLICATION FOR REHEARING AND REQUEST FOR STAY

COMES NOW Kansas City Power & Light Company (“KCP&L”) and KCP&L Greater Missouri Operations Company (“GMO”) by and through the undersigned counsel, pursuant to § 386.500 RSMo, 4 CSR 240-2.080, and 4 CSR 240-2.160, and for its Application for Rehearing and request for a stay of the effectiveness of its Order of Rulemaking in the captioned case, states the following:

1. On June 2, 2010, the Commission issued an Order of Rulemaking in the captioned case, to be effective on July 2, 2010. The rule purports to adopt portfolio requirements for all electric utilities to generate or purchase electricity generated from renewable energy resources, all as set forth in the Renewable Energy Standards legislation (adopted by initiative petition, Proposition C) and codified at §§ 393.1020 through 393.1050 RSMo. Supp., 2009 (the “Act”). KCP&L and GMO believe the Order of Rulemaking is unconstitutional, unlawful, unjust and unreasonable and arbitrary and capricious and therefore requests reconsideration and rehearing for the following reasons.

2. The Order of Rulemaking attempts to link Renewable Energy Credits (RECs) or Solar Renewable Energy Credits (S-RECs) with the associated renewable energy resource. *See*, 4 CSR 240-20.100(3)(a). This requirement is unauthorized by law as well as contrary to the spirit and letter of the enabling legislation. The Act specifically contemplates that an electric utility may comply with its renewable energy portfolio requirements “in whole or in part by purchasing RECs.” *See*, §§ 393.1030 RSMo. The

legislation was intended to allow electric utilities to comply with their renewable energy portfolio requirements by purchasing tradable certificates instead of arranging for the delivery of a specific resource's output (i.e., "green electrons") into a particular service territory.

3. The definition of the term "REC" is not limited to electricity generated just in the State of Missouri or to energy delivered to Missouri customers. The legislation expressly allows an electric utility to acquire either electricity or RECs carried in states other than the State of Missouri. § 393.1030.1 provides an incentive to electric utilities to favor Missouri generation by providing a 25% additional credit towards compliance. The law provides for an incentive for electric utilities to use Missouri generation sources but does not mandate it. The Commission's insistence on using Missouri energy is contrary to Missouri law.

4. The Commission's restriction on the geographic area within which electric utilities may secure renewable energy or RECs is a violation of the Commerce Clause of the United States Constitution. U.S. Const. art. 1 § 8, cl. 3.

5. The Commission's requirement at 4 CSR 240-20.100(4)(A) that utilities extend to solar energy developers a "standard offer contract" has no basis in the enabling legislation. The only financial incentive allowed by the Act is a limited \$2.00 per watt subsidy found in § 393.1030.3 RSMo. This standard offer contract is not authorized by law and is in excess of the Commission's statutory authority. The contract is also a violation of the electric utilities' due process rights because it is a mandatory monetary payment by utilities to solar energy developers in violation of Missouri Constitution article 1, § IX and the Fifth Amendment of the United States Constitution.

6. The standard offer contract is in excess of the Commission's statutory authority because it manages the business of an electric utility. The Commission does not have the authority to take over the general management of any utility.

7. The standard offer contract for solar energy developers means that the Commission has unlawfully favored a particular segment of generators by prohibiting electric utilities from extending a contract offer to an affiliate. *See*, 4 CSR 240-20.100(4)(H)(6)(e). This limitation is contradictive of Proposition C which permits "electric utilities to generate or purchase electricity from renewable energy resources." Thus, the Act contemplates that the electric utilities have a self-build option to meet their renewable energy portfolio requirements. Proposition C does not give the Commission authority to limit, either directly or indirectly, solar generation investments for electric utilities and thus favor one class of providers over another. Additionally, this restriction was not in the Rule as originally proposed and there is no commentary offered or evidence introduced that would support its eleventh hour appearance. Thus, its addition is a denial of due process in violation of the Constitutions of Missouri and the United States.

8. The penalty provisions of the Order of Rulemaking are unauthorized by law. This portion of the Rule (4 CSR 240-20.100(7)(C)) purports to allow the Commission to affix a penalty by calculating the market value for RECs or S-RECs. This language violates the Missouri Constitution which states that no law shall so delegate to any commission the authority to make any rule fixing to fine or impose as punishment for its violation. The determination of appropriate penalty for violation of Proposition C is a matter reserved by the law to the courts. *See*, § 386.600 RSMo.

9. The Order of Rulemaking requires that all monies recovered as a penalty shall be paid to the public school fund of the state. § 393.1030.2(2) RSMo. purports to direct penalties paid by electric utilities to the Department of Natural Resources to buy RECs or other selected projects. Thus, the Rule is in conflict with the enabling legislation and calls into question the validity of this aspect of the Rule.

10. The Order of Rulemaking contains many errors and omissions. These inconsistencies or omissions have no explanation in the Order of Rulemaking.

WHEREFORE, KCP&L and GMO respectfully request the Commission grant reconsideration and rehearing with respect to the matter set forth in detail above. Additionally, KCP&L and GMO request that the Commission stay the effectiveness of its order until such time as the issues identified can be reheard and resolved in a manner consistent with the language and intent of the Act.

Respectfully submitted,

/s/ James M. Fischer

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**Attorneys for Kansas City Power & Light
Company, and KCP&L Greater Missouri
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed, or mailed, postage prepaid, this 30th day of June, 2010, to all counsel of record.

/s/ James M. Fischer
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