

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

In the Matter of a Proposed Rulemaking)	
Regarding Revision of the Commission's)	File No. EX-2010-0254
Chapter 22 Electric Utility Resource)	
Planning Rules)	

**APPLICATION FOR REHEARING
AND REQUEST FOR STAY**

COMES NOW Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO") (collectively the "Companies"), by and through the undersigned counsel, pursuant to §386.500, RSMo., 4 CSR 240-2.080 and 4 CSR 240-2.160, and hereby submit their Application for Rehearing and Request for Stay of the Missouri Public Service Commission's ("Commission") Orders of Rulemaking dated March 2, 2011, in the above-captioned proceeding, in which the Commission adopts a new rule, 4 CSR 240-22.045, and amends the eight following rules, to-wit: 4 CSR 240-22.010, 4 CSR 240-22.020, 4 CSR 240-22.030, 4 CSR 240-22.040, 4 CSR 240-22.050, 4 CSR 240-22.060, 4 CSR 240-22.070 and 4 CSR 240-22.080. In support thereof, the Companies respectfully state as follows:

1. On March 2, 2011, the Commission issued nine (9) separate Orders of Rulemaking in the captioned case, to be effective April 1, 2011.¹ By its Orders of Rulemaking, the Commission amends rules 4 CSR 240-22.010 (Policy Objectives), 4

¹ Section 393.490.3 provides that "(e)very order or decision of the commission shall of its own force take effect and become operative thirty days after the service thereof, except as otherwise provided." While the Cover Memorandum (containing the executed signatures of the five Commissioners) for each of the Orders of Rulemaking reflects a March 2, 2011 date, each of said documents also reflects a Stamped-Filed Date of March 3, 2011, which is the date the Orders were filed in the Commission's Electronic Filing Information System ("EFIS"), as well as the date the Orders were filed with the Joint Committee on Administrative Rules ("JCAR"). Out of an abundance of caution, Companies are filing this pleading prior to an April 1, 2011 effective date.

CSR 240-22.020 (Definitions), 4 CSR 240-22.030 (Load Analysis and Load Forecasting), 4 CSR 240-22.040 (Supply-Side Resource Analysis), 4 CSR 240-22.050 (Demand-Side Resource Analysis), 4 CSR 240-22.060 (Integrated Resource Plan and Risk Analysis), 4 CSR 240-22.070 (Resource Acquisition Strategy Selection) and 4 CSR 240-22.080 (Filing Schedule, Filing Requirements and Stakeholder Process), and adopts a new rule, 4 CSR 240-22.045 (Transmission and Distribution Analysis), all constituting the Commission's Chapter 22 Rules on Electric Utility Resource Planning. The Companies believe the Orders of Rulemaking and the rules contained therein are unlawful, unjust and unreasonable and arbitrary and capricious, and therefore request reconsideration and rehearing and a stay of the effectiveness of said Orders, for the following reasons.

2. Section 536.014, RSMo, provides:

No department, agency, commission or board rule shall be valid in the event that: (1) There is an absence of statutory authority for the rule or any portion thereof; or (2) The rule is in conflict with state law; or (3) The rule is so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on persons affected.

In addition, Section 386.250, RSMo provides, in part: "The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:

(6) To the adoption of rules as are supported by evidence as to reasonableness and which prescribe the conditions of rendering public utility service, disconnecting or refusing to reconnect public utility service and billing for public utility service. All such proposed rules shall be filed with the secretary of state and published in the Missouri Register as provided in chapter 536, and a hearing shall be held at which affected parties may present evidence as to the reasonableness of any proposed rule;" (Emphasis added).

3. As noted in the Commission’s respective Orders, each rule “is part of a larger package of nine rules that comprise the proposed Chapter 22 of the Commission’s rules that establish the requirements for resource planning by investor-owned electric utilities in Missouri.” The Orders further reflect that many of the comments (both written and oral) relate to the entire package of changes to Chapter 22.²

The Companies, through the Missouri Energy Development Association (“MEDA”), provided an alternative rule designed to allow utilities the flexibility to plan in the manner most appropriate for each utility and to still provide Staff and any intervenor with the information necessary to participate in the planning process and evaluate the end result, *i.e.* the plan. (See, Tr. 97-98). However, the Commission rejected the less prescriptive rules proposed by MEDA, and adopted highly prescriptive rules in the Orders of Rulemaking. Such actions are unlawful, unjust, unreasonable, arbitrary and capricious, and beyond the legal authority of the Commission.

While Missouri law gives the Commission broad authority to regulate utilities,³ such authority is not without limitation. The Commission is purely a creature of statute and its powers are limited to those conferred by the statutes, either expressly or by clear implication as necessary to carry out the powers specifically granted.⁴ The Orders and resulting rules go beyond the Commission’s statutory authority by intruding on the management prerogatives of the utility. (See, *State ex rel. St. Joseph v. PSC*, 30 S.W.2d 8 (Mo. Banc 1930); *State ex rel. Harline v. PSC*, 343 S.W.2d 177 (Mo. App. 1960)).

² Orders of Rulemaking, Comments relating to the entire package of changes to Chapter 22, page 1.

³ Section 386.040, RSMo.

⁴ *State ex rel. Utility Consumers Council v. PSC*, 585 S.W.2d 41, 49 (MO 1979).

4. The Companies also advocated for the inclusion of a provision in the revised rules that would allow the utilities to request decisional prudence rulings for major investments that are planned in the near term. As noted in the Companies' written comments, "[c]onsidering the elevated status of the IRP in the determination of revenue requirements related to demand-side investments and renewable energy investments, the ability to request decisional prudence for major investments in these arenas is critical." (Comments, page 3; See also, Tr. 98-99). However, the Commission determined that it "will not include a provision for preapproval of large investments in its Chapter 22 rules." (Orders, page 3). Such action is unlawful, unjust, unreasonable, and arbitrary and capricious.

5. In amended Rule 4 CSR 240-22.020(37), the Commission defines "major class" as a "cost –of-service class of the utility." The Companies pointed out that in the current rule, major classes are residential, commercial and industrial. Traditionally, the Companies have prepared their budgets by economic sector – residential, commercial and manufacturing, because this division creates the most homogeneous groups of customers. Also, most of the economic data and forecasts are provided by economic sector. The Companies use forecasts of energy efficiency trends from the US DOE and their models are separated by economic sector. The new rule would require the Companies to prepare separate budget and IRP forecasts, unless a waiver is granted. This will result in duplicative data bases, additional work, and forecasts that may not be in sync. The Commission refused to modify the definition of major class, and such decision is unlawful, unjust, unreasonable, and arbitrary and capricious.

6. Regarding Rules 4 CSR 240-22.040 and 4 CSR 240-22.045, Companies advocated that the Commission modify the rules to better recognize the critical role of regional transmission organizations in the transmission planning process of an electric utility. (See, Comments, pp. 4-7, Tr. 107-120). The Commission refused to make such modifications, and such refusal is unlawful, unjust, unreasonable, and arbitrary and capricious.

7. The Commission Staff proposed to delete a portion of subsection 4 CSR 240-22.080(1) – Companies submitting their triennial compliance filings on the same schedule may file them jointly -- “to clarify that KCP&L and GMO, even though they are affiliated utilities, will be required to file separate IRPs.” The Companies opposed this suggested revision to the proposed rule during the hearing, pointing out the risks associated with such a requirement. (See, Tr. 100-101). The Commission agreed to modify the proposed rule as Staff requested, and such action is unlawful, unjust, unreasonable, and arbitrary and capricious.

8. In 4 CSR 240-22.080 (17)(C), the Commission requires an electric utility to certify in all future cases which “involve a requested action that is affected by electric utility resources, preferred resource plan or resource acquisition strategy” that the requested action is substantially consistent with the preferred resource plan. This request is overly broad and unduly burdensome. Without a better definition of what constitutes a “requested action,” the rule puts the utility in jeopardy of unintentional noncompliance.

9. The Commission modified 4 CSR 240-22.080(12), to require “a utility to notify the Commission if between its triennial IRP filings, it determines that its business plan or acquisition strategy has become inconsistent with its preferred resource plan, or if

it determines that its acquisition strategy or preferred resource plan is no longer appropriate.” (Order of Rulemaking, 4 CSR 240-22.080, pp. 6, 9). The Companies believe that this rule is overly broad because of the inclusion of the term “business plan.” The Companies’ business plan covers aspects of operations that are not considered in resource planning. An example would be a change to the Companies’ billing system. Delaying or accelerating the adoption of a new billing system could be a change in the Companies’ business plan, but does not impact the acquisition strategy. Without additional guidance in the rule, the rule is overbroad and puts the utility at risk for unintentional noncompliance. The Commission offers no guidance or clarification as to such determinations and, accordingly, such Order and rule is unlawful, unjust, unreasonable, and arbitrary and capricious.

10. Due to these substantive errors on the part of the Commission, there is an absence of statutory authority for the above-described rules as adopted by the Commission; said rules are in conflict with state law; and said rules, as adopted by the Commission, are so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on those affected. Accordingly, the Orders of Rulemaking and the above-described rules set forth therein are in violation of the referenced Missouri statutes.

WHEREFORE, the Companies respectfully request that the Missouri Public Service Commission grant reconsideration and rehearing with respect to the matters set forth in detail above. Additionally, the Companies request that the Commission stay the

effectiveness of its Orders until such time as the issues identified can be reheard and resolved in a manner consistent with the authority of the Commission.

Respectfully submitted,

/s/ Roger W. Steiner

Roger W. Steiner, MBN 39586
Corporate Counsel
Kansas City Power & Light Company
1200 Main – 16th Floor
Kansas City, Missouri 64105
Phone: (816) 556-2314
Fax: (816) 556-2787
E-mail: roger.steiner@kcpl.com

James M. Fischer, MBN 27543
E-mail: jfischerpc@aol.com
Larry W. Dority, MBN 25617
E-mail: lawdority@sprintmail.com
Fischer & Dority, P.C.
101 Madison Street, Suite 400
Jefferson City, MO 65101
Telephone: (573) 636-6758
Facsimile: (573) 636-0383

**ATTORNEYS FOR KANSAS CITY
POWER & LIGHT COMPANY AND
KCP&L GREATER MISSOURI
OPERATIONS COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on this 31st day of March, 2011 to:

General Counsel's Office
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Office of the Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102

/s/ Roger W. Steiner

Roger W. Steiner