

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

In the Matter of the Application of Kansas City )  
Power & Light Company for Approval to Make ) Case No. ER-2009-0089  
Certain Changes in its Charges for Electric )  
Service to Implement its Regulatory Plan )

In the Matter of the Application of KCP&L )  
Greater Missouri Operations Company for ) Case No. ER-2009-0090  
Approval to Make Certain Changes in its )  
Charges for Electric Service )

In the Matter of the Application of KCP&L )  
Greater Missouri Operations Company for ) Case No. HR-2009-0092  
Approval to Make Certain Changes in its )  
Charges for Steam Heating Service )

**RESPONSE TO STATUS REPORT AND MOTION TO  
EXTEND PERIOD TO DEMONSTRATE COMPLIANCE  
WITH CERTAIN IN-SERVICE CRITERIA**

COME NOW Praxair, Inc., Midwest Energy Users' Association, Wal-Mart Stores, Inc., Sedalia Industrial Energy Users' Association, Ag Processing, Inc., a cooperative, (collectively, "Industrial Intervenors"), the Office of the Public Counsel ("OPC"), and the Federal Executive Agencies ("FEA") and for their response to the status report and motion to extend period to demonstrate compliance with certain in-service criteria ("Motion") of Kansas City Power & Light Company ("KCPL") and KCP&L Greater Missouri Operations Company ("KCPL – GMO") (collectively, the "Companies") respectfully stats as follows:

1. On March 2, 2009, the Companies filed their Motion. In that Motion, the Companies inform the Commission of the events which led to the failure of the Iatan 1 HP turbine; the actions being taken to remedy the turbine failure; and the implications of

the turbine failure on the ordered procedural schedule in the above-captioned proceedings. Specifically, the Companies suggest that the current true-up date of March 31, 2009 be maintained while allowing the Companies an additional month to demonstrate that the Iatan 1 capital improvements meet the applicable in-service criteria. While attempting to downplay the procedural implications of its request, the Companies' request will seriously undermine the parties' ability to audit either the construction expenditures associated with the relevant capital improvements as well as the in-service criteria found to be applicable to those capital additions.

2. Early in this case, several parties to this case suggested that the Companies proposed true-up date was unworkable. Relative to the requested tariff effective date of August 5, 2009, a March 31, 2009 true-up does not provide adequate time for:

(1) the Company to demonstrate that the planned capital improvements complied with the "fully operational and used for service" standard contained in Section 393.135;

(2) the Company to close its financial books for all of the expenses through the true-up date;

(3) the Company to share the necessary financial information with the parties to this case;

(4) other parties to audit both the financial information and the in-service performance of the capital improvements;

(5) the parties to prepare both true-up direct testimony and rebuttal testimony;

(6) the Commission to schedule and hold an evidentiary hearing related to true-up information;

(7) the parties to brief the evidence received at the true-up hearing;

(8) the Commission to carefully weigh the evidence, deliberate, prepare and issue a Report and Order;

(9) the parties to digest the Report and Order and prepare any application for rehearing of the Report and Order;

(10) the Company to prepare tariffs in compliance with the Report and Order;

(11) the Commission to deliberate and approve the compliance tariffs; and

(12) the parties to prepare any applications for rehearing of the Commission's order approving the compliance tariffs.

Recognizing the unworkable nature of the Companies' proposed schedule, these parties suggested, at that time, that the Commission provide more time in the schedule by either moving the true-up date forward, thus threatening the inclusion of Iatan 1 in the Companies' rates, or suspend the tariffs and operation of law date for a suitable period of time. While it did not accept the responding parties' procedural proposals, the Commission did recognize the ambitious nature of the Companies proposal, noting that:

The Commission puts the Companies on notice that if the true-up period is extended, there is a possibility that the tariff effective date and true-up procedural schedule will also need to be extended.<sup>1</sup>

As predicted, the scheduled true-up has now proven unworkable. While the Companies attempt to avoid couching their motion in terms of a request to extend the true-up date, they are engaging in sophistry. Delays in the Iatan I projects' completion result in their inability to meet the true-up date they advised the Commission (on January 20) that they committed to meet. However adroitly worded, the Companies need to extend the true-up date to include the Iatan 1 additions in this case. Though repeatedly

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<sup>1</sup> Order Setting Procedural Schedules, issued November 20, 2008, at page 5.

warned of this risk, the Companies assumed it. Consistent with its earlier warning, the Commission should now extend the tariff effective date by a suspension order.

3. It is important to remember that the events delaying the Iatan 1 project completion were entirely within Companies' control. This contrasts greatly with the recent situation where Empire was granted an expedient true-up during the course of the evidentiary hearing. There the failure to demonstrate operational capacity of the capital addition was caused by a third-party vendor – not by Empire. Here, however, as Staff points out in its Response, the delay in demonstrating that the Iatan I capital improvements were “fully operational and used for service” was caused by operational errors on the part of KCPL. Staff notes, and the Company has admitted, that

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\_\_\_\_\_\*\* Now, despite its critical role in the failure of the HP turbine,

KCPL believes that ratepayers should suffer by further abbreviating the time for the parties to conduct their operational testing and the true-up audit.

4. The effect of the turbine failure on a regulatory procedural schedule has not been lost on other jurisdictions. On March 6, 2009, the parties in a Kansas rate proceeding agreed to a two-month delay in the consideration of KCPL's pending rate increase request. That new procedural schedule calls for a Kansas Commission decision on August 14, 2009. Recognizing that the Commission would also have to approve tariffs designed to implement that decision, it is unlikely that rates would be increased in Kansas before August 20, 2009. Nevertheless, KCPL still contends that the Missouri Commission should continue to process its request on the current schedule and have rates effective on August 5, 2009. Again, KCPL fails to provide any basis for its belief that the Missouri Commission should be able to act prior to the Kansas Commission, in fact, given the number and complexities of the *three* Missouri cases, it is apparent that the Missouri schedule should be well behind that in Kansas.

5. Unlike the pending Kansas docket which involves only a single rate increase, the pending Missouri proceedings involve rate increases for several utilities: (1) KCPL; (2) the KCPL – GMO MPS operations; (3) the KCPL – GMO L&P operations; and (4) the KCPL – GMO steam heat operations. Therefore, the demands on the time and resources of the Missouri parties are exponentially greater than those in the Kansas docket. Relevant to the resource demands during the requested true-up period, Missouri parties are being asked to conduct in-service testing and cost audits on capital improvements at *three* units: (1) Iatan I Air Quality Control Systems<sup>2</sup>; (2) Sibley 3

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<sup>2</sup> Giles Direct at page 4, Davis Direct.

Selective Catalytic Reduction equipment<sup>3</sup>; and (3) Jeffery Units 1-3 scrubber rebuilds.<sup>4</sup> Thus, while the Kansas proceeding involves a single utility, a single rate increase, and a single capital improvement, the Missouri proceeding involves three different utilities, four different rate increases and three different capital improvements. Clearly, the facts of the Missouri dockets dictate that the Missouri cases take more, not less, time than the Kansas proceeding.

6. The time needed to conduct the Missouri cases is further complicated by the Companies' inability to provide timely responses to discovery requests. As Staff indicates in its Response, "it is still Staff's experience in this case that it takes Companies over three weeks from the end-of-a-month period to provide updates to their investment, revenues, fuel and purchased power, payroll and other costs through the end of that end-of-month period."<sup>5</sup> In fact, in some cases, the Staff has been unable to receive any responses.<sup>6</sup> In any event, it is unreasonable to allow the Companies to extend the true-up for investment through April 30, 2009 when it takes the Companies over three weeks to provide data and true-up direct testimony is due on May 22, 2009. At some point, something in the schedule has to give. In this case, as the parties noticed early in this proceeding, either the Company needs to advance the date of its true-up request and recognize that Iatan 1 will not be reflected in this case or the Commission needs to extend the effective date for tariffs.

7. Further complicating the facts in these cases is the lack of agreement on in-service criteria. While the Companies claim to have reached a resolution with Staff,

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<sup>3</sup> Giles Direct at pages 3-4, Hedrick Direct.

<sup>4</sup> Crawford Direct at pages 10-15.

<sup>5</sup> Staff Response, dated March 6, 2009, at page 9. (emphasis added).

<sup>6</sup> *Id.* at page 17,

the Companies have refused to engage other parties in discussions designed to satisfy the in-service meaning of “fully operational and used for service.” Specifically, the Companies want to utilize an abbreviated set of performance standards that differ from those used for commercial purposes. As a result, a capital improvement could be accepted as fully operational for regulatory purposes, even though it is not fully operational for commercial purposes. The implications of these different regulatory and commercial in-service criteria is best demonstrated by facts already presented in this case. As the Staff Cost of Service Report points out:

In 1999, Babcock & Wilcox (B&W) entered into an engineering, procurement and construction agreement with KCPL for the construction of Hawthorn Unit 5 boiler island (Agreement). The Agreement required B&W to install a selective catalytic reduction system (SCR) at Hawthorn Unit 5. Under the Agreement, as amended, B&W guaranteed certain performance standards, including an ammonia slip test. After the SCR was placed in service in 2001 it failed the ammonia slip test.

Because of B&W's failure to meet the ammonia slip test standards, KCPL experienced increased replacements of catalysts, increased usage of ammonia, plus additional cleaning and maintenance expense.

In 2007 KCPL received a settlement from B&W. . . . The increased costs for the ammonia slip tests, more frequent replacements of catalysts, and increased cleaning and maintenance expense continue to exist today.<sup>7</sup>

While KCPL asserts that ratepayers should pay these higher operation and maintenance costs associated with the faulty Hawthorn 5 SCR, KCPL does not propose that the same ratepayers benefit from the B&W settlement. This demonstrates, with acute clarity, the need for extensive regulatory in-service criteria that parallel the in-service criteria used for commercial acceptance purposes. Had such regulatory criteria been utilized at the time that the Hawthorn 5 SCR was considered, it is unlikely that

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<sup>7</sup> Staff Cost of Service Report, filed February 11, 2009, at pages 101-102.

ratepayers would have been saddled with both the capital costs of a faulty unit as well as the increased O&M costs of that unit.

Absent agreement, the issue of the appropriate in-service criteria will need to be considered at the true-up hearing. As previously mentioned, that hearing will also need to consider the costs for the Iatan 1 Air Quality Control Systems; the Sibley 3 SCR and the Jeffery units scrubber rebuilds. Currently, the Commission's schedules call for that true-up hearing to be completed in 2 days. As with the other parts of this schedule, such a schedule appears to be incredibly ambitious.

8. These signatory parties are adamantly opposed to the Companies' request. The parties do, however, recognize the Companies' financial need to have the capital costs for these units included in rates in this case. Therefore, the parties have not suggested that the Commission strictly apply its true-up schedule and criteria. Such a suggestion would inevitably lead to the Companies' inability to include the Iatan 1 capital improvements in rates. Rather, the parties suggest that the Commission extend the true-up date in this case until April 30, 2009. Of course, such an extension would also necessarily involve an extension (*i.e.*, suspension) of the tariff effective date. Given that the parties are being asked to audit three utilities in four cases involving three different capital improvements, the parties suggest that a two month delay until October 5, 2009 would be entirely warranted. This suggestion, while still overly ambitious, may represent an appropriate compromise between: (1) the Companies' need to have their capital costs included in rates; (2) the legal requirement to demonstrate that capital projects are "fully operation and used for service"; and (3) the ratepayers need to have such costs fully audited and considered. The parties warn, however, that the preceding



proposal contemplated the Companies' ability to demonstrate Iatan's ability to meet in-service criteria by April 30. Further delays in the operations of that unit will necessarily lead to further delays in the true-up date and the effective date of rates.

WHEREFORE, the signatory parties respectfully request that the Commission deny the Companies' request and, in lieu of the strict application of the current procedural schedule, extend the true-up date until April 30, 2009 with a simultaneous suspension of the tariff effective date until either October 5, 2009.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

A handwritten signature in black ink, appearing to read "David L. Woodsmall", is written over a horizontal line. A vertical red line is positioned to the right of the signature.

David L. Woodsmall

Dated: March 11, 2009