

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

**In the Matter of the Application of)
Kansas City Power & Light Company for)
Approval to Make Certain Changes in its) Case No. ER-2010-0355
Charges for Electric Service to Continue)
the Implementation of Its Regulatory)
Plan)**

**KANSAS CITY POWER & LIGHT COMPANY’S RESPONSE
TO APPLICATIONS FOR REHEARING FILED BY
OFFICE OF PUBLIC COUNSEL AND MIDWEST ENERGY USERS’ ASSOCIATION**

COMES NOW Kansas City Power & Light Company (“KCP&L”) and in response to the Applications For Rehearing filed by the Office of the Public Counsel (“Public Counsel”) and the Midwest Energy Users’ Association (“MEUA”) on the issue of Fuel and Purchased Power Expense, respectfully states as follows :

1. On April 21, 2011, the Public Counsel and MEUA filed virtually identical pleadings requesting a rehearing of the April 12, 2011 *Report and Order*, and the April 19, 2011 *Order of Clarification* in this matter.

2. On April 22, 2011, the Commission issued its *Order Setting Deadline For Responses* (“*April 22 Order*”) which directed that any responses to the applications filed by Public Counsel and MEUA should be filed by noon on April 26, 2011. This pleading is intended to comply with the Commission’s *April 22 Order*.

3. First, KCP&L would note that Section 386.500 RSMo. establishes the legal standard for granting motions for rehearing when it states: “. . . the commission shall grant and hold such rehearing, if in its judgment sufficient reason therefor be made to appear”

4. In this case, Public Counsel and MEUA filed their joint Response To Staff's Motion For Clarification on April 14, 2011 which raised virtually the same arguments as are now contained in their respective motions of rehearing filed on April 21. On April 19, 2011, the Commission issued its *Order of Clarification* addressing their arguments and concerns.

5. In their applications for rehearing, Public Counsel and MEUA also argue that the Commission's *Order of Clarification* was erroneous when it concluded that KCP&L abandoned its true-up testimony position on fuel expense. (Motions, p. 3) Contrary to the arguments of Public Counsel and MEUA, KCP&L did abandon its position on fuel expenses, as the Commission's *Order of Clarification* correctly stated. KCP&L accepted Staff's unit sales, sales revenues and billing units during the true-up proceedings (*See KCP&L's Response to Staff's Motion For Clarification*¹ at page 2.) and abandoned its previous position on fuel expenses. KCP&L's position on fuel expense was also reflected in the Revised Reconciliation filed by Staff prior to the true-up hearings since the Reconciliations deleted Fuel Expense and Purchased Power Expense as an issue in the case. Unlike Staff's January 12, 2011 Reconciliation which shows that Fuel Expense and Purchased Power Expense were listed as issues, neither the March 2 Revised Reconciliation nor the final Reconciliation and Summary of Reconciliation filed on March 18 after the true-up hearing list them as issues.

6. As the *Order of Clarification* states at page 2, the "Commission found KCP&L's true-up testimony on this dollar amount to be less reliable than the number presented by Staff for this item." This was a proper finding in light of the fact that KCP&L had abandoned its position, and was no longer supporting its original fuel expense numbers. Judgments as to the

¹ On April 14, 2011, KCP&L filed its Response to Staff's Motion For Clarification on the fuel and purchased power issue which addressed similar issues raised by. Rather than repeating those arguments herein, KCP&L would incorporate them herein by reference.

reliability and credibility of testimony are matters dedicated to the sound exercise of regulatory discretion by the Commission. *State ex rel. Missouri Gas Energy v. Public Service Comm'n*, 186 S.W.3d 376, 382 (Mo. App. W.D. 2005).

7. Contrary to the arguments of Public Counsel and MEUA in their applications for rehearing, there was no “settlement” of the fuel expense issue. As stated above, KCP&L unilaterally abandoned its position in favor of the testimony of Staff on the fuel expense issue, as it did on many other differences, consistent with the practice in prior rate cases. The Commission did not adopt a “non-unanimous stipulation and agreement,” but instead made the appropriate findings of fact and conclusions of law, based upon the competent and substantial evidence in the record. As a result, the reliance of Public Counsel and MEUA on the court’s holding in *State ex rel. Fischer v. Public Service Commission*, 645 S.W.2d 39 (Mo. App. 1982) is inapposite to the facts of this case.

WHEREFORE, KCP&L respectfully requests that the Commission deny the Public Counsel’s and MEUA’s Applications for Rehearing filed on April 21, 2011.

Respectfully submitted,

/s/ Roger W. Steiner

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ATTORNEYS FOR KANSAS CITY
POWER & LIGHT COMPANY

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, to all parties of record this 26th day of April, 2011.

/s/ Roger W. Steiner
Roger W. Steiner