

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

In the Matter of Kansas City Power & Light)
Company’s Request for Authority to Implement) Case No. ER-2012-0174
a General Rate Increase for Electric Service.)

**OPPOSITION OF KCP&L TO MOTION TO
STRIKE PRE-FILED TESTIMONY AND
REJECT TARIFFS RELATING TO INTERIM ENERGY CHARGE**

Kansas City Power & Light Company (“KCP&L” or “Company”) states the following in opposition to the Motion to Strike Pre-Filed Testimony and Reject Tariffs filed on July 6, 2012 by the Staff of the Missouri Public Service Commission (“Staff”), the Office of the Public Counsel (“OPC”) and the Midwest Energy Consumers’ Group (“MECG”) (collectively, “Movants”):

INTRODUCTION

1. In a second effort to prevent KCP&L from presenting its case to the Commission, Movants have filed a motion to strike the Company’s proposal for an Interim Energy Charge (“IEC”). The basis for the motion is that the proposal set forth in the Direct Testimony of Company witness Tim Rush allegedly fails to set a rate “ceiling” which they contend is required by the 2005 Regulatory Plan Stipulation and Agreement approved by the Commission in Case No. EO-2005-0329 (“Stipulation”).

2. As discussed below, there is no procedural basis for a motion to strike. Under the Stipulation KCP&L has an unqualified and absolute right to propose an IEC in a general rate case.

3. As a substantive matter, the term “ceiling” is not defined in the Stipulation. Its meaning is, therefore, is a matter about which reasonable minds may differ. Mr. Rush’s proposal that the IEC be established at a “zero price and remain at zero for two years” until actual variable fuel and purchased power costs are compared with base costs, less an adjustment for off-system

sales margins, presents a sufficient “ceiling” within the meaning of the Stipulation. See Rush Direct Testimony at 12-13.

I. 2005 STIPULATION: SINGLE-ISSUE RATE MECHANISM

4. The basis of the motion to strike is the language of Section III(B)(1)(c), which is entitled “Single-Issue Rate Mechanisms.” See Ex. A, § III(B)(1)(c), Stipulation (attached). In the first sentence of this provision KCP&L agreed that prior to June 1, 2015 it would not utilize any mechanism offered by Senate Bill 179 or other change in state law that would allow riders, surcharges or changes in rates outside of a general rate case that did not consider all relevant factors.¹ The proposal presented by Mr. Rush in his direct testimony was filed in the instant proceeding, which is a general rate case.

5. It is the next sentence of Section III(B)(1)(c) that Movants rely upon. It states:

“In exchange for this commitment, the Signatory Parties agree that if KCPL proposes an Interim Energy Charge (‘IEC’) in a general rate case before June 1, 2015 in accordance with the following parameters, they will not assert that such proposal constitutes retroactive ratemaking or fails to consider all relevant factors:”

Six parameters follow, of which only Parameter (iii) is relevant.

6. Before addressing the language in Parameter (iii), however, the passage above must be understood. What it plainly states is that if KCP&L proposes an IEC in a general rate case before June 2015 consistent with the parameters, the Signatory Parties would not argue that the proposal (a) constitutes retroactive ratemaking or (b) fails to consider all relevant factors.

7. In other words, if KCP&L’s proposal does not meet the parameters, the other Signatory Parties may assert that the proposal recommends retroactive ratemaking or fails to consider all relevant factors and should not be approved. However, the provision does not supply grounds for a Signatory Party to move to strike the IEC proposal. It simply allows a

¹ Senate Bill 179 is now codified at § 386.266, Mo. Rev. Stat. (Cum. Supp. 2010).

Signatory Party to raise two additional arguments relating to retroactive ratemaking or the failure to consider all relevant factors -- arguments that would otherwise not be proper, given the passage of Senate Bill 179.

8. Therefore, the Motion to Strike is procedurally defective and should be denied. It should also be noted that since MECG was not a Signatory Party to the Stipulation, it has no basis to lodge an objection or a motion to strike since the provision which it relies upon applies only to Signatory Parties like Staff and OPC.²

II. THE “CEILING” PARAMETER

9. The motion to strike claims that Mr. Rush’s Direct Testimony fails to set forth a ceiling in the Company’s IEC proposal, which Movants contend without citation to the Stipulation is “expressly required.” See Motion to Strike at 6. However, the Stipulation uses the term “parameter,” not requirement.

10. A parameter is a “characteristic, element or factor,” as well as a “guideline.” It also connotes a “limit” or “boundary.” See Merriam-Webster Dictionary (2012 online version); Dictionary.com (2012 version). Another dictionary defines parameter as a “factor that restricts what is possible or what results,” as well as a “factor that determines a range of variations.” See American Heritage College Dictionary (3rd ed. 1993).

² According to MECG’s application to intervene, its members consist of six companies, none of whom signed the 2005 Stipulation. See Application for Intervention of Midwest Energy Consumers’ Group (naming Alliant Techsystems, Inc.; Wal-Mart Stores, Inc.; United States Gypsum Co.; Cargill, Inc.; North Kansas City Hospital, and Ameristar Casino) (Mar. 19, 2012). The companies that signed the 2005 Stipulation were Praxair, Inc., Ford Motor Co., and the Missouri Industrial Energy Consumers. At that time MIEC consisted of Anheuser-Busch, Boeing, DaimlerChrysler, Hussman, J.W. Aluminum, Monsanto, Pfizer, Precoat, Procter & Gamble, Nestlé, Purina and Solutia. See Missouri Industrial Energy Consumers’ Prehearing Brief, No. EO-2005-0329 (filed June 15, 2005).

11. Parameter is not a legal term, and is not defined in either Black's Law Dictionary (8th ed. 2004) or in Ballentine's Law Dictionary (3d ed. 1969). An expert on legal terms has commented on the imprecise meaning of parameter. "**Parameters.** Technical contexts aside, this jargonistic vogue word is not used by those with a heightened sensitivity to language. To begin with, no one who is not a specialist in mathematics or computing knows precisely what it means: it is a mush word." Bryan A. Garner, Dictionary of Modern Legal Usage 637 (2d ed. 1995).

12. A leading reference work providing synonyms for the words "required" or "requirement" cites to "essential," "indispensable," "necessary," "mandatory" and "requisite." See Roget's II: The New Thesaurus (3rd ed. 1995). The entries for "required" or "requirement" do not include "parameter."

13. The fact that "parameter" has a broad, imprecise meaning is important because the Stipulation also contains no definition of "interim energy charge" and no definition of "ceiling." The Stipulation does not refer to or incorporate any of the concepts or elements of interim energy charges in the cases that the Motion to Strike cites. See Motion to Strike at 4-6. Consequently, that discussion is not relevant to KCP&L.³

14. It is also important to recognize that "ceiling" is not a defined term in Section 386.266.1, which refers to "interim energy charge." The Commission itself does not use the term "ceiling" in defining an IEC. It defines an IEC to mean:

"... a refundable fixed charge, established in a general rate proceeding, that permits an electric utility to recover some or all of its fuel and purchased power costs separate from its base rates. An IEC may or may not include off-system sales and revenues and associated costs. The commission shall determine whether

³ While Movants' discussion of "ceiling" and "base" is not germane to this case, it should be recalled that the Commission has previously rejected Staff's proposal of an IEC with such elements. In Aquila's 2007 rate case the Report & Order noted the "poor results" of IECs that Aquila and Empire District Electric Co. had utilized that were similar to Staff's proposal. Those utilities suffered under-recoveries in fuel and purchased power costs totaling \$60.8 million. In re Aquila, Inc., Report & Order at 40, Case No. ER-2007-0004 (May 17, 2007).

or not to reflect off-system sales revenues and associated costs in an IEC in the general rate proceeding that establishes, continues or modifies the IEC;”

See 4 CSR 240-3.161(1)(D), 4 CSR 240-20.080(1)(F). Mr. Rush’s IEC proposal meets this definition.

15. “Ceiling” was also not discussed in the context of an IEC at any point during the hearings on the 2005 Stipulation. When “ceiling” was mentioned during the hearing, it was in another context. See Transcript, Vol. 4 at 102, 108 (KCP&L’s Chris Giles answers Commissioner Gaw questions regarding the ceiling or limits on the new Iatan 2 unit) (June 23, 2005); Vol. 5 at 341 (Sierra Club witness Ned Ford refers to a ceiling on power purchases from third parties in California) (June 24, 2005); Vol. 7 at 731 (Commissioner Clayton comments on the ceiling or limits on power plant emissions) (June 27, 2005), Case No. EO-2005-0329.⁴

16. What is relevant is that while the word “shall” is used in all of the other parameters in Section III(B)(1)(c), it is not used in Parameter (iii) that refers to a rate “ceiling.” Instead, the word “may” is used.

17. Parameter (iii) simply states that the “IEC rate ‘ceiling’ may be based on both historical and forecast data for fuel and purchased power costs, forecasted retail sales, mix of generating units, purchased power” and a host of “other factors.” The phrase “other factors” is used not once, but twice. See Ex. A.

18. The many “other factors” upon which a ceiling “may be based” are general and wide ranging, with no limitation on their amount. Indeed, the word “may” indicates that “other factors” not even mentioned in Parameter (iii) may be part of the IEC rate ceiling. Such an

⁴ References to the interim energy charge or IEC were made in passing, without any mention of requirements, parameters or mandates. See Transcript, Vol. 7 at 767-68 (OPC witness Russell Trippensee), Vol. 8 at 1038 (comments of Commissioner Gaw) (July 12, 2005), Case No. EO-2005-0329.

expansive range of factors leads to the inescapable conclusion that there is no hard and fast ceiling or limit on the IEC, as the Motion to Strike presumes.

19. Given that the IEC is not defined, KCP&L's proposal can be interpreted to recommend that the actual costs of variable fuel and purchased power (net of off-system sales margins) be the "ceiling." This is consistent with Mr. Rush's testimony and proposed tariff sheets.

20. Looking at proposed Tariff Sheet No. 24A (contained in Schedule TMR-4 to Mr. Rush's Direct Testimony), base costs are set forth as element "B" in the formula and are defined as "Base Variable Fuel & Purchased Power Costs - On System." The ceiling on Tariff Sheet No. 24A would logically be element "FFPON," which is defined as "Variable Fuel & Purchased Power Costs - On System," as adjusted by off-system sales margins. They represent the actual costs that would be incurred during the two-year period of the IEC.

21. Movants interpret Mr. Rush's request that the IEC be set at a "rate of \$0.00/kWh (zero)" as not even a request for an IEC. See Motion to Strike at 3; Rush Direct Testimony at 12, line 10. The actual variable fuel and purchased power costs (less off-system sales margins) are compared with base costs. Interpreting these actual costs and margins as a "ceiling" would be consistent with the Stipulation which permits such costs, as well as many "other factors" to be considered in an IEC. There is nothing in the Stipulation that prohibits a "ceiling" from being calculated according to the costs and margins that are actually incurred.

22. It is also important to note that an audit and true-up process would occur at the end of the 2-year IEC, where costs would be refunded to customers or revenues retained by KPC&L according to a sharing mechanism. See Rush Direct Testimony at 12-13 & Sched. TMR-4.

III. CONCLUSION

23. As stated by KCP&L in its opposition to the first Motion to Strike filed by OPC and MECCG, such motions are inappropriate at this stage of the proceedings. Motions to strike are not favored by the law. A leading civil procedure treatise observes that motions to strike are viewed as “time wasters,” noting that “there appears to be general judicial agreement, as reflected in the extensive case law on the subject, that they should be denied unless the challenged allegations have no possible relation or logical connection to the subject matter of the controversy and may cause some form of significant prejudice to one or more of the parties to the action.” 5C Wright & Miller, Federal Practice and Procedure, § 1382 at 436-41 (3d ed. 2004).

24. Clearly, the Company’s IEC proposal is related to the subject matter of this general rate case, and to KCP&L’s fuel and purchased power costs. There is no significant prejudice to the Movants, given that the Stipulation expressly permits the Company to propose an IEC in a general rate case.

25. KCP&L should be free to submit an Interim Energy Charge recommendation to the Commission that is within the reasonable bounds of the Stipulation. As the other parties have done in previous cases, they are free to criticize the proposal, argue for its rejection or present a counterproposal. In the final analysis the Commission is responsible for determining whether an IEC is appropriate in this case, and for imposing any conditions that it believes are just and reasonable.

WHEREFORE, Kansas City Power & Light Company asks that the Motion to Strike Pre-Filed Testimony and Reject Tariffs concerning the proposed Interim Energy Charge be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing was served upon counsel of record on this 16th day of July, 2012.

/s/ Karl Zobrist

Attorney for Kansas City Power & Light
Company

EXHIBIT A

Paragraph III.B.5 constitute major elements of a reasonable and adequate resource plan at the time the Signatory Parties entered into this Agreement.

b. Current Rate Levels

KCPL, Staff, Public Counsel and the other Signatory Parties have agreed that, based upon the agreements and commitments contained herein, KCPL's current rates should be maintained at current levels through December 31, 2006, as specified in Paragraph III.B.2 "Rate Moratorium" below.

c. Single-Issue Rate Mechanisms

KCPL agrees that, prior to June 1, 2015, it will not seek to utilize any mechanism authorized in current legislation known as "SB 179" or other change in state law that would allow riders or surcharges or changes in rates outside of a general rate case based upon a consideration of less than all relevant factors. In exchange for this commitment, the Signatory Parties agree that if KCPL proposes an Interim Energy Charge ("IEC") in a general rate case filed before June 1, 2015 in accordance with the following parameters, they will not assert that such proposal constitutes retroactive ratemaking or fails to consider all relevant factors:

- (i) The rates and terms for such an IEC shall be established in a rate case along with a determination of the amount of fuel and purchased power costs to be included in the calculation of base rates.
- (ii) The rate or terms for such an IEC shall not be subject to change outside of a general rate case where all relevant factors are considered.
- (iii) The IEC rate "ceiling" may be based on both historical data and forecast data for fuel and purchased power costs, forecasted retail sales, mix of

generating units, purchased power, and other factors including plant availability, anticipated outages, both planned and unplanned, and other factors affecting the costs of providing energy to retail customers.

- (iv) The duration of any such IEC shall be established for a specified period of time, not to exceed two years.
- (v) A refund mechanism shall be established which will allow any over-collections of fuel and purchased power amounts to be returned to ratepayers with interest following a review and true-up of variable fuel and purchased power costs at the conclusion of each IEC. Any uncontested amount of over-collection shall be refunded to ratepayers no later than 60 days following the filing of the IEC true-up recommendation of the Staff.
- (vi) During any IEC period, KCPL shall provide to the Staff, Public Counsel and other interested Signatory Parties monthly reports that include any requested energy and fuel and purchase power cost data.

d. SO₂ EMISSION ALLOWANCES

KCPL is authorized to manage its SO₂ emission allowance inventory, including the sales of such allowances, under the Stipulation and Agreement in Case No. EO-2000-357. Under such Stipulation and Agreement, KCPL must record all SO₂ emission allowance sales proceeds as a regulatory liability in Account 254, Other Regulatory Liabilities, for ratemaking purposes. The following, including the attached SO₂ Emission Allowance Management Policy (“SEAMP”) contained in Appendix A, supersedes the plan approved in the Stipulation and Agreement in Case No.