

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of Missouri Public)
Service Company of Kansas City,)
Missouri, for authority to file)
tariffs reflecting increased rates)
for electric service to its customers)
in the Missouri service area of the)
company.)

Case No. ER-79-60

In the matter of Missouri Public)
Service Company of Kansas City,)
Missouri, for authority to file)
tariffs reflecting increased rates)
for gas service to its customers)
in the Missouri service area of the)
company.)

Case No. GR-79-61

JOINT BRIEF OF THE STAFF AND PUBLIC COUNSEL

Submitted by:

Kent Ragsdale
Daniel Ochstein

P. O. Box 1216
Jefferson City, Missouri 65102
Attorneys for the Office
of the Public Counsel

Paul W. Phillips
James Haines
William F. Schwer
Treva Hearne

P. O. Box 360
Jefferson City, Missouri 65102
Attorneys for the Staff of
the Missouri Public Service
Commission

Jeffrey Energy Center Unit I Fully Operational
and Used for Service Date

Joint Ex. 1, p.

Company Evidence: Tr. 1661-1843

Company Exs. 7, Deposition Exs. 1 and 2;

Staff Evidence: Tr. 498-542, 1245-1657

Staff Exs. 5, 15, 16, 17, 18, 19, 20, and 21

The operation of law date in the Company's last permanent rate case (ER-78-29) was July 5, 1978. (Tr. 498) In that case, the Company certified to the Commission that Jeffrey Energy Center Unit 1 (JEC 1) was in service by mid June 1978 (Staff Ex. 5, Sch. 1) so that the Company's share of the fixed and operating costs of JEC 1 were included in the rate increase which went into effect on July 5, 1978. (Tr. 498) The Staff and Public Counsel contend that JEC 1 did not become "fully operational and used for service" until at least July 30, 1978, and therefore that under Section 393.135, RSMo. Supp. 1976, (proposition 1) the Company was prohibited from charging to its ratepayers any of the fixed and operating costs for JEC 1 until July 30, 1978.

As far as the Staff and Public Counsel are aware, the record made by the Staff on this issue reflects the most extensive and complete investigation ever undertaken by the Staff in any matter. The length of this brief would double if an effort were made here just to accurately summarize the Staff's case and the Company's response to it. Moreover, since all of the Commissioners heard nearly all the evidence on this issue, the Staff and Public Counsel do not think it is necessary to summarize the entire record on this issue. Rather, on this issue the Staff and Public Counsel will focus on the following: 1) the language of Section 393.135, RSMo. Supp. 1976, 2) a summary of the basis for the Staff's and Public Counsel's conclusion that JEC 1 was not "fully operational and used for service" until at least July 30, 1978, 3) the Company's total lack of supporting evidence for a "fully operational and used for service" date of June 30, 1978, 4) the testimony of the Company's rebuttal witness, 5) the incredibility of the Company on this issue, and 6) the basis for the amount of the adjustment proposed by the Staff and Public Counsel.

1. The Language of Section 393.135, RAMo. Supp. 1976, (proposition 1).

Section 393.135, RSMo. Supp. 1976, provides as follows:

"Any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited."

Obviously, the significant language in proposition 1 is "fully operational and used for service." It is a maximum of statutory construction that all the words in a statute must be given meaning if possible and that different words are not used to mean the same thing. The Staff and Public Counsel submit, therefore, that proposition 1 establishes two criteria which must be satisfied before an electric utility can include in its revenue requirement the fixed and operating expenses associated with a particular item of plant. The two criteria are that the item of plant must be 1) fully operational and 2) used for service. Since proposition 1 says "fully operational AND used for service," it is not enough for just one of the criteria to be satisfied. Furthermore, the Staff and Public Counsel submit that the two criteria of proposition 1 are not synonymous. "Fully operational" does not mean the same thing as "used for service." The Staff and Public Counsel suggest that "fully operational" means a demonstrated ability of a unit of plant to consistently function at expected minimum operating levels and in accordance with design characteristics and its intended purposes. This means, if a unit, such as JEC 1, has a minimum operating level of 250 MW (Tr. 535), an expected load factor of 55% (Tr. 536), a design characteristic to burn coal (Tr. 540), and a purpose to be a KWH factory (Tr. 1222), that such a unit is not "fully operational" until it has at least demonstrated a consistent ability to perform in those ways. "Used for service," on the other hand, arguably means nothing more than that the output of the unit of plant in question is used in providing service.

2. A Summary of the Basis for the Staff's and Public Counsel's Conclusion That JEC 1 Was Not "Fully Operational and Used for Service" until at Least July 30, 1978.

Mr. Schallenberg testified as to his basis for the Staff's conclusion as follows:

"Q. Has the Staff reached a conclusion as to which date, KP&L's July 30, 1978 date or Mo. Pub.'s June 30, 1978 date, is the most reasonable "fully operational and used for service date?

A. Yes.

Q. What is that conclusion?

A. July 30, 1978.

Q. Will you state the basis for that conclusion?

A. Yes. To begin one must evaluate the position of the source of the July 30, 1978 date. That source is Kansas Power and Light Company who owns 64% of J.E.C. 1, planned the unit, built the unit, tested the unit, and now operates the unit as shown by Staff Exhibit 5, Schedule 4. KP&L has also widely circulated its date and only used one date. It has testified before the Kansas Commission shown in Schedules 6, 7, and 8. KP&L reported the date to the S.E.C. as illustrated in Schedule 9. Schedule 10 shows KP&L circulating the date through its new bond offering. Its annual report to stockholders (Schedule 11) uses the date in several places. The audit of the operations and construction of J.E.C. 1 was based on KP&L's July 30, 1978. This has been shown by schedule 12. Schedule 13 shows that in the first month of operation after KP&L's commercial date, J.E.C. 1's fuel cost had reached the expected levels. Schedules 14, 15, and 16 show that two of the other owners (KG&E and CTU) relied on KP&L's determination of the commercial date. Staff Exhibit 5, Schedule 17 portrays a third party utility using a date that closely approximates KP&L's July 30, 1978 date. Schedule 21 supports the July 30, 1978, date by showing that in August the first month of operation after KP&L's date, J.E.C. 1 nearly operated on its expected load factor. Schedule 22 shows that J.E.C. 1 had operated at its minimum operating levels several times before KP&L's commercial date. Schedule 26 shows that in August, Sibley 3's first month of operation, Sibley operated at a 52% load factor, while J.E.C. 1 operated at 53% as shown on schedule 21. Schedules 27 and 28 support the testing period of seven weeks used in the July 30, 1978 date.

I have reviewed Mr. Cochran's testimony on this issue and it confirms the conclusion which I have reached." (Tr. 528-529, Schedule references are to Staff Ex. 5)

Mr. Cochran testified as to his basis for the Staff's conclusion as follows:

"A. Yes. In summary, I used five criteria for determining the earliest possible date for calling JEC No. 1 fully operational and used for service.

The first and very important criteria is continuous minimum operating level. That's this line right here going over to 6,000 (indicating). Six thousand is operating at the minimum level of 250 megawatts for a continuous 24 hours. The unit must demonstrate that it can operate continuously at this daily minimum operating level of 6,000 megawatt-hours.

I show on this graph that there were 14 days in July before it reached the minimum operating level for one day.

That happened on July 11th. No time before that did it operate for one total day at the minimum operating level.

That was the first criteria I used in ascertaining the most reasonable earliest possible date for JEC 1 being fully operational and used for service. It also shows that there were 27 days in August that it was above or at the minimum operating level. You see it on the graph (indicating).

The second criteria I used was: Is this power generation station capable of achieving its expected load factor, the load factor it was designed for for the first six months of operation?

The expected load factor, you can see, runs just below 9,000 megawatts. That's this line here (indicating), "Expected 55 Percent Load Factor."

The graph shows that the first time this unit demonstrated that it reached its expected load factor was on July 30, 1978. It was a little above that expected load factor for the entire day.

It also shows that there were 22 days following that in August that it was above or at the expected load factor, again, showing that the machinery, the power generation plant, was capable--it's demonstrated it was capable of maintaining its designed expected load factor, plus, of course, being above the minimum operating level.

The third criteria I used was asking, "When did this machine demonstrate that it could operate at its nameplate capacity or its maximum operating?" I didn't ask for it to do that for one day. I asked for it to do it for one hour.

And, again, on July 30, it demonstrated at three o'clock in the afternoon that it could maintain its maximum capacity. It generated six hundred and some odd--680 megawatt-hours for that hour, from three o'clock to four o'clock.

So, the fourth--this unit is designed to be 100 percent coal fired, with only oil stabilization as an added input of energy. From 6/11 through, I guess, 8/20, you'll see there's a red and a blue portion of the graph.

The fourth criteria I used was: When did it rely to the greatest degree or to a substantial degree on its designed energy input, which is coal.

And you can see from the red areas that it was slowly diminished in using oil through, I guess, 8/25. This criteria, it shows that they are gradually reducing reliance on oil and showing that the plant designed is coming into focus as being fully operational.

Fifth, testing a plant and fully operational plant are mutually exclusive events. So I went to the plant; and I talked to the engineer who's running it, who did most of the construction work on it, Lee Brunton. Mr. Brunton told me that he was testing JEC 1 all through July, until July 31st or July 30th, when it was declared fully operational and used for service or, in their terms, commercial.

That summarizes my five criteria for determining the most reasonable date for determining JEC No. 1 fully operational and used for service.

The most reasonable date had the maximum nameplate boiler rating happen on 7/30. It had shown a consistent continuous output above the minimum operating level for 14 days in July, 27 days in August. It showed that it was capable of achieving the expected load factor for the first time on 7/30, and it followed with 22 days in August where it did operate above expected load factor.

Those are the criteria I used in saying that, in my opinion, or, in the Staff's opinion, 7/30 is the earliest possible day this plant could be called fully operational and used for service." (Tr. 1363-1366)

3. The Company's Total Lack of Supporting Evidence for a "Fully Operational and Used for Service Date" of June 30, 1978.

According to the Company's response to Staff information request number 112, the basis for the Company's assertion that JEC 1 was "fully operational and used for service" on June 30, 1978, is contained in Staff Ex. 5, Schedule 34. (Tr. 519) Schedule 19 consists of a two sentence memorandum from the Company's manager of production, Jackson Barry, to the Company's controller, Colin Campbell, the daily schedules of power transactions between the Company and Kansas Power & Light Company from June 16, 1978, through June 30, 1978, and the Kansas Power & Light Company's production report for JEC for June 1979. Mr. Barry later conceded that the last few daily schedules of power transactions would not have been in his possession when he determined JEC 1 to be "fully operational and used for service" nor would the June production report. (Tr. 1570, 1742)

A review of Staff Ex. 5, Schedule 19 demonstrates the Company's total disregard for the command of proposition 1 that a unit of plant be "fully operational" as well as "used for service" before customers are charged any of the fixed or operating charges for such plant. The only thing that Staff Ex. 5, Schedule 19 demonstrates is that the Company's share of the insignificant output of JEC 1 during June, 1978, was used in providing service to the Company's customers. By contrast, Staff Ex. 5, Schedule 35 revised shows that JEC 1 did not produce energy at its minimum level for an entire day until July 11, 1978 (Tr. 537), that JEC 1 produced energy at or near its minimum level for only 14 days in July, 1978 (Tr. 537), that JEC 1 never produced energy at its minimum level for an entire day in June, 1978 (Tr. 537), that JEC 1 did not produce energy at its expected 55% load factor for an entire day until July 30, 1978 (Tr. 537), that on five days from June 11, 1978, to June 30, 1978, JEC 1 did not produce any energy, that JEC 1 did not burn coal at all until June 22, 1978 (Tr. 540), that from June 23, 1978, to June

30, 1978, JEC 1 burned an increasing amount of coal but still relied substantially upon oil (Tr. 541), and that oil did not cease to be a substantial portion of JEC 1's fuel mix until the middle of August, 1978. (Tr. 541)

The Company presented no analysis comparable to Staff Ex. 5, Schedule 35 revised. The testimony of Mr. Barry, the Company's manager of production and the one who determined the "fully operational and used for service" date for JEC 1, is a study in ignorance as far as the testing of JEC 1 is concerned. Mr. Barry did not observe, conduct, or supervise any of the testing or initial operation of JEC 1. (Tr. 1696-1705) Mr. Barry had never physically been to JEC until July 14, 1978, and then he was only there for the dedication ceremony. (Tr. 1560, 1701) He was not there after that until the last one or two days of July, 1978, and that was to review the construction progress of units 2 and 3 at JEC. (Tr. 1559) He was there for the same reason in October, 1978. (Tr. 1558) The only other time he has been to JEC was on February 28 of this year for a meeting with the Staff. (Tr. 1558) So Mr. Barry has been to JEC four times, for less than one day each time, and never for the purpose of conducting, supervising, or even observing the testing or operation of JEC 1 and the Company proclaims that his decision that JEC 1 was "fully operational and used for service" at June 30, 1978, should be accepted. In the absence of any evidence to the contrary the Company's assertion would not be so baseless, but the record shows that those who were/are in charge of planning, constructing, testing, and operating JEC 1 determined it to be in service on July 30, 1978. (Staff Ex. 5, Schedules 5, 7, and 8)

4. The Testimony of the Company's Rebuttal Witness.

The Company presented a rebuttal witness, John C. Conder, on this issue who had no detailed knowledge of JEC 1 until April 20, 1979. (Tr. 1808) That's right! The Company presented a rebuttal witness who knew nothing about JEC 1 until 11 days before he testified. (Tr. 1806-1808) Mr. Conder has never been to JEC. (Tr. 1808) Mr. Conder had nothing to do, directly or indirectly,

with the planning, construction, testing, or operation of JEC 1.

(Tr. 1809) Mr. Conder has never spoken with Lee Brunton, the plant superintendent of JEC 1, with Daric Miller, the Vice-President for Construction of Kansas Power & Light and the person who declared JEC 1 to be in service, or with Ronald Kuether, the Vice-President for Power Production of Kansas Power & Light. (Tr. 1809) In Mr. Conder's experience, the persons who have declared units to be in service are the ones who constructed, tested, and operated such units. (Tr. 1811-1813) Yet, in the case of JEC 1, Mr. Conder is content to declare that it was "fully operational and used for service" a full month before such a declaration was made by those who planned, constructed, tested, and operate JEC 1. Furthermore, in the states where Mr. Conder actually has declared units to be commercial, he believes that construction work in progress is allowed in rate base. (Tr. 1813-1814) If CWIP is allowed in rate base, the in service date for a unit of plant is not critical.

Mr. Conder testified that at June 30, 1978, he would not have hesitated to take JEC 1 up to maximum load within a few days and then declare it commercial. (Tr. 1817) He indicated that silica in the boiler water and unexpected noises in the turbine are conditions which would have prevented taking JEC 1 up to maximum. (Tr. 1818-1819) There was silica in the JEC 1 boiler water and unexpected noises in the JEC 1 turbine well into the middle of July, 1978. (Tr. 1818-1821) But Mr. Conder should be excused for not knowing the extent or cause of these conditions because he has never been to JEC or even talked to those who operate the unit. Besides if he had learned too much about the planning, construction, testing, and operation of JEC 1 he might have had to admit that those people who did plan, construct, test, and operate JEC 1 were correct when they declared it to be in service on July 30, 1978.

5. The Incredibility of the Company on This Issue

There are many facts established by the record on this issue which, in the Staff's and Public Counsel's estimation, raise a question about the Company's candor with the Commission on this issue. In list form, the more salient of those facts are as follows:

(a) In case ER-78-29 the Company, through its late filed exhibit 52, gave June 11, 1978, and June 16, 1978, as the in service date for JEC1. In this case the Company has given June 30, 1978. (Tr. 500)

(b) The person at the Company who made the decision as to the "fully operational and used for service date" for JEC1 had absolutely no input, direct or indirect, with regard to the preparation or filing of late filed exhibit 52 in ER-78-29. (Tr. 1694-1695)

(c) Staff Ex. 5, Schedule 3 shows that Mr. Allen, for the Company, testified in October, 1978, before the Commission that he did not know when the Company received notification from Kansas Power & Light that JEC1 was in service. Yet he testified in this case that he received a document on August 3, 1978, from a KP&L Vice President indicating that JEC1 was declared to be in service on July 30, 1978. (Tr. 1835-1836) (Of course, when Mr. Allen testified in October 1978 he could surmise that if he told the truth the Company wouldn't get the interim relief it was requesting.)

(d) The Company declared JEC1 to be in service on June 30, 1978, without preparing an in service report. (Staff Ex. 5, Schedule 31) And it was at the direction of the Company's controller, Colin Campbell, that JEC1 was placed in service on the Company's books without an in service report. (Staff Ex. 5, Schedule 31) Yet when Mr. Campbell was deposed on this matter he unequivocally stated that there was an in service report for JEC1 at the time that it was transferred from the Company's construction records to plant in service records. (Tr. 1489) Of course, when confronted with Staff Ex. 5, Schedule 31, Mr. Campbell quickly changed his tune. (Tr. 1490)

(e) After having to admit that there hadn't been an in service report prepared for JEC1, right after he unequivocally said there had been one, Mr. Campbell compounded his "story" by assuring his examiner that the in service report surely would have been placed in the JEC1 in service folder by November, 1978. (Tr. 1491) But the report didn't make it to the folder until sometime between February 1 and February 12, 1979. (Tr. 527)

(f) Mr. Allen testified at his deposition that he had nothing to do with declaring JEC1 to be in service. (Tr. 1614) Yet during the course of the Staff's field audit for this case, Mr. Allen told Mr. Schallenberg, a staff auditor, that he, Allen, advised Mr. Barry that June 30, 1978, would be an appropriate in service date for JEC1. (Tr. 518)

(g) The Company knew that Kansas Power & Light, the planner, constructor, tester and operator of JEC1, declared JEC1 to be in service on July 30, 1978, yet the Company never made any effort to clarify to the Commission the ambiguity inherent in a generating unit having two different in service dates. This is particularly ambiguous when it is considered that the Missouri standard of "fully operational and used for service" on its face is more rigorous than the Kansas standard of "in service." It might make sense, given the different standards, if KPL had declared JEC1 in service on June 30, 1978, and the Company had waited until July 30, 1978, to do so. But for the Company, under a more rigorous standard, to declare it one month sooner than KPL seems to compel the need for an explanation. One was never given.

(h) The Commission literally had to order the Company to satisfy the Staff's information requests regarding this issue.

As noted in the initial paragraph for this subsection, only the more salient inconsistencies have been noted above.

6. The Basis for the Amount of the Adjustment

Proposed by the Staff and Public Counsel.

The Staff and Public Counsel recommend that Company be compelled to refund \$2,142,803 to its customers because of the fact that the fixed and operating costs were illegally included in the Company's rates which went into effect on July 5, 1978. The \$2,142,803 represents the net dollar effect to the Company's revenue requirement if from July 5, 1978, through December 14, 1978, the fixed and operating costs of JEC1 had not been included in the Company's rates. (Tr. 532) The amount includes interest at 6% annually. (Tr. 532) The amount also includes all the companion adjustments to depreciation, materials and supplies, income taxes, interchange sales, fuel expense, purchased power, fuel adjustments, operating and maintenance expense, and property taxes which are necessary to obtain the net effect of removing JEC1 from the Company's rates. (Staff Ex. 5, Schedule 34) The Staff and Public Counsel measure the dollar impact from July 5, 1978, to December 14, 1978, because December 14, 1978, is the date on which the Company's present interim increase went into effect. That is the next point at which the Company would have been able to obtain a rate increase to cover the fixed and operating costs for JEC1.

Based on the foregoing reasons, the Staff and Public Counsel conclude that the Commission should find that JEC1 was not "fully operational and used for service" until at least July 30, 1978, and, accordingly, that the Company should refund \$2,142,803 to its customers.