

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
vs.)	<u>EC-2011-</u> _____
)	
Kansas City Power & Light Company,)	
)	
Respondent.)	

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its Complaint against Kansas City Power & Light Company (KCPL), states as follows:

Introduction

1. This Complaint concerns Respondent’s violation of a Commission order by violating the Stipulation and Agreement approved therein.

Complainant

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Chief Staff Counsel as authorized by Commission Rule 4 CSR 240-2.070(1).

Respondent

3. Respondent KCPL is a Missouri general business corporation in good standing, incorporated on July 29, 1922. Its principal place of business is located at 1200 Main Street, 30th Floor, Kansas City, Missouri 64105 and its registered agent is

National Registered Agents, Inc., 300-B East High Street, Jefferson City, Missouri 63101.

Jurisdiction

4. KCPL is in the business of generating and distributing electricity to the public for light, heat and power, using electric plant, as defined at § 386.020(14), RSMo, that it owns, controls, operates, or manages. KCPL's most recent Form 10-K filed with the United States Securities and Exchange Commission states that it serves 510,000 customers in Missouri and Kansas.

5. KCPL does not generate and distribute electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others.

6. By virtue of its activities described in Paragraphs 4 and 5, above, KCPL is an electrical corporation within the intendments of § 386.020(15), RSMo, and a public utility within the intendments of § 386.020(43), RSMo, and therefore "subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter[.]"

7. This Commission has authority to hear and determine complaints against public utilities pursuant to § 386.390.1, RSMo, which provides that "[c]omplaint may be made . . . in writing, setting forth any act or thing done or omitted to be done by any corporation . . . in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission . . ."

Background

8. KCPL is a wholly-owned subsidiary of Great Plains Energy Incorporated (GPE), a Missouri general business corporation in good standing, incorporated on

February 26, 2001. GPE's principal place of business is also located at 1200 Main Street, 30th Floor, Kansas City, Missouri 64105 and its registered agent is National Registered Agents, Inc., 300-B East High Street, Jefferson City, Missouri 63101.

9. GPE describes itself in its most recent Form 10-K filed with the United States Securities and Exchange Commission as a public utility holding company with no significant assets other than the stock of KCPL and another regulated electric utility that it owns, KCP&L Greater Missouri Operations Company (GMO).

10. On March 28, 2005, KCPL entered into a ***Stipulation and Agreement*** (the ***Stipulation***) filed in Case No. EO-2005-0329, ***In the Matter of a Proposed Regulatory Plan of Kansas City Power & Light Company***, intended to create and maintain conditions under which KCPL could undertake and complete the construction of a major new coal-fired generating facility, Iatan 2, at Weston, Missouri, as well as certain other construction and improvements both at Weston and elsewhere.

11. Among the provisions of the ***Stipulation*** was Paragraph III.B.1.q, which provides:

q. Cost Control Process for Construction Expenditures:

KCPL must develop and have a cost control system in place that identifies and explains any cost overruns above the definitive estimate during the construction period of the Iatan 2 project, the wind generation projects and the environmental investments.

12. On July 28, 2005, the Commission issued its ***Report and Order*** in Case No. EO-2005-0329, approving "the ***Proposed Experimental Regulatory Plan*** embodied in the ***Stipulation and Agreement*** filed in this case on March 28, 2005, as amended on July 26, 2005[.]"¹ At Ordered Paragraph No. 2 of the ***Report and Order***,

¹ The amendment of July 26, 2005, did not pertain to Paragraph III.B.1.q.

the Commission ordered “[t]hat the signatory parties shall abide by all of the terms and requirements in the March 28, 2005 Stipulation and Agreement.”

Count I

Violation of the Commission’s Order of July 28, 2005

13. Complainant hereby re-alleges and incorporates by reference the allegations set out in Paragraphs 1 through 12, above.

14. KCPL undertook the construction of Iatan 2 and of some of the other construction and improvements contemplated in Case No. EO-2005-0329 and in the ***Experimental Regulatory Plan (ERP)*** embodied in the ***Stipulation***.²

15. Pursuant to the direction of the Commission, Staff undertook a prudence review and construction audit of Iatan 2 and the other construction and improvements undertaken by KCPL, a necessary and usual step in the process whereby newly constructed utility assets are admitted to rate base and included in the rates paid by customers for utility services.

16. Upon review of KCPL’s Iatan Project construction accounts, Staff’s auditors discovered that cost overruns of millions of dollars above the definitive estimate had indeed occurred.

17. Relying upon the provisions of Paragraph III.B.1.q, Staff’s auditors requested via data requests a list of all cost overruns through April 30, 2010, the amount of each cost overrun, a description of each overrun, and an explanation of why the overrun was incurred.

18. KCPL’s response was as follows:³

² For convenience, Iatan 2 and all other improvements contemplated or constructed pursuant to the ***ERP*** are referred to as the Iatan Project.

Question No. :0970

For Iatan 2, please provide a list of all cost overruns (from KCPL's original Definitive Estimate / Control Budget Estimate) through April 2010, the amount for each cost overrun, a detailed description of the overrun, why each cost overrun was incurred and charged to the project, and how the cost overrun was mitigated, if it was mitigated.

RESPONSE:

As discussed in Question No. 0445A, all variances from the Project Control Budget estimate are captured in, and reported from, the Cost Control System. The System provides the detailed tracking process in the Cost Portfolio, which includes the Control Budget as well as each budget change, the Committed Costs, the Uncommitted Costs, the Current Forecast Total Cost At Completion and the Actuals Including Accruals. These details are maintained by Budget Line Item and the supporting documentation is voluminous. There is not a single set of output documents resulting from the process.

Utilizing the April 2010, Iatan 2 K^(a) Cost Report, the Control Budget Estimate (Column A) is [REDACTED]. As of April 2010, the Actuals Including Accruals (Column M) total [REDACTED]. The justification for the additional [REDACTED] is located within the documentation previously provided to staff in multiple data requests. As discussed above, the variance is explained within the documentation previously provided in data requests such as Contingency Logs, PO logs, Change Order logs, Reforecast Presentations and supporting documentation, Budget Transfer Logs, etcetera.

(a) The K Cost Reports are routinely provided in hard copy in the Strategic Infrastructure Investment Status Reports on a quarterly basis and has been provided in Microsoft Excel format in data requests question series number 0622.

A drawing illustrating how to track variances is attached, "*Example for DR 0970 Rev 1.xls*." Mr. Forrest Archibald has walked through the portfolio in previous meetings and would be able to provide the assistance again if requested.

Attachment: Q0970 MO Verification.pdf

³ Highly Confidential (HC) numbers have been redacted. Similar data requests directed at other parts of the Iatan Project received identical responses.

19. Although KCPL produced thousands of pages of documents, KCPL never produced a list of all cost overruns that occurred in the course of the Iatan Project, the amount of each cost overrun, a description of each cost overrun, or an explanation of why the cost overrun was incurred as required by Paragraph III.B.1.q of the **Stipulation**.

20. KCPL thereby violated Paragraph III.B.1.q of the **Stipulation** approved by the Commission in Case No. EO-2005-0329.

21. KCPL thereby violated Ordered Paragraph No. 2 of the Commission's **Report and Order** of July 28, 2005, in Case No. EO-2005-0329, approving the **Stipulation** and ordering the signatory parties to abide by its terms.

22. KCPL's violation referred to in Paragraphs 20 and 21, above, seriously obstructed and impeded Staff's prudence review and construction audit of the Iatan Project.

WHEREFORE, Staff prays that the Commission will give such notice to Respondent as is required by law and, after hearing, find that Respondent has violated the Commission's Order of July 28, 2005, by violating the **Stipulation and Agreement** therein approved and, further, Staff prays that the Commission will deem the violation to be a continuing one.

Count II

Authority to Seek Penalties

23. Complainant hereby re-alleges and incorporates by reference the allegations set out in Paragraphs 1 through 22, above.

24. Section 386.570, RSMo, provides:

1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any

other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

25. Section 386.600, RSMo, provides:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order or decision of the commission the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in this chapter, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

WHEREFORE, Staff prays that the Commission will give such notice to Respondent as is required by law and, after hearing, in the event that any of the

conduct herein described is determined to be a violation of any law of the State of Missouri or of any order, decision, or rule of the Commission, deem each day that such violation existed to be a separate offense and authorize its General Counsel to proceed in Circuit Court to seek such penalties as are authorized by law.

Respectfully Submitted,

s/ Kevin A. Thompson

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