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 Certain Changes in its Charges for Electric Service to Begin the Implementation of Its Regulatory Plan	)))))	Case No. ER-2006-0314

APPLICATION FOR REHEARING OF UNITED STATES DEPARTMENT OF ENERGY/NATIONAL NUCLEAR SECURITY ADMINISTRATION (DOE/NNSA)

Counsel for Intervenor DOE/NNSA
Paul W. Phillips
1000 Independence Ave.SW
Washington, DC 20585
(Telephone) (202) 586-4224
Paul.Phillips@HQ.Doe.gov
MBN 21173

Stephanie L. Bogart
P. O. Box 410202
Kansas City, Mo. 64141-0202
(Telephone) (816) 997-3341
Stephanie.bogart@nnsa.doe.gov

December 29, 2006

TABLE OF CONTENTS

In the Matter of the Application of Kansas City Power & Light Company for Approval to Make Certain Changes in its Charges for Electric Service to Begin the Implementation of Its Regulatory Plan	)))))	Case No. ER-2006-0314

DOE/NNSA'S APPLICATION FOR REHEARING

I. INTRODUCTION

DOE/NNSA intervened in this proceeding on behalf of the DOE/NNSA plant in Kansas City, a large customer of Kansas City Power and Light Company (KCPL), as well as other affected Federal Executive Agencies. On December 21, 2006 the Commission majority issued its Report and Order (R&O) in this case with such decision becoming effective on December 31, 2006. The vote was 3 Commissioners in favor and 2 Commissioners dissenting with written dissents to follow[1]. In this Application For Rehearing filed pursuant to Section 386.500 RSMo 2000 and 4 CSR 240-2.160, we address those points in the majority R&O in the same order that the majority in its R&O discusses such issues and which we conclude is unlawful, unjust and unreasonable.[2]

II. MAJORITY ERRED IN ITS DECISION ON COST OF CAPITAL

The majority Order of the Commission is erroneous in applying a national average of Return on Equity (ROE) and arbitrarily adjusting upward its finding of a reasonable ROE.

In our Post Hearing Brief we demonstrated why the Commission in this case should find an appropriate return on equity to be 9% based on a traditional Discounted Cash Flow (DCF) methodology as advocated by DOE/NNSA Witness Woolridge which methodology this Commission has endorsed on numerous occasions and which has been upheld by

[1] At the time of the filing of this Application For Rehearing no dissenting opinions had been filed in this case.

Missouri Courts. See Post Hearing Brief at pp.25-30. Although the majority stated in the R&O that they did not intend to "**unthinkingly**" rely on a national average in determining an appropriate ROE, they in fact appear to have done just that. See R&O pages 20-30. Whether "**unthinkingly**" or "**thinkingly**", we submit such reliance is contrary to the U. S. Supreme Court decisions in both ***Hope*** and ***Bluefield*** as well as contrary to Missouri law.[3] Although the majority finds Witness Woolridge has impressive credentials,[4] it then dismisses his testimony on the basis that his conclusions are outside the "zone of reasonableness" which it arbitrarily adopts vis a vis the "national average". The majority of the Commission concluded that since its arbitrary "zone of reasonableness" was between 9.37% and 11.37%, it was entitled to ignore Professor Woolridge's testimony since his calculated return on equity was below 9.37%.[5] The Commission then ignored that KCPL Witness Hadaway had also recommended a return on equity outside the Commission's arbitrary "zone of reasonableness". Witness Hadaway testified in his direct testimony at page 6,

> "Using this average cost of equity as a reference point, in order to reflect the higher risk profile of KCPL as discussed previously, KCPL's ROE should be increased by 50 basis points relative to the cost of equity for the reference group, which results in a **requested ROE of 11.5 percent**." [Emphasis added]

In order to ignore that Witness Hadaway's return on equity was outside of its "zone of reasonableness" the majority claimed, erroneously, that Witness Hadaway had recommended an 11% return on equity plus a 50 basis point adder.[6] As the above quotation from Witness Hadaway's testimony clearly demonstrates, Witness Hadaway

---

[2] See Section 386.500 et seq, RSMo 2000.
[3] Although the majority quote from both decisions the majority does not adhere to the requirements of the decisions. See Federal Power Commission v. Hope Natural Gas, 320 U.S. 591, 64 S. Ct. 281, 88 L. Ed. 333 (1941) and Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n of West Virginia, 262 U.S. 679, 43 S. Ct. 675, 67 L. Ed. 1176 (1923). Also see State ex rel. Missouri Public Service Co. v. Fraas, 627 S.W. 2d 882, (Mo. App., W. D. 1981).
[4] See R&O at p. 22.
[5] See R&O pp.21-22.
[6] See R&O at p.22.

recommended a ROE outside of the Commission's own arbitrary boundaries.

The Commission majority also chose to ignore the fact that all ROE witnesses, including Witness Hadaway, testified that using the widely accepted DCF methodology to determine return on equity, concluded that the DCF method showed that KCPL's return on equity should be somewhere in the 9% range. Using the DCF methodology, Professor Woolridge testified the return on equity should be 9%, Staff testified to the range of 9.32 to 9.42%, OPC to 9.9% and Witness Hadaway to the range of 9.3 to 9.4%. Thus, if any return on equity is outside of a "zone of reasonableness" it is Witness Hadaway's requested ROE of 11.5%.

The majority also criticizes Professor Woolridge on the grounds that he has never testified for nor been employed by a utility[7]. Such criticism is unwarranted and we submit misplaced. To impose a requirement that a witness must have worked for a utility or testified on behalf of a utility in determining rate of return and ROE is ludicrous and we submit unreasonable, unjust and unlawful. It ignores the fact that a witness testifying in such a field be an expert in utility ratemaking, economics and in determining a reasonable rate of return and ROE. Professor Woolridge is a competent expert witness who has testified in numerous cases before state utility commissions throughout the United States. The Commission majority obviously made all or part of its determination to ignore Professor Woolridge's testimony unlawfully and impermissibly on the completely irrelevant fact that he has neither worked for nor represented a utility. Since it is not possible to determine to what extent the Commission majority based its decision to ignore Professor Woolridge's testimony on an irrelevant fact, the Commission majority's opinion lacks competent and substantial evidence on which to support its decision on rate of return and ROE.

[7] See R&O at p. 22.

The majority's R&O summarily dismisses the other competent and substantial testimony offered by Staff and OPC relating to ROE and rate of return.[8] The majority R&O finds the testimony of KCPL Witness Hadaway to be persuasive without revealing why this is so. The real question the majority should have, but failed to address is what does the competent and substantial evidence in this case support? We demonstrated earlier as did Staff and OPC in their Briefs and in their witnesses testimony why Witness Hadaway's testimony should not be followed and we will not repeat such arguments again other than to observe that Witness Hadaway apparently consistently testifies to 11% and higher for ROE on behalf of any and all utilities for which he is retained to testify irrespective as to what the unique circumstances are for such utility or what the equity requirements of the specific utility may be. We submit that such testimony does not constitute competent and substantial evidence and is contrary to both the ***Hope*** and ***Bluefield*** decisions.

The majority arbitrarily adds 25 basis points to its ROE in this case, apparently to keep the return within the majority's arbitrary "zone of reasonableness" as opposed to KCPL Witness Hadaway's actual request of 11.5%. As we said in our Post Hearing Brief at pp 29-30, no evidence was offered in testimony by any witness which would indicate any need for an upward adjustment in ROE[9]. The majority in its R&O has allowed what it denominates to be an upward adjustment to the equity return in this case based on its interpretation of KCPL Witness Hadaway's ***request*** for an upward adjustment of 50 basis points (but which we pointed out earlier is simply part of his ROE of 11.5%[10] which request was not based on any competent and substantial evidence. Merely asking for

[8] See R&O at pp. 24-27.
[9] As we pointed out in our Post Hearing Brief at p.29, Witness Woolridge did not make an adjustment to his equity return specifically for the impact of the Regulatory Plan but did observe in his Testimony that the impact of the Regulatory Plan certainly had an impact of lowering the risk by at least 30 basis points due to the agreement by the Signatory Parties to maintain the current credit rating of KCPL. See Woolridge Surrebuttal at p.5, Exhibit No. 808.
[10] See herein at p. 4.

something is not the same as making a recommendation based on competent and substantial evidence. Witness Hadaway made no empirical study which showed the need for such an adjustment rather it was purely an arbitrary request for such an adjustment.

Although DOE/NNSA Witness Woolridge agreed that the Stipulation and Regulatory Plan has "not eliminated" the Company's financing, construction, and regulatory risks, he indicated in his testimony that there are elements of the Agreement which significantly reduce the riskiness of KCPL. See Woolridge Direct Testimony, Ex.801 at pp. 51-52.

We submit that if the majority had carefully reviewed all of the proposed recommendations and testimony for overall rate of return and ROE by competent witnesses in this case, it would have found that an ROE on the order of 9% or so and an overall rate of return of 7.68% is just and reasonable for KCPL based on the competent and substantial evidence of record in this case.[11] We further submit failure to do so by the majority in the R&O renders such finding unlawful, unjust and unreasonable.

III. MAJORITY ERRED IN ITS DECISION ON TREATMENT OF OFF-SYSTEM SALES

The majority of the Commission determined that the 25% percentile as recommended by KCPL be utilized in determining an appropriate level of off-system sales, ignoring the competent and substantial evidence offered by its own Staff, OPC, Praxair and DOE/NNSA.[12]

[11] Although the Majority in its R&O relied on the RRA for a reasonable return on equity we have argued that such reliance is erroneous and unlawful. As we said earlier we do not endorse the use of such a number in making a finding by the Commission of a reasonable return on equity as it fails both the ***Hope*** and ***Bluefield*** tests and is clearly unlawful under Missouri law. With the exception of Witness Hadaway the other returns were in the 9% range. See herein at p. 5.

[12] See R&O at pp. 31-37.

DOE/NNSA pointed out in its earlier Briefs that KCPL has contractually bound itself by its execution of the Stipulation and Agreement (hereinafter the "Experimental Regulatory Plan" or "Plan") approved by the Commission in Case No. ER-2005-0329 (Exhibit 143), by an amendment to the Experimental Regulatory Plan and by statements of its officers, to allocate all margins from off-system sales to its ratepayers. See Post Hearing brief at pp.12-13. The majority of the Commission has ignored those provisions of the Plan. The majority's opinion thus is unjust, unlawful and unreasonable.

IV. MAJORITY ERRED IN ITS DECISION ON ALLOWANCE OF ADDITIONAL AMORTIZATION

In our Post Hearing Brief we demonstrated that in order for this Commission to find that "additional amortizations" should be allowed in this case, competent and substantial evidence is required to support such a finding, not merely the "knee-jerk" application of the Regulatory Plan and its Stipulation.[13] *State ex rel. Dyer* v. *Public Service Commission* 341 S. W. 2nd 795, (Sup. 1961), certiorari denied 81 S. Ct. 1351, 366 U.S. 924, 6 L. Ed. 2d 384. We do not mean to belabor the point further. We also demonstrated that there was no competent and substantial evidence to support such a finding. DOE/NNSA submits that is still the case. As we said earlier, if KCPL could demonstrate that Standard and Poor's (S&P) is about to downgrade KCPL's credit rating and that a downgrading of KCPL's debt will be more unreasonable and costly to KCPL ratepayers than requiring ratepayers to fund the additional amortization expense then additional amortizations may be required.[14] KCPL offered no such evidence.

[13] In addition to Intervenor DOE/NNSA, Jackson County, AARP, Trigen and Wal-Mart are not signatories to the Regulatory Plan Stipulation.

[14] As we said in our earlier Briefs the Commission should be cognizant that requiring present ratepayers to assist in financing KCPL's construction program through added amortization expense which will be paid back to future ratepayers results in an intergenerational subsidy. What the parties to this case would have accomplished in the Rate Design Stipulation filed in this case, i.e. beginning to eliminate interclass subsidies will thus be negated if the Commission in

As we pointed out in our Initial Post Hearing Brief, one of the major financial weaknesses impacting KCPL's credit according to S&P has nothing to do with the building of IATAN 2 or costs associated with that plant, but instead according to S&P relates to the risk profile of Strategic Energy, a separate **unregulated** subsidiary of Great Plains Energy.[15]

It bears repeating to quote again OPC Witness Trippensee wherein in his Rebuttal True-Up Testimony he stated the following in response to the following question by Public Counsel Mills:

"Q. Are the parties to this case or the Commission obligated to defer to Standard & Poor's in the calculation of the Regulatory Plan Amortization?

A. No. …the ***Stipulation and Agreement and the Commission's Report & Order clearly do not anticipate that this Commission defer its regulatory authority to S&P to set just and reasonable rates.*** (Emphasis supplied.)

In a further question by OPC Counsel Mills at p. 3, Trippensee Rebuttal Testimony

"Q. While the Staff proposes to defer to S&P regarding the risk factor, are the other components of the regulatory plan amortization proposed by Staff consistent with Standard & Poor's methods?

A. No. There are **numerous examples** where the Regulatory Plan Amortization **recommended by Staff is inconsistent with S&P methods**. The entire calculation is based upon findings by this Commission on the cost to serve Missouri retail operations while **S&P looks at total Company operations**, including non-regulated operations such as Strategic Energy. The RPA also **allocates the capital structure to Missouri retail operations**. That Missouri jurisdictional allocation excludes debt that supports non-Missouri retail operations and the resulting interest expense on that debt coverage. This lowers cash flow requirements by **lowering the interest coverage requirement** (Emphasis supplied).

Further in answer to another question by OPC Counsel Mills, OPC Witness Trippensee responded in his Rebuttal True-Up Testimony at p. 3:"

Public Counsel believes ***this Commission should not blindly follow S&P procedures in setting rates for Missourians nor does Public Counsel believe the Stipulation and agreement in ER-2005-0329 contemplated such an adherence to an organization***

---

allowing added amortization expense at the recommendation of the Signatory Parties to the Experimental Regulatory Plan will simply create a new intergenerational subsidy. This is not we submit, prudent nor sound ratemaking.

[15] See Staff Exhibit No. 145.

whose mission has absolutely nothing to do with ensuring Missourians have just and reasonable utility rates (Emphasis supplied).

Not only has the majority in the R&O done just this and blindly following S&P , they maintain that the determination of additional amortization requires nothing more than a mathematical calculation based on the various findings by the majority in its R&O. Thus the majority makes **NO** finding or determination of Additional Amortization at all, but instead begs the question by passing such determination to KCPL which ostensibly "***may"*** take that into account in filing rates which in the majority's nomenclature "comport" with the majority's R&O. Thus, allowing KCPL to determine the just and reasonable rates to be filed as a result of this case. This is an abandonment of the Commission's statutory requirement in determining just and reasonable rates. The majority's opinion thus is unjust, unlawful and unreasonable.

V. MAJORITY ERRED IN ITS DECISION ON TREATMENT OF ICE STORM COSTS

The majority of the Commission determined in its R&O that all ice storm costs proposed by KCPL should be allowed in this case. As we stated earlier DOE/NNSA opposes KCPL's proposal to include within the Missouri jurisdictional cost of service amortization of ice storm costs incurred in 2002 and that issue was discussed in our Posthearing Brief. In Staff's Posthearing Brief Staff expressly stated at p. 8 that: "Staff has no position on this issue." The majority has adopted KCPL's position even though DOE/NNSA Witness Dittmer pointed out in his testimony that KCPL has already **recovered this depreciation** (emphasis supplied). See Dittmer, Direct Testimony, Exhibit 803 and 803 HC at pp. 19-27. Further the majority R&O erroneously concludes that "…since Staff has no position on the issue, the Commission finds KCPL's ice storm

costs were prudent".[16] This finding is made notwithstanding clear evidence that shows Staff's treatment of ice storm costs is for four months of amortization while KCPL proposed seven months of amortization.[17] Staff did not disagree with this position of DOE/NNSA. The majority's R&O thus is unjust, unlawful and unreasonable.

VI. MAJORITY ERRED IN ITS DECISION AS IT FAILS TO MAKE A DETERMINATION OF JUST AND REASONABLE RATES OR OF A REVENUE REQUIREMENT FOR SUCH RATES

Although the majority's R&O refers to the fixing of just and reasonable rates in this case no where in the majority's R&O, either in its Findings of Fact or Conclusions of Law, does the majority make a determination of such just and reasonable rates or of a revenue requirement for KCPL. The R&O simply states that "KCPL may file rates that comport" with the R&O.[18] We submit that the majority's opinion thus is unjust, unlawful and unreasonable.

VII. CONCLUSION

Intervenor, DOE/NNSA submits that as it previously argued in its Post Hearing Brief, that after careful consideration of the competent and substantial evidence in this record that such evidence supports a reduction in current rates for KCPL as also recommended by the Commission Staff and by OPC. The majority of the Commission has ignored or cavalierly dismissed the competent and substantial evidence offered by its Staff, by OPC and by DOE/NNSA and has provided an excessive rate of return and ROE

[16] See R&O at p. 61.
[17] See Reply and True-Up Brief of DOE/NNSA filed on November 27, 2006 at p. 5.
[18] Although the majority quotes from Section 393.270 RSMo 2000 regarding the fixing of the price for electricity nowhere in the R&O does it fix a price for electricity, nor does it set rates, nor does it make a finding of a revenue requirement for KCPL. Without such findings we submit a reviewing court will have no

and has ignored making a finding on additional amortization claiming that all that is required is a simple mathematical calculation which is to be determined by KCPL based on the majority's other findings. Such findings by the majority in this case is an abuse of discretion, unlawful and unconstitutional and is contrary to the US Supreme Court's decisions in both ***Hope*** and ***Bluefield***. In addition the majority in their R&O fail to make a finding of just and reasonable rates in this case nor does the majority make a finding of a specific revenue requirement which is required by Missouri law. The majority's opinion in its R&O is thus unjust, unlawful and unreasonable, wherefore for the reasons set out above we submit this Application For Rehearing should be granted.

Respectfully Submitted

/s/ Paul W. Phillips
Counsel for Intervenor DOE/NNSA
Paul W. Phillips, 21173
1000 Independence Ave. SW
Washington, DC 20585
(Telephone) (202) 586-4224
Paul.Phillips@HQ.Doe.gov

choice but to reverse the majority's R&O.