

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

In the Matter of the Application of Kansas City Power and Light Company for Approval to Make Certain Changes in its Charges for Electric Service to Continue the Implementation of Its Regulatory Plan) Case No. ER-2009-0089
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In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval to Make Certain Changes in its Charges for Electric Service) Case No. ER-2009-0090
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In the Matter of the Application of KCP&L Greater Missouri Operations Company for Approval to Make Certain Changes in its Charges for Steam Heating Service) Case No. HR-2009-0092
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REPLY TO RESPONSES FILED BY STAFF, PUBLIC COUNSEL AND INDUSTRIAL INTERVENORS TO THE MOTION FOR RECONSIDERATION OF THE ORDER MODIFYING PROCEDURAL SCHEDULES AND FOR TRUE-UP PROCEEDINGS ISSUED ON MARCH 18, 2009

Pursuant to 4 C.S.R. 240-2.080, Kansas City Power & Light Company (“KCP&L”) and KCP&L Greater Missouri Operations Company (“KCP&L-GMO”) (collectively, the “Companies”) hereby file this reply to the pleadings filed by Staff, and Public Counsel/Industrial Intervenors¹ regarding the Companies’ Motion For Reconsideration of the Commission’s *Order Modifying Procedural Schedules for True-Up Proceedings and Formally Adopting test Year and Update Period* issued March 18, 2009 in the above-captioned proceedings (“*Modified Procedural Order*”).

In support hereof, the Companies state as follows:

1. In its *Modified Procedural Order*, the Commission (i) agreed to extend the true-up date in these cases until April 30, 2009; (ii) directed the Companies to comply with their

¹ On March 23, 2009, the Public Counsel and the Industrial Intervenors filed their Response To Order Establishing Time For Response which raised arguments similar to the Staff Response. In an effort to be brief, this Response will principally address the Staff’s Response which raises arguments that are similar to the concerns of Public Counsel and the Industrial Intervenors.

representation that they would voluntarily extend the effective date of the tariffs filed in these proceedings until September 5, 2009; and (iii) imposed five of six conditions proposed by Staff.

2. The Commission imposed the following conditions:

- (i) “Iatan 1 costs that exceed the base costs will be included in rates on an interim basis subject to refund based on a true-up of costs in the Movants’ next electric rate case” (“Iatan 1 Cost Condition”);
- (ii) “depreciation reserve attributable to Iatan 1 accrued post March 31, 2009 shall be included in setting rates in this proceeding” (“Depreciation Condition”);
- (iii) “deferred income tax reserve attributable to Iatan 1 accrued post March 31, 2009 will be included in setting rates in this proceeding” (“Tax Reserve Condition”);
- (iv) “environmental credits for energy productions from Iatan 1 shall be applied as an offset to the Iatan 1 plant balance” (“Environmental Credit Condition”); and
- (v) “the value of power generated by Iatan 1 net of variable costs shall be credited to the costs to be placed in service” (“Test Power Condition”).

3. On March 19, 2009, the Companies filed their *Motion For Reconsideration And/Or Rehearing Of Order Modifying Procedural Schedules For True-Up Proceedings And Motion For Expedited Treatment* (“*Motion For Reconsideration*”) in which the Companies requested that the Commission grant a reconsideration of the Staff’s recommended conditions. The Companies have pointed out that the conditions exceed the Commission’s statutory authority, prejudging substantive and contested issues in these cases with no supporting evidence, findings of fact, or conclusions of law, and constitute a regulatory taking without due process of law. Consequently, the Companies requested that the Commission issue a *Modified Procedural Order* eliminating the conditions on an expedited basis.

4. On March 24, 2009, the Commission Staff filed its Staff Response to KCP&L and KCP&L-GMO’s Motion For Reconsideration And/Or Rehearing Of Order Modifying Procedural

Schedules And For True-Up Proceedings And Motion For Expedited Treatment And Staff Motion For Leave To Late-File (“*Staff Response*”). In the *Staff Response* at 6-7, Staff clarifies its position regarding its first proposed condition (“Iatan 1 Cost Condition”) confirming that the Companies’ voluntary agreement to place any rates into effect on an interim subject to refund basis would be required:

By this bold face language, the Staff meant in its March 6, 2008 (sic) filing that in order for the Commission to allow the Iatan 1 environmental improvements as an isolated adjustment after March 31, 2009 or the extension of the true-up date to April 30, 2009, KCP&L and KCP&L-GMO must agree that Iatan 1 costs that exceed the base costs (definitive estimate) will be included in KCP&L’s and KCP&L-GMO’s rates interim subject to refund based on a true-up of costs in KCP&L’s and KCP&L-GMO’s next electric rate cases. (*Staff Response*, pp. 6-7)

5. For the reasons stated in the *Motion For Reconsideration* at 3-8, the Companies wholeheartedly agree with the Staff that the voluntary agreement of the Companies would be required before the Commission could lawfully impose this condition upon them. Without a voluntary agreement by the Companies, any subsequent refund order in a future proceeding would constitute unlawful retroactive ratemaking. (*See Motion For Reconsideration* at 6-7). As noted in the *Motion For Reconsideration*, the Companies are not willing to voluntarily agree to this condition. (*Motion For Reconsideration* at 2)

6. Staff largely ignored the Companies’ other concerns that the Commission does not have competent and substantial evidence in the record to support the other conditions (ii) – (v) originally proposed by Staff and adopted by the Commission. This is understandable since there have been no evidentiary hearings in this matter, and as a result, there can not be any competent and substantial evidence in the record to support these substantive decisions related to the Depreciation Condition, Tax Reserve Condition, Environmental Credit Condition, and Test Power Condition. As the Companies have already pointed out in their *Motion For*

Reconsideration, by imposing these conditions, the Commission has decided issues to the Companies' detriment that have not been properly raised by a party which is a violation of the Companies' statutory and constitutional due process rights. (*Motion For Reconsideration* at 11) The Staff did not challenge this argument in their Staff Response.²

7. As Staff points out in its Staff Response, the Companies originally requested that the Commission "extend until April 30, 2009 the deadline for demonstrating that the AQCS [(air quality control system)] equipment satisfies the technical in-service criteria" but make no other changes to the ordered procedural schedules. (*Staff Response* at 2). Staff has raised concerns about their ability to complete the True-Up Audit within the confines of the March 31, 2009 True-Up. (*Staff Response* at 7) Given these practical considerations, the Companies believe it would be reasonable for the Commission to reconsider the *Modified Procedural Order* by extending the True-Up period for all costs and revenues until April 30, 2009, and direct the Companies to voluntarily extend the effective date of their tariffs until September 5, 2009. In addition, it would be reasonable for the Commission to also extend, by approximately one month, the dates for all matters related to the True-Up proceeding beginning with the "Closed Book True-Up Data Date" and continuing through the "Effective Date for Tariffs." This is essentially what the Commission decided was reasonable in its *Modified Procedural Order*. However, the other remaining conditions suggested by Staff, (i.e. the Iatan Cost Condition, the Depreciation Condition, Tax Reserve Condition, Environmental Credit Condition, and Test Power Condition) would be left for resolution by the Commission, if appropriate, following the

² Public Counsel and the Industrial Intervenors also do not contest the fact that there is no competent and substantial evidence in the record at this juncture of the proceedings to support the adoption of these conditions. Instead, they merely argue that such conditions are required to protect the customers. (Public Counsel/Industrial Response at 4-5) Of course, these arguments may be raised during the evidentiary hearings, and the Commission will have the opportunity to address them based upon the evidence and arguments presented in this case.

evidentiary hearings in which competent and substantial evidence would be in the record, and the Commission would be provided full legal argument on the related legal issues by the Parties.

8. The April 30, 2009, True-Up Period had originally been a procedural option that was considered reasonable by the other parties with a modification of the effective dates of the tariffs.³ The unforeseen events that have occurred during the Iatan 1 start-up process after the Companies initially elected to maintain the March 31, 2009 True-Up Period have caused the need to make a reasonable and moderate adjustment to the True-Up schedule in this proceeding, as described herein. The adoption of the April 30, 2009 True-Up Period will not prejudice any of the parties' ability to present their evidence and argument on the issues in this case, and the Companies will voluntarily extend the effective dates of the tariffs to September 5, 2009.

9. As explained in the Affidavit of Michael W. Cline that accompanied the Companies' Status Report And Motion To Extend Period To Demonstrate Compliance With Certain In-Service Criteria filed on March 2, 2009, given the turmoil in the financial debt markets, the severe recession affecting the United States economy generally, the Companies' reliance on the anticipated cash flow from the rate relief in this proceeding, and the publicly disclosed need of Great Plains to raise capital in these difficult financial markets in 2009, it is necessary that KCPL and KCPL-GMO be permitted to present their respective rate cases to the Commission under a revised schedule that contains reasonable and moderate changes to the True-Up proceeding.

10. It is unfortunate that the Companies must bring this critical matter to the Commission for final resolution. However, it is apparent that the level of contention among the parties has increased to the point that even minimal changes in the procedural schedule can not be resolved without the intervention of the Commission.

³ See *Order Setting Procedural Schedules* (November 30, 2008).

WHEREFORE, the Companies respectfully renew their Motion For Reconsideration And/Or Rehearing in this matter, and request that the Commission issue a revised *Modified Procedural Order* which extends the True-Up Proceeding for all matters until April 30, 2009, and moves the related True-Up hearings by approximately one month, as more fully described herein. Under this proposal, the Commission would remove the five conditions contained in the *Modifying Procedural Order*, and leave these substantive issues for resolution by the Commission, if appropriate, following the evidentiary hearings in this matter.

Respectfully submitted,

/s/ James M. Fischer

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**Attorneys for Kansas City Power & Light Company and
KCP&L Greater Missouri Operations Company**

Dated: March 24, 2009

CERTIFICATE OF SERVICE

A copy of the foregoing has been served this 24^h day of March 2009 upon counsel of record in the above-captioned proceedings.

/s/ James M. Fischer

James M Fischer