

**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 Implement its Regulatory Plan            )        Case No. ER-2009-0089

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

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

**RESPONSE TO COMPANIES' MARCH 24, 2009 REPLY**

COME NOW Praxair, Inc.; Midwest Energy Users' Association; Wal-Mart Stores, Inc.; Sedalia Industrial Energy Users' Association; and Ag Processing, Inc., a cooperative (collectively, "Industrial Intervenors") and for their response to the March 24, 2009 Reply ("Reply") filed by Kansas City Power & Light Company ("KCPL") and KCP&L Greater Missouri Operations Company ("KCPL – GMO") (collectively, the "Companies") respectfully state as follows:

1. Much like the Companies in this case, the Industrial Intervenors regret that this matter must be brought to the Commission for resolution. Given, however, the Companies' adamant refusal to account for basic ratepayer safeguards within the context of the proposed true-up of this case, it is left to the Commission to properly balance the interests in this matter.

2. In order to best understand the nature of the dispute in this case, it is helpful to understand the historical context of how true-ups developed. In the early 1980s, electric utilities were facing rapidly increasing interest rates and fuel prices. In addition, these utilities were attempting to reflect recently constructed generating stations in rates. Recognizing the effects of regulatory lag on each of these various costs, the Commission implemented various techniques to minimize the time between the incurrence of a cost and the reflection of that cost in rates. Specifically, the Commission adopted the use of known and measureable changes and true-up hearings.<sup>1</sup>

The true-up procedure has received broad acceptance as a proper ratemaking tool. A true-up permits adjustments outside of the test year without improperly disturbing the revenue-expense relationship.<sup>2</sup>

By implementing such ratemaking procedures, the Commission departed from its strict adherence on the historical test year. That said, however, the Commission has always recognized that the necessary consumer safeguards must be preserved, even if it means abandoning the true-up and subjecting the utility to regulatory lag.<sup>3</sup>

2. In this case, the Commission is faced with two competing interests. As reflected in their pleadings, the Companies are interested in including all capital projects (environmental capital projects for Iatan 1, Sibley and Jeffery generating stations) in rates and then implementing those increased rates as soon as possible. On the other hand, consumers are interested in allowing adequate time for the parties to determine whether those capital projects meet the statutory requirements of Section 393.135 (“fully

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<sup>1</sup> *Kansas City Power & Light Company*, Case No. ER-82-66, Report and Order, issued July 14, 1982, 25 Mo.P.S.C. (N.S.) 229, 239.

<sup>2</sup> *Kansas City Power & Light Company*, Case No. ER-83-49, Report and Order, issued July 8, 1983, 26 Mo.P.S.C. (N.S.) 104, 109.

<sup>3</sup> In those situations where a proper true-up audit could not be conducted, the Commission has recognized that the true-up must be abandoned and a strict reliance on the historical test year figures should be utilized. *Kansas City Power & Light Company*, Case No. ER-83-49, Order on Rehearing, issued August 30, 1983, 26 Mo.P.S.C. (N.S.) 233, 235-236.

operational and used for service”) and for auditing the prudence of the capital costs to be reflected in rates. Given the time implications of both goals, the Companies’ goal of implementing rates as soon as possible will often conflict with the ratepayers’ goal of maintaining adequate audit time.

Repeatedly throughout this case the various customer groups have told the Commission that the time allotted for a true-up audit was not adequate to meet the ratepayer interests. In a recent pleading, these customer groups informed the Commission that a minimum of two months was needed for the parties to audit the operational capabilities of the various capital projects. As such, these customer groups recommended that the Commission suspend the Companies’ tariffs for two months.<sup>4</sup>

In contrast to the two month delay suggested by the consumers, Staff attempted to craft another alternative which would allow the Companies to collect rates earlier while still preserving the necessary ratepayer protections. Specifically, Staff proposed that the Commission only move the tariff effective date by one month, but allow for a subsequent audit of the prudence of the construction costs by allowing the Company to collect certain amounts on an interim, subject to refund, basis.<sup>5</sup> Ultimately, the Commission agreed with the Staff and imposed these conditions.

3. As the Commission is aware by now, the Companies have summarily rejected both proposals. The Companies claim that it is critical that rates be implemented as soon as possible. As such, the Companies adamantly oppose any additional delay to the tariff effective date in this case. On the other hand, the Companies reject the

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<sup>4</sup> *Response to Status Report and Motion to Extend Period to Demonstrate Compliance with Certain In-Service Criteria*, filed March 11, 2009, at pages 8-9.

<sup>5</sup> *Staff’s Response to Status Report and Motion to Extend Period to Demonstrate Compliance with Certain In-Service Criteria*, filed March 6, 2009.

implementation of any consumer safeguards that will allow for the early tariff effective date. The Companies' conduct epitomizes the notion of having your cake and eating it too! First, the Companies want to repeatedly reschedule the date of any true-up hearing in order to account for operational problems caused by the Companies. Second, the Companies want to implement rates as soon as possible. Third, by implementing rates as soon as possible, the Companies seek to limit the parties' opportunity to audit the construction costs. Fourth, the Companies want to ensure that they are able to keep any rates resulting from the abbreviated schedule imposed by them.

4. The reasonableness of the Staff's position and the unreasonableness of the Companies' position are best reflected by agreements reached in a previous case. In 1983, Kansas City Power & Light filed a rate increase. Faced with rapidly increasing interest and fuel costs, the parties sought to undertake a true-up of certain costs in the case. Because of other resource demands, Staff was unable to conduct a true-up audit.

As the Commission noted:

Staff's failure to recommend a true-up is based on its lack of resources to conduct a true-up prior to the anticipated date for an order, while maintaining its auditing obligation in the current press of other similar major rate cases. Absent a true-up, the Commission is faced with the choices of using a completely historical test year, or utilizing an interim procedure.

Use of the historical period for setting future rates will most likely result in rates that will not recover the Company's true cost of service. Under those conditions the Company may be deprived of an opportunity to earn a fair and reasonable return to which it is entitled. Any under collection cannot be compensated for in the future. As such, the Company would not be able to earn rates based on its current costs.

If a level of interim rates is authorized, with proper safeguard for verification and return of any over collection, the ratepayer is not exposed to a similar hazard. The provision for refund, at a proper interest rate, offers adequate protection against the use of the ratepayer's money without compensation. Since the interim rate with a subsequent true-up proceeding balances the interest of

both ratepayer and shareholder it will be employed to set a proper level of rates in this case.

Pending the conduct of a true-up, the Company shall be allowed to file interim tariffs reflecting the revenue effect of those issues that cannot presently be resolved because of the test year issue. The interim rates authorized shall be collected subject to refund, with interest, as hereinafter set out, to the extent that those rates may exceed those authorized on a permanent basis. In addition to any amount to be refunded the Company shall pay simple interest thereon at the authorized rate of return on investment set in this matter for the Company by the Commission.<sup>6</sup>

5. As can be seen, the present case is not the first time that the Commission has been presented with a need for a true-up audit without the necessary time or resources to conduct such an audit. In the previous case, the Commission balanced the competing interests of the Company and the ratepayers by allowing the Company to collect rates on an interim, subject to refund, basis until such time as the true-up audit could be completed. Noticeably, in that case, KCPL did not object to the Commission allowing certain rates on an interim basis.<sup>7</sup> The current case suggests similarities and differences from that 1983 case. Like that case, the necessary time and resources do not exist for the parties to conduct a proper true-up hearing within the schedule suggested by the

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<sup>6</sup> *Kansas City Power & Light Company*, Case No. ER-83-49, Report and Order, issued July 8, 1983, 26 Mo.P.S.C. (N.S.) 104, 109-110.

<sup>7</sup> *Kansas City Power & Light Company*, Case No. ER-83-49, Order on Rehearing, issued August 30, 1983, 26 Mo.P.S.C. (N.S.) 233. KCPL did not seek rehearing on the Commission's order that certain amounts be collected on an interim, subject to refund, basis. Ultimately, because of the delay in the true-up audit and the scope of the true-up audit, the Commission retreated from its use of the interim, subject to refund, rates. Realizing that the audit would not be completed as soon as expected, the Commission merely refused to allow KCPL to recover any of the costs in rates. Clearly, where confronted with this situation in the past, the Commission has erred on the side of consumer protections even where it may subject the Company to an extended amount of regulatory lag. "Any immediate resolution of the issues resulting in interim rates in this matter, other than for forecasted fuel expense, **must result in an exclusion of those amounts from the Company's authorized rates.** The Commission's Report and Order, at pages 7 and 8, clearly reflects that the inclusion of any amount in interim rates is contingent on the availability of proper safeguards for verification by true-up audit and return of any potential overcollection. However, Staff and Company have advised the Commission that the true-up audit cannot be performed short of a full-scale reaudit of the Company. Thus, in effect, there is no mechanism to verify the accuracy of the Company's or Staff's proposed out-of-test period adjustments and the interim rates previously authorized in connection with those adjustments must be disallowed." *Id.* at pages 235-236.

Companies. Unlike the previous case, however, KCPL does not appear willing to accommodate the Commission's reasonable compromise. Instead, KCPL seems determined to test the Commission's resolve on this matter by claiming certain legalities prevent the Commission's ruling.

As a result of their adamant refusal to accommodate the competing interests of the ratepayers, the Companies have placed the Commission in the unenviable choice between total reliance on a historical test year or implementation of unaudited true-up rates. Under the first option, the Company would be precluded from reflecting its capital projects in rates. Under the second option, the consumers would be precluded from conducting a proper audit.

Several factors should dictate that the Commission resort to reliance on an historical test year. First, the current situation is entirely the result of the Companies' failure to complete the Iatan I capital project in a timely fashion. Second, the Companies have failed to provide any other suggestion by which the necessary consumer safeguards can be accommodated. Third, if the Commission relents in this case, it is apparent that it will face similar utility-imposed time constraints in all future true-up cases. For all these reasons, the Commission should err on the side of complete reliance on an historical test year. By giving the Companies an option of relenting to interim rates or the cancellation of the true-up audit, it is likely that the Companies would quickly see the error of their ways and suggest some resolution that accommodates the needs of their ratepayers.

In order to assist the Commission in its determination, the Industrial Intervenors also suggest that the Commission schedule an oral argument so that the Commission can ask questions and consider the implications of its resolution of this matter.

WHEREFORE, the Industrial Intervenors respectfully request that the Commission deny the Companies' Motion for Rehearing.

Respectfully submitted,



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ATTORNEYS FOR THE INDUSTRIAL  
INTERVENORS.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



David L. Woodsmall

Dated: March 24, 2009