

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

In the Matter of Heritage Farms, Inc.’s,)	
Application for Variance and/or Waiver of)	
Commission Rule to Require Kansas City)	
Power and Light, or Any Other Utility, to)	Case No. EE-2008-0151
Provide Service to Real Property Located)	
At 8360 N.W. Fox Road in Platte County,)	
Missouri)	

**RESPONSE OF KANSAS CITY POWER & LIGHT COMPANY
TO ORDER ESTABLISHING DEADLINE FOR RESPONSES**

Pursuant to 4 CSR 240.2-080 and the Order Establishing Deadline for Responses issued on January 22, 2008 by the Missouri Public Service Commission (“Commission”) in the above-captioned proceeding, Kansas City Power & Light Co. (“KCPL”) hereby offers the following response:

BACKGROUND

1. On November 26, 2007, Heritage Farms, Inc. (“Heritage Farms”) filed an application (“Application”) requesting “a finding by the Commission waiving the requirement that [KCPL] provide electrical service to [8360 NW Fox Road, Parkville, Missouri (the “Subject Property”)] as dictated by 4 CSR 240-13.035(3).” *Application*, at ¶ 5(A).

2. Also on November 26, 2007, the Commission issued an Order Directing Filing, which *inter alia*, directed KCPL to respond to the Application. KCPL did so on December 18, 2007. KCPL explained (i) that the Subject Property was within its service territory; (ii) that Mr. Cowan, the owner of the Subject Property, requested electric service from KCPL; and (iii) that KCPL intended to provide such service, but needed an easement across the property of Heritage Farms to do so. KCPL further explained that it opposed the Application as unsupported and against public policy.

3. On January 17, 2008, Staff submitted its Report and Recommendation concerning the Application. In pertinent part, the Report and Recommendation listed several “undisputed facts.” *See*, ¶¶ 6-9. Staff’s Report and Recommendation also concluded that a determination on the pleadings was not yet appropriate because two material issues of fact remained: (i) whether Heritage Farms would suffer harm from KCPL’s provision of electric service to Mr. Cowan and (ii) whether KCPL was currently providing electric service to the Subject Property owned by Mr. Cowan. *See*, ¶¶ 22 and 23.

4. On January 22, 2008, the Commission issued an Order Establishing Deadline for Responses. The Commission directed any party wishing to respond to Staff’s Report and Recommendation to file a pleading with the Commission no later than February 11, 2008. Moreover, the Commission directed any responding party to address the facts Staff described as undisputed, as well as the facts Staff described as being material and in dispute.

KCPL’S RESPONSE

5. KCPL renews its position that the Application is unsupported and that it would be bad public policy to permit a third party to prevent a customer from receiving electric service. KCPL also notes that events have transpired subsequent to Staff’s Report and Recommendation that render the Application moot.

6. KCPL agrees with Staff that the facts listed in paragraphs 6 through 9 of its Report and Recommendation are undisputed.

7. KCPL does not agree, however, that the facts Staff describes as material and in dispute warrant an evidentiary hearing. Several significant events have transpired since Staff submitted its Report and Recommendation. As KCPL pointed out in its December 18 response, on November 26, 2007, the Platte County Circuit Court issued an order, granting KCPL the

easement it needs to serve the Subject Property. The sole remaining issue was how much KCPL would be required to compensate Heritage Farms for that easement. The Court appointed three commissioners to assess that value, and on December 18, 2007, they determined that KCPL would be required to pay Heritage Farms \$5,000 for the easement. On January 3, 2008, KCPL paid that amount, and *on January 14, 2008, KCPL began providing electric service to Mr. Cowan at the Subject Property.* Significantly, KCPL was able to serve Mr. Cowan using the same underground conductors that have traversed Heritage Farms for many years. KCPL simply energized existing underground facilities.

8. Because KCPL is now providing electric service to the Subject Property, the sole factual issue is whether KCPL's provision of such service harms Heritage Farms. There is no reasonable argument that Heritage Farms is harmed by energizing underground facilities that have been in place for many years and which were previously used to provide electric service to the Subject Property. Heritage Farms did not allege any harm when the facilities were installed, and Heritage Farms did not allege any harm when the facilities were used to serve the previous owner of the Subject Property. Neither the facilities, nor the nature of the electric service has changed. The only change in circumstance is that a different person owns the Subject Property.

9. Ultimately, Heritage Farms is contesting the location of certain distribution facilities of KCPL, alleging that providing electric service to Mr. Cowan will result in some unspecified loss of land value. *Application*, at ¶ 4(I). During the condemnation proceeding, the Platte County Circuit Court considered KCPL's need for the easement and the location of KCPL's facilities. After a hearing and legal briefs, the Court granted KCPL the easement it requested. Any harm to Heritage Farms was considered by the commissioners appointed by the

Court to assess a value for the easement. The citing of distribution facilities is better addressed at the county or municipality level than at the Commission.

10. Finally, as a practical matter, Heritage Farms' request is moot. KCPL has an easement to traverse Heritage Farms' property to provide electric service to Mr. Cowan at the Subject Property, and KCPL is using that easement to serve Mr. Cowan. At this late stage, for Heritage Farms to receive the relief it seeks, the Commission would have to direct KCPL to disconnect Mr. Cowan's electric service and prohibit KCPL from utilizing an easement granted to it by the Platte County Circuit Court. Nothing in the Application justifies such an outcome.

11. KCPL continues to oppose the Application of Heritage Farms as unsupported. Moreover, KCPL continues to maintain that empowering one customer to unreasonably interfere with another customer's receipt of electric service would constitute bad public policy. Based upon the foregoing, it would be appropriate for the Commission to deny the Application based on the pleadings.

Respectfully submitted,

/s/ Curtis D. Blanc

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Dated: February 11, 2008

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been hand delivered, e-mailed, or mailed, postage prepaid, this 11th day of February 2008 to counsel of record.

/s/ *Curtis D. Blanc*

Curtis D. Blanc