

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of a Proposed Experimental)	
Regulatory Plan of)	Case No. EO-2005-0329
Kansas City Power and Light Company)	

SIERRA CLUB AND CONCERNED CITIZENS OF PLATTE COUNTY’S
RESPONSE TO THE STAFF SUGGESTIONS
IN SUPPORT OF THE STIPULATION

Sierra Club (“SC”) and Concerned Citizens of Platte County (“CCPC”) are extremely dismayed by the Suggestions filed by the Staff of the Public Service Commission (“Staff”) in support of the Stipulation. SC and CCPC argue that the staff erred in supporting the stipulation for the following reasons.

1. On page one of the staff suggestions the staff states: “The Staff believes that approval of the Agreement and a faithful implementation of its terms will result in the provision of safe and adequate electric service at just and reasonable rates by KCPL.” This belief is erroneous because the proposed stipulation amounts to a request by KCPL to rubberstamp its proposed plans to incur a need for substantial rate increases without the establishment of a proper public record. The majority of the signatories to the stipulation are not regulated ratepayers. Those who are customers are specifically those customers who have below-market special contracts.

2. It is egregious for the staff to state on page 7 of the Suggestions that “in the long months engaged in Case No. EO-2004-0577 and Case No. EW-2005-0596, no participant credibly demonstrated that baseload capacity will not be needed by approximately 2010 to serve the retail customers of investor owned utilities in Western

Missouri. Furthermore, it was not shown that coal-fired generation is not the most economic available alternative to meet this need.” The staff and KCPL failed to inform the ratepayers of KCPL that the workshops were the proper proceedings in which to demonstrate this. Furthermore, there are no standards setting forth to what extent a “credible” demonstration would have been. There are no public records of the proceedings. There is no possible way to determine which viewpoint is accurate. Not only is it inaccurate to claim that no showing was made that coal-fired generation is not the most economic alternative available to meet the purported need, but KCPL’s own presentation materials contradict this claim. SC and CCPC will provide evidence at the evidentiary hearing that the need for Iatan 2 in 2010 is non-existent, and that the construction of Iatan 2 is an inflexible, economically risky proposition for both KCPL and its customers.

3. The workshops were established as an “investigatory docket,” with the stated purpose to “discuss, and hopefully gain consensus on, constructive regulatory responses to emerging issues that will affect the supply, delivery and pricing of the electric service provided by KCPL.” At no time were the citizens of Kansas City and Platte County informed that the workshops were the proper forum for them to prove that a new plant was not necessary. Indeed, the workshops were “investigatory,” held two hours away from the ratepayers, had no requirements that testimony be given under oath, and had no judge presiding. Furthermore, workshops have not been used before to justify the building of a new plant before it was fully operational. In addition, the staff should not have submitted to a process in which no meetings were held in Kansas City.

4. Therefore, the staff's statement that no one has yet credibly demonstrated that baseload capacity will not be needed does not justify the staff's support of the stipulation. No one has had the opportunity. Even though there finally will be an evidentiary hearing on KCPL's plan, there has not been sufficient time for SC and CCPC to adequately prepare their case.

5. The staff incorrectly assumes a second plant is necessary because the staff failed to consider adequately alternatives to the building of Iatan 2. For six months Kansas City Power and Light ("KCPL") informed the staff that it was necessary to build Iatan 2 to meet demands for energy. However, the new plant is not necessary for these reasons: 1) There is not the demand for increased capacity among KCPL customers; 2) If KCPL were to introduce strong energy efficiency measures, any future growth could be offset by the efficiencies achieved. 3) If there is actually a need for increased capacity in the future after efficiency measures have been taken, this need could be met through wind power generation which is less costly and much less harmful to the environment.

6. The staff failed to consider the interests of the public in supporting the stipulation. It is apparent that several large corporate users of KCPL made agreements with KCPL before signing the stipulation. It was commonly understood during the negotiations on the stipulation that the corporations would sign it if KCPL made a special deal with each one allowing that corporation to avoid some amount of anticipated rate increase. However, regular customers were not privy to such deals and therefore will be paying an unjust burden of the rate increases. It is manifestly unfair of the staff to sign onto an agreement that allows large corporations to negotiate their way out of rate

increases that will affect the entire KCPL customer base especially when such customers are signatories to the proposed stipulation, and there is an attempt to make it appear that they are among a peer group of customers who have equal interest in the plant.

7. The staff should not support the stipulation because the staff failed to investigate other alternatives. Missouri statute provides that the staff “shall also update the commission and the commission’s administrative law judges periodically on developments and trends in public utility regulation, including updates comparing the use, nature and effect of various regulatory practices and procedures as employed by the commission and public utility commissions in other jurisdictions.” RSMo 386. The staff failed to adequately consider the fact that several other jurisdictions are rewarding utilities financially for meeting energy demand through efficiencies and renewable sources, and that there is no need for any utility in the present economic and environmental circumstances to build a new coal-fired power plant.

8. The staff failed to take into account the interests of the public when it declared on page 7 that, “The Staff, in making its determination regarding the need for additional baseload capacity for investor owned utilities in Missouri, has relied on the analysis performed by KCPL, Aquila, Inc. (Aquila) and The Empire District Company.” The parties who stand to make the most profits from the new plant obviously will declare the need for it. The staff ignored the written and spoken comments filed by members of Concerned Citizens for Platte County and Sierra Club concerning the need for efficiency measures, not a new plant.

9. The staff concedes the possible errors in its determination that a new plant is needed when it states on page 8 that, “Had Chapter 22 not been suspended, the Staff would have been in a much better position to determine KCPL’s need for additional baseload capacity and its choice of Iatan 2 to meet that need.” The staff should not made a decision until after KCPL has sought a rate increase after the completion of the plant.

10. The staff erred in supporting the stipulation by not withholding judgment until after all of the information is filed. On pages 8 and 9 of the stipulation, the staff wrote, “The suspension period agreed to in Case No. EO-99-365 for the Commission’s Chapter 22 resource planning rules for each electrical corporation has ended, or is about to end. As a consequence, each electrical corporation is required by Chapter 22 to file consistent with the requirements of Chapter 22, commencing with (a) AmerenUE by December 5, 2005, followed by (b) KCPL by July 5, 2006...” The staff should not support the stipulation until after it has reviewed that report.

11. The staff has not sufficiently considered the available means to address the revenue erosion effect of efficiency programs and the resulting disincentives for successfully operating efficiency programs for KCPL. The staff’s discussion on page 26 is less than clear when the staff states that: “Signatory Parties reserve the right to establish a fixed amortization amount, in any KCPL rate case prior to June 1, 2011, to be amortized over a period greater or lesser than a ten (10) year period. The amounts accumulated in these regulatory asset accounts shall be allowed to earn a return not greater than KCPL’s AFUDC rate. The class allocation of the costs will be determined by the Commission when the amortizations are approved by the Commission in a rate

proceeding.” This is not a well-defined formula for creating incentives that will encourage a utility to pursue efficiency with sufficient vigor to capture existing opportunities to reduce load growth. It is necessary to provide financial incentives, or at least a firm system of revenue replacement for the megawatts saved for a real efficiency program to be successful over time. Until the revenue erosion problem is addressed through one of several possible approaches, the Company will have a strong economic incentive NOT to pursue the customers’ best economic interest with efficiency. If the Commission adopts the stipulation, it will be endorsing a structure that will reward KCPL for increasing customers’ bills in the coming years.

12. The staff incorrectly relies on the efficiency and related program spending on pages 26 and 27 of the stipulation in an effort, ostensibly, to approve of the amounts proposed to be spent by KCPL. The staff’s reliance is inadequate in that the preferred means would be percentage of total revenues within the jurisdiction. Furthermore, these amounts are irrelevant to the case at issue in the absence of any consideration of the potential cost/benefit ratio or comparable spending or growth rates.

13. The staff’s conclusion on page 29 that, “The Staff has agreed that it is prudent for KCPL to construct at the Iatan site a baseload coal-fired unit, with an in-service date of 2010, and the indicated environmental enhancements and transmission and distribution infrastructure,” is without substantial basis in law or fact. At the time the staff arrived at that conclusion, there had not been a contested case in which KCPL would have had to justify the need for a new plant. There had only been a series of company led workshops at which KCPL could introduce the propaganda it chose.

14. The staff should not support the stipulation because the staff is not clear what the commission is binding itself to upon approval. On page 30, the staff reminds the commission that it “must have in mind the question what has it bound itself to if it were to approve the Agreement.” The acceptance of the stipulation by the PSC in the absence of a properly formed public record on the need for Iatan 2 explicitly denies SC, CCPC and the citizens of Missouri the opportunity to raise specific issues in a timely fashion.

15. The staff erred in supporting the stipulation in that it is not prudent nor in the interest of the public because KCPL has signed a special contract with a large industrial customer, Praxair, and a letter of understanding with another large industrial customer, Ford Motor Company (see page 37 of the staff’s suggestions). SC and CCPC are deeply concerned that KCPL is using assets generated through the regulated ratemaking process over the history of the company to create excess capacity to generate revenue via off-system sales and special contracts, while seeking to secure a promise to accept higher rates resulting from the construction of a new generating plant. If the construction of Iatan 2 were actually in the interest of the Missouri jurisdiction regulated customer, KCPL would need no rate increase in order to construct the plant. If off-system sales were legitimately justified by the company’s current capital investments, Iatan 2 could be constructed without a rate increase, and used to serve the off-system customers. One legitimate strategy for KCPL is to completely eliminate off-system sales over the next five years, thereby eliminating the need for Iatan 2 in the time frame

discussed in the stipulation. Another legitimate strategy is for KCPL to proceed without any stipulation.

Furthermore, KCPL's existing plant mix was paid for by regulated customers, and Missouri regulation imposes an obligation on the PSC to ensure that these partially and fully amortized resources are used to the benefit of those customers, rather than allowing KCPL to skim off additional profits by selling cheaper power from these assets to unregulated customers and customers who enjoy special rates, while imposing the cost of new and more expensive capacity on the regulated customers.

The staff's reiteration of KCPL's statement that special contract customers' discounts will be ignored for ratemaking purposes raises the question of whether those customers have a legitimate role in advocating new, expensive capacity additions, because the special contract customers and the off-system customers who are signatories to the stipulation have an interest that is contrary to the interests of the public.

WHEREFORE, for the foregoing reasons, SC and CCPC urge the Commission to not adopt the suggestions of the staff and to not approve the stipulation.

/s/Kathleen G. Henry

Kathleen G. Henry (Mo. Bar No. 39504)

Bruce A. Morrison (Mo. Bar No. 38359)

Great Rivers Environmental Law Center

705 Olive Street, Ste. 614

St. Louis, MO 63101

(314) 231-4181

(314) 231-4184 (facsimile)

khenry@greatriverslaw.org

Attorneys for Sierra Club and

Concerned Citizens of Platte County

CERTIFICATE OF SERVICE

I hereby certify that a true and correct PDF version of the foregoing was sent by email on this 27th day of May, 2005, to the parties listed on the Service List for this case according to the Public Service Commission web site's service list.

/s/Kathleen G. Henry
Kathleen G. Henry