

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 MOTION FOR REHEARING**

Come now Sierra Club (“SC”) and Concerned Citizens of Platte County (“CCPC”) and file a motion for rehearing on the above-styled cause. In support of their motion, movants state the following:

1. The Commission issued its Report and Order (“Order”) on July 28, 2005, with an effective date of August 7, 2005.

2. This Motion for Rehearing is filed before the effective date of the Order.

3. The Order is unlawful, unjust and unreasonable because the Commission’s finding of fact and conclusion of law that the proposed regulatory plan is in the public interest is contrary to fact and law in that *the public is overwhelmingly against the building of Iatan 2*. The citizens who will be forced to pay the increased rates wrote to, spoke to and testified before the Commissioners on numerous occasions, informing them that they DO NOT WANT a new coal-fired power plant. KCPL ratepayers will be forced to pay higher electric bills as a result of the new plant and will be forced to pay for a plant that emits carbon dioxide, a major contributor to global warming; and those that live near the new plant will be forced to breathe in thousands of tons of toxic pollutants which cause asthma and other illnesses. The public wants clean energy that does not harm human health, cause global warming, and is cheaper than a new coal-fired power plant.

4. The Order is unlawful, unjust and unreasonable in that the Commission's finding of fact and conclusion of law that the regulatory plan is in the public interest is contrary to fact and law in that the plan will not result in rates to customers which are lower than the rates expected from energy efficiency measures. KCPL never looked at efficiency measures sufficient to meet actual or stated growth needs and presented no evidence to refute the SC and CCPC's expert witness testimony that implementation of energy efficiency measures would meet demand and result in lower rates to customers than would the building of a new coal-fired power plant.

5. The Order is unlawful, unjust and unreasonable in that the Commission's finding of fact and conclusion of law that the regulatory plan is in the public interest is contrary to fact and law in that fully one-half of the plant's toxic emissions will be from coal used to generate energy for companies other than KCPL. The ratepayers and neighbors will be forced to pay the resulting higher rates, breathe in the pollutants, pay the increased health care costs, and suffer the effects of a coal-fired power plant that is approximately twice as large as the one they supposedly need. The Commission is not acting in the public interest when it makes KCPL ratepayers bear the risks and burdens of a plant that is not built to benefit them.

6. The Order is unlawful, unjust and unreasonable in that the Commission has approved an 850 megawatt plant when KCPL's testimony shows that KCPL customers need 431 megawatts. The Commission has no authority to approve in the Stipulation and Agreement filed on March 28, 2005 ("Stipulation") a plant that will produce an additional 419 megawatts which will supposedly be sold to regulated and unregulated utilities. The

Commission has no jurisdiction over unregulated utilities and the regulated utilities did not make the case for the need for the plant in the workshops nor is there evidence of their need in the Stipulation.

7. The Order is unlawful, unjust and unreasonable in that the Commission has given its approval of a plant that will be used to deliver a large quantity of off-system sales. The large percentage of off-system sales is *prima facie* evidence that a new coal-fired power plant is not necessary, prudent, reasonable nor in the public interest.

8. The Order is unlawful, unjust and unreasonable in that the Commission lacked jurisdiction over KCPL's filing of the Stipulation and Agreement in that there is no statute or regulation authorizing the initiation of a case in this way. A contested case can be resolved but not initiated by a stipulation, and this Stipulation was not entered into pursuant to a contested case. 4 CSR 240-2.060.

9. The Order is unlawful, unjust and unreasonable in that the Commission lacked jurisdiction over KCPL's filing of the Stipulation because KCPL stated no basis for relief as required by 4 CSR 240-2.080(3).

10. The Order is unlawful, unjust and unreasonable in that the Commission lacked jurisdiction over KCPL's request to the Commission for approval of the Stipulation in that in accepting the Stipulation the PSC was not acting on its own motion, nor was the case merely investigatory, nor a matter of property under § 393.140, RSMo, nor a matter of KCPL's obligations (rather than the PSC's jurisdiction) under § 393.130.1 RSMo (*see* Order, p. 32).

11. The Order is unlawful, unjust and unreasonable in that the Commission has no jurisdiction to approve an “Experimental Regulatory Plan.” There is no definition of such a plan, no legal requirements pertinent to such a plan, and no statute or regulation giving the Commission jurisdiction over one.

12. The Order is unlawful, unjust and unreasonable in that the Stipulation was entered into pursuant to a series of uncontested “Workshops.” There are no regulations defining workshops, no statutes pertaining to workshops, and no legal requirements defining them. A utility can present any evidence it wants to at such workshops, take as many days and months as it wants at these workshops, and indoctrinate the audience with its Powerpoint exhibits. Then the utility can offer “special contracts” to those large corporations who have sincere doubts as to the legality of the process. The “evidence” is not presented under oath at these workshops nor is there any opportunity to cross-examine the witnesses. It would be cost-prohibitive for citizens to hire experts to spend as many days and months at these workshops as the utilities can spend at them. Rate increases have never before been set in place by “workshops” and it is illegal and not in the public interest to allow for them to be so set now.

13. The Order is unlawful, unjust and unreasonable in that the Stipulation was the result of a workshop process that could not be reviewed by the Commission in the manner required by § 536.080 because no record was created that is capable of such review. For example, the Order asserts that SC and CCPC witness Ned Ford was not credible based on evidence that was not before the Commission (Order pp. 25-26). Filing of a pleading or application would not remedy this defect. The Order and Stipulation are

not supported by substantial and competent evidence. 4 CSR 240-2.130, §§ 536.070, 536.080 RSMo.

14. The Order is unlawful, unjust and unreasonable in that the PSC accepted the condition of the Stipulation that it approve the Stipulation as a whole or not at all. This violated the PSC's duty, and abrogated its right, not to enter into an arrangement that it could not modify in any part or revoke entirely. *State ex rel. Fischer v. PSC*, 645 S.W.2d 39 (Mo.App. 1982).

15. The Order is unlawful, unjust and unreasonable in that it approves a Stipulation which calls for the creation of a public governmental body (the Customer Program Advisory Group, or "CPAG") that will meet in meetings closed to the public in violation of Chapter 610, RSMo, the Missouri Sunshine Law. Since the Stipulation provides that if one provision fails, the entire Stipulation fails, because this provision is illegal the entire Stipulation fails.

16. The Order is unlawful, unjust and unreasonable in that the Commission lacks jurisdiction to approve a new coal-fired power plant when the utility company has not received a certificate of convenience and necessity as required by § 393.170 RSMo. The 32-year-old certificate KCPL received forfeited for nonuser after two years elapsed without the construction of a second plant.

17. The Order is unlawful, unjust and unreasonable in that the Stipulation is not a contract as found by the Commission. An experimental regulatory plan has never yet been determined a contract. The Commission could not be bound by Stipulation, since the Commission's powers cannot be contracted away. PSC staff is a signatory party.

Staff has no power beyond what the Commission has. § 386.240, RSMo 2000. Neither the Staff nor the Commission could enter into the Stipulation if it were to be regarded as a contract.

18. The Order is unlawful, unjust and unreasonable in that the Stipulation is not a contract between private parties but a “regulatory plan” designed to be approved by the PSC and KCC before taking effect. As such, it is an illegal delegation of the police power, depriving the PSC of needed flexibility to modify it over time in the face of changing conditions. If it were a contract it could not bind the PSC, but it purports to do so with its all-or-nothing approval requirement. An *experimental regulatory* plan furthermore cannot legally authorize the construction of a power plant.

19. The Order is unlawful, unjust and unreasonable in that the Stipulation illegally purports to bind the PSC to long-term commitments, *e.g.*, to allow rate recovery for pension plans, a rate moratorium, an exclusive procedure for modification of the Resource Plan, and Construction Accounting for the 2009 Iatan 2 rate case.

20. The Order is unlawful, unjust and unreasonable in that the Stipulation *prohibits* the Signatory Parties, *including the PSC staff and OPC staff*, from raising specific objections in future ratemaking cases, thus preventing or prohibiting consideration of all relevant factors. (Stipulation pp. 7-8, 29-44, Order p. 37.) This violates the law and it not in the public interest, as the staff of the PSC and OPC are both statutorily charged with representing the public, not corporations.

21. The Order of the Commission is unlawful, unjust and unreasonable in that the Stipulation that the Commission approved on July 28, 2005, is not the final version of

the Stipulation. The Stipulation may still be modified based on demands made by the Kansas Corporation Commission and on other factors as well.

22. The Order of the Commission is unlawful, unjust and unreasonable in that the Stipulation is not in the public interest. It is cheaper economically and better for human health and the environment for KCPL to build wind plants and/or to use Combined Heat and Power technologies rather than to build a new coal-fired power plant. KCPL presented no credible evidence that its actual or stated growth rate could not be met by wind plants and/or Combined Heat and Power technologies, both of which would have less environmental, health and financial costs than would a new coal-fired power plant.

23. The Order of the Commission is unlawful, unjust and unreasonable in that a new coal-fired power plant is not necessary, reasonable, prudent nor in the public interest. There are several cheaper alternatives available that are less risky for the consumer, less harmful to human health and better for the environment. These alternatives are wind generation and greater efficiency measures. The new plant is risky for consumers for several reasons: the price of coal has greatly increased; the price of natural gas has greatly increased; the consumers bear the burden of increased health care costs; the world bears the burden of global warming and new regulatory fees are expected which would increase the costs associated with the new plant. In addition, usage by Missouri customers has decreased in the past five years and KCPL's projected growth rate is not supported by substantial and competent evidence. All of these risks are not present if the

Commission urges KCPL to utilize wind and efficiency measures and rewards KCPL financially for so doing.

24. The Order of the Commission is unlawful, unjust and unreasonable in that KCPL, PSC staff, OPC and the Commission never looked at what efficiency measures would be necessary in order to defer the construction of the new plant for one year. Even though KCPL was not required to do so in its 2003 IRP, the requirements of Chapter 22 of the Missouri Code of State Regulations will take effect again in 2006 and KCPL will be required to examine these efficiency measures in its 2006 IRP. It would be prudent for the Commission to wait until that has been done before approving an unnecessary and costly plant. Furthermore, there was nothing prohibiting the staff or OPC from demanding that KCPL look at those efficiency measures during the workshop proceedings.

25. The Order of the Commission is unlawful, unjust and unreasonable in that the AFUDC rate violates the applicable statutes and regulations. The Order states that KCPL will be authorized to reduce its AFUDC rate in the equity portion of the AFUDC rate by 250 basis points applicable to Iatan 2. The Stipulation attached to the Order states that KCPL agrees to a 125 basis point reduction in the AFUDC rate applicable to Iatan 2 but the Order explains that during the hearing KCPL agreed to substitute the AFUDC Rate Reduction from a similar Kansas Stipulation and Agreement. The fact that KCPL shall use the basis point reduction from the effective date of the Order, and not from the date after Iatan 2 is fully operational, violates Missouri statute and regulation and is not in the public interest. Furthermore, the fact that the PSC staff required KCPL to double the



AFUDC rate at the last minute indicates that there is a great deal of risk involved with the project and the Stipulation is not in the public interest.

26. The Order of the Commission is unlawful, unjust and unreasonable in that KCPL failed to show by substantial and competent evidence that the AFUDC formula does not violate § 393.135, RSMo and that it is prudent and in the public interest.

27. The Order of the Commission is unlawful, unjust and unreasonable in that it is unlawful for the Commission to allow an increase in KCPL revenue requirements based on an amortization expense that is unsupported or unrelated to the amortization of any cost, asset or liability. The additional amortization expenses will cause present ratepayers to pay higher rates and future ratepayers to pay lower rates, causing an intergenerational subsidy resulting in undue discrimination. Furthermore, the modification process of the amortizations unlawfully places the non-KCPL signatory parties in the position of being involved in the management of KCPL in violation of applicable law.

WHEREFORE, for the foregoing reasons, SC and CCPC respectfully request the Commission to grant rehearing of the above-styled cause.

/s/Kathleen G. Henry

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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing were sent by email on this 5th day of August, 2005, to the parties listed currently 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