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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 18th
day of April, 1995.

In the matter of a special contract filed by Kansas City)
Power & Light Company.) Case No. EO-95-181
)

ORDER APPROVING INTERIM RELIEF

This case was established to consider a special contract tariff sheet submitted by Kansas City Power & Light Company (KCPL) and a motion for a protective order to protect the claimed confidential nature of the information concerning the rates and customer involved in the contract. On April 4, 1995, KCPL filed a motion for interim rate relief with regard to the proposed tariff sheet. KCPL states that settlement of the issues involving the permanent tariff sheet has not been accomplished and a hearing will be necessary. In its motion KCPL requests the Commission approve a tariff sheet on an interim basis in the form attached to its motion, with the condition that if a permanent tariff sheet is not approved, the customer will pay any additional amounts which would have been due under current rates.

On April 10, 1995, Commission Staff and Trigen-Kansas City Energy Corporation (Trigen) filed responses to KCPL's motion. In its response Staff states that it has no objection to the granting of the interim relief under the condition that no presumption is made which will affect consideration of the permanent tariff sheet.

Trigen opposes the approving of a tariff sheet on an interim basis. Trigen argues, first, that KCPL's request for interim relief is not in the proper form. Trigen refers the Commission to a prior decision from 1980 where the Commission required a request for interim relief to be filed in a separate filing

and placed in a separate docket. **Re: Kansas City Power & Light Company,** 24 Mo. P.S.C. (N.S.) 50, 52 (1980). Trigen then argues that the request for interim relief does not meet the Commission standard that there must be a showing that there is a threat to the company's financial integrity or ability to provide adequate service. **State ex rel. Utility Consumers Council of Missouri v. P.S.C.,** 525 S.W.2d 41, 48 (1979). Trigen contends no emergency situation exists in this case and so no interim relief is warranted. In addition, Trigen argues that there is no way to ensure recovery of the amount owed by the customer if the permanent tariff sheet is not approved.

The Commission has considered the request by KCPL and the positions of Staff and Trigen. The Commission is well aware of its historical position regarding requests for interim relief and recognizes that this relief should only be granted in limited circumstances. This case, though involves a fact situation different from those cited by Trigen and upon which the courts have ruled. Requests for approval of interim tariff sheets normally involve requests for an increase in rates pending a decision on a request for a permanent general rate increase. In those instances the Commission has held, and the courts have recognized, that an interim rate increase should only be granted where an emergency situation exists which would affect a utility's financial integrity or ability to provide adequate service. **State ex rel. Laclede Gas Company v. P.S.C.,** 535 S.W.2d 561, 568 (Mo. App. 1976). The courts, though, have said that the Commission has broad discretion to approve tariffs on an interim basis. 535 S.W.2d at 567.

The request for approval of an interim tariff in this case involves a special contract rate with one customer. There is no emergency situation for KCPL, nor will the denial of the request affect KCPL's ability to provide adequate service. The Commission, though, believes that this situation may warrant a different standard for approval of interim relief. KCPL has, in

effect, guaranteed that no effect on other ratepayers will occur if the permanent tariff sheet is not ultimately approved. If the interim approval is not granted, the customer will pay current rates and would not be able to benefit from the special contract rate for several more months. What effect this will have on the customer is speculative, but with KCPL's guarantee the Commission finds that it is not reasonable to place the burden of regulatory lag, in this instance, on the customer.

Although the request may not meet the requirements established in 1980 for interim rate increase requests, the Commission finds this failure is not fatal. In a proper case, the request for interim approval should be filed at the time the request for permanent approval is filed. In this instance, though, denying this request and requiring KCPL to file an interim tariff sheet prior to the Commission taking any action would put form over substance.

The Commission therefore finds that KCPL shall be authorized to file an interim tariff sheet for Commission approval in the form attached to its motion. This interim tariff sheet will be approved on an interim basis subject to KCPL's guarantee of recovery of any deficient amounts if the permanent tariff sheet is not approved. By approving the interim tariff sheet the Commission is not rendering a decision on the reasonableness of the permanent tariff sheet or any of the issues the Commission has directed the parties to address.

IT IS THEREFORE ORDERED:

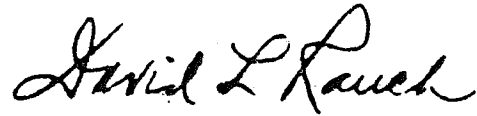
1. That Kansas City Power & Light Company's motion for interim rate relief is hereby granted.
2. That Kansas City Power & Light Company shall file a tariff sheet in the form attached to its Motion For Interim Relief for service on and after April 21, 1995.

3. That the proposed tariff sheet submitted on December 7, 1994, and suspended until May 6, 1995, is hereby suspended an additional six (6) months to November 6, 1995.

4. That the parties shall file a proposed procedural schedule in this case on or before April 21, 1995.

5. That this order shall become effective on the date hereof.

BY THE COMMISSION

A handwritten signature in black ink, reading "David L. Rauch". The signature is written in a cursive style with a large, stylized 'D' and 'R'.

**David L. Rauch
Executive Secretary**

(S E A L)

Perkins, Kincheloe and Crumpton,
CC., concur.
Mueller, Chm., dissents.
McClure, C., dissents, with opinion.