

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

Kansas City Power & Light)	
Company's Request for Authority to)	File No. ER-2016-0285
Implement a General Rate Increase for)	
Electric Service)	

APPLICATION FOR REHEARING/RECONSIDERATION

COMES NOW the United States Department of Energy ("U.S. DOE") and Federal Executive Agencies ("FEA") and pursuant to Missouri Statute Section 386.500 and 4 CSR 240-2.160 of the Missouri Code of Regulations, files their Application for Rehearing of the Missouri Public Service Commission's ("PSC" or "Commission") Report and Order issued May 3, 2017 in the above-referenced docket. In support of its Application of Rehearing, DOE/FEA state as follows:

I. Legal Standard

When reviewing an order issued by the Commission: "[F]irst, the reviewing court must determine whether the [Commission]'s order is lawful; and second, the court must determine whether the order is reasonable." Earth Island Inst. v. Union Elec. Co., 456 S.W.3d 27, 32 (Mo. 2015) (citing Office of Pub. Counsel v. Missouri Pub. Serv. Comm'n, 409 S.W.3d 371, 375 (Mo. banc 2013)). The appellant bears the burden of proving that the order is unlawful or unreasonable. Office of Pub. Counsel, 409 S.W.3d at 375.

In an appeal, lawfulness of an order of the Public Service Commission is determined by whether statutory authority for its issuance exists, and all legal issues are reviewed de novo. In re State ex rel. Praxair, Inc. (MO App. W.D. 2010) 2010 WL 3218887. "Reasonableness" depends upon whether (i) the order is supported by substantial and competent evidence on the

whole record, (ii) the decision is arbitrary, capricious or unreasonable, or (iii) the Commission abused its discretion. See *id.*

Substantial evidence is “competent evidence which, if true, has a probative force on the issues.” State ex rel. Midwest Gas Users' Ass'n v. Pub. Serv. Comm'n, 976 S.W.2d 470, 476 (Mo.App.W.D.1998). An Appellate court will reverse the Commission's order “only where it is clearly contrary to the overwhelming weight of the evidence.” Deaconess Manor Ass'n v. Pub. Serv. Comm'n of State of Mo., 994 S.W.2d 602, 611 (Mo. Ct. App. 1999) (citing *Friendship Village*, 907 S.W.2d at 345 (Mo. App. W.D. 1995)).

DOE/FEA contests the legality of the Commission’s Order with respect to its Findings of Fact. In State ex rel. GS Technologies Operating Co. v. PSC, 116 S.W.3d 680, 691-692 (Mo. App. W.D. 2003), the Court of Appeals described the requirements for adequate findings of fact when it stated:

In particular, the findings of fact must be sufficiently specific to perform the following functions: [F]indings of fact must constitute a factual resolution of the matters in contest before the commission; must advise the parties and the circuit court of the factual basis upon which the commission reached its conclusion and order; must provide a basis for the circuit court to perform its limited function in reviewing administrative agency decisions; [and] must show how the controlling issues have been decided[.]

State ex rel. GS Techs. Operating Co. v. Pub. Serv. Comm'n of State of Mo., 116 S.W.3d 680, 692 (Mo. Ct. App. 2003), as modified on denial of reh'g (Oct. 28, 2003) (citing St. Louis County v. State Tax Comm'n, 515 S.W.2d 446, 448 (Mo.1974)). When the agency's order indicates that the agency completely failed “to consider an important aspect or factor of the issue before it,” this court may find that the agency acted arbitrarily and capriciously. State ex rel. GS Techs. Operating Co at 692 (citing *Barry Serv. Agency Co. v. Manning*, 891 S.W.2d 882, 892 (Mo.App.1995)).

DOE/FEA asserts that certain Findings of Fact included in the Commission's May 3rd 2017 Report and Order, as discussed below, are contrary to the overwhelming weight of the evidence and its Report and Order, therefore, is arbitrary, capricious and unreasonable with respect to the issue of class cost of service.

II. Issues Upon Which Rehearing Should be Granted

DOE/FEA respectfully recommend that the Commission approve DOE/FEA's request for rehearing/reconsideration of its Report and Order on the issue of class cost of service. The Commission's Report and Order included the following erroneous Findings of Fact:

136. Because KCPL participates in the Southwest Power Pool's Day-Ahead, Real-Time, and Ancillary Services integrated markets ("SPP IM"), its generation is dispatched as part of the larger SPP fleet. SPP's dispatch is ordered according to security-constrained economic merit, **which results in price signals stacking in a manner consistent with those experienced by a utility with a generation fleet that includes the relative amounts of each base, intermediate, and peak generation units assumed in the *NARUC manual*.** (Emphasis added).

137. Among the submitted studies, Staff's BIP study also best accounts for KCPL's participation in the SPP integrated energy market through its recognition of the variability of fuel costs. (Footnote omitted).

These findings of fact are contrary to the overwhelming weight of the evidence and result in a decision that is unsupportable, arbitrary, capricious and unreasonable. Specifically, the Commission should grant DOE/FEA's motion to rehear the issue of which class cost of service study (CCOSS) is most reasonable given KCPL's participation in the Southwest Power Pool's Integrated marketplace (SPP-IM).

III. The Record Evidence is Overwhelming, Clear and Incontrovertible that Staff's Base Intermediate Peak CCOSS Method is Incompatible with Kansas City Power & Light's Participation in the SPP-IM.

In selecting the BIP CCOSS methodology, the Commission ignored the established fact that few, if any, other jurisdictions in the country still utilize the BIP methodology. The only example offered, a municipal utility in Austin Texas, was offered by DOE/FEA witness Dr. Schmidt to demonstrate that while BIP may make sense for an isolated utility, it makes no sense as a cost allocation methodology for a utility that participates in an interconnected wholesale electric market, such as the SPP-IM.¹ This is a crucial fact that the Commission must find in order for its decision to meet the minimal reasonableness standards set forth by the Missouri appellate courts.

In this very case, KCP&L's rate design witness states that BIP is no longer suitable to allocate production costs due to the Company's transition to the SPP-IM:

For a time, the Company believed the BIP method to be reasonable, but due to concerns with the transition of the SPP to an Integrated Marketplace (IM) with centralized dispatch, the Company decided the Average & Peak method was more appropriate. To utilize the BIP allocator one must assign the generating units into base, intermediate, and peak groups based on their use. Prior to the IM market, the Company provided its own generation to meet its load requirements. With the introduction of the IM market, we no longer use our generation to meet the Company's load requirements, but instead sell generation into the SPP market and buy our load requirements for [sic] the SPP market. It is the Company's belief that the IM market change impacts the suitability of the BIP method as the production allocation.²

BIP assumes that the utility is an isolated entity that generates and delivers its own power in response to load. In today's SPP-IM, SPP members like KCP&L do not directly generate to load. Rather, SPP determines, based upon prices, which generators are chosen in the "stack"

¹ See DOE Ex. 502 at 4:7-12.

² See KCP&L Ex. 137 at 7:12-22.

from an extensive portfolio of resources.³ That stack may or may not match the load characteristics of an individual utility within SPP, and thus, the manner in which KCP&L's plants run at different times of the day and during different seasons of the year actually determines its costs to deliver energy and capacity to its customers.⁴ The important point here is that as an LSE, KCP&L is a buyer in the SPP-IM and takes electricity from the SPP market *without regard to its generation source*.⁵

To find, as the Commission does in ¶ 136 of its Report and Order, that SPP's generation stack "results in price signals stacking in a manner consistent with those experienced by a utility with a generation fleet that includes the relative amounts of each base, intermediate, and peak generation units assumed in the *NARUC manual*" is contrary to the overwhelming weight of the evidence, arbitrary, capricious and unreasonable. The SPP generation stack may or may not resemble KCP&L's generation fleet, but as it stands, KCP&L purchases power from SPP regardless of its own generation fleet – the types of plants (base, intermediate and peak) have no bearing on the power purchased by KCPL from the SPP-IM to serve its load. Thus, to find that a generation fleet assumed in the NARUC Manual is consistent with a regional transmission organization's generation stack is contrary to the weight of the evidence, arbitrary, capricious and unreasonable. The Commission should reconsider or grant rehearing on this matter.

Second, ¶ 137 in the Commission's Report and Order should also be reconsidered because its premise – that the BIP method "best accounts for KCPL's participation in the SPP integrated energy market through its recognition of the

³ See DOE Ex. 502 at 4:7-12.

⁴ See *id* at 4:12-17.

⁵ See *id* at 4:17-18.

variability of fuel costs” – is against the overwhelming weight of the evidence, arbitrary, capricious and unreasonable. If KCP&L planned, built and operated generation resources to meet its own load curve, then it could be reasonable to attribute specific load characteristics to a given power plant or types of generation; but in the absence of such centralized planning and operation, such as in the SPP, this is not the case.⁶

Dr. Schmidt addressed this very point in his Rebuttal Testimony:

Prior to the advent of the SPP nodal market, utilities for the most part did build a mix of power plants for various reasons, including building more capital-intensive generation in order to minimize system fuel expense. This concept of trading off capital costs and fuel costs is referred to as “Capital Substitution.” In a vertically integrated, bundled market environment, a utility planned and operated its generation resources to match its load requirements.

The transition to a nodal market changed the manner by which generation planning and operation occurs. In the nodal market, the SPP establishes the amount of generation capacity that is required to meet estimates of peak demands. It is up to individual LSEs to determine what type of plant they are willing to build based upon their individual estimates of load levels including reserves, hours of use, estimated future fuel costs, environmental factors, water availability, capital costs, construction cost estimates, and other such information. KCP&L does not serve its load by only matching its own resources to that load; it also buys and sells power based on the ever-changing cost of that power in the SPP-IM. In other words, generation is utilized based upon power supply prices, not individual utility system load. Thus, an electric utility buying and selling power in the SPP-IM, such as KCP&L, no longer plans and builds its own power plants to match a particular segment of its own load duration curve. The cost to KCP&L of meeting its own power supply requirements through generation and transmission plant construction by the Company was decoupled with the operation of the SPP nodal market. This separation of identifying demand capacity needs, and selection of the type of generation plant to build, renders obsolete the production allocation methodologies such as the BIP methodology which matches loads and plant types.⁷

⁶ See DOE Ex. 502 at 5:3-6.

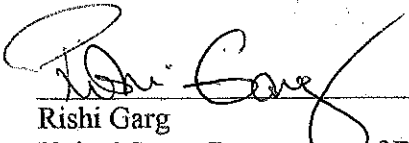
Dr. Schmidt's explanation, that capital substitution – the building of capital intensive projects to minimize fuel expense – made sense for an isolated utility but not for KCP&L, contradicts the notion that the recognition of the variability of fuels costs is even valuable. KCP&L purchases power from the SPP-IM with no regard to the type of generation plant that produces it. The power KCP&L purchases from the SPP-IM in any given hour of any given year could come from any combination of resources that make up SPP's generation stack in that hour. Whatever that combination may be, it is completely decoupled from, and irrespective of KCP&L's own generation fleet. Thus, the BIP method's "recognition of the variability of fuel costs" does not best account for KCP&L's participation in the SPP-IM. To the contrary, KCP&L's participation in the SPP-IM renders such recognition irrelevant.

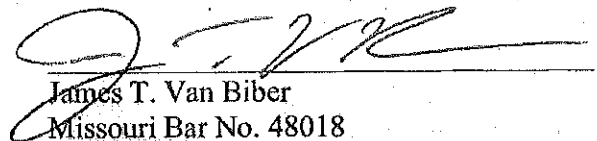
IV. CONCLUSION

Findings of Fact that Staff's BIP CCOSS method is consistent with KCP&L's participation in the SPP-IM contradict the overwhelming weight of the evidence and are arbitrary, capricious and unreasonable. The Commission should therefore grant DOE/FEA's request for reconsideration/rehearing on Findings of Facts ¶¶136-137 in the Commission's May 2nd 2017 Report and Order. The approved cost allocation methodology must be consistent with a company's operational reality and at the very least, should not be based upon misstatements and mischaracterizations of a method's consistency with the Company's operational reality. As indicated clearly on the record by DOE/FEA, MIEC and KCP&L, KCP&L's participation in SPP renders Staff's BIP method obsolete – it is unreasonable, arbitrary and capricious, therefore, for the Commission to find as fact, as it does, that the BIP method is most consistent with KCP&L's participation in the SPP-IM.

⁷ See DOE Ex. 502 at 5:13 – 6:5.

Respectfully Submitted,


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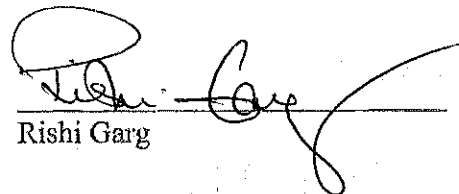

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 15th day of May 2017, the foregoing Initial Brief was:

- (1) formally placed on the Commission's website via the Commission's Electronic Filing and Information System ("EFIS") in accordance with applicable procedure; and
- (2) served via electronic mail on all of the entities and individuals, and all of the legal representatives of all of the entities and individuals, including Commission Staff, whom the EFIS at this date identifies as parties or petitioners for intervention herein.


Rishi Garg