

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

In the Matter of the Exploration of a Joint       )  
Proceeding with the Kansas Corporation       )  
Commission to Investigate the Off-System Sales   )  
Allocation Methods of Kansas City Power &    )  
Light Company.                                        )

**File No. EO-2012-0020**

**STAFF RESPONSE TO COMMISSION ORDERS DIRECTING FILING**

Comes now the Staff of the Missouri Public Service Commission (“Staff”) and for its response to the Missouri Public Service Commission’s (“Commission”) July 22, 2011, *Order Directing Filing* and August 9, 2011, *Second Order Directing Filing* (collectively “*Orders Directing Filing*”) suggests the Commission set a conference for the parties to discuss the multi-state allocation issues affecting Kansas City Power & Light Company’s (“KCPL”) rates and the authority of the Commission and the Kansas Corporation Commission (“KCC”) to jointly address this matter. In support thereof, the Staff states:

1. In its *Orders Directing Filing* the Commission invited the parties in KCPL’s most recently concluded Missouri general rate increase case, File No. ER-2010-0355, to file pleadings addressing whether it would be worthwhile for the Commission to explore a joint proceeding with the KCC to address how both jurisdictions currently treat non-firm off-system sales and how the Commission should treat such sales in the future. The concern is whether KCPL loses money on non-firm off-system sales due to differences in the way the KCC and the Commission have allocated non-firm off-system sales which, in turn, (1) prevents KCPL from earning its authorized rate of return in either or both jurisdictions and (2) also disincentivizes it to make off-system sales that benefit its retail customers.

2. The Commission also invited the parties to “provide proposals on how the

Commissions should handle a joint proceeding” and, in particular, directed Staff to “identify any other potential issues for inquiry.”

3. On August 8, 2011, KCPL responded to the Commission’s *Orders* stating: “KCP&L suggests that the Commission convene a prehearing conference so that the parties can discuss the best way to proceed with these multi-state allocation issues.” The Staff has no objection to the Commission scheduling a conference, but believes it premature to assume there will be a hearing, and thus it may be more appropriate to refer to such a conference as merely a conference, rather than as a prehearing conference.

4. In its July 22, 2011 *Order Directing Filing*, the Commission noted Section 386.210.7, RSMo. 2000, which, among other things, specifically authorizes the Commission to make joint investigations, hold joint hearings, within or without the state, and issue joint or concurrent orders with other state commissions, “under agreements or contracts between states or under the concurrent power of states to regulate interstate commerce, or as an agent of the United States of America, or any official, agency or instrumentality thereof or otherwise.” Section 386.210.1, RSMo. 2000, authorizes the Commission to confer with, among others, other state utility commissions on any matter relating to the performance of the Commission’s duties. The Staff suggests in particular that the Commission schedule a conference for the parties to discuss the multi-state allocation issues affecting KCPL’s rates and the authority of the Commission and the KCC to jointly address this matter without an agreement or contract between Missouri and Kansas.

5. The Staff also notes that different statutes and rules govern the Commission and the KCC, both substantively and procedurally. Those differences would need to be dealt with if there were a joint KCC and Commission investigation, hearing, or deliberations.

6. The Commission's interest in the possibility of consistent regulation of KCPL by Missouri and Kansas jurisdictions is not new. In KCPL's 1982 general rate increase case, Case No. ER-82-66, the Commission stated in its *Report and Order*: "The Commission would like to point out that the Commission believes it would be desirable for the parties to meet among themselves and the other jurisdictions affecting the Company's operations."<sup>1</sup> The Staff followed the Commission's recommendations. The Staff's jurisdictional allocations witness related in his prepared direct testimony filed in KCPL's next general rate increase case, Case No. ER-83-49,<sup>2</sup> that KCPL had a general rate increase case pending before the KCC and that before the filing of his prepared direct testimony he and other Missouri Staff members met with KCC Staff respecting the matter of the two Staffs' allocations positions regarding KCPL. The Commission and the KCC did not hold joint hearings or deliberations on any issues pending before them in Case No. ER-83-49.

7. In 2000, KCPL filed Case No. EM-2000-753, in which it sought a fundamental restructuring of its utility business. KCPL filed an almost identical proposal before the KCC. During those proceedings KCPL, the Missouri Staff, the Missouri Office of the Public Counsel, Missouri intervenors, the KCC Staff, the Kansas Citizens Utility Ratepayers Board ("CURB"), and intervenors in the Kansas proceeding held a series of informal meetings at KCPL's offices in Kansas City. The Commission ordered a procedural schedule in Case No. EM-2000-753; however, the procedural schedule did not include a joint hearing or deliberations with the KCC. Ultimately KCPL withdrew its application, but in a later case, Case No. EM-2001-464, where KCPL sought less of a fundamental restructuring, the case did run to conclusion with the

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<sup>1</sup> *Re Kansas City Power & Light Co.*, Case No. ER-82-66, *Report and Order*, 25 Mo.P.S.C.(N.S.) 229, 250 (July 14, 1982).

<sup>2</sup> *Re Kansas City Power & Light Co.*, Case Nos. ER-83-49, et al., *Report and Order*, 26 Mo.P.S.C.(N.S.) 104 (July 8, 1983).

Commission authorizing KCPL to reorganize into a holding company structure. There were no joint informal meetings with the KCC Staff and others from Kansas in the context of Case No. EM-2001-464.

8. On numerous occasions over the years the KCC and Missouri Staffs have met telephonically and in person to discuss issues and positions in particular cases, but the Missouri Staff is not aware of any joint investigation, hearing, or deliberations by the Commission and the KCC.

9. When setting utility rates this Commission must consider “all relevant factors.” § 393.270.4, RSMo. 2000; *State ex rel. Missouri Water Co. v. Public Serv. Comm’n*, 22 P.U.R.3d 254, 308 S.W.2d 704, 718-719, (Mo. 1957); *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm’n*, 585 S.W.2d 41, 56-57 (Mo.banc 1979). The allocation of non-firm off-system sales is but one of the myriad of relevant factors this Commission considers when setting KCPL’s rates for its Missouri retail customers. KCPL’s revenue requirement generally is comprised of the same components in the different state jurisdictions where KCPL operates – Missouri and Kansas. The KCC and Missouri Staffs separately audit KCPL’s books and records, and make innumerable independent decisions as to what methodologies or principles they apply. Different jurisdictional resolution of the same or similar issues is inherent to multi-jurisdictional utilities. Broad categories of issues, affected by jurisdictional allocators and which themselves may be decided differently by different jurisdictions, are:

- a. Income statement issues
- b. Rate base issues
- c. Depreciation issues

- d. Tax issues
- e. Cost of money (rate of return) issues
- f. Rate design issues

10. The Commission is well aware that it is not bound by *stare decisis*. *State ex rel. Arkansas Power & Light Co. v. Public Serv. Comm'n*, 736 S.W.2d 457 (Mo.App. 1987); *State ex rel. GTE North, Inc. v. Public Serv. Comm'n*, 835 S.W.2d 356, 371-72 (Mo.App. W.D. 1992). Also, as long as it is not arbitrary or capricious, the Commission is free to change methodologies it uses from one case to the next. *Columbia v. Missouri State Bd. of Mediation*, 605 S.W.2d 192, 195 (Mo.App. W.D. 1980); *State ex rel. Arkansas Power & Light Co. v. Public Serv. Comm'n*, 736 S.W.2d 457, 461-62 (Mo.App. W.D. 1987).

11. There is nothing inherently unfair to a multi-state utility if the different state jurisdictions use different jurisdictional allocation methods and allocators, so long as the resultant rates are “just and reasonable.”

Wherefore, the Staff in response to the Commission *Orders Directing Filing* suggests that the Commission schedule a conference for the parties to discuss the multi-state allocation issues affecting KCPL’s rates and the authority of the Commission and the KCC to jointly address this matter.

Respectfully submitted,

**/s/ Steven Dottheim**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing *Staff Response To Commission Orders Directing Filing* have been transmitted by electronic mail to all counsel of record this 23rd day of August, 2011.

/s/ Steven Dottheim  
Steven Dottheim