

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 22nd day
of November, 2011.

In the Matter of the Application of Kansas City Power)
and Light Company for Authorization to Manage its) **File No. EO-2012-0147**
Sulfur Dioxide (SO₂) Emission Allowance Inventory)

**ORDER GRANTING MOTION FOR AUTHORITY FOR DISPOSITION OF
SO₂ and NO_x ALLOWANCES AND GRANTING MOTION FOR
EXPEDITED TREATMENT**

Issue Date: November 22, 2011

Effective Date: November 23, 2011

Background

On November 10, 2011, Kansas City Power and Light Company ("KCPL") filed a motion requesting that the Commission extend its existing authority to sell and trade sulfur dioxide ("SO₂") emissions allowances issued under the Federal Clean Air Act. The Commission had originally granted this authority on June 22, 2000, in File Number EO-2000-357, subject to certain record keeping conditions. The prudence of the transactions was reviewed in subsequent rate cases.¹

KCPL states that in 2005 the Environmental Protection Agency ("EPA") issued its Clean Air Interstate Rule ("CAIR") creating Nitrogen Oxide ("NO_x") emission allowances; allowances that it has not previously sought authority to sell or trade. On July 6, 2011, the EPA replaced the CAIR with the Cross-State Air Pollution Rule (CSAPR) and new NO_x

¹ The Commission addressed the SO₂ allowances again in the KCPL Experimental Regulatory Plan Stipulation and Agreement in File Number EO-2005-0329.

allowances will now be issued. Consequently, the current seasonal and annual NO_x allowances issued under the CAIR will no longer be usable for compliance after the end of November 2011 and the beginning of March in 2012, respectively.

KCPL is in possession of approximately 500 Annual NO_x allowances and 840 Seasonal NO_x allowances that are available for trade, and they will become worthless if KCPL fails to trade them prior to the respective cutoff dates. KCPL is “requesting the Commission extend its existing authority to sell and trade SO₂ allowances to the NO_x emissions allowances that will no longer be useable for compliance post-December 31, 2011, and record such sales proceeds in FERC account 254, to be flowed to customers over an amortization period to be determined in the next rate case with the unamortized balance to be used as an offset to ratebase.” KCPL also seeks a Commission decision by November 23, 2011. KCPL further stated that it contacted the Commission’s Staff and the Office of the Public Counsel and was authorized to represent that both parties support its motion.

The Commission issued notice and set a deadline for responses. KCPL also served notice of its filing on all parties to its most recent rate case, ER-2010-0355. No entity sought intervention or requested a hearing.

Discussion and Decision

The motions are within the Commission's jurisdiction to decide.² Because no law requires a hearing this is a non-contested case.³ Non-contested cases do not require formal proceedings or hearings before the Commission, and as such, there is no evidentiary record.⁴ Consequently, the Commission bases its decision on the verified filings.

On November 18, 2011, Staff filed its recommendation. Staff states that because granting the motion will provide KCPL with an opportunity to obtain remuneration for the CAIR NOX emissions allowances to the benefit of KCPL's retail customers that it supports the motion and recommends the Commission grant it. Staff has proposed several conditions, similar to the record-keeping conditions on KCPL's current authority for selling and trading its SO₂ emissions allowances, to which KCPL has agreed.

Based on KCPL's verified motions and Staff's verified memorandum and recommendation, the Commission will grant KCPL's unopposed motions. Since the market for these NOx allowances will disappear at the end of the year, KCPL has stated good cause for expedited treatment. Staff's proposed conditions will be adopted and incorporated into the order paragraphs below.

² See File No. EO-2000-357, where the Commission previously authorized KCPL to manage its inventory of sulfur dioxide emission allowances.

³ Section 536.010(4) defines a "contested case" as "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing."

⁴ *Sapp v. City of St. Louis*, 320 S.W.3d 159, 163 (Mo. App. 2010). "The key to the classification of a case as contested or noncontested is the requirement of a hearing. The term "hearing," as used in section 536.010(4) means a proceeding at which a 'measure of procedural formality' is followed. Procedural formalities in contested cases generally include: notice of the issues (section 536.067); oral evidence taken upon oath or affirmation and the cross-examination of witnesses (section 536.070); the making of a record (section 536.070); adherence to evidentiary rules (section 536.070); and written decisions including findings of fact and conclusions of law (section 536.090)." (Internal citations omitted). *City of Valley Park v. Armstrong*, 273 S.W.3d 504, 507 (Mo. banc 2009).

THE COMMISSION ORDERS THAT:

1. Kansas City Power and Light Company's motion for expedited treatment is granted.
2. Kansas City Power and Light Company's motion to extend its existing authority to sell and trade sulfur dioxide emissions allowances is granted.
3. Specifically, Kansas City Power and Light Company is granted authority to sell and trade sulfur dioxide emissions allowances to the nitrogen oxide emissions allowances that will no longer be usable for compliance post-December 31, 2011, and record such sales proceeds in FERC account 254, to be flowed to customers over an amortization period to be determined in Kansas City Power and Light Company's next rate case with the unamortized balance to be used as an offset to ratebase.
4. Kansas City Power and Light Company shall maintain detailed records of each Clean Air Interstate Rule nitrogen oxide emissions allowances transaction, and shall file an annual report similar to the report that it is currently providing for its sulfur dioxide emissions allowances transactions.
5. Kansas City Power and Light Company shall file an annual report enumerating all of its Clean Air Interstate Rule nitrogen oxide emissions allowances transactions.
6. The prudence of any Clean Air Interstate Rule nitrogen oxide emissions allowances transaction shall be subject to review and adjustment as part of any audit and examination in a future rate case.

7. Should Kansas City Power and Light Company wish to sell or trade nitrogen oxide allowances created under the Cross-State Air Pollution Rule it shall file a separate application.

8. This order shall become effective on November 23, 2011.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Davis, Jarrett, and
Kenney, CC., concur.

Stearley, Deputy Chief Regulatory Law Judge