

In the Matter of the Application of)
 Kansas City Power & Light Company for)
 the Issuance of an Order Authorizing Construction) Case No. EU-2014-0255
 Accounting Relating to its Electrical Operations)

COMES NOW Kansas City Power & Light Company (“KCP&L” or “Company”) and hereby respectfully submits its *Motion in Limine Regarding Ratemaking Issues; and Motion for Expedited Treatment* to the Missouri Public Service Commission (“Commission”).

1. When considering a request for an accounting authority order (“AAO”) such as this application by KCP&L for construction accounting authority, the Commission has for more than two decades evaluated whether the subject financial event is extraordinary, unusual and unique, and non-recurring and whether the associated costs are material. (*Re: Missouri Public Service*, Case Nos. EO-91-358 and EO-91-360, Report and Order, p. 7, dated December 20, 1991; hereinafter “*MoPub*”). When the Commission grants an AAO, it is not making any ratemaking determination regarding the subject costs. *State ex rel. Public Counsel v. Pub. Serv. Comm’n*, 858 S.W.2d 806, 813 (Mo. App. 1993) (“*Public Counsel*”); *State ex rel. Missouri Gas Energy v. Pub. Serv. Comm’n*, 978 S.W.2d 434, 438 (Mo. App. 1998) (“*MGE*”).

2. Although Commission Staff (“Staff”) agrees that the Commission should use the *MoPub* standard in evaluating KCP&L’s request for construction accounting authority¹ and that the Commission does not make ratemaking determinations in AAO proceedings such as this²,

² See, Oligschlaeger Rebuttal, p. 6, l. 33 through p. 7, l. 4; and Majors Rebuttal, p. 10, ll. 15-21.

Staff's testimony is replete with ratemaking recommendations that are irrelevant to the issues to be decided by the Commission in this proceeding.

3. Section 536.070(8)³ of the Missouri Administrative Procedure Act requires that the Commission exclude irrelevant evidence in a contested case such as this proceeding.

4. For these reasons, the Commission should exclude any evidence regarding ratemaking issues and prohibit any witness from testifying about this subject at the evidentiary hearing.

Factual Background

5. KCP&L initiated this proceeding by filing an *Application* on June 12, 2014 requesting Commission authority to use construction accounting for its La Cygne Environmental Project for the period of time between when the project becomes operational and when the cost of the project is included in rates (the "deferral period"). A grant of construction accounting authority would enable KCP&L to defer depreciation expense and carrying costs (i.e., Allowance for Funds Used During Construction or "AFUDC") as a regulatory asset. Absent a grant of construction accounting authority, KCP&L would record depreciation expense associated with the La Cygne Environmental Project upon its in-service date(s) to its income statement and move the associated plant balances from construction work in progress to plant-in-service with a resultant negative impact on KCP&L's earnings until the cost of the project can be included in rates. The La Cygne Environmental Project is budgeted at \$1.23 billion in total, approximately \$336 million of which represents KCP&L's Missouri jurisdictional share. The \$336 million plant addition (prior to the application of AFUDC) will increase KCP&L's rate base by approximately 16% above the level most recently used to set the Company's Missouri rates which took effect in early 2013. KCP&L understands that a Commission order granting

³ All references are to the Missouri Revised Statutes (2000), as amended.

construction accounting authority would not be determinative of the ratemaking treatment to be afforded the amounts deferred pursuant to that authority and that, instead, ratemaking treatment would be determined, if at all, in the Company's pending general rate proceeding (Case No. ER-2014-0370).

6. Staff has filed rebuttal testimony of two witnesses, Messrs. Oligschlaeger and Majors, both of whom agree that the Commission should use the *MoPub* standard in determining whether to grant KCP&L's request.⁴ Both Staff witnesses also agree that this AAO proceeding is not appropriate to address ratemaking concerns.⁵ Inexplicably, however, Staff witness Majors proceeds to recommend that no less than ten (10) “. . . modifications be made to KCPL's calculations and that several offsets be ordered to the amount of the deferral.” (Majors Rebuttal, p. 34, ll. 19-20). All ten (10) of these recommendations, which can be found on pages 34 through 50 of Mr. Majors' rebuttal testimony seek to have the Commission order ratemaking treatment.

7. Because a Commission order granting an AAO such as the construction authority requested by KCP&L in this proceeding is not determinative of the ratemaking treatment to be afforded amounts to be recorded by KCP&L pursuant to that authority, Staff witness Majors' ratemaking testimony is irrelevant and should be excluded.

Argument

8. The Missouri Administrative Procedure Act requires that “[i]rrelevant and unduly repetitious evidence shall be excluded.” See, section 536.070(8). “Evidence is relevant when it tends to prove or disprove a fact in issue or corroborates other relevant evidence which bears on the principal issue.” *Kendrick v. Board of Police Comm'rs*, 945 S.W.2d 654 (Mo. App. W.D.

⁴ See, Oligschlaeger Rebuttal, p. 6, ll. 1-32; and Majors Rebuttal, p. 8, l. 16 through p. 10, l. 14.

⁵ See, Oligschlaeger Rebuttal, p. 6, l. 33 through p. 7, l. 4; and Majors Rebuttal, p. 10, ll. 15-21.

1997). *See, Gardner v. Missouri State Highway Patrol Sup't*, 901 S.W.2d 107, 116 (Mo. App. W.D. 1995); *State ex rel. Webster v. Missouri Resource Recovery, Inc.*, 825 S.W.2d 916, 942 (Mo. App. S.D. 1992).

9. In determining whether to grant the construction accounting authority KCP&L has requested in this proceeding, KCP&L expects that the Commission will rely on the *MoPub* standard. Both Staff witnesses agree on this. Similarly, both Staff witnesses also agree that an AAO proceeding such as this is not the forum for ratemaking determinations, and on this point KCP&L concurs with these Staff witnesses.

10. Staff loses its way, however, beginning on page 34 of Mr. Majors' rebuttal testimony where he begins to describe modifications Staff recommends that the Commission order to KCP&L's construction accounting calculations. In brief, these ten (10) Staff recommendations are as follows:

- 1) Offset the base on which carrying costs are calculated by the additional non-environmental La Cygne depreciation reserve during the deferral period;
- 2) Offset the base on which carrying costs are calculated by the monthly depreciation expense deferral recorded to the regulatory asset;
- 3) Offset the base on which carrying costs are calculated by the accumulated deferred income taxes ("ADIT") created by the La Cygne environmental plant;
- 4) Offset the base on which carrying costs are calculated by the ADIT created by the monthly regulatory asset deferral;
- 5) Use actual depreciation and carrying costs based on the actual unadjusted AFUDC rate, less Staff's adjustments to the equity rate, with an estimate based on actuals for amounts calculated after the true-up in Case No. ER-2014-0370;
- 6) For the calculation of the AFUDC rate, a 250 basis point (2.50%) reduction should be assumed in the cost rate of common equity components of the AFUDC rate;
- 7) No additions to the base on which carrying costs or depreciation are calculated after the true-up in Case No. ER-2014-0370;

- 8) No additional deferrals after the effective date of rates in Case No. ER-2014-0370;
- 9) Offset the amount of the construction accounting deferral by over-collected, expired and/or expiring amortizations of other regulatory assets alleged by Staff to exist; and
- 10) Offset the amount of the construction accounting deferral by Department of Energy (“DOE”) fees included in rates but which KCP&L no longer pays DOE.

That each of these Staff recommendations seeks to determine ratemaking treatment cannot be credibly questioned. For example, in item 1) above (discussed on pp. 34-37 of his rebuttal testimony in this proceeding), Staff witness Majors recommends that the Commission order an offset to the base used to calculate carrying costs by the amount of non-environmental La Cygne depreciation reserve during the deferral period. Mr. Majors attempts to justify this by noting that KCP&L incurs depreciation expense on plant at La Cygne that is not part of the La Cygne Environmental Project, thereby increasing the depreciation reserve balance. While this Staff recommendation is purely a ratemaking concern, it completely ignores the fact that KCP&L will also incur construction costs during the deferral period, both at La Cygne and elsewhere on KCP&L’s system (i.e., while ongoing depreciation expense increases KCP&L’s depreciation reserve, KCP&L is at the same time expending capital on construction costs which serves to increase plant balances). In item 2) above (also discussed on pp. 34-37 of his rebuttal testimony in this proceeding), Mr. Majors recommends that the Commission order an offset to the base used to calculate carrying costs by the amount of the monthly depreciation expense deferred under this grant of construction accounting authority. While this is unprecedented to KCP&L’s knowledge, it is also purely a ratemaking proposal. For items 3) and 4) above (discussed on pp. 37-40 of his rebuttal testimony in this proceeding), Staff witness Majors proposes adjustments based on accumulated deferred income taxes (“ADIT”). ADIT is a fundamental element of the ratemaking process that will be affected in the event construction accounting authority is granted

in this case but, as with the remainder of Staff witness Majors' ten (10) recommendations, the ADIT adjustments he recommends are purely for ratemaking purposes. For two more examples, on page 9, lines 12-24 of his rebuttal testimony in this proceeding, Staff witness Oligschlaeger acknowledges that items 9) and 10) above (discussed by Mr. Majors on pp. 43-49 of his rebuttal testimony) amount to ratemaking treatment. As yet another example, item 6) above (discussed by Mr. Majors on pp. 41-42 of his rebuttal testimony in this proceeding) – wherein the Staff proposes to establish a 250 basis point offset to the AFUDC rate to be used by KCP&L for deferral purposes – is precisely the kind of ratemaking determination the *MGE* court found that the Commission could not conclusively determine in an AAO proceeding like this. *MGE* at 438. It is clear, therefore, that pages 34-50 of Staff witness Majors' rebuttal testimony address ratemaking proposals that are irrelevant to this AAO proceeding.

11. The deferrals for which KCP&L seeks authority to record are straightforward, resulting from a) book depreciation rates authorized by the Commission and b) AFUDC rates calculated pursuant to a prescribed rule as applied to La Cygne Environmental Project plant balances. KCP&L is recording these entries today while construction is ongoing, so no guidance from Staff (such as the ratemaking recommendations found on pages 34-50 of Mr. Majors' rebuttal testimony) or the Commission is warranted to enable KCP&L to continue recording these entries when the La Cygne Environmental Project becomes operational. Consistent with the *Public Counsel* and *MGE* line of judicial authority, as well as years of custom and practice of the Commission regarding AAOs, KCP&L fully understands that a grant of construction accounting authority in Case No. EU-2014-0255 is not determinative of the ratemaking treatment to be afforded the associated deferrals in Case No. ER-2014-0370. More specifically, KCP&L fully understands that the ratemaking treatment to be afforded the construction accounting

deferrals may be different than the approach KCP&L may take in recording the deferrals and that write-offs may result. That is a risk inherent in the AAO process that KCP&L is willing to undertake.

12. Although KCP&L could likely agree to a small number of these Staff ratemaking recommendations in the proper forum, this AAO proceeding is not the appropriate forum. In upholding the Commission's authority to issue AAOs, the courts have made it clear that an important element was the fact that the AAOs in question did not determine the associated ratemaking treatment. *Public Counsel* at 813; *MGE* at 438.

13. Because Staff's ratemaking recommendations have no bearing on the issues for Commission decision in this AAO proceeding – that is, whether the La Cygne Environmental Project is extraordinary, unusual and unique, and non-recurring and whether the associated costs are material – the testimony of Mr. Majors discussing those ratemaking recommendations is irrelevant and should be excluded pursuant to the provisions of section 536.070(8). Moreover, because Staff's ratemaking recommendations cannot, under the *Public Counsel* and *MGE* line of judicial authority, be adopted by the Commission in this AAO proceeding, the testimony of Staff witness Majors discussing those ratemaking recommendations is also irrelevant and should be excluded pursuant to the provisions of section 536.070(8). Specifically, the Commission should exclude Mr. Majors' rebuttal testimony starting on page 34, line 21 and ending on page 50, line 2.

Motion for Expedited Treatment

14. Staff filed its rebuttal testimony on November 14, 2014. KCP&L has filed this motion as soon as reasonably practicable given the Thanksgiving holiday and the press of other business. KCP&L's surrebuttal testimony is due on December 10, 2014. Absent a Commission

order excluding Staff's ratemaking testimony, KCP&L will be required to devote substantial attention in its surrebuttal testimony to an irrelevant issue, namely, the ratemaking treatment to be afforded the construction accounting deferrals. KCP&L does not believe such an effort would serve the interests of the efficient administration of justice and therefore requests that the Commission direct Staff to respond to this *Motion in Limine* no later than noon on Monday, December 8, 2014. KCP&L requests that the Commission rule on this *Motion in Limine* as soon as possible, but in any event no later than noon on December 10, 2014. On information and belief, KCP&L states that granting this request for expedited treatment will not prejudice the rights of any party.

WHEREFORE, KCP&L offers this *Motion in Limine Regarding Ratemaking Issues; and Motion for Expedited Treatment* and respectfully requests that the Commission exclude and prohibit any testimony or other evidence relating to ratemaking issues.

Respectfully submitted,

/s/ Robert J. Hack

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ATTORNEYS FOR KANSAS CITY POWER &
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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 3rd day of December, 2014, to all parties of record.

/s/ Robert J. Hack

Robert J. Hack