

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

In the Matter of Staff's Audit of Kansas City)
Power & Light Company's Expenditures)
Related to the LaCygne Air Quality Control)
System Project.)

Case No. EO-2014-0042

RECOMMENDATION TO DENY INTERVENTION REQUEST OF SIERRA CLUB

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission") and in response to the *Motion to Intervene of Sierra Club*, filed October 4, 2013, states as follows:

1. The purpose of this docket is to retain information that is protected from disclosure by law, and Staff takes this opportunity to make clear that it did not initiate this docket to facilitate circumvention of §386.480 RSMo.¹ This docket exists simply to provide a place in the Commission's Electronic Filing and Information System (EFIS) for Data Requests to be stored. Neither Staff nor the Company will be filing audit results in this docket, and any disputes regarding the LaCygne investment will necessarily occur in a different docket.

2. Staff also takes this opportunity to remind the Commission that its rules governing intervention are discretionary, *where intervention is contemplated*, as discussed further below.²

¹ §386.480 provides that "No information furnished to the commission by a corporation, person or public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. The public counsel shall have full and complete access to public service commission files and records. Any officer or employee of the commission or the public counsel or any employee of the public counsel who, in violation of the provisions of this section, divulges any such information shall be guilty of a misdemeanor."

² Further, the Sierra Club's request was not filed within the discretionary time limits of 4 CSR 240-2.075.

3. On August 20, 2013, Staff filed a motion to open this docket, concerning Kansas City Power & Light Company's ("KCPL") installation of an Air Quality Control System ("AQCS") and related investment at the LaCygne Generation Station ("LaCygne").

4. In that motion, Staff stated as follows:

3. Staff requests that the Commission open this docket to facilitate and retain discovery related to Staff's audit of the LaCygne AQCS and related investment.

4. Staff anticipates that any disputes related to the level of KCPL's prudent investment in the LaCygne AQCS would be made in the general rate case where KCPL seeks to include its LaCygne AQCS investment in rate base, and not in this docket.

5. On August 21, 2013, the Commission entered its *Order Opening a Case*, in which it noted "this is not a contested case. Any consideration of the prudence of KCP&L's investment will occur in a subsequent rate case and not in this case."

6. Given the extremely confined nature of this case – namely to enable the use of EFIS to facilitate the promulgation and retention of Staff's discovery concerning the LaCygne AQCS – it is not appropriate to grant intervention to any party.

7. The Sierra Club has previously requested that it be allowed to participate in a formal investigation of LaCygne construction expenditures prior to a case at which those expenditure are at issue, This Commission has already denied such a request.³

³ In its *Report and Order* in Case No. ER-2012-0174, at page 51, the Commission found:

Sierra Club acknowledges the existence of the Integrated Resource Planning ("IRP") procedure, KCPL's informational meetings with Staff and OPC, and the Commission's periodic prudence reviews. Nevertheless, Sierra Club alleges that some kind of ongoing formal hearing procedure would benefit shareholders and customers. The cost of such proceedings to rate-payers does not figure into Sierra Club's proposal. Absent a full analysis of the effects on ratepayers, Sierra Club's proposals are unpersuasive as a matter of fact and policy. Moreover, no rulemaking, IRP, or prudence review is before the Commission in this contested case. The Commission concludes that the proposed

8. Commission rules preclude Sierra Club's requested intervention on several fronts. 4 CSR 240-2.075 contemplates that some party is seeking relief in the docket to which intervention is sought. There is no relief sought by any party in Case No. EO-2014-0042, as plainly stated in both the motion to open the docket, and the Commission Order noticing the opening of the docket.

9. In particular, 4 CSR 240-2.075(2) states, in pertinent part that:

A motion to intervene or add new member(s) shall include:

(E) A statement of the proposed intervenor's or new member's **interest** in the case and reasons for seeking intervention or to be added; and

(F) A statement as to whether the proposed intervenor or new member supports or opposes the **relief sought** or that the proposed intervenor or new member is unsure of the position it will take. [emphasis added]

10. Further, 4 CSR 240-2.075(3) states that:

The commission may grant a motion to intervene or add new member(s) if—

(A) The proposed intervenor or new member(s) has an **interest** which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest. [emphasis added]

11. Both 4 CSR 240-2.075(2) and 4 CSR 240-2.075(3)(A) presuppose that relief is sought and that the putative intervenor could have an interest in the outcome of that relief which is sought. Because no relief is sought in Case No. EO-2014-0042, there cannot be an interest for a putative intervenor in Case No. EO-2014-0042.

12. While 4 CSR 240-2.075(3)(B) does discuss intervention to serve the public interest, there are three reasons why Sierra Club's requested intervention should be denied none-the-less:

additional standards and procedures do not support safe and adequate service at just and reasonable rates, so the Commission will not order the proposed procedures or standards for KCPL in this contested case.

13. First, the request should be denied in that the “public interest” actually furthered by the existence of Case No. EO-2014-0042 is that the Staff, Office of the Public Counsel, and KCPL have the convenient medium of EFIS for the facilitation of discovery. The presence of additional parties to this docket complicates Staff’s gathering of discovery information that it is entitled to by statute, pursuant to the Commission’s investigatory authority.

14. Second, the request should be denied because it is premised on an assumption that there is a broader “public interest” in the sense alleged by Sierra Club, to be served by participation in the docket. In Case No. EO-2014-0042, no relief or process is contemplated. There is no “public interest” that Sierra Club can attempt to further.

15. Third, 4 CSR 240-2.075(3)(B) does not obviate the requirements and underlying assumption of 4 CSR 240-2.075(2) that the party seeking intervention (1) have an interest, and (2) that relief of some sort be sought in the subject docket.

16. Missouri statute confers this investigative authority onto the Commission, its Staff, and the Office of the Public Counsel.⁴ In particular, 393.140 provides that the Commission shall:

(1) Have general supervision of all... ..electrical corporations... ..and all... ..electric plants....

⁴ See §386.480 providing that “No information furnished to the commission by a corporation, person or public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. **The public counsel shall have full and complete access to public service commission files and records.** Any officer or employee of the commission or the public counsel or any employee of the public counsel who, in violation of the provisions of this section, divulges any such information shall be guilty of a misdemeanor.” [emphasis added]

(2) ...[E]xamine or investigate the methods employed by such persons and corporations in manufacturing, distributing and supplying gas or electricity for light, heat or power and in transmitting the same....

(3) ...[H]ave power, of its own motion, to examine and investigate the plants and methods employed in manufacturing, delivering and supplying gas, electricity or water... ...and shall have access, through its members or persons employed and authorized by it, to make such examinations and investigations to all parts of the manufacturing plants owned, used or operated for the manufacture, transmission or distribution of gas or electricity by any such person or corporation.... Any employee or agent of the commission who divulges any fact or information which may come to his knowledge during the course of any such inspection or examination, except insofar as he may be directed by the commission, or by a court or judge thereof, or authorized by law, shall be guilty of a misdemeanor.

(4) Have power, in its discretion, to prescribe uniform methods of keeping accounts, records and books, to be observed by... ...electrical corporations.... Any other and additional forms of accounts, records and memoranda kept by such corporation shall be subject to examination by the commission.

(5) Examine all persons and corporations under its supervision and keep informed as to the methods, practices, regulations and property employed by them in the transaction of their business.....

No information furnished to the commission by a corporation, person or public utility, except such matters as are specifically required to be open to public inspection by the provisions of this chapter, or chapter 610, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. The public counsel shall have full and complete access to public service commission files and records. Any officer or employee of the commission or the public counsel or any employee of the public counsel who, in violation of the provisions of this section, divulges any such information shall be guilty of a misdemeanor.

17. Finally, as discussed by the Commission in its May 15, 2013, *Order Denying Intervention* in Case No. EO-2013-0405, concerning The Empire District Electric Company's Chapter 22 Filing:

Commission Rule 4 CSR 240-2.075 governs the procedures by which an individual or entity may intervene in a case ("the intervention rule"). The

purpose of the rule is to allow individuals or entities to intervene in contested cases where relief is being sought.

The Staff is not taking any position at this time on any request for intervention that the Sierra Club may make in a case where relief is actually being sought.

WHEREFORE, Staff respectfully requests that the Commission deny the intervention of the Sierra Club in this docket which was intended solely to facilitate Staff and Office of the Public Counsel's promulgation and retention of discovery to which those parties are entitled by statute.

Respectfully submitted,

/s/ Sarah Kliethermes

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 22nd day of November, 2013.

/s/ Sarah Kliethermes