

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

Staff of the Public Service Commission of the State of Missouri,	)	
	)	
Petitioner,	)	
	)	
v.	)	<b><u>Case No. EU-2015-00XX</u></b>
	)	
Kansas City Power & Light Company,	)	
	)	
Respondent.	)	

**PETITION FOR ACCOUNTING ORDER**

**COMES NOW** the Staff of the Missouri Public Service Commission, and pursuant to the Commission’s authority, after hearing, “to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited” (§ 393.140(8), RSMo. 2000<sup>1</sup>), petitions the Commission to order Kansas City Power & Light Company (“KCPL”) to book to a new subaccount of **FERC Account 254—Other regulatory liabilities** labeled **KCPL—MO DOE fees regulatory liability**, \$7,019 for each day after May 15, 2014, for the amount KCPL is recovering in Missouri retail customer rates for the one-tenth of a cent for each kilowatt hour (“kWh”) of net nuclear generation from Wolf Creek delivered and sold by KCPL that KCPL was incurring to the United States Department of Energy (“DOE”) for spent nuclear fuel storage fees until May 15, 2014, when the DOE reduced the quarterly fee to zero effective May 16, 2014, and thereafter, after being ordered to do so by the United States Court of Appeals for the District of Columbia in *National Association of Regulatory Utility Commissioners v.*

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<sup>1</sup> All statutory citations are to RSMo 2000, unless otherwise noted.

*United States Department of Energy, Case No. 11-1066, issued November 19, 2013,*<sup>2</sup>  
as follows:

### **Introduction**

1. This petition is based on the DOE changing its quarterly fee for spent nuclear fuel storage to zero effective May 16, 2014, when, due to KCPL's ownership interest in Wolf Creek nuclear generating station, KCPL's current Missouri retail customer rates are based in part on the one-tenth of a cent fee for each kWh of net nuclear generation delivered and sold the DOE was charging quarterly before May 16, 2014, for spent nuclear fuel storage. In other words, KCPL's Missouri retail customers are paying rates that are, in part, based on a cost for DOE spent nuclear fuel storage fees that KCPL stopped incurring as of May 16, 2014.

### **Parties**

2. The Staff of the Missouri Public Service Commission is the petitioner. Its address is Governor Office Building, P.O. Box 360, 200 Madison Street, Jefferson City, Missouri, 65102-0360, and the signature, telephone number, facsimile number, and electronic mail address of its counsel appear below.

3. Kansas City Power & Light Company is the respondent. Its address is 1200 Main Street, Kansas City, Missouri 64105. It is a Delaware corporation whose registered agent is National Registered Agents, Inc., 300 B East High Street, Jefferson City, Missouri, 65101.

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<sup>2</sup> Copy attached.

4. Public Counsel is a party by rule 4 CSR 240-2.010(10). Public Counsel's address is Governor Office Building, P.O. Box 2230, 200 Madison Street, Suite 650, Jefferson City Missouri, 65102-2230.

### **Jurisdiction**

5. Kansas City Power & Light Company is an "electrical corporation" and "public utility" as defined by § 386.020(15) and § 386.020(43), respectively, and is subject to the jurisdiction of the Commission, in particular under §§ 386.250 and 393.140.

6. This Commission has exclusive jurisdiction initially to hear and determine petitions against public utilities based on matters within the Commission's jurisdiction under the Public Service Commission Act. Section 386.390; *State ex rel. and to Use of Cirese v. Ridge*, 138 S.W.2d 1012, 345 Mo. 1096 (1940); *State ex rel. and to Use of Kansas City Power & Light Company v. Buzard*, 168 S.W.2d 1044, 350 Mo. 763 (banc 1943).

### **Facts**

7. Note 4, appearing on page 21, of Great Plains Energy Incorporated's and KCPL's June 30, 2014, combined 10-Q SEC filing on August 7, 2014, provides a succinct description of the DOE quarterly spent nuclear fuel storage fees and how KCPL charges them. That note follows:

#### **4. NUCLEAR PLANT**

KCP&L owns 47% of Wolf Creek Generating Station (Wolf Creek), its only nuclear generating unit. Wolf Creek is located in Coffey County, Kansas, just northeast of Burlington, Kansas. Wolf Creek's operating license

expires in 2045. Wolf Creek is regulated by the Nuclear Regulatory Commission (NRC), with respect to licensing, operations and safety-related requirements.

### **Spent Nuclear Fuel and High-Level Radioactive Waste**

Under the Nuclear Waste Policy Act of 1982, the Department of Energy (DOE) is responsible for the permanent disposal of spent nuclear fuel. Wolf Creek paid the DOE a quarterly fee of one-tenth of a cent for each kilowatt hour (kWh) of net nuclear generation delivered and sold for the future disposal of spent nuclear fuel. KCP&L's 47% share of these costs are charged to fuel expense. The Nuclear Energy Institute, a number of individual utilities, and the National Association of Regulatory Utility Commissioners sued the DOE seeking the suspension of this fee. In January 2014, the DOE submitted a proposal to Congress to set the fee at zero and effective May 16, 2014, this fee is set at zero.

In 2010, the DOE filed a motion with the NRC to withdraw its then pending application to the NRC to construct a national repository for the disposal of spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nevada. An NRC board denied the DOE's motion to withdraw its application. In 2011, the NRC reexamined its decision and ordered the licensing board, consistent with budgetary limitations, to close out its work on the DOE's application. In August 2013, a federal court of appeals ruled that the NRC must resume its review of the DOE's application.

Wolf Creek is currently evaluating alternatives for expanding its existing on-site spent nuclear fuel storage to provide additional capacity prior to 2025. Management cannot predict when, or if, an off-site storage site or alternative disposal site will be available to receive Wolf Creek's spent nuclear fuel and will continue to monitor this activity.

### **Low-Level Radioactive Waste**

Wolf Creek disposes of most of its low-level radioactive waste (Class A waste) at an existing third-party repository in Utah. Management expects that the site located in Utah will remain available to Wolf Creek for disposal of its Class A waste. Wolf Creek has contracted with a waste processor that will process, take title and dispose in another state most of the remainder of Wolf Creek's low-level radioactive waste (Classes B and C waste, which is higher in radioactivity but much lower in

volume). Should on-site waste storage be needed in the future, Wolf Creek has current storage capacity on site for about four years' generation of Classes B and C waste and believes it will be able to expand that storage capacity as needed if it becomes necessary to do so.

8. KCPL's Missouri retail customers indirectly through their rates have been paying these DOE spent nuclear fuel fees since the Commission established KCPL's rates after Wolf Creek started operating in September of 1985.

9. When the Commission set the revenue requirement for KCPL's Missouri retail rates in its last general rate case, Case No. ER-2012-0174, the DOE spent nuclear fuel fees KCPL incurred during the trued-up, updated test year (one-tenth of a cent for each kWh of net nuclear generation KCPL delivered and sold) were normalized and annualized and included in that revenue requirement; therefore, they were one of the relevant factors upon which KPCL's current rates were established.

10. KCPL's current Missouri retail rates are designed to collect about \$2.5 million per year from its customers for DOE spent nuclear fuel fees.

11. Like the federal income tax, which is imposed for financing the federal government, and unlike other costs KCPL incurs to provide retail electric service, the DOE spent nuclear fuel fees, at the direction of Congress, were imposed by the DOE, a federal agency, for the purpose of financing a depository for the long-term storage of spent nuclear fuel.

12. The DOE spent nuclear fuel fee was set to zero because, in response to a lawsuit brought by the National Association of Regulatory Utility Commissioners and others, the District of Columbia Circuit of the United States Court of Appeals ordered the Secretary of Energy "to submit to Congress a proposal to change the fee to zero until

such a time as either the Secretary chooses to comply with the Act as it is currently written, or until Congress enacts an alternative waste management plan.”<sup>3</sup>

13. As Staff witnesses Keith Majors and Mark L. Oligschlaeger explain in their direct testimony filed with this petition, the reduction of the DOE spent nuclear fuel fee to zero is an extraordinary event, similar to events for which the Commission has allowed utilities to book regulatory assets.

14. Much like paying for a tax that is no longer imposed on a utility, it would be unfair for KCPL’s customers to be denied the opportunity to seek rate relief for remitting to KCPL amounts through the rates they pay for a government-mandated fee that has been reduced to zero.

### **Witnesses**

15. In his testimony Staff witness Keith Majors, a Utility Regulatory Auditor IV within the Auditing Unit of the Audits, Accounting, and Financial Analysis Department, Regulatory Review Division, of the Commission and Commission employee since June 2007, (1) provides a history and background of the DOE’s spent nuclear fuel fees; (2) explains Staff’s rationale for why the Commission should order KCPL to establish a regulatory liability that captures the amounts for these fees that KCPL’s current Missouri rates were designed to collect from its retail customers, but which KCPL is no longer ultimately paying to DOE; and (3) defines the specific principles Staff is requesting the Commission determine in this proceeding.

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<sup>3</sup> *National Association of Regulatory Utility Commissioners v. United States Department of Energy*, 736 F.3d 517, 521, 407 U.S.App.D.C. 197, 201 (2013).

16. Staff witness Mark L. Oligschlaeger, Manager of the Auditing Unit of the Audits, Accounting, and Financial Analysis Department, Regulatory Review Division, of the Commission and Commission employee for over 30 years, (1) provides an overview of past Commission actions regarding regulatory assets; (2) explains why the DOE spent nuclear fuel fee being set to zero is an extraordinary event and justifies ordering KCPL to book one-tenth of a cent for each kWh of net nuclear generation it delivers and sells after March 15, 2014, to a regulatory liability for potential future use in setting KCPL's rates in a future general rate case; (3) explains "regulatory lag" and (4) explains why the DOE spent nuclear fuel fee being set to zero is not an example of normal "regulatory lag."

**WHEREFORE**, Staff petitions the Commission to order Kansas City Power & Light Company ("KCPL") to book to a new subaccount of **FERC Account 254—Other regulatory liabilities** labeled **KCPL—MO DOE fees regulatory liability**, \$7,019 for each day after May 15, 2014, for the amount KCPL is recovering in Missouri retail customer rates for the one-tenth of a cent for each kWh of net nuclear generation from Wolf Creek delivered and sold by KCPL that KCPL was incurring to the DOE for spent nuclear fuel storage fees until May 15, 2014, when the DOE reduced the quarterly fee to zero effective May 16, 2014, and thereafter.

Respectfully submitted,

**/s/ Nathan Williams**

Nathan Williams  
Deputy Counsel  
Missouri Bar No. 35512

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-8702 (Telephone)  
(573) 751-9285 (Fax)  
[nathan.williams@psc.mo.gov](mailto:nathan.williams@psc.mo.gov)

**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 9<sup>th</sup> day of October, 2014.

**/s/ Nathan Williams**