

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

In the Matters of the Application of Kansas)	
City Power & Light Company for the)	<u>Case No. EU-2014-0255</u>
Issuance of an order Authorizing)	
Construction Accounting relating to its)	
Electrical Operations)	
Staff of the Public Service Commission)	
of the State of Missouri, Petitioner)	<u>Case No. EU-2015-0094</u>
v.)	
Kansas City Power and Light Company)	

**STAFF’S REPLIES TO KCPL’S RESPONSE TO STAFF’S PETITION FOR
ACCOUNTING ORDER AND TO KCPL’S RESPONSE IN OPPOSITION TO STAFF’S
MOTION TO CONSOLIDATE CASES**

COMES NOW the Staff of the Missouri Public Service Commission, by and through undersigned counsel, and submits its replies to Kansas City Power and Light Company’s (“KCPL”) response to *Staff’s Petition for Accounting Order* (Case No. EU-2015-0094) and response in opposition to *Staff’s Motion to Consolidate* Case Nos. EU-2014-0255 and EU-2015-0094.

Procedural History

On June 12, 2014, KCPL filed an application for authorization to use construction accounting treatment for certain costs related to its La Cygne environmental project—an accounting authority order (“AAO”), which the Commission docketed as Case No. EU-2014-0255. On October 9, 2014, Missouri Public Service Commission Staff (“Staff”) filed a petition for the Commission to issue an Accounting Order (“AO”) directing KCPL to account for amounts related to fees collected from KCPL’s Missouri retail customers to satisfy a quarterly charge of the United States Department of Energy (“DOE”) for spent nuclear fuel storage, which the Commission docketed as

Case No. EU-2015-0094. On November 17, 2014, the Staff of the Missouri Public Service Commission filed its Motion to Consolidate Case Nos. EU-2014-0255 and EU-2015-0094. On November 19, KCPL filed its response in opposition of the Motion to Consolidate. KCPL also filed a response on November 3, 2014, respecting Staff's petition filed as Case No. EU-2015-0094 entitled *Kansas City Power & Light Company's Verified Response to Staff Petition for Accounting Authority Order— KCPL's Response to Staff Petition*.

Staff's Reply to KCPL's Response to Staff's Petition for Accounting Order

Staff, in this first section of its reply, replies first to KCPL's November 3, 2014, Response to Staff's Petition for Accounting Order ("AO").

1. KCPL states that if it had a fuel adjustment clause ("FAC") agreement in place, then its customers would automatically receive reimbursement for the DOE fees. (Response to Staff Petition p. 1, para. 2). However, even if a FAC would address the DOE spent nuclear fuel storage fees issue, KCPL made an agreement as part of its 2005 Regulatory Plan that the Commission approved and ordered the signatories to that agreement to comply with in the Commission's Report and Order in Case No. EO-2005-0329, dated July 28, 2005. In the 2005 Regulatory Plan, KCPL agreed as follows:

KCPL agrees that, prior to June 1, 2015, it will not seek to utilize any mechanism authorized in current legislation known as "SB 179" or other change in state law that would allow riders or surcharges or changes in rates outside of a general rate case based upon a consideration of less than all relevant factors.

Therefore, KCPL's Missouri retail customers will not realize in their bills the benefit of KCPL no longer incurring DOE fees before KCPL's next general rate case—pending Case No. ER-2014-0370.

2. KCPL next proposes that it would accept an order of the Commission to defer and record as a regulatory liability the amounts for DOE fees it is no longer paying, if the Commission were to grant it an AAO to also defer and record as a regulatory asset the increased amounts of Southwestern Power Pool ("SPP") transmission fees, with the ratemaking treatment of both to be addressed in KCPL's pending general rate case, Case No. ER-2014-0370. KCPL alleges transmission fees have increased by \$16.4 million since its last rate case. (Response to Staff Petition p. 2, para. 3). As the Commission is aware, it denied KCPL's request for a transmission AAO on July 30, 2014, in Case No. EU-2014-0077, finding KCPL's transmission expenses are not an unusual or infrequent occurrence. In its July 30, 2014, Report and Order¹ in Case No. EU-2014-0077, the Commission said:

Companies [KCPL and KCP&L Greater Missouri Operations Company] began incurring transmission expenses when they began providing retail electric service. Transmission costs are part of the ordinary and normal costs of providing electric service and are expected to continue in the foreseeable future. Furthermore, while the transmission costs at issue may have a significant effect on Companies, they are not "abnormal and significantly different from the ordinary and typical activities" of the Companies. The increase in transmission costs was anticipated and is indeed the norm for all electric utility members of SPP. Therefore, the transmission costs are not extraordinary.

In contrast to SPP transmission fees, the cessation of the DOE fee payments formerly made by KCPL is an unusual and unique event.

¹ p.10.

3. KCPL's assertion in the fourth paragraph of its response is that Staff's position is one-sided and "recognizes and seeks to protect only customer interests." (Response to Staff Petition p. 3, para.4). Staff's position is no more one-sided than KCPL's request in Case No. EU-2014-0255 for an AAO ordering continuation of construction accounting for its La Cygne Environmental Project, which recognizes and seeks to protect only KCPL's interests. KCPL cites three bases for its opposition: (1) earnings shortfalls; (2) that DOE fees are not material, and (3) that Staff's request is unprecedented. In response to the first basis Staff responds that the proper remedy for earnings shortfalls is a general rate case. KCPL presently has a rate case pending before this Commission—Case No. ER-2014-0370. As to its dispute of materiality, while § 393.140(8) includes no express standard—"The Commission shall: Have power to examine the accounts, books, contracts, records, documents and papers of any such corporation or person, and have power, after hearing, to prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited"—Commission rule 4 CSR 240-20.030 (which prescribes that electrical corporations use a version of the FERC Uniform System of Accounts) includes the following provision: "The commission may waive or grant a variance from the provisions of this rule, in whole or in part, for good cause shown, upon a utility's written application." Therefore, it is Staff's view that it is "good cause" that must be shown for relief, not materiality, and that part of that "good cause" is that the cost is "an unusual or infrequent occurrence," i.e., "extraordinary." While materiality may be a consideration, it is not a threshold.

4. KCPL asserts that its return on equity has been and will be significantly less than what the Commission authorized. (*Response to Staff Petition* p. 3, para. 4). It is unclear what the relevancy of KCPL's earnings level is to the accounting treatment requested in either proceeding. If KCPL believed it had an earnings shortfall it could have filed for an earlier request to increase rates. Allegations pertaining to KCPL's current earnings level are better addressed in KCPL's pending general rate case, Case No. ER-2014-0370.

Staff's Reply to KCPL's Response to Staff's Motion to Consolidate Cases

Staff in this second section of its reply, Staff replies to KCPL's November 19, 2014, Response in Opposition to Staff's Motion to Consolidate Case Nos. EU-2014-0255 and EU-2015-0094.

5. In the second paragraph of its response, KCPL asserts that there is no "logical or substantive relationship" between its application for an AAO for depreciation expense and carrying costs and Staff's application for an AO for DOE spent nuclear fuel storage fees. (*Response in Opposition* p. 2, para. 2). The logical relationship is that both parties are seeking accounting treatment not allowed by Commission Rule 4 CSR 240-20.030 which incorporates a version of the FERC Uniform System of Accounts, and both are seeking relief for changes in KCPL's costs that were not anticipated when the Commission last established KCPL's general rates. Both requests are seeking relief outside of the normal ratemaking process caused by regulatory lag, and the only difference between them is that one is for a lost earnings opportunity and the other is for a "windfall" recovery of a pass-through cost similar to taxes. Additionally, while KCPL has not yet incurred any of the actual costs relating to KCPL's Construction

Accounting request, the DOE fees are accounted for in its current rates. If the DOE fee amounts offset in whole or in part the amount of constructions costs KCPL is not recovering, then this is also a vital consideration for the Commission.

6. KCPL argues in the third paragraph of its response that Staff should not have agreed to the proposed procedural schedule in Case No. EU-2014-0255 if it planned to seek to consolidate the proceeding with Case No. EU-2015-0094 because KCPL's ability to investigate the proposed AO is damaged by the timing. (*Response in Opposition* p. 2-3, para. 3). Staff has been unable to confirm a pressing timing requirement for the processing of Case No. EU-2014-0255. KCPL does not need a separate Commission order regarding the construction accounting for the La Cygne project as this can be more appropriately addressed in its rate case, Case No. ER-2014-0370, filed October 30, 2014. The La Cygne environmental project is not expected to be completed until approximately May 31, 2015. There is no risk of impact on KCPL's books for calendar year 2014 as a result of the La Cygne environmental project. However, there is urgency to processing the DOE spent nuclear fuel fees AO because the fees ceased to be collected as of May 16, 2014, and those costs directly relate to KCPL's 2014 operating results.

7. KCPL further asserts that a decision regarding construction accounting for the La Cygne project must be issued by the end of February 2015 to account for the amounts in its Securities and Exchange Commission ("SEC") filings and to preserve the amounts for consideration in its pending general rate case, Case No. ER-2014-0370. (*Response in Opposition* p. 3, para. 4). KCPL has failed to allege facts that, if true, show that it requires a decision to be issued prior to February 2015. Staff is aware that KCPL

must report its final results to the SEC for calendar year 2014 in its Form 10-K filing that is due in late February or early March of 2015. However, these 2014 earnings amounts will not reflect the financial impact of any KCPL La Cygne project deferrals. If the authority sought by KCPL in Case No. EU-2014-0255 is granted, the construction accounting treatment sought for the La Cygne project will not begin until at least the second quarter of 2015. KCPL could report the Commission's decision to the SEC immediately following the issuance of the Commission's order.

8. KCPL suggests that Staff actually seeks ratemaking treatment in its Petition for Accounting Authority, Case No. EU-2015-0094, and the matter would be better off consolidated with KCPL's general rate case proceeding. (*Response in Opposition* p. 4, para. 5 & 6). Staff is **not** seeking ratemaking treatment for the DOE fee consideration. Rather Staff seeks to ensure that the Commission considers all pertinent accounting provisions when it determines KCPL's petition for construction accounting. Staff direct testimony is that the deferred DOE fees will be considered in KCPL's pending rate case.

9. KCPL argues that consolidating the two cases will affect its ability to conduct an investigation and analysis of Staff's proposed AO. (*Response in Opposition* p. 3, ft. note 1). If KCPL needs more time to conduct discovery in Case No. EU-2015-0094, then Staff recommends altering the existing procedural schedule for Case No. EU-2014-0255 to be consistent with the schedule it orders in Case No. EU-2015-0094, which would permit the Commission to hear both proposed deferrals at the same time. If a delay in the hearings and testimony filings in Case No. EU-2014-0255 is necessary to put the two cases on the same schedule, then

Staff recommends such a procedural schedule be resubmitted to the Commission.

10. Finally, KCPL suggests outright denial of Staff's petition. However, there is direct evidence that the Commission needs to consider the DOE fees.

WHEREFORE, Staff files *Staff's Replies to KCP&L's Response to Staff's Petition for Accounting Order and to KCPL's Response in Opposition to Staff's Motion to Consolidate Cases* and respectfully requests, for the reasons stated above, that the Commission grant Staff's petition in Case No. EU-2015-0094 and grant Staff's motion to consolidate Case Nos. EU-2014-0255 and EU-2015-0094.

/s/ Whitney Payne

Whitney Payne
Legal Counsel
Missouri Bar No. 64078
Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751- 8706 (Telephone)
(573) 751-9285 (Fax)
whitney.payne@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 26th day of November, 2014, to all counsel of record.

/s/ Whitney Payne