

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

In the Matter of Kansas City Power)	
& Light Company's Request for)	<u>File No. ER-2012-0174</u>
Authority to Implement A General)	Tracking No. YE-2012-0404
Rate Increase for Electric Service)	

**STAFF'S RESPONSE TO MOTION
TO STRIKE PRE-FILED TESTIMONY AND REJECT TARIFFS**

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission, and for its *Response to Motion To Strike Pre-Filed Testimony and Reject Tariffs* respectfully states:

On May 25,¹ the Office of the Public Counsel ("Public Counsel" or "OPC") and the Midwest Energy Consumers Group ("MECG") filed their *Motion to Strike Pre-Filed Testimony and Reject Tariffs of Kansas City Power & Light Company* ("KCPL") and *Motion for Expedited Treatment* in this case.

The Commission issued its *Order Granting Expedited Treatment As To Response* on May 29, which indicated that KCPL shall, and any other party may, file a response to the motion no later than June 15. On June 15, Staff filed its *Notification of Need for Additional Time* to file its response, and on June 18 the Commission issued an *Order Extending Time for Staff Response*.

Staff agrees with OPC and MECG. KCPL's testimony requests an Interim Energy Charge ("IEC") that includes a provision for sharing of its off-system sales margins between KCPL's ratepayers and shareholders. This sharing constitutes a violation of KCP&L's Experimental Regulatory Plan (the "Regulatory Plan") approved by the Commission in its June 28, 2005, *Report and Order* in Case No. EO-2005-0329.

¹ All dates are in the year 2012, unless otherwise indicated.

As explained in their *Motion to Strike*, various stakeholders reviewed the future supply and pricing of KCPL's electric service in a 2004 Commission docket. The stakeholders signed a Stipulation and Agreement ("Stipulation") filed with the Commission on March 28, 2005. The Stipulation contained KCPL's 2005 Regulatory Plan, which, *in exchange for certain ratepayer protections relevant to this matter*, provided KCPL a mechanism to collect additional cash to fund (among other items) construction of the Iatan 2 power plant. Since then, KCPL has completed the Iatan 2 power plant and received the benefit of the Regulatory Plan.

KCPL initiated a contested case, Case No. EO-2005-0329, by filing the Stipulation and Agreement—which includes KCPL's Regulatory Plan—on March 28, 2005. This case resulted in the applicable language, cited by OPC and MECG, that "all" off-system sales revenues shall be used in establishing retail rates for as long as the Iatan investments are included in rate base. In its 2005 *Report and Order* approving the Stipulation and Regulatory Plan in Case No. EO-2005-0329, the Commission specifically emphasized that this treatment of off-system sales was an important reason why the Commission found the Regulatory Plan to be in the public interest.²

When the Commission approved the Regulatory Plan, the Commission specifically found that the provisions of the Regulatory Plan should result in lower rates:

The Commission finds that the proposed Experimental Regulatory Plan provides a framework that should lead to reasonable rates during the expected 5-year duration of the construction period for the projects included in the Experimental Regulatory Plan. *The Commission also agrees with Mr. Schallenberg and Mr. Trippensee that the Stipulation contains provisions that facilitate lower rates for customers in the future that would not exist absent this Stipulation.* (Emphasis added).³

² EO-2005-0329, *Report and Order*, filed July 28, 2005, p. 28-29.

³ EO-2005-0329, *Report and Order*, p. 27.

Dissenting in part and concurring in part with the Commission's *Order*, Commissioner Steve Gaw emphasized that, pursuant to his understanding of the Regulatory Plan, there should be no "sharing" of off-system sales margins so long as the Iatan plant and related improvements are included in rate base:

[I]t is very important to note that Iatan 2 construction again creates capacity for potential off-system sales. The credibility of those sales to the benefit of KCPL customers is critical to Staff's favorable recommendation in the Nonunanimous Stipulation.... KCPL consumers who are paying for this plant deserve and will be credited for amounts representing **any** margins associated with off-system sales. *If this were not so, this plan should not be approved. If the credit for off-system sales is diverted from consumers in the future, it will be in violation of the understanding of this Commissioner and will amount to taking from KCPL customers what is rightfully theirs.* (Emphasis added).⁴

This language makes clear that KCPL's request to share off-system sales margins in this case violates Staff's understanding of the Stipulation and Regulatory Plan. Staff recommends that the Commission consider the importance that the parties to the Stipulation and the Regulatory Plan placed on the fact that the customers would receive the *full* benefit of off-system sales margins. The parties fully negotiated the Stipulation that contained the Regulatory Plan. The parties gave and received consideration, and the Commission approved the Regulatory Plan. KCPL has collected, and continues to collect, the benefits of the upgrade of Iatan 1 and the construction of Iatan 2. Now, however, KCPL is attempting to diminish its commitment to maintain the benefit of off-system sales margins to the ratepayers who are still paying for the upgrade of Iatan 1 and the Iatan 2 unit.

⁴ EO-2005-0329, Opinion of Commissioner Steve Gaw, *Concurring in Part and Dissenting in Part*, filed August 19, 2005, p. 5.

Staff agrees with OPC and MCEG that the Commission can strike testimony, if it finds that testimony violates a Stipulation and Agreement. In Case No. ER-2006-0315, The Empire District Electric Company (“Empire”) sought to terminate an IEC and implement a cost recovery rider. Parties argued this violated a previous stipulation and agreement, and the Commission agreed, stating:

The Stipulation and Agreement was freely negotiated. Consideration was given and received. The Commission approved it and it is binding. The Commission can and shall require that Empire remove from its pleadings and other filings in this case the request it consented not to make.⁵

When Empire failed to remove from its pleadings the offending request, the Commission explained that “Empire’s failure to comply with the Commission’s Order necessitates removal by striking testimony and rejecting tariffs.”

WHEREFORE, Staff submits this response to the OPC’s and MCEG’s *Motion to Strike Pre-Filed Testimony and Reject Tariffs of Kansas City Power & Light Company*, and states that Staff believes their pleading is meritorious.

Respectfully Submitted,

/s/ John D. Borgmeyer

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⁵ ER-2006-0315.

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 19th day of June, 2012.

/s/ John D. Borgmeyer