

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 19th day of
April, 2012.

In the Matter of the Application of Kansas City Power)	
& Light Company and KCP&L Greater Missouri)	
Operations Company for the Issuance of an Accounting)	<u>File No. EU-2012-0131</u>
Authority Order Relating to Their Electrical Operations)	

**ORDER APPROVING AND INCORPORATING
STIPULATION AND AGREEMENT**

Issue Date: April 19, 2012

Effective Date: April 30, 2012

On December 30, 2011, Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company ("Companies") filed an application with the Missouri Public Service Commission ("Commission") for an Accounting Authority Order ("AAO") that would allow the Companies to undertake certain accounting procedures in connection with their electrical operations in relation to the costs of compliance with Missouri's Renewable Energy Standard Law. The Commission directed notice and established an intervention deadline. On January 23, 2012, Praxair, Inc., Sedalia Industrial Energy Users' Association, and AG Processing, Inc. a Cooperative (collectively, the Midwest Energy Users' Association), filed a timely application to intervene, which was granted.

On April 3, 2012, the Companies and the Commission's Staff ("Signatories") filed a non-unanimous stipulation and agreement ("Agreement"). The remaining participants, Midwest Energy Users' Association and the Office of Public Counsel, are not signatories to the Agreement. The Signatories to the Agreement request that the Commission issue an

order authorizing both Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company to:

- (a) record all incremental operating expenses associated with the cost of solar rebates, the cost to purchase renewable energy credits, the cost of the standard offer and other related costs incurred as result of compliance with Missouri's Renewable Energy Standard Law in USOA Account 182;
- (b) include carrying costs based on the Companies' short term debt rate on the balances in those regulatory assets; and
- (c) defer such amounts in a separate regulatory asset with the disposition to be determined in the Companies' next general rate cases.

Missouri courts have recognized the Commission's regulatory authority to grant a form of relief to a utility in the form of an AAO "which allows the utility to defer and capitalize certain expenses until the time it files its next rate case."¹ "The AAO technique protects the utility from earnings shortfalls and softens the blow which results from extraordinary construction programs."² "However, AAOs are not a guarantee of an ultimate recovery of a certain amount by the utility."³ The AAO "simply allows for certain costs to be separately accounted for *possible* future recovery in a future ratemaking proceeding."⁴ "This is not

¹ *State ex rel. Aquila, Inc. v. Public Service Comm'n of State*, 326 S.W.3d 20, 27 (Mo. App. 2010). See also Section 393.140, RSMo 2000. Additionally, Commission Rule 4 CSR 240-20.030(1) requires electric utilities to keep all accounts in conformity with the Uniform System of Accounts prescribed for Public Utilities and Licensees subject to the provisions of the Federal Power Act. However, section (4) of the rule provides that in prescribing this system of accounts the Commission is not committing itself to the approval or acceptance of any item set out in any account for the purpose of fixing rates or in determining any other matter.

² *Id.*

³ *Id.*

⁴ *State ex rel. Office of Public Counsel v. Missouri Public Service Comm'n*, 301 S.W.3d 556, 570 (Mo. App. W.D. 2009).

retroactive ratemaking, because the past rates are not being changed so that more money can be collected from services that have already been provided; instead, the past costs are being considered to set rates to be charged in the future.”⁵ Although the courts have recognized the Commission’s authority to authorize an AAO in extraordinary and unusual circumstances, there is nothing in the Public Service Commission Law or the Commission’s regulations that would limit the grant of an AAO to any particular set of circumstances.⁶

The Commission has discretion in prescribing accounting methods and forms of accounts, records and memorandum kept by an electrical corporation without conducting a hearing.⁷ Nevertheless, the Commission issued notice in this matter and allowed interested entities to intervene and request a hearing. No hearing was requested.⁸ Instead, the Signatories filed the non-unanimous Agreement.

Commission Rule 4 CSR 240-2.115 provides that if no objection is made to a non-unanimous stipulation and agreement within seven days of its filing, the stipulation and agreement may be treated as unanimous. No participant to this matter objected within the seven day time period. Since no participant has filed a timely objection to the Agreement, it will be treated as a unanimous agreement. The Agreement waives any procedural

⁵ *Id.*

⁶ Section 393.140, RSMo 2000. Extraordinary has been defined as meaning of a nonrecurring nature, and unusual has been defined as meaning a substantial cost. *Missouri Gas Energy v. Public Service Comm’n*, 978 S.W.2d 434, 437 (Mo. App. 1998); *State ex rel. Office of Public Counsel v. Public Service Comm’n*, 858 S.W.2d 806, 811 (Mo. App. 1993).

⁷ The courts have not decided the issue of whether Section 393.140(4) (which does not require a hearing) or Section 393.140(8) (which does require a hearing) controls the grant of an AAO. *State ex rel. Public Counsel v. Public Service Commission*, 858 S.W. 2d 806, 809-810 (Mo. App. 1993). The Commission’s position is that no hearing is required. *Id.*

⁸ The term “hearing” presupposes a proceeding before a competent tribunal for the *trial of issues* between *adversary parties*, the presentation and the consideration of proofs and arguments, and determinative action by the tribunal with respect to the issues ... ‘Hearing’ involves an *opposite party*; ... it contemplates a listening to facts and evidence for the sake of *adjudication* ... The term has been held synonymous with ‘opportunity to be heard’. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Comm’n of State of Mo.*, 776 S.W.2d 494, 495 -496 (Mo. App. 1989). The requirement for a hearing is met when the opportunity for hearing was provided and no proper party requested the opportunity to present evidence. *Id.*

requirements that would otherwise be necessary before final decision.⁹ Also, because the settlement disposes of this action, the Commission need not separately state its findings of fact.¹⁰

Based on the Commission's independent and impartial review of the unopposed Agreement, the Commission finds that the Agreement is consistent with the public interest and will approve it. The Commission will incorporate the terms of the Agreement into this order.

THE COMMISSION ORDERS THAT:

1. The provisions of the Non-unanimous Stipulation and Agreement filed on April 3, 2012 are approved and incorporated into this order as if fully set forth herein. The Signatories shall comply with the terms of the Agreement. A copy of the Agreement is attached to this order as Appendix A.
2. This order shall become effective on April 30, 2012.
3. This file shall be closed on May 1, 2012.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Jarrett and Kenney,
CC., concur.

Bushmann, Regulatory Law Judge

⁹ Section 536.060, RSMo 2000.

¹⁰ Section 536.090, RSMo 2000.