

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

In the Matter of the Application of)
Kansas City Power & Light Company)
For the Issuance of an Order Authorizing)
Construction Accounting Relating to its)
Electrical Operations)

**STAFF'S RESPONSE IN OPPOSITION TO KCPL'S MOTION IN LIMINE AND
MOTION TO CONSOLIDATE WITH KCPL'S GENERAL RATE INCREASE CASE,
CASE NO. ER-2014-0370, OR DISMISS CASE NO. EU-2014-0255**

COMES NOW the Staff of the Missouri Public Service Commission, by and through undersigned counsel, and hereby files *Staff's Response in Opposition to KCPL's Motion In Limine and Motion to Consolidate with KCPL's General Rate Increase Case*, Case No. *ER-2014-0370*, or *Dismiss Case No. EU-2014-0255*, stating as follows:

1. On June 12, 2014, Kansas City Power & Light Company ("KCPL" or "Company") filed an Application with the Commission for authorization to use construction accounting treatment, through an Accounting Authority Order (AAO), for Missouri jurisdictional carrying costs and monthly depreciation expenses related to its La Cygne environmental project from the plant-in-service date until the rates from KCPL's next general rate case take effect.

2. On December 3, 2014, KCPL filed a *Motion in Limine Regarding Ratemaking Issues; and Motion for Expedited Treatment* in which KCPL requests that the Commission order the other parties in this case to file their responses to the Motion in Limine by noon on December 8, 2014.

3. On December 4, 2014, the Commission in its *Order Setting Deadline for Responses* gave all the parties until December 9, 2014, to respond to the Motion.

Argument

I. The modifications and offsets suggested by Staff in its rebuttal testimony are not ratemaking determinations as KCPL suggests

KCPL seeks expedited treatment from the Commission to exclude a substantial portion of Staff's evidence arguing that Staff's ten modifications and offsets explained in Staff witness' Keith Majors rebuttal testimony, amount to nothing more than an attempt to provide ratemaking determinations in an AAO case. Simply put, KCPL's argument is not true. When the Commission grants an AAO, it is not making any ratemaking determination regarding the subject costs.¹ Staff has not proposed that any of the modifications and offsets discussed in Mr. Majors' rebuttal testimony have particular ratemaking treatment for any deferral of costs that the Commission may grant to KCPL in this case. As KCPL admits in its Motion, Staff has stated in testimony and pleadings that Staff is not seeking any ratemaking treatment in this case or in Case No. EU-2015-0094, as an AAO proceeding is not the appropriate way to address ratemaking concerns.² Staff is not requesting any adjustment—up or down—to rates in this case. Nor is Staff asking the Commission to change KCPL's current tariffs in this case or in Case No. EU-2015-0094.

Typically, an applicant for an AAO makes at least two separate requests from the Commission:(a) authority to defer certain costs, and (b) approval of a method of quantifying the costs to be deferred (i.e., how the deferrals are to be calculated; whether carrying costs should be applied to the deferred amounts, and at what carrying cost rate). Indeed, KCPL's request for construction accounting authority in this Application

¹ *State ex rel. Public Counsel v. Pub. Serv. Comm'n*, 858 S.W.2d 806, 813 (Mo. App. 1993); *State ex rel. Missouri Gas Energy v. Pub. Serv. Comm'n*, 978 S.W.2d 434, 438 (Mo. App. 1998).

² KCPL's *Motion in Limine Regarding Ratemaking Issues; and Motion for Expedited Treatment*, pg. 4, para. 9.

both asks for authority to apply construction accounting to the La Cygne environmental project costs, and specifies a particular quantification method for calculating the deferred amounts. Staff opposes both the Company's deferral request in general, and its proposed method for quantifying the deferred amounts. Yet, KCPL objects to Staff's counter-proposals for deferral accounting in this case on the spurious grounds that these recommendations are somehow "ratemaking" in nature, even though KCPL itself makes the exact same kind of recommendations as part of its Application.

A simple example will demonstrate the fallacy of the Company's arguments on this point. KCPL recommends that a carrying charge rate equal to its ongoing Allowance for Funds Used During Construction ("AFUDC") rate be applied to any construction accounting deferrals associated with the La Cygne environmental project. (Klote direct, p.7-8) Staff disagrees with this recommendation and, if the Commission decides to grant the Company deferral authority, Staff recommends that the Commission order a carrying charge rate equal to the Company's ongoing AFUDC rate less 250 basis points subtracted from the return on equity component of that rate. (Majors rebuttal, p. 40-42) Though Staff's recommended carrying cost rate in this case is offered in direct response to the rate the Company seeks, KCPL argues that Staff's recommendation is an improper ratemaking issue while the Company's carrying cost proposal is not. Under KCPL's logic, its testimony suggesting a specific carrying cost rate be applied to any deferrals should be excluded along with Staff's testimony on this topic if the Commission adopts KCPL's proposal.

KCPL in its direct testimony filed in this case requested pro-forma depreciation and carrying costs calculated on several assumptions and inputs of \$10.1 million. Staff,

in its rebuttal testimony, calculated pro-forma depreciation and carrying costs on a different set of inputs presented as modifications to the calculations and offsets to the amounts. KCPL argues that any recommended change to its calculation is tantamount to “ratemaking treatment.” On the contrary, Staff recommends changes to the calculation of the deferred amount, not any ratemaking treatment. Simply put, KCPL estimates the amount of the deferral should be \$10.1 million under its calculation recommendations; Staff estimates the amount of the deferral should be \$5.8 million under its calculation recommendations, without any additional offsets. This is simply a difference in assumptions and inputs to the calculation of the deferral amount for accounting purposes.

KCPL contends that carrying costs were calculated at the rate AFUDC “pursuant to a prescribed rule.”³ On the contrary, construction accounting has no statutory or otherwise strict definition or prescribed rule. In fact, nowhere in the FERC USOA is construction accounting mentioned or addressed. There is no mention of any such accounting treatment by the USOA because this treatment is inconsistent and not in conformity with FERC’s prescribed accounting of construction costs. Construction accounting is a Missouri Public Service Commission mechanism. Concerning construction accounting, generally, the depreciation related to the asset is deferred into a regulatory asset. Carrying costs may or may not be included in the calculation, and may or may not be calculated at the rate of AFUDC. Contrary to KCPL’s implications, carrying cost calculations are not bound by any formula.

In fact AAO’s themselves, while not having an immediate ratemaking impact, may have future ratemaking impacts because they account for dollars in a way that may

³ *Id.* at 6, para. 11.

allow them to have an effect on rate base they otherwise would not have, i.e., all or part of them may still be on the Company's books for the test year for a general rate case, and ultimately be considered by the Commission when it establishes new rates. KCPL's requested AAO relief has the same potential force and effect on rate base and rates as Staff' proposed accounting modifications and offsets to it – that is, no effect until the Commission includes, or alternatively excludes them when establishing ratemaking treatment of the amounts in some future rate proceeding.

The very crux of the disagreement between Staff and the Company in this case is whether the continuation of construction accounting is necessary. In its Application, the Company explained it needs deferral accounting "to avoid this significantly harmful earnings situation in connection with the Company's plant additions at La Cygne to comply with environmental regulations..."⁴ While KCPL's request identifies what it believes is the impact on its earnings once the La Cygne environmental project is completed, an event that will not occur before sometime in the second quarter of 2015, Staff argues that construction accounting is unnecessary in the first place.

As Staff will further explain in Section III below, since KCPL's need to continue construction accounting for La Cygne costs can be addressed in KCPL's pending general rate increase case, it is unnecessary for the Commission to authorize this accounting treatment in this case. However, even if one assumes there is no harm in addressing the construction accounting request in this case, it is very relevant to the discussion of the "need" for the continuance of construction accounting for Staff to evaluate and identify, by considering modifications and offsets.

⁴ *In the Matter of Application of Kansas City Power & Light Company for the Issuance of an Order Authorizing Construction Accounting Relating to its Electrical Operations*, Application, pg. 4, para. 13.

The Commission has previously provided guidance as to what types of issues should be dealt with in an AAO case. In 1991, in the *Sibley* case, the Commission stated: “Record-keeping procedures and *the booking of any offsets associated with the extraordinary event may be requested* [in an AAO case]; whether to allow those offsets is a decision for the rate case.”(Italics added)⁵

The Company claims that the “ratemaking nature” of Staff’s accounting recommendations in this case are not consistent with the Commission’s previous findings on this topic. However, none of the accounting adjustments Staff proposes to KCPL’s recommended deferral calculations in this case fall within the types of issues the Commission has previously found to be more appropriately addressed in a general rate proceeding. A majority of Mr. Majors’ accounting recommendations found in his rebuttal testimony are proposals that various offsets be made to KCPL’s proposed calculation of its requested deferral for accounting purposes, not for ratemaking purposes. These are among the types of recommendations the Commission specifically foresaw in the *Sibley* case to be appropriate considerations in AAO proceedings.

II. Calculations made by KCPL are one sided. Any applicable offsets are not considered

The Commission has considered and ordered offsets to requests for AAO deferrals in prior AAO cases. Such a case is Case No. GU-2011-0392, which concerned the application of Southern Union Company d/b/a Missouri Gas Energy (“MGE”) for an AAO deferral of the expense and capital amounts incurred related to the

⁵ Report and Order, *In the Matter of the Application of Missouri Public Service for the issuance of an accounting order relating to its electrical operations and purchase power commitments*. (Case Nos. EO-91-358 & EO-91-360 (the “*Sibley*” case), page 9, decided December 20, 1991).

2011 Joplin tornado. In its *Report and Order*, the Commission ordered offsets to the deferral costs for insurance claim proceeds, government payments, government credits, and other offsets applicable to incremental operation and maintenance expense or capital expenditures.⁶ MGE's AAO filing was not concurrent with a general rate case and the Commission explicitly stated, "Nothing in this order shall constitute a finding or conclusion by the Commission of the reasonableness of any amount deferred, and the Commission reserves the right to consider the ratemaking treatment to be afforded any deferred amount."⁷ The Commission can, and has, considered the inclusion of offsets to be recorded against requested AAO deferrals in AAO cases, while explicitly reserving ratemaking treatment of the net deferred amounts for some future rate proceeding.

To give an example that is germane to this case of the need to consider deferral offsets, if the value of depreciation and carrying costs associated with La Cygne environmental cost construction accounting treatment is \$1, but cessation of the DOE spent nuclear fuel storage fees has a value to KCPL of a reduction to expense of \$0.25, then the net impact of the deferral accounting, when both events are considered is \$0.75. Staff's position in this proceeding is that the current DOE funding windfall to KCPL is highly relevant to the Company's asserted need for construction accounting authority in this case. In addition, some of the Staff's proposed modifications to KCPL's proposed deferral calculation listed in Mr. Majors' rebuttal testimony are necessary because of KCPL's failure to appropriately take into account concurrent impacts of the La Cygne environmental project on KCPL's accumulated depreciation reserve and accumulated deferred income tax reserve.

⁶Report and Order, Case No. GU-2011-0392 decided January 25, 2012, pg. 26.

⁷*Id.* at 27.

The above discussion illustrates the importance of looking at offsets to make an overall determination of the true value of the deferred construction accounting. Through its evaluation and assessment, Staff has presented evidence in its rebuttal testimony, and will argue at the hearing, that with the appropriate modifications and offsets, the impact on earnings relating to depreciation and carrying costs, regarding the La Cygne project goes away.⁸ If the Commission accepts that the impact of Staff's proposed offsets are as great, or nearly as great, as the amounts KCPL proposes to defer for continuation of construction accounting, then there is no need for the Commission to authorize KCPL to implement construction accounting for La Cygne costs on its books.

Below is a summary of Staff's calculations and offsets listed in Staff witness Keith Majors' rebuttal testimony filed November 14, 2014, page 50, which, as can be seen, result in no need for construction accounting:

KCPL Calculation of the La Cygne Deferral	\$10,162,555
Staff Adjustments for Deferred Taxes & AFUDC Rate (Adjustments 1-5)	\$(4,359,963)
Staff Calculated LaCygne Deferral	\$5,802,592
Adjustment 8 – Expired Amortizations	\$(2,385,146)
Adjustment 9 – DOE Fees, Case No. EU-2015-0094	\$(3,530,553)
Net Total	\$(113,107)

If reference to modifications or offsets is not allowed at the hearing, then Staff would be litigating with one arm tied behind its back, and would be unable to effectively argue its position on the primary issue in the case—whether or not continuation of construction accounting should be granted because of its necessity. Thus, Staff

⁸ See Mr. Major's rebuttal testimony at pages 34 through 50, wherein evidence is presented that demonstrates using the proper offsets makes the impact on KCPL's 2015 earnings relating to the deferred construction accounting costs completely go away.

requests that KCPL's Motion to exclude certain portions of Staff's rebuttal testimony be denied.

III. KCPL's AAO request for the La Cygne costs is premature

Staff agrees with KCPL with regard to the standard that the Commission has used when determining whether to authorize deferral of certain costs. It is well established that the Commission has granted deferral accounting if the costs relate to an event that is extraordinary, unusual, and infrequent, and the costs associated with the event are material.⁹ However, the simple fact that an expense is extraordinary and nonrecurring is not enough to justify the deferral of that expense. Implicit in the Commission's previous orders regarding requests for AAOs is a requirement that there must be some reason why the expense to be deferred could not be immediately included for recovery in a rate case.¹⁰ The Commission has previously decided that where the utility could file a general rate increase case with an appropriate test year within which the relevant event occurred for which the utility was seeking the AAO, there was no reason why the expenses should be deferred through an AAO.¹¹

In the instant case, KCPL filed such a rate case on October 30, 2014, Case No. ER-2014-0370, based on a test year of the twelve months ending March 31, 2015, with a proposed true-up end date of May 31, 2015, which is now pending before the Commission. There will not be any expenses relating to construction accounting to defer until sometime next year and certainly no earlier than when the true-up in KCPL's current general rate case is to occur. The environmental equipment that is the subject

⁹ *In the Matter of Missouri Public Service*, 1 MPSC 3d 200, 205 (1991).

¹⁰ Report and Order, *In the Matter of the Application of St. Joseph Light & Power Company for the Issuance of an Accounting Authority Order Relating to its Electrical Operations*, 9 MoPSC3d 481, 485 (Case No. EO-2000-0485 decided December 14, 2000) (internal citations omitted).

¹¹ *Id.*

of KCPL's request in this case will go into service no earlier than second quarter 2015. Thus, there is no reason for Commission action on KCPL's request and no reason why the expense to be deferred could not be immediately included for recovery in a rate case—a rate case KCPL has already filed.

IV. KCPL has already included the anticipated La Cygne deferral and the anticipated La Cygne rate base value in its general rate case

By urging the Commission to exclude certain portions of Staff's rebuttal testimony, KCPL is implicitly arguing that Staff's accounting recommendations are improper because they are intended to eventually result in a particular ratemaking result. KCPL has in fact already included La Cygne costs in its rate case filing. KCPL's witness Mr. Ronald Klote, provided pre-filed direct testimony in the rate case on October 30, 2014, supporting ratemaking treatment of the La Cygne construction accounting deferral.¹² KCPL's proposed rate treatment of the LaCygne deferral includes a distinct adjustment to both rate base and inclusion of an additional amount of amortization expense to KCPL's cost of service. These are clear ratemaking adjustments. On the contrary, Staff's proposed accounting modifications that KCPL seeks to prevent from being admitted into evidence in this case do not address in any matter either of these adjustments, only the amount that should be deferred based on Staff's calculations.

There is Commission history supporting for AAO deferral requests being considered in a general rate case and not in a separate AAO application. In 2011, KCPL filed for an AAO for certain costs relating to a flood that affected some of its power plant

¹² Direct testimony of Ronald Klote, ER-2014-0370, pg. 10, lines 20-22.

operations.¹³ Subsequent to filing the AAO request, KCPL filed a rate case, Case No. ER-2012-0174. During discussions at the early prehearing conference, KCPL did not oppose Staff's motion to consolidate the AAO with the pending rate case.¹⁴ The Commission ordered supplemental direct testimony concerning the AAO to be filed in the pending rate case. KCPL, and all the parties, had sufficient time, and more importantly, sufficient opportunity to examine the merits of the requested flood AAO by examining all the elements making up the flood costs in the rate case, and not in an AAO docket. Similarly, Staff believes that the facts in this case support the La Cygne AAO case being consolidated into the rate case.

Conclusion

For all the reasons listed in Section I and II above, Staff respectfully requests that KCPL's Motion to exclude certain portions of Staff's rebuttal testimony be denied, allowing testimony and evidence on modifications and offsets to be presented by Staff at the hearing.

Accordingly, for the reasons stated in Section III and IV above, Staff requests that the Commission consolidate this case with KCPL's general rate increase case (ER-2014-0370) thereby eliminating a need for an evidentiary hearing in this case. Failing to consolidate this proceeding with the current rate case would result in duplicative efforts by Staff and other parties. It would be a more efficient use of Commission resources to address the expenses for La Cygne once, in KCPL's pending rate case, rather than to address them twice—first for deferral accounting authority, then again, for setting KCPL's rates. As a second alternative, Staff requests the Commission issue an order

¹³ File No. EU-2012-0130, *Application for Accounting Authority Order*.

¹⁴ EU-2012-0130, *Response in Opposition to Motion to Dismiss and in Support of Motion to Consolidate*

dismissing this case on the basis that the facts stated in KCPL's Application fail to establish the necessity of an AAO at this time and is duplicative of its current rate case filing.

WHEREFORE, Staff files *Staff's Response in Opposition to KCPL's Motion In Limine and Motion to Consolidate with KCPL's General Rate Increase Case*, Case No. *ER-2014-0370, or Dismiss Case No. EU-2014-0255*, and for the reasons stated above, Staff respectfully requests that the Motion in Limine be denied, this case be consolidated into KCPL's general rate increase case, Case No. ER-2014-0370, or in the alternative, this case be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed with first-class postage, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 9th day of December, 2014.

/s/ Akayla J. Jones