BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

MOTION TO STRIKE PRE-FILED TESTIMONY AND REJECT TARIFFS AND MOTION FOR EXPEDITED TREATMENT

COME NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission"), the Office of the Public Counsel, and the Midwest Energy Consumers' Group (collectively, "Movants") and for their *Motion To Strike Pre-Filed Testimony and Reject Tariffs and Motion for Expedited Treatment* respectfully state:

I. Introduction

On February 27, 2012, Kansas City Power & Light Company ("KCPL") filed its *Request for Authority to Implement a General Rate Increase for Electric Service*.

KCPL's application contains a request for an interim energy charge ("IEC") that violates the terms of the utility's 2005 Regulatory Plan ("Regulatory Plan"). As explained below, KCPL's requested IEC does not comply with the parameters of the Regulatory Plan, and KCPL's request is fundamentally different from the type of IEC contemplated in the Regulatory Plan. Therefore, KCPL's requested IEC violates the letter and the spirit of the Regulatory Plan, and should be struck from its pending rate request.[1]

The Commission may strike testimony if it finds that a utility's pleadings or other filings contain a request that the utility agreed not to make. Because KCPL has violated the

[1] On May 25, 2012, The Office of the Public Counsel and the Midwest Energy Consumers' Group filed a *Motion to Strike Pre-Filed Testimony and Reject Tariffs* regarding KCPL's request to collect off-system sales margins through its IEC.

commitments it made in its Regulatory Plan, the appropriate remedy is for the Commission to strike the testimony and tariff sheets, listed below, containing the improper request.

II. Background

A. KCPL's 2005 Regulatory Plan

KCPL's 2005 Experimental Regulatory Plan is contained in Section III.B.1 of the Stipulation and Agreement in Case No. EO-2005-0329. Specifically, KCPL has violated Section III.B.1.c., entitled "Single-Issue Rate Mechanism," which contains the following provision:

> 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 changes 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. In exchange for this commitment, the Signatory Parties agree that if KCPL proposes an Interim Energy Charge ("IEC") in a general rate case filed before June 1, 2015 in accordance with the following parameters, they will not assert that such proposal constitutes retroactive ratemaking.[2]

The Regulatory Plan lists six parameters describing the appropriate IEC. Parameter (iii) specifically provides for an IEC that includes a rate "ceiling," to be collected on an interim basis, subject to refund. Parameter (iii) states:

> (iii) The IEC rate "ceiling" may be based on both historical data and forecast data for fuel and purchased power costs, forecasted retail sales, mix of generating units, purchased power, and other factors including plant availability, anticipated outages, both planned and unplanned, and other factors affecting the costs of providing energy to retail customers.[3]

B. KCPL's proposed "IEC"

In this case, the direct testimony of KCPL witness Tim Rush contains the utility's request for what it labels an "IEC."[4] Mr. Rush testified as follows:

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[2] EO-2005-0329, Stipulation and Agreement, p. 7.

[3] *Id.*

[4] ER-2012-0174, *Direct Testimony of Tim M. Rush*, filed February 27, 2012, p. 13 lns 8-21.

> The proposed IEC would be established at zero price and remain at zero for two years. During that time, costs for variable fuel and purchased power costs to meet NSI would be accumulated in a deferred account. The base fuel for NSI established in this case would be offset to this amount. Each amount would be set on annual $ per kWh basis. For example, the base amount for fuel and purchased power costs is set in this case at $0.01596 per kWh. If during the first twelve-month period of the IEC the fuel and purchased power costs to meet NSI were $0.01696, then the deferred account would include an amount equal to that difference, i.e., $0.0010 times the NSI for the period. This amount would be offset by the Off-System Sales Margin during the same twelve-month period, adjusted to reflect the sharing proposal described above.
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> This process would happen each year of the IEC's two-year period. At the end of the two years, if the amount in the deferred account were negative, then the Company would refund that amount to customers. If the amount were positive, then no refund would occur.

As Mr. Rush explained above, instead of collecting a "ceiling" rate on an interim, subject-to-refund basis, KCPL actually requests a ceiling rate of zero—not an IEC at all.

Therefore, KCPL's so-called IEC does not comply with Parameter (iii) of the Regulatory Plan, and it bears no resemblance to the kind of IEC contemplated by that agreement. A brief history of the IEC in Missouri explains this violation in greater detail.

III. The IEC in Missouri and Senate Bill 179

Historically, the term "interim energy charge" has been used in cases before this Commission to describe a specific method of mitigating the risk of volatile fuel prices. The Commission approved IECs that worked by setting two rates. The first, a base "floor" rate, was determined using traditional historical ratemaking. Also, a higher "ceiling" rate, based on forecasted estimates—the "ceiling" required by Parameter (iii)—was collected by the utility on an interim basis, subject to refund after a true-up to determine actual fuel and purchased power costs.[5]

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[5] See, e.g., ER-2001-299, *Direct Testimony in Support of the Stipulation and Agreement Regarding Fuel and Purchase Power Expense of Staff Witness Featherstone*, filed May 22, 2001, p. 2 lns. 4-30; ER-2007-0004 *Report and Order* p. 38-42.

A. *State ex rel. Utility Consumers Council of Missouri, Inc. v. PSC*

Staff and other parties designed IECs in this manner in the wake of the Missouri Supreme Court's 1979 ruling in *State ex rel. Utility Consumers Council of Missouri, Inc. v. PSC* ("*UCCM*").[6] The court considered whether the Commission possessed statutory authority to approve a "fuel adjustment clause" ("FAC"), which allowed the utility to automatically recover, outside a rate case, any increase in fuel cost above a certain base amount.

The Supreme Court reversed the Commission's order authorizing the FAC. The Court explained that the FAC "enables the utility to pass on to the consumer any increase (or decrease) in the cost of fuel *automatically and without any need for further consideration of compensatory decreases (or increases)* in other operating expenses."[7] The Court found no statutory authority permitting the Commission to approve such a recovery mechanism. The Court emphasized that if the Commission approved an FAC without appropriate statute authority,

> it would… come at least dangerously close to abdication by the commission of its power to set just and reasonable rates, for the commission has determined in advance that any fuel charge made in accordance with the prescribed formula will be proper without regard to whether, in light of other cost factors, the overall charge is reasonable.[8]

B. The IEC in Missouri

In recognition of the Court's *UCCM* decision, the Staff, utilities and other parties to electric rate cases developed a ratemaking procedure in the early 1980s called "forecasted fuel" to address the effect of double-digit inflation rates on fuel and purchased power costs. The IEC mechanism was based on these forecasted fuel procedures.[9]

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[6] 585 S.W.2d 41 (Mo. banc 1979).

[7] *Id.* at 49 (emphasis added).

[8] *Id.* at 57.

[9] ER-2001-299, *Direct Testimony In Support of Stipulation and Agreement Regarding Fuel and Purchased Power Expense of Staff Witness Featherstone*, p. 5.

In Case No. ER-2001-299, the parties agreed to allow The Empire District Electric Company ("Empire") to implement the first IEC in Missouri to address the volatile and extremely high costs of natural gas at the time of Empire's 2001 filing.[10] In that case, the Commission approved a stipulation and agreement in which the parties agreed that Empire's cost of service would contain two separate amounts that formed the IEC.

First, a conventional historic ratemaking analysis was used to establish a certain "base" or "floor" amount for variable fuel and purchased power costs in the company's permanent rates. Second, a forecasting analysis was used to set a "ceiling" amount to be collected from ratepayers on an interim basis, subject to refund.

The utility collected this ceiling amount during the life of the IEC (in Empire's case, 24 months). After the IEC expired, a prudency and true-up audit identified the actual cost for fuel and purchased power. If the actual variable fuel and purchased power costs fell below the floor, then the amount billed interim subject to refund was returned to the customers and the utility's shareholders retained the difference between the actual fuel costs and the floor amount. Actual costs above the ceiling were absorbed by the utility, with no additional charge to customers. If the actual costs fell somewhere in between the floor and ceiling, the utility refunded the applicable amount of the difference between the actual cost and the ceiling. Thus, the floor amount functioned as an incentive for utilities to keep fuel and purchased power costs as low as possible. The ceiling functioned to mitigate the risk to customers if fuel prices rose much higher than expected.

Senate Bill 179 took effect on January 1, 2006, as Section 386.266 RSMo. It authorizes the Commission to approve, modify or reject periodic rate adjustments outside of general rate

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[10] *Id.*

proceedings for electric corporations. S.B. 179 resolved the problem addressed in the *UCCM* case by explicitly authorizing the Commission to set a variable component.[11] In compliance with Section 386.266, the Commission began approving fuel adjustment clauses for electric utilities.[12] Specifically, Union Electric, Empire and KCP&L Greater Missouri Operations Company[13] all have fuel clauses authorized by the Commission under S.B. 179.

IV. Movants' Argument

The history of the IEC in Missouri shows that the concept of a "ceiling" rate collected on an interim, subject-to-refund basis is the operative heart of an IEC as contemplated by the Regulatory Plan. An IEC with a ceiling is the *only* type of IEC that had been supported by Staff and other parties and approved by the Commission at the time KCPL signed its Regulatory Plan in 2005. A ceiling is expressly required by Parameter (iii) of the Regulatory Plan. Moreover, KCPL's promise not to seek any mechanism authorized by Senate Bill 179 bolsters Movants' argument that the Regulatory Plan contemplates an IEC with a ceiling.[14] KCPL's request does not contain a ceiling, it is not an IEC, and therefore it violates both the letter and spirit of the Regulatory Plan. This violation is significant, because, as explained above, the ceiling in the IEC functions to mitigate the risk to ratepayers if the utility's fuel and purchased power costs

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[11] Section 386.266.1 states in pertinent part: "Subject to the requirements of this section, any electrical corporation may make an application to the commission to approve rate schedules authorizing an interim energy charge, or periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred fuel and purchased power costs, including transportation." The Western District viewed this language authorizing an automatic adjustment clause for fuel as a direct response to the holding in *UCCM. State ex rel. Office of Pub. Counsel & Missouri Indus. Energy Consumers v. Missouri Pub. Serv. Comm'n*, 331 S.W.3d 677, 683 (Mo. Ct. App. 2011).

[12] (ER-2007-0004 Report and Order p38-42).

[13] Aquila is now called KCP&L Greater Missouri Operations, an affiliate of KCPL.

[14] Despite KCPL's promise in its Regulatory Plan not to seek the benefits of S.B. 179, the direct testimony of KCPL witness Wm. Edward Blunk, Burton Crawford and Tim M. Rush explained how KCPL's requested IEC meets the requirements of 4 CSR 240-20.090(2): Electric Utility Fuel and Purchased Power Cost Recovery Mechanisms. The Commission promulgated this rule to give effect to Section 386.266 RSMo, which codified S.B. 179.

turn out higher than expected. The lack of a true rate ceiling in KCPL's request seems to remove this risk-mitigating function.[15]

Based on the Commission's order regarding a similar issue in Empire's 2006 rate increase, Case No. ER-2006-0315, the appropriate remedy for KCPL's violation is to strike the improper request.

V. Remedy

Because KCPL's requested IEC violates its 2005 Regulatory Plan, Movants hereby request that the Commission strike all KCPL testimony relating to its requested IEC. When a utility makes a request it agreed not to make, the Commission has explained that it 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."[16]

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."[17]

[15] Staff is unclear how any fuel costs above the amount in retail rates will be treated. There appears to be a conflict between KCPL's testimony and its proposed tariff sheets.

[16] ER-2006-0315, *Order Clarifying Continued Applicability of the Interim Energy Charge,* issued May 2, 2006.

[17] ER-2006-0315, *Order Rejecting Tariffs and Striking Testimony*, issued June 15, 2006.

Because KCPL's request violates its commitments in its 2005 Regulatory Plan, Movants request that the Commission strike the following sections of KCPL witnesses' direct testimony and tariff sheets relating to the IEC proposal:

Direct Testimony of Tim Rush, filed February 27, 2012: page 3, line 5; page 6, lines 3-13; page 7, lines 9-16; page 10, line 3 through page 16, lines 17 and Rush Schedule TMR-1 through TMR-5

Direct Testimony of Darrin R. Ives, filed February 27, 2012: page 4, lines 22-23; page 21, lines 21-23.

Direct Testimony of Samuel C. Hadaway, filed February 27, 2012: page 19, lines 7-9.

Direct Testimony of Michael M. Schnitzer, filed February 27, 2012: page 33, fn. 20.

Direct Testimony of Wm. Edward Blunk, filed February 27, 2012: pages 30 line 9 through page 32, line 15

Direct Testimony of Burton L. Crawford, filed February 27, 2012: pages 17, line 1 through page 20, line 18 and Crawford Schedules BLC-8 through 12.

Direct Testimony of Terry Bassham, filed February 27, 2012: page 8, lines 20-22; page 9, lines 13-15 and page 19, lines 17-19.

And tariff sheets P.S.C. MO. No. 7 Original Sheet No. 24 and P.S.C. No. 7 Original Sheet No. 24A.

VI. Motion for Expedited Treatment

Pursuant to 4 CSR 240-2.080(14), Movants request that the Commission act on this request in an expedited manner. In support of this request, Movants point out that by acting in an expeditious fashion, the Commission may save the parties the significant cost of issuing discovery, prefiling testimony, conducting cross-examination and filing briefs on an issue that should not be heard by the Commission. With this in mind, and recognizing that direct testimony is due in this matter on August 2, Movants ask that KCPL be ordered to respond to this Motion on or before July 16 and that the Commission grant this motion on or before July 25, 2012.

Movants are filing this pleading as soon as was reasonably practicable. While KCPL filed its direct testimony on February 27, other matters have prevented counsel from addressing this matter and coordinating efforts to present a joint motion to strike. In this case, undersigned counselors have been detained by the press of other work. Specifically, counselors have been involved with the pending Ameren Missouri and GMO MEEIA filings, as well as the pending Ameren Missouri, KCPL and GMO rate cases. Furthermore, MECG counsel has been involved in the recently completed Westar rate proceeding in Kansas. As such, this pleading has been filed as soon as reasonably practicable

VII. Conclusion

The foregoing history clearly shows that KCPL's 2005 Regulatory Plan bound KCPL to submit an IEC (if it chose to propose an IEC) that included a forecasted "ceiling" rate to collect fuel and purchased power costs on an interim, subject-to-refund basis. KCPL did not do so. KCPL's so-called IEC is actually an IEC of "zero," which is not an IEC at all. Instead, KCPL requested to automatically collect fuel and purchase power costs, then automatically offset those costs with a shared percentage of off-system sales margins. This request violates KCPL's commitment in Section II.B.1.c of its 2005 Regulatory Plan, and should therefore be stricken from the record in ER-2012-0174.

WHEREFORE, Movants recommend the Commission find that KCPL submitted direct testimony and tariff sheets in violation of Section II.B.1.c of its 2005 Regulatory Plan and Stipulation and Agreement in Case No. EO-2005-0329, and strike KCPL's tariff sheets and testimony as set forth herein.

Respectfully Submitted,

STAFF OF THE MISSOURI
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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 6th day of July, 2012.

/s/ John D. Borgmeyer