

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Kansas)	
City Power & Light Company for Approval)	<u>Case No. ER-2007-0291</u>
to Make Certain Changes in Its Charges)	
for Electric Service to Implement Its)	
Regulatory Plan)	

CONCURRING OPINION OF CHAIRMAN JEFF DAVIS ON ORDER
APPROVING TARIFFS IN COMPLIANCE WITH COMMISSION REPORT
AND ORDER

Having thoroughly reviewed the motions, the facts and the law in this case, it is appropriate for the Commission to deny these motions and to approve tariffs that comply with the Commission's report and order in this case. I felt the need to write a concurrence in this matter to enlighten commission observers about the positions taken by the parties in this case.

In this case, three parties filed motions regarding the tariffs. Trigen raises some very valid points regarding the Commission's decision in this case and the Commission has addressed those points. We may not have addressed all of the points raised by Trigen in the way Trigen would have preferred, but they are addressed. That leaves the arguments raised by the Office of Public Counsel and Praxair.

Response to Office of Public Counsel's Position on "Good Cause":

Office of Public Counsel correctly points out there are defects in KCP&L's motion for expedited treatment, but that does not relieve this Commission from acting for good cause shown. In this case, the Commission has already found KCP&L's current rates

are not just and reasonable. Even the PSC Staff and the OPC opined that KCP&L was not earning its allowed rate of return.

Here, the Office of Public Counsel (OPC)'s final recommendation in this case was that KCP&L receive slightly more than \$1 million. \$1 million is no paltry sum by any stretch of the imagination and Mr. Mills correctly notes that these increased rates, any rate increases, will be a hardship for KCP&L's residential consumers. Such concern is particularly well-founded in the current economic climate; however, we cannot let those concerns override other equally valid concerns – namely this commission's duty to set just and reasonable rates, our obligation to allow utilities the opportunity to earn a fair return on their investments and to decide these issues in a timely manner when public policy dictates that is a prudent course.

I concur with the majority's analysis as to why this commission has "good cause" to act in this matter on less than thirty days notice. I would even go further.

Bad news is a dish best served warm. If we are truly concerned about the people of this state we have an obligation to tell them the truth about their utility rates. The truth is that our low electric rates have been both a blessing and a curse. Society's desire to have all of the latest technological innovations when combined with the low rates enjoyed by KCP&L customers compared to the rest of the nation is encouraging electricity consumption. This demand for increasing amounts of electricity, necessitates new power plants like Iatan II and the continued operation of existing coal-fired baseload units that require additional environmental controls. New generation plants are very expensive. The current string of cases necessitated by the construction of Iatan II is proof positive that increasing consumer demand for electricity drives electric

rates higher and can possibly lead to other societal costs that we are only beginning to discover.

Having already determined that new rates are just and reasonable, any further delay than that necessary to insure that these tariffs are in compliance with report and order in this case and to insure all parties have an opportunity to raise any objections as to whether or not the tariffs comply with the actual report and order issued in this case only harms consumers because we are only further perpetuating the myth there are no consequences for their increasing consumption of electricity.

When utilities file rate cases, there is an expectation based on state statute and ninety years of regulatory custom that those cases will be adjudicated by this body in eleven months or less. Those utilities make their business plans around that regulatory framework and this Commission should take great care not to violate that principle unless absolutely necessary. Unnecessary delay could start this commission down the long, slippery slope to never granting rate increases which could hurt consumers in the form of rate shock when those rates do finally go into effect and ultimately be detrimental to the efforts of all Missouri utilities trying to attract capital to fund infrastructure improvements to give their customers the quality service expected from a utility that has a monopoly.

If this Commission were to take OPC at its word and spend the next eleven months evaluating those tariffs, it is only a logical extension that those tariffs could also be suspended again unless they had the unanimous consent of all the parties, an arbitrary and capricious result that would effectively give the OPC a line item veto on every commission order.

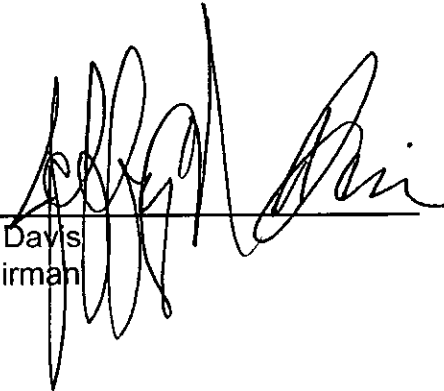
Response to Praxair's Objection to PSC Staff Recommendation to Approve Tariffs:

Similar reasoning applies to the arguments made by Praxair. These issues have already been heard by the Commission prior to the filing of the tariffs in compliance with the commission's report and order. KCP&L filed tariffs in compliance with the report and order and Trigen was the only party to file to timely file an objection based on the very narrow issue of the termination date for KCP&L's space-heating tariffs.

Staff's efforts to work with Trigen to resolve this issue to provide the parties with as much notice of the issue as possible to the other parties should be commended and encouraged. Those actions should not be used to thwart the process or toll the original filing made by KCP&L on December 6, 2007. In my opinion, the legal reasoning behind State ex. rel. Public Counsel v. Public Service Commission, 121 S.W.3d 534, 539 (Mo.App. 2003) is dispositive of the issue raised by Praxair, but I certainly respect Praxair's right to litigate the issue and if I'm wrong, I'll be the first person to apologize to Praxair and to the taxpayers of this state for wasting their resources on this issue.

That being said, it is this commissioner's most fervent desire to afford OPC, Praxair and all concerned parties the due process everyone expects from their government. Any suggestions the parties have on how these issues can be resolved in the future are welcome and should be filed as part of this case or in another way designed to give formal notice to the interested parties herein.

Respectfully submitted,



Jeff Davis
Chairman

Dated at Jefferson City, Missouri,
on this 21st day of December, 2007.