

**zSTATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 31st day of
January, 2008.

In the Matter of the Application of Kansas City)	
Power & Light Company for Approval to Make)	<u>Case No. ER-2007-0291</u>
Certain Changes in Its Charges for Electric)	Tariff No. YE-2008-0369
Service to Implement Its Regulatory Plan)	

ORDER DENYING MOTIONS FOR REHEARING
CONCERNING COMPLIANCE TARIFFS

Issue Date: January 31, 2008

Effective Date: January 31, 2008

On February 1, 2007, Kansas City Power & Light Company submitted to the Commission proposed tariff sheets intended to implement a general rate increase for electrical service provided in its Missouri service area. The Commission issued a Report and Order on December 6, 2007, in which it rejected those tariffs, but allowed KCPL to file tariffs that comported with that Report and Order no later than December 13. The Commission also ordered any objections to the tariffs to be filed no later than December 18.

KCPL filed new tariffs on December 13, 2007, and the Staff of the Missouri Public Service Commission filed its Recommendation on December 18, 2007. Staff stated that the tariff sheets denominated YE-2008-0369 comply with the Commission's December 6, 2007 Report and Order, and recommended that the Commission approve them. The Office of the Public Counsel, Trigen-Kansas City Energy Corporation and Praxair, Inc., opposed

the tariffs.¹ Over those parties' objections, the Commission approved the tariffs on December 21, 2007 effective January 1, 2008. Praxair and OPC filed motions for rehearing on December 31, 2007.

Despite Supreme Court holdings stating that no hearing is required for the Commission to approve a tariff², Praxair and OPC steadfastly maintain that they are entitled to such a hearing. Praxair, OPC, and all other parties as well, already received their due process during the lengthy evidentiary hearing, as well as the entirety of the rate case, which began on February 1, 2007. And, contrary to OPC's assertion that no other party except Staff has any "real" opportunity to be heard once KCPL filed its compliance tariffs, Trigen utilized its "real" opportunity to be heard by launching substantive objections to those tariffs. What is more, KCPL conceded, and incorporated Trigen's suggested language in substitute tariff sheets.

In addition, OPC is wrong in claiming that Staff, and only Staff, has the power to "force a utility to file substitute sheets." No party, and not even the Commission itself, has the power to "force" a utility to file substitute sheets. Parties can consent or object to tariff sheets, and the Commission can approve them, suspend them, reject them, or simply let the tariff sheets go into effect by operation of law. Moreover, a company can file substitute sheets to effect changes desired by another party. But the tariffs are the company's. If a party, including Staff, objects, the company has the right to disagree with that party, and ask the Commission to approve the tariffs, anyway.

¹ Praxair's motion was not filed until December 19 and did not include a motion for leave to late-file the untimely response.

² *State ex. rel. Utility Consumers' Counsel of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc. 1979); *State ex. rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 31 (Mo. banc. 1975). See also *State ex. rel. Public Counsel v. Public Service Commission*, 121 S.W.3d 534, 539 (Mo. App. 2003).

Finally, OPC and Praxair's argument concerning the final revenue requirement is specious. The Commission's December 6, 2007 Report and Order on revenue requirement and class cost of service obviously contained all the information KCPL and Staff needed. Further, both OPC and Praxair were signatories to KCPL's Experimental Regulatory Plan in Case No. EO-2005-0329, which states that additional amortizations might be required after the Commission completes its "traditional" revenue requirement analysis to keep KCPL at investment grade. This is precisely what was done here, as it was in the last case. Only OPC complained of how to calculate the additional amortizations in this case, and the Commission ruled in OPC's favor on that issue.

The Commission must grant rehearing "if in its judgment sufficient reason therefor be made to appear."³ The Commission does not find sufficient reason to grant rehearing. The motions for rehearing will be denied.

IT IS ORDERED THAT:

1. The Application for Rehearing filed by Praxair, Inc., is denied.
2. Public Counsel's Application for Rehearing of Order Approving Tariffs in Compliance with Commission Report and Order is denied.

³ Section 386.500.1 RSMo 2000.

3. This order shall become effective on January 31, 2008.
4. This case shall be closed on February 1, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is positioned above the printed name.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, and
Jarrett, CC., concur.
Clayton, C., dissents.
Appling, C., not participating

Pridgin, Senior Regulatory Law Judge