

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 21st day  
of December, 2007.

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

**ORDER APPROVING TARIFFS IN COMPLIANCE**  
**WITH COMMISSION REPORT AND ORDER**

Issue Date: December 21, 2007

Effective Date: January 1, 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 KCPL's tariffs, but allowed KCPL to file tariffs that comport with the 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.

On December 13, 2007, KCPL filed tariff sheets which the Commission denominated Tariff No. YE-2008-0369, as amended by substitute sheets filed on December 18. KCPL stated that these tariffs comply with the Commission's December 13, 2007 Report and Order, and KCPL requested that the tariffs become effective for service on and after January 1, 2008. KCPL filed a Motion for Expedited Consideration, in which it pointed out that the original tariffs were filed on February 1, thereby meaning that the

Commission's time to decide a rate case pursuant to Section 393.150.1 RSMo will expire on January 1.

Trigen-Kansas City Energy Corporation objected to KCPL's tariffs on December 18. Subsequent to Trigen's objection, but also on December 18, KCPL filed two separate sets of substitute tariffs. The language in those two sets of substitute tariffs mirror the language Trigen requested except for Trigen's request that the tariffs contain a date certain on which the discounted rates are no longer available. The Commission has a pending motion for clarification on that very issue pending, and will address that issue in a separate order.

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. Staff also stated that the Commission's December 6, 2007 Report and Order states good cause for the Commission to approve the tariffs on less than 30 days' notice because that Report and Order finds that KCPL does not have adequate revenue to meet its cost of service. In addition, Staff comments on the Report and Order's effect of allowing KCPL \$24,585,087 in traditional revenue requirement, with \$10,723,827 in Experimental Regulatory Plan additional amortizations, for a total of \$35,308,914 additional revenue requirement. Staff asks that any order approving KCPL's tariffs include this language.

The Office of the Public Counsel filed its Response to Motion for Expedited Consideration and Approval of Tariff Sheets Filed in Compliance With Commission Order on Less Than Thirty Days' Notice on December 19. OPC does not object to the substance of the tariffs, but objects to the tariffs going into effect on less than thirty days' notice. OPC

states that the Commission is not required to approve KCPL's proposed tariffs by January 1, and that, indeed, the Commission could take up to another eleven months to determine whether the proposed tariffs comport with the Report and Order. Further, OPC stated that KCPL has failed to comply with Commission Rule 4 CSR 240-2.080(16), the Commission's rule on expedited treatment.

Trigen renewed its objections on December 19. Trigen states that the proposed tariff sheets are still lacking a date certain on which the discounted rates are no longer available.

On December 19, a day after the Commission's deadline to object to the tariffs, Praxair, Inc., filed a Response to Motion for Expedited Treatment, an Objection to Affidavit, and Motion for Scheduling of a Hearing. Praxair objects to the Commission relying upon an affidavit attached to Staff's recommendation to approve the tariffs. Then, Praxair posits that because it has launched an objection, it is entitled to a hearing on the tariffs, during which it should have the opportunity to cross-examine the affiant.

The Commission has reviewed the above-mentioned filings, and determines that the filings comply with the Commission's order. No hearing is required for the Commission to approve the tariffs. In an electric rate increase case, the Supreme Court of Missouri held that under the "file and suspend" method KCPL used in this case, a utility's rates may be increased without the requirement of a public hearing.<sup>1</sup> Thus, Praxair's motion for hearing is denied. Indeed, there is no property interest in a utility rate that requires procedural due process protections.<sup>2</sup> To address Trigen's concerns about the date on which the

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<sup>1</sup> *State ex. rel. Utility Consumers' Counsel of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc. 1979). See also *State ex. rel. Public Counsel v. Public Service Commission*, 121 S.W.3d 534, 539 (Mo. App. 2003).

<sup>2</sup> *State ex. rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 31 (Mo. banc 1975).

discounted rates should no longer be offered to new customers, the Commission will clarify that in a separate order that the date on which those discounts should not be offered to new customers as of January 1, 2008.

OPC made a last-minute filing in which it claims that a recent case Supreme Court case allows for a review of the Commission's order regarding compliance tariffs.<sup>3</sup> Indeed, the Commission has issued this order on December 21, effective January 1, to accommodate parties who might want to file motions for rehearing before the order's effective date. Those parties will have ten days to do so, and the Supreme Court of Missouri has held that the Commission has authority to issue orders with ten day effective dates.<sup>4</sup>

The Commission further finds that good cause exists for KCPL to be excused from the Section 393.140(11) requirement that tariffs have a 30-day effective date. To constitute *good* cause, the reason or legal excuse given "must be real not imaginary, substantial not trifling, and reasonable not whimsical."<sup>5</sup>

The results of the Commission's decisions in the Report and Order show that KCPL needs to earn an additional \$35,308,914 per year to serve its customers and to pay a reasonable rate of return. That incremental increase to Missouri jurisdictional rates equals an average revenue increase of approximately \$96,472 per day that the Commission has ruled that KCPL needs.<sup>6</sup> KCPL asks the Commission to approve the new

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<sup>3</sup> See *State ex. rel. Office of the Public Counsel v. Public Service Commission of Missouri*, SC88390 (issued October 30, 2007).

<sup>4</sup> See *State ex. rel. Kansas City, Independence & Fairmount Stage Line Co. v. Public Service Commission*, 63 S.W.2d 88, 93 (Mo. 1933).

<sup>5</sup> *Belle State Bank v. Indus. Comm'n*, 547 S.W.2d 841, 846 (Mo. App. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

<sup>6</sup> \$35,308,914 divided by 366 days, with 2008 being a "leap year".

rates as of January 1. If the new rates do not go into effect until January 12, the effective date of the tariffs, KCPL is deprived of eleven days worth of opportunity to earn the increase in revenue that the Commission has already determined is just and reasonable. Even assuming KCPL would only sell its average daily amount of electricity during those eleven days in the middle of winter, such a result would deprive KCPL of approximately one million dollars.<sup>7</sup> The Commission finds one million dollars an amount that is substantial, not trifling, and finds good cause to approve the tariffs on January 1, especially considering KCPL is in the middle of a \$1.8 billion construction program contemplated in KCPL's Experimental Regulatory Plan to which OPC was a signatory, and which the Commission approved in Commission Case No. EO-2005-0329.

**IT IS ORDERED THAT:**

1. The Motion for Expedited Treatment filed by Kansas City Power & Light Company is granted.
2. The Commission's December 6, 2007 Report and Order allows Kansas City Power & Light Company \$24,585,087 in traditional revenue requirement, with \$10,723,827 in Experimental Regulatory Plan additional amortizations, for a total of \$35,308,914 additional revenue requirement.
3. All objections to the tariffs approved in this order are overruled.
4. The following tariff sheets in Tariff No. YE-2008-0369, issued December 13, 2007, as amended by substitute sheets filed on December 18, 2007, are hereby approved to become effective on January 1, 2008:

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<sup>7</sup> \$96,472 average daily increase authorized by the Commission times 11 days = \$1,061,192 lost revenue.

**P.S.C. Mo. No. 7**

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4<sup>th</sup> Revised Sheet No. 5A, Canceling 3<sup>rd</sup> Revised Sheet No. 5A  
4<sup>th</sup> Revised Sheet No. 5B, Canceling 3<sup>rd</sup> Revised Sheet No. 5B  
4<sup>th</sup> Revised Sheet No. 8, Canceling 3<sup>rd</sup> Revised Sheet No. 8  
3<sup>rd</sup> Revised Sheet No. 8A, Canceling 2<sup>nd</sup> Revised Sheet No. 8A  
3<sup>rd</sup> Revised Sheet No. 9, Canceling 2<sup>nd</sup> Revised Sheet No. 9  
4<sup>th</sup> Revised Sheet No. 9A, Canceling 3<sup>rd</sup> Revised Sheet No. 9A  
4<sup>th</sup> Revised Sheet No. 9B, Canceling 3<sup>rd</sup> Revised Sheet No. 9B  
3<sup>rd</sup> Revised Sheet No. 10, Canceling 2<sup>nd</sup> Revised Sheet No. 10  
4<sup>th</sup> Revised Sheet No. 10A, Canceling 3<sup>rd</sup> Revised Sheet No. 10A  
4<sup>th</sup> Revised Sheet No. 10B, Canceling 3<sup>rd</sup> Revised Sheet No. 10B  
4<sup>th</sup> Revised Sheet No. 10C, Canceling 3<sup>rd</sup> Revised Sheet No. 10C  
3<sup>rd</sup> Revised Sheet No. 11, Canceling 2<sup>nd</sup> Revised Sheet No. 11  
4<sup>th</sup> Revised Sheet No. 11A, Canceling 3<sup>rd</sup> Revised Sheet No. 11A  
4<sup>th</sup> Revised Sheet No. 11B, Canceling 3<sup>rd</sup> Revised Sheet No. 11B  
4<sup>th</sup> Revised Sheet No. 11C, Canceling 3<sup>rd</sup> Revised Sheet No. 11C  
4<sup>th</sup> Revised Sheet No. 14A, Canceling 3<sup>rd</sup> Revised Sheet No. 14A  
4<sup>th</sup> Revised Sheet No. 14B, Canceling 3<sup>rd</sup> Revised Sheet No. 14B  
4<sup>th</sup> Revised Sheet No. 14C, Canceling 3<sup>rd</sup> Revised Sheet No. 14C  
3<sup>rd</sup> Revised Sheet No. 17, Canceling 2<sup>nd</sup> Revised Sheet No. 17  
4<sup>th</sup> Revised Sheet No. 17A, Canceling 3<sup>rd</sup> Revised Sheet No. 17A  
2<sup>nd</sup> Revised Sheet No. 17B, Canceling 1<sup>st</sup> Revised Sheet No. 17B  
2<sup>nd</sup> Revised Sheet No. 17C, Canceling 1<sup>st</sup> Revised Sheet No. 17C  
2<sup>nd</sup> Revised Sheet No. 17D, Canceling 1<sup>st</sup> Revised Sheet No. 17D  
3<sup>rd</sup> Revised Sheet No. 18, Canceling 2<sup>nd</sup> Revised Sheet No. 18  
4<sup>th</sup> Revised Sheet No. 18A, Canceling 3<sup>rd</sup> Revised Sheet No. 18A  
4<sup>th</sup> Revised Sheet No. 18B, Canceling 3<sup>rd</sup> Revised Sheet No. 18B  
4<sup>th</sup> Revised Sheet No. 18C, Canceling 3<sup>rd</sup> Revised Sheet No. 18C  
2<sup>nd</sup> Revised Sheet No. 18D, Canceling 1<sup>st</sup> Revised Sheet No. 18D  
2<sup>nd</sup> Revised Sheet No. 18E, Canceling 1<sup>st</sup> Revised Sheet No. 18E  
3<sup>rd</sup> Revised Sheet No. 19, Canceling 2<sup>nd</sup> Revised Sheet No. 19  
4<sup>th</sup> Revised Sheet No. 19A, Canceling 3<sup>rd</sup> Revised Sheet No. 19A  
4<sup>th</sup> Revised Sheet No. 19B, Canceling 3<sup>rd</sup> Revised Sheet No. 19B  
4<sup>th</sup> Revised Sheet No. 19C, Canceling 3<sup>rd</sup> Revised Sheet No. 19C  
2<sup>nd</sup> Revised Sheet No. 19D, Canceling 1<sup>st</sup> Revised Sheet No. 19D  
4<sup>th</sup> Revised Sheet No. 20C, Canceling 3<sup>rd</sup> Revised Sheet No. 20C  
3<sup>rd</sup> Revised Sheet No. 28B, Canceling 2<sup>nd</sup> Revised Sheet No. 28B  
4<sup>th</sup> Revised Sheet No. 30, Canceling 3<sup>rd</sup> Revised Sheet No. 30  
4<sup>th</sup> Revised Sheet No. 33, Canceling 3<sup>rd</sup> Revised Sheet No. 33  
4<sup>th</sup> Revised Sheet No. 35, Canceling 3<sup>rd</sup> Revised Sheet No. 35  
4<sup>th</sup> Revised Sheet No. 35A, Canceling 3<sup>rd</sup> Revised Sheet No. 35A  
4<sup>th</sup> Revised Sheet No. 35B, Canceling 3<sup>rd</sup> Revised Sheet No. 35B  
4<sup>th</sup> Revised Sheet No. 35C, Canceling 3<sup>rd</sup> Revised Sheet No. 35C  
4<sup>th</sup> Revised Sheet No. 35D, Canceling 3<sup>rd</sup> Revised Sheet No. 35D  
4<sup>th</sup> Revised Sheet No. 36, Canceling 3<sup>rd</sup> Revised Sheet No. 36  
4<sup>th</sup> Revised Sheet No. 36A, Canceling 3<sup>rd</sup> Revised Sheet No. 36A  
4<sup>th</sup> Revised Sheet No. 36B, Canceling 3<sup>rd</sup> Revised Sheet No. 36B

4<sup>th</sup> Revised Sheet No. 37, Canceling 3<sup>rd</sup> Revised Sheet No. 37  
4<sup>th</sup> Revised Sheet No. 37A, Canceling 3<sup>rd</sup> Revised Sheet No. 37A  
4<sup>th</sup> Revised Sheet No. 37B, Canceling 3<sup>rd</sup> Revised Sheet No. 37B  
4<sup>th</sup> Revised Sheet No. 37C, Canceling 3<sup>rd</sup> Revised Sheet No. 37C  
4<sup>th</sup> Revised Sheet No. 37D, Canceling 3<sup>rd</sup> Revised Sheet No. 37D  
4<sup>th</sup> Revised Sheet No. 37E, Canceling 3<sup>rd</sup> Revised Sheet No. 37E  
4<sup>th</sup> Revised Sheet No. 37F, Canceling 3<sup>rd</sup> Revised Sheet No. 37F  
4<sup>th</sup> Revised Sheet No. 37G, Canceling 3<sup>rd</sup> Revised Sheet No. 37G  
4<sup>th</sup> Revised Sheet No. 45, Canceling 3<sup>rd</sup> Revised Sheet No. 45  
4<sup>th</sup> Revised Sheet No. 45A, Canceling 3<sup>rd</sup> Revised Sheet No. 45A

5. This order shall become effective on January 1, 2008.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., concurs, with separate  
concurring opinion to follow.

Murray and Jarrett, CC., concur.

Clayton, dissents.

Appling, C., not participating

Pridgin, Senior Regulatory Law Judge