

**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)	<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 REGARDING MOTIONS FOR
REHEARING AND REQUEST FOR CLARIFICATION**

Issue Date: December 21, 2007

Effective Date: December 21, 2007

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. The Commission received a Request for Clarification from Staff, and motions for rehearing from KCPL and OPC.

Staff requests the Commission to clarify whether it intended the availability of KCPL's general service All-Electric and separately-metered space heating rates to be restricted to those qualifying customers' commercial and industrial physical locations being served under such rates as of September 30, 2007, January 1, 2008, or some other date. The Commission intended to adopt Trigen's alternative, and to limit those discounted rates to customers being served under such rates as of January 1, 2008. This will allow KCPL to keep the almost 200 customers who signed up for the discounted rates in 2007 on those

discounted rates, while ending those discounts as of an alternative date suggested by Trigen.¹

Staff further requests that the Commission clarify an apparent inconsistency between its order that KCPL's general service all-electric tariffs and separately metered space heating rates should be increased more (i.e., by a greater percentage) than KCPL's corresponding standard general application rates by 10% on a revenue neutral basis, prior to any shifts in class responsibility, and its order that KCPL's first block of the all-electric rate's winter energy blocks should be increased by 10%, and KCPL's second block of the all-electric rate's winter energy blocks should be increased by 5%. Staff states that both KCPL and Trigen agree with Staff's proposed language to clarify the Report and Order.

The language Staff proposes is "KCPL's separately metered space heating rates should be increased by more (i.e., by a greater percentage) than KCPL's corresponding standard general application rates by 10% on a revenue neutral basis, prior to any shifts in class responsibility. KCPL's first block of the All-Electric rate's winter energy blocks should be increased by 10%, on a revenue neutral basis, prior to any shifts in class responsibility. KCPL's second block of the All-Electric rate's winter energy block should be increased by 5%, on a revenue neutral basis, prior to any shifts in class responsibility. Any approved reduction in the revenue responsibility for the Medium General Service Class should not be applied to the separately metered space heating rate or to the All-Electric rate's winter energy blocks." The Commission intended such a result, and will adopt Staff's suggested language.

¹ See *Kansas City Power & Light Company's Application for Rehearing and Stay, Or In the Alternative, Application for Waiver or Variance From Decision for Specific Customers*, pp. 6-7 (December 14, 2007).

KCPL requests rehearing on these issues as well, claiming that Trigen did not put on competent and substantial evidence to support such a sudden shift away from KCPL's decade old rate design. As a matter of fact, because the Commission is ordering KCPL to file a class cost of service study in its next rate case, the Commission should at least wait until that study is filed to make such a decision. Finally, KCPL asks for rehearing or, in the alternative, a stay or variance from its decision on restricting the availability of all-electric and separately-metered space heating discounts.

KCPL's motion is largely based upon the perspective of its customers in the midst of millions of dollars worth of infrastructure development, and how they will be deprived of these discounts if the Commission does not modify its decision. But there is no protected property interest in any particular utility rate.² Indeed, the Commission put KCPL on notice of a possible change to these discounted rates last year when it stated that "it is concerned that during KCPL's winter season, commercial and industrial customers under the all-electric general service tariffs pay about 23% less for the entire electricity usage than they would otherwise pay under the standard general service tariff, and that commercial and industrial customers under the separately metered space-heating provisions . . . pay about 54% less for such usage than they would pay under the standard general service tariff".³ KCPL's motion is denied.

On December 20, Staff responded to KCPL's request for rehearing. Staff asked that the Commission reopen the record to take evidence on the issues KCPL raised concerning a substantial number of customers who have relied upon KCPL's discounted all-electric and separately-metered space heating rates to make investments in construction

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

³ *In re KCPL*, Commission Case No. ER-2006-0314, Report and Order, p. 83 (December 21, 2006).

and heating equipment. The Commission will deny Staff's request, and notes that the request states that it is "unfortunate" that KCPL "chose not to provide the information (about these customers who have made substantial investments, or are considering such investments, in reliance upon KCPL's discounted rates) in any of the testimony that it filed on this issue in last (sic) case or this case, but instead waited until after the Commission made its decision to not accept KCPL's position on this issue in the instant case."⁴

OPC asks for rehearing on capital structure, off-system sales, and a revenue neutral shift from the Medium General Service class to the residential class. The Commission will address those topics separately.

OPC accuses the Commission of acting on a "whim" by using KCPL's parent companies' *actual capital structure* instead of imputing a *hypothetical* capital structure to KCPL as it imputed to St. Joseph Light & Power in 1993.⁵ In the SJLP case, the Commission's Staff also advocated for a hypothetical capital structure.⁶ But in KCPL, Staff argues for an actual capital structure, claiming that it is Staff's practice to use actual figures, which are known and measurable, and therefore fair, to all parties.⁷ In fact, in SJLP, Staff's alternative position was that the Commission should use SJLP's actual capital structure, which included 59.10% common equity, which is even more equity than the actual capital structure of KCPL in this case.⁸

⁴ See *In re KCPL, Staff's Response to the Application for Rehearing Filed by Kansas City Power & Light Company and Responses Thereto of Trigen*, Commission Case No. ER-2007-0291, p. 5 (filed December 20, 2007)

⁵ See *In Re St. Joseph Light & Power*, Commission Case Nos. ER-93-41, EC-93-252, 2 Mo. P.S.C 3d 248 (1993).

⁶ Id. at p. 250.

⁷ See *In re KCPL*, Staff's Post-Hearing Reply and True-Up Brief, Commission Case No. ER-2007-0291, p. 17 (filed November 16, 2007).

⁸ See *In re St. Joseph Light and Power*, 2 Mo.P.S.C. 3d at 250.

Moreover, in the SJLP case, both Staff and OPC used a “proxy group” similar to the proxy groups used in the KCPL case to arrive at an estimate of a proper capital structure.⁹ Indeed, OPC used a “zone of reasonableness” test to get its hypothetical capital structure.¹⁰ But in KCPL, OPC instead eschewed such an analysis in favor of merely urging the Commission to use the benchmarks “published by credit rating agencies which provide guidelines for utilities as to how much debt and equity they can use to finance utility operations and still maintain an investment grade credit quality.”¹¹ This analysis is unpersuasive, especially when OPC also argues on one hand that the Commission should rely on credit rating agencies, such as Standard & Poor’s, to impute a mythical capital structure to a utility but then, on the other hand, argues that following that same credit rating agency’s method of calculating additional amortizations is tantamount to the Commission handing its ratemaking authority to S&P.¹²

For off-system sales, the Commission, in its Report and Order, has already cited evidence that KCPL is not even close to meeting the 25th percentile of projected off-system sales for 2007. In addition, the Commission has ordered KCPL to file monthly surveillance reports of its off-system sales with Staff. If Staff or OPC believes those reports indicate that KCPL is intentionally manipulating its off-system sales in derogation of this Report and Order, the Experimental Regulatory Plan, or any other statute, rule or tariff, those parties are not only free, but encouraged, to seek what they believe the appropriate remedies are.

⁹ Id. at 250-251.

¹⁰ Id. at 251.

¹¹ Ex. 210, p. 3.

¹² Ex. 212, p. 1-4.

And for the revenue shift away from Medium General Service customers to residential customers, OPC criticizes the Commission for speculating that latan 2 might be placed into service, yet accuses the Commission of ignoring the impact of the cessation of amortizations at the time latan 2 goes into service. Further, OPC talks of the amount of amortizations and KCPL filing its next rate case as anticipated.¹³ In any event, those amortizations will not offset the rate increase needed when or, indeed, if, latan 2 comes on line.

Further, as OPC stated, “because equity’s more expensive and less risky (than debt), if the percentage of equity goes up, the cost of equity should be going down.”¹⁴ This is largely true, and one of many reasons the Commission declined to award KCPL its’ requested 11.25% return on equity. The cost of equity is, indeed, going down, as the 10.75% return on equity the Commission awarded KCPL is over \$6 million less in traditional earnings than KCPL requested.

IT IS ORDERED THAT:

1. The Request for Clarification filed by the Staff of the Commission is granted as described above.
2. The motions for rehearing filed by Kansas City Power & Light Company and the Office of the Public Counsel are denied.
3. All other pending requests for relief not expressly granted are denied.

¹³ See *In re* KCPL, Commission Case No. ER-2007-0291, the Office of The Public Counsel’s Application for Rehearing, pp. 4-5 (December 14, 2007).

¹⁴ Tr. Vol. 15, p. 1142.

4. This order shall become effective on December 21, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a faint, circular embossed seal.

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