

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 18th day
of January, 2007.

In the Matter of the Application of Kansas City)	
Power & Light Company for Approval to Make)	<u>Case No. ER-2006-0314</u>
Certain Changes in its Charges for Electric Service)	
to Begin the Implementation of its Regulatory Plan)	

ORDER REGARDING MOTIONS FOR REHEARING

Issue Date: January 18, 2007

Effective Date: January 18, 2007

Syllabus: This order clarifies the Commission's Report and Order and denies the pending motions for rehearing.

On December 21, 2006, the Commission issued its Report and Order. The Commission received motions for rehearing from W. Bill Dias, Trigen-Kansas City Energy Corporation, Jackson County, Missouri, the United States Department of Energy/National Nuclear Security Administration, Praxair, Inc., and the Office of The Public Counsel.

Section 386.500.1, RSMo 2000, provides that the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefor be made to appear." The Commission finds that, except as discussed below, the above named movants have failed to establish sufficient reason to grant their motions.

However, in response to some parties' argument that the Commission erred on return on equity, the Commission will clarify its Report and Order regarding its decision on

that issue. The Commission relied upon the Hope¹ and Bluefield² cases as its ultimate authority for determining ROE. In its Hope and Bluefield analysis, the Commission stated that there are some numbers that the Commission can use as **guideposts** in establishing an appropriate return on equity; nowhere did the Commission **limit itself** to a “zone of reasonableness” or end its analysis with that zone, despite its statutory charge to set just and **reasonable** rates, and despite the Supreme Court of the United States finding that the Federal Power Commission, in setting just and reasonable rates, could use a “zone of reasonableness” as well.³ In fact, “(n)ot only can the Commission select its methodology in determining rates and make pragmatic adjustments called for by particular circumstances, but it also may adopt or reject any or all of any witnesses' testimony.”⁴ What is more, “. . . the statute (giving the Commission authority to set rates) neither prescribes nor limits the methodology that the Commission may use in determining rates”.⁵

Furthermore, the Commission reconsiders its off-systems sales decision, in which it allowed KCPL to put the projected 25th percentile from KCPL witness Schnitzer's curve into revenue requirement. Depending upon actual 2007 actual non-firm off-system sales, the Commission's Report and Order required KCPL to establish either a regulatory asset account to recover any deficit from that 25th percentile from ratepayers, or a regulatory liability account to return the surplus over that 25th percentile to ratepayers. Upon reviewing the motions for rehearing from Praxair and OPC, and KCPL's response, the

¹ Fed. Power Comm'n v. Hope Nat. Gas Co., 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1943)

² Bluefield Water Works & Improv. Co. v. Pub. Serv. Comm'n of West Virginia, 262 U.S. 679, 692-93; 43 S.Ct. 675, 679; 67 L.Ed. 1176 , 1182-83 (1923).

³ In re Permian Basin Area Rate Cases, 390 U.S. 747, 767, 770; 88 S.Ct. 1344, 1360, 1361; 20 L.Ed.2d. 312 (1968); *reh'g denied*, 392 U.S.2d 917, 88 S.Ct. 2050, 20 L.Ed.2d 1379.

⁴ State ex rel. Associated Natural Gas Co. v. Pub. Svc. Comm'n., 706 S.W.2d 870, 880 (Mo.App. W.D. 1985).

⁵ Id.

Commission concludes that the regulatory asset mechanism could provide a disincentive to KCPL to make off-system sales up to the 25th percentile, which could result in rates that are not just and reasonable to the detriment of Missouri ratepayers. Therefore, the Commission will no longer allow KCPL to use the regulatory asset mechanism described in its December 21, 2006 Report and Order, but will continue to require KCPL to book any amounts above the 25th percentile as a regulatory liability. Relying upon the same rationale as it did in its Report and Order, the Commission still concludes that the trued-up, 25th percentile amount of non-firm, off-system sales from KCPL witness Schnitzer's curve is the appropriate amount off-systems sales to include in revenue requirement.

Finally, counsel for Praxair points out that the Commission listed Explorer Pipeline Company as a party to this case and to a partial stipulation when, in fact, Explorer Pipeline was not a party in this case or the stipulation. The Commission notes that the Stipulation and Agreement Regarding Class Cost of Service and Rate Design, filed on November 9, 2006, lists Explorer Pipeline as a party. However, Explorer Pipeline did not intervene in this case, and is not listed as a party allowed automatic intervention in this case by virtue of being a signatory party to Case No. EO-2005-0329.

Commission Rule 4 CSR 240-2.080(15) allows parties ten days to respond to pleadings. No party timely contested Praxair's allegation concerning Explorer Pipeline. Therefore, the Commission finds that Explorer Pipeline was inadvertently included as a party to the above-referenced stipulation, and the Commission will clarify its Report and Order to exclude Explorer Pipeline as a party in this case and as a party to the above-referenced stipulation.

IT IS ORDERED THAT:

1. The Commission's December 21, 2006 Report and Order is clarified as stated above, but is otherwise in full force and effect.
2. That the Motions for Rehearing filed by Praxair, Inc., and the Office of The Public Counsel are granted in part, as discussed above, and denied in part.
3. The Motions for Rehearing filed by W. Bill Dias, Trigen-Kansas City Energy Corporation, Jackson County, Missouri, the United States Department of Energy/National Nuclear Security Administration are denied.
4. All other pending motions and requests for relief are denied.
5. This order shall become effective on January 18, 2007.
6. This case shall be closed on January 19, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, and Appling, CC., concur.
Gaw and Clayton, CC., dissent.

Pridgin, Senior Regulatory Law Judge