

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

REPLY BRIEF OF JACKSON COUNTY, MISSOURI

COMES NOW the County of Jackson, Missouri, and for its Reply Brief states:

Jackson County participated in the proceedings leading up to the Regulatory Plan Stipulation and Agreement, however, it refused to be a signatory to such agreement because it believed same to be unlawful. Therefore, it is not bound by such stipulation.

It is the position of Jackson County that any attempt to increase rates that are based on additional amortization pursuant to the Regulatory Plan is unlawful and unreasonable. The Commission is a body of limited jurisdiction and has only such powers as are expressly conferred by the statutes and powers reasonably incidental thereto. *State ex rel. Kansas City Power & Light Co. v. Buzard*, 168 S.W. 2d 1044 (Mo. 1943).

The Commission is prohibited by Section 393.130, RSMo. from permitting an electric company to charge rates that are in excess of what is allowed by law and also prohibits the Commission from allowing electric companies to charge rates that directly or indirectly discriminate in any respect whatsoever, whether by subjecting one class to undue and unreasonable prejudice or disadvantage or granting undue or unreasonable preference or

advantage to another class of customers. Allowing KCPL to charge current customers a rate that includes Regulatory Plan Amortization is clearly an indirect attempt to charge current customers for electrical plant that is not in service and would reduce the rates of future ratepayers results in an unlawful intergenerational subsidy. Thus, current customers would be subjected to unreasonable prejudice and disadvantage while future customers would be granted an undue and unreasonable preference and advantage. While to be unlawful under the statute, it is only necessary for one class to be discriminated against or to receive a preference, in this case we have both the current customers being discriminated against and the future customers being preferred.

In addition, the Regulatory Plan Additional Amortization also clearly violates Section 393.135, RSMo., which provides:

Any charge made or demanded by an electrical corporation for service, or in connection therewith, which is based on the costs of construction in progress upon any existing or new facility of the electrical corporation, or any other cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service, is unjust and unreasonable, and is prohibited.

It is quite apparent that charging current customers a rate for service that is based on the costs of a future plant (that is not even being built yet) clearly is not plant that is fully operational and used for service. Consequently, it is clear that charging customers rates now that include the additional amortization as a procedure for financing such future plant is prohibited by Section 393.135, and, therefore, the Commission has no power or authority to so authorize such a practice.

It is Jackson County's understanding that according to Staff, as of September 30, 2006,

the true-up date, KCPL is currently overearning \$29.2 Million a year without the inclusion of the additional amortization and that such figure contains an additional \$116 Million of additional plant in service, including \$85 Million of which is for wind power. Reducing KCPL's excess rates is all the law allows. Including additional amortization for plant that is not in service is unlawful. Jackson County supports rates that reflect an annual decrease of \$29.2 million.

WHEREFORE, for the foregoing reasons, Jackson County respectfully requests that the Commission issue its Report and Order requiring KCPL to reduce its rates to produce revenues that meet KCPL's revenue requirement which are based only on lawful ratemaking principles, and which would exclude any amount for Regulatory Plan Additional Amortization in the rates to be authorized.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served electronically to all parties of record this 27th day of November, 2006.

Jeremiah D. Finnegan