

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

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

STAFF'S RESPONSE TO THE COMMISSION'S ORDER
DIRECTING FILING OF AUGUST 8, 2006

COMES NOW the Staff of the Missouri Public Service Commission, by and through the Commission's General Counsel, and for its Response to the Commission's Order Directing Filing of August 8, 2006, states as follows:

1. On August 8, 2006, the Commission directed Staff to file a pleading by August 11, 2006, stating "whether it supports or objects to Mr. Dias' application [for leave to intervene out-of-time.]"
2. Staff hereby advises the Commission that it has no opposition to Mr. Dias' application with certain conditions as explained below.

In further response, Staff states as follows:

3. Kansas City Power and Light Company ("KCPL") filed this rate case on February 1, 2006. Thereafter, the Commission by its Order and Notice issued on February 3, 2006, set an intervention deadline of February 23, 2006.
4. On August 1, 2006, W. Bill Dias moved *pro se* for leave to intervene out-of-time. KCPL objected on August 2, with a corrected objection on August 3. Mr. Dias replied to KCPL on August 7.
5. Commission Rule 4 CSR 240-2.075 governs intervention in Commission proceedings. The "rules of a state administrative agency duly promulgated pursuant to properly delegated

authority have the force and effect of law and are binding upon the agency adopting them." *St. ex rel. Martin-Erb v. Mo. Comm'n on Human Rights*, 77 S.W.3d 600, 607 (Mo. banc 2002); *Missouri Nat. Educ. Ass'n v. Missouri State Bd. of Mediation*, 695 S.W.2d 894, 897 (Mo. banc 1985).

6. Commission Rule 4 CSR 240-2.075 states in part that "(5) Applications to intervene filed after the intervention date may be granted upon a showing of good cause."

7. Staff notes that, on July 3, 2006, Wal-Mart Stores East, LP. ("Wal-Mart") filed a Motion For Leave To File Application To Intervene Out Of Time Of Wal-Mart Stores East, LP, wherein Wal-Mart stated that it had not timely filed in this proceeding for intervention because it needed time to review the filing and analyze its business interests as they relate to the proceeding. Wal-Mart also asserted that its interest cannot be adequately represented by any existing or future participant in these proceedings given the competitive and unique nature of its interest. KCPL did not oppose Wal-Mart's motion and, on July 17, the Commission granted Wal-Mart's motion.

7. In explanation of his failure to timely seek intervention, Mr. Dias states that "the information only became known on July 12, 2006." Mr. Dias in his August 1 application and August 7 response to KCPL's objection to his application notes Wal-Mart's showing of good cause and the Commission's granting of Wal-Mart's motion. Mr. Dias states that he meets the standard that the Commission applied to Wal-Mart.

8. Staff suggests that given the standard accorded the Wal-Mart motion, Mr. Dias has shown good cause such that his failure to intervene on or before February 23, 2006, should be excused.

9. Commission Rule 4 CSR 240-2.075, governing intervention, also states in part:

(4) The commission may on application permit any person to intervene on a showing that:

(A) The proposed intervenor has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.

10. Mr. Dias alleges that he is a third-party pay agent with a business relationship with KCPL pursuant to a Memorandum of Understanding (“MOU”) executed on February 12, 2001, which contemplated a Pilot Program that KCPL was to implement, but which is not part of the filing made by KCPL on February 1, 2006, which is the present case. Mr. Dias also makes various allegations regarding the Demand Response, Efficiency and Affordability Programs that were a part of Case No. EO-2005-0329 and that are a part of the KCPL Experimental Regulatory Plan. Staff suggests that Mr. Dias has shown that his interests herein are not identical to those of the general public.

11. Mr. Dias contends that he meets the standard of 4 CSR 240-2.075(4). Staff notes that the Office of the Public Counsel has made no filing opposing the application of Mr. Dias and, although the Commission directed the Staff to respond to the application of Mr. Dias, the Commission did not similarly direct the Public Counsel to respond. Staff suggests that Public Counsel’s silence seems to support Mr. Dias’ assertion that he has met the requirements of Commission Rule 4 CSR 240-2.075(4). Consequently, Staff is not opposed to the Commission granting Mr. Dias’ request to intervene out-of-time. However, Staff has certain reservations that it respectfully requests the Commission address.

12. Mr. Dias filed his request to intervene almost six months after the intervention deadline. Necessarily, case preparation has gone on during that interval. The test year has been established. A procedural schedule has been adopted (March 29, 2006). Direct testimony on

all matters except class cost of service and rate design has been filed (August 8, 2006). Staff is concerned that granting intervention at this late date might disrupt the existing procedural schedule. Therefore, Staff suggests that Mr. Dias be allowed to intervene, subject the following conditions:

A. Mr. Dias must take the case as he finds it. Because the date for filing Revenue Requirement Direct Testimony has already passed, Staff suggests that Mr. Dias be permitted to offer his Revenue Requirement Direct Testimony live at one of the Local Public Hearings on August 24. Like other witnesses, Mr. Dias would stand cross during the evidentiary hearing in Jefferson City in October.

B. In all other respects. Mr. Dias must conform to the existing procedural schedule and the conditions therein imposed.

WHEREFORE, Staff states that it is not opposed to the Commission granting W. Bill Dias' request for leave to intervene out-of-time, subject to conditions as stated above.

Respectfully submitted,

/s/ Kevin A. Thompson

KEVIN A. THOMPSON

Mo. Bar No. 36288

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102
573-751-6514 (voice)
573-526-6969 (FAX)
kevin.thompson@psc.mo.gov

For the Staff of the Missouri Public Service
Commission

Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been mailed, hand-delivered, transmitted by facsimile or electronically served to all counsel of record this 11th day of August, 2006.

/s/ Kevin A. Thompson_____