

**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.	)	

**APPLICATION FOR REHEARING BY JACKSON COUNTY, MISSOURI  
AND REQUEST FOR STAY OR, IN THE ALTERNATIVE, REQUEST THAT THE  
INCREASED RATES BE COLLECTED SUBJECT TO REFUND AND  
REQUEST FOR EXPEDITED CONSIDERATION**

COMES NOW the County of Jackson, Missouri (hereinafter referred to as "Jackson County"), and pursuant to Section 386.500 RSMo. moves the Commission grant its application for rehearing of the Commission's December 21, 2006 Report and Order ("the Order") on the grounds that such Report and Order is unconstitutional, unlawful, unjust, unreasonable, is not based upon competent and substantial evidence, is not based upon adequate findings of fact, is an abuse of discretion and is arbitrary and capricious for the reasons set forth herein.

In addition, for the reasons stated hereinafter, Jackson County requests that pending the decision on this application and the decision on rehearing, if rehearing is granted, that any rate increases be stayed or, in the alternative, that any such increases be ordered approved on an interim basis only, subject to refund, until the Commission renders a final decision on rehearing; and that the Commission give expedited consideration to this motion.

1. The Order is unlawful, unjust and unreasonable, is not based upon competent and substantial evidence, is not based upon adequate findings of fact, is an abuse of discretion and

is arbitrary and capricious in that it grants an increase of millions of dollars in rates based on the costs of construction in progress of an electric plant before it is fully operational and used for service in direct contravention of 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 millions of dollars in rates in excess of what the Commission determined KCPL's revenue requirement to be is a charge for service which is based on "the costs of construction in progress upon any existing or new facility" and/or "the cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service" and, therefore, "is unjust and unreasonable, and is prohibited" as provided in Section 393.135.

2. The Order is unlawful, unjust and unreasonable, is not based upon competent and substantial evidence, is not based upon adequate findings of fact, is an abuse of discretion and is arbitrary and capricious in that it grants an increase of millions of dollars in rates based on the costs of construction in progress of an electric plant before it is fully operational and used for service in direct contravention of Section 393.130 RSMo., which prohibits the Commission from permitting an electric company to charge rates that are in excess of what is allowed by law and also prohibits the Commission from authorizing 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 millions of dollars in rates based on Regulatory Plan Amortizations is clearly an indirect unlawful attempt to charge current customers for service from an electrical plant that is not in service and is also an unlawfully discriminatory intergenerational subsidy in that it would increase the rates of existing customers and reduce the rates of future ratepayers. By authorizing such charges, current customers would be subjected to unreasonable prejudice and disadvantage while future customers would be granted an undue and unreasonable preference and advantage.

3. The Order is unjust and unreasonable, is not based upon competent and substantial evidence, is not based upon adequate findings of fact, is an abuse of discretion and is arbitrary and capricious in that the Commission arbitrarily decides to average 3 quarters of national average return on equity data rather than relying entirely on the latest data from the 3rd quarter of 2006. By using outdated information, the Commission's Order runs afoul of the requirement in *Bluefield Water Works* that the Commission authorize a return on equity "equal to that generally being made at the same time."

4. The Order is unlawful, unjust and unreasonable, is not based upon competent and substantial evidence, is not based upon adequate findings of fact and is an abuse of discretion in that the Commission utilizes a "zone of reasonableness" defined as "100 basis points above or below the industry average." As used and defined in the current case, the "zone of reasonableness" is clearly a regulatory fiction created by the Commission since there is no competent and substantial evidence to support it nor adequate findings of fact to explain it to a reviewing court as required by law.

5. The Order is unlawful, unjust and unreasonable, is not based upon competent and

substantial evidence, is not based upon adequate findings of fact and is an abuse of discretion in that the Commission improperly rejects the return on equity recommendation of the Department of Energy witness based solely on the Commission-created "zone of reasonableness." As discussed, supra, the "zone of reasonableness" is a regulatory fiction which has no basis in statute or case law.

6. The Order is unlawful, unjust and unreasonable, is not based upon competent and substantial evidence, is not based upon adequate findings of fact and is an abuse of discretion in that the Commission appears to give greater credence to the testimony of KCPL's witness based solely on the fact that Dr. Hadaway has previously worked for or testified on behalf of a public utility. Giving greater credibility to a particular witness based solely upon the fact that witness has previously testified on behalf of a utility is entirely arbitrary and capricious and is in direct conflict with Section 386.610 RSMo which requires the Commission to balance the interests of "patrons and public utilities."

7. The Order is unlawful, unjust and unreasonable, is not based upon competent and substantial evidence, is not based upon adequate findings of fact and is an abuse of discretion in that the Commission arbitrarily applies the concept of its "zone of reasonableness" to exclude the recommendation of the DOE witness (9.00% return on equity), but fails to exclude the recommendation of the KCPL witness (11.5% return on equity).

8. The Order is unlawful, unjust and unreasonable, is not based upon competent and substantial evidence, is not based upon adequate findings of fact and is an abuse of discretion in that the Commission gave credence to the testimony of KCPL Witness Hadaway based upon the fact that his proxy group of companies "included companies mostly from the Midwestern

United States." The evidence readily indicates that well over half of that proxy group consisted of companies from Poughkeepsie, New York; Vermont; Manhattan, New York; Pittsburgh, Pennsylvania; upstate New York; Hawaii; Massachusetts, Phoenix, the Carolinas; Washington and Georgia. Interestingly, the Commission criticized the comparable company group of Staff Witness Barnes on the basis that he did not consider "the location of the company." In fact, the Commission states that Staff's analysis does not assist the Commission because it does not comply with the *Bluefield* requirement that proxy companies be "in the same general part of the country." Clearly, this criticism is equally applicable to the proxy group of KCPL's witness that included over half from other geographical regions. This inclusion of a majority of companies from other regions of the country runs contrary to the dictates of *Bluefield Water Works*.

9. The Order is unlawful, unjust and unreasonable, is based on inadequate findings of fact, is arbitrary and capricious and is an abuse of discretion in that the Commission arbitrarily starts with a return of equity of 11.0% (before adding a risk premium of 25 basis points). The Commission fails to provide any findings of fact or conclusions of law which would allow a reviewing court to determine how it reached this 11.0% return on equity.

10. The Order is unlawful, unjust and unreasonable, is based on inadequate findings of fact, is arbitrary and capricious and is an abuse of discretion in that the Commission fails to provide any substantive basis for the arbitrary and capricious changes in the method for calculating return on equity in its last four return on equity decisions, including a decision issued the same day as this case. In a Report and Order in the Empire District Electric Company rate case, Case No. ER-2006-0315, also issued on December 21st, the Commission authorized a return on equity of 10.9%. Again, contrary to the methodologies adopted by the Commission in two

previous decisions, this authorized return on equity for Empire was based upon the national average return on equity for electric utilities as well as a quarterly DCF analysis using a proxy company growth rate. In the present case, the Commission in finding the Company witness more credible than other witnesses (after excluding out-of-hand the evidence of the very credible DOE witness because his analysis did not fit within the Commission's magical "zone of reasonableness") employs a traditional DCF method, which because the results therefrom yielded a return of only 9.3% to 9.4% (virtually identical to the same ROE determined by Staff witness) required upward manipulation by Company's witness by recalculating constant growth results with the growth rate based on long-term forecasted growth in gross domestic product (whatever forecasted growth in GDP has to do with this case is also a mystery). Had the Commission employed the same methodology in this case as was utilized in the simultaneously issued Empire District Electric Company decision, the Company's recommended return on equity would have been 9.4%.

WHEREFORE, Jackson County seeks rehearing of the Report and Order of December 21, 2006 as specified herein and that such order be corrected and modified as addressed herein; that pending the decision on such application and the decision on rehearing, if such application is granted, that any rates increases pursuant to the Order proposed by KCPL be stayed or, in the alternative, that any such increases be ordered approved on an interim basis only, subject to refund, until the Commission renders a final decision on rehearing; that the Commission give expedited consideration to this motion; and for such other relief that is just and meet in the circumstances.

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 29th day of December, 2006.

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Jeremiah D. Finnegan