



Susan B. Cunningham  
Staff Attorney

(816) 556-2789  
(816) 556-2787 (Telecopy)

FILED  
SEP 14 1998  
Missouri Public  
Service Commission

September 11, 1998

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

RE: Case No. 00-99-44

Dear Mr. Roberts:

Enclosed for filing with the Commission in the above-referenced matter are the original and 14 copies of Kansas City Power & Light Company's Response to Commission's August 5, 1998 Order. A copy of the foregoing Response has been hand-delivered or mailed this date to parties of record.

Please bring this filing to the attention of the Commission.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Susan B. Cunningham".

Susan B. Cunningham

Enclosures

cc: Parties of Record  
Office of the Public Counsel

FILED

SEP 14 1998

Missouri Public  
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of the Assessment Against )  
the Public Utilities in the State of Missouri ) Case No. 00-99-44  
for the Expenses of the Commission for the )  
Fiscal Year Commencing July 1, 1998. )

KANSAS CITY POWER & LIGHT COMPANY'S  
RESPONSE TO COMMISSION'S AUGUST 5, 1998 ORDER

On September 2, 1998, the Commission held a prehearing conference to discuss the issues related to the above-captioned case. At the prehearing conference, the Commission directed the parties to which intervention had been granted to respond to the specific items enumerated in paragraph 3 of the ordering language in its August 5, 1998 Order Regarding Application for Rehearing and Stay. The following response is submitted to the Commission in compliance with its directive on behalf of Kansas City Power & Light Company ("KCPL").

KCPL generally supports the Joint Applicants' position in this case and agrees that the Commission's inclusion of Article X transfers in its public utility assessments should be reexamined. Specifically, KCPL questions the legality of both the authority of an Executive Order to require the Commission to transfer funds from its Public Service Commission Fund ("Fund") to the state's general revenue fund and the Commission's authority to assess public utilities for such transfer. The Commission may, in fact, lack jurisdiction to refuse to comply with a directive issued in an Executive Order,<sup>1</sup> as it suggested in its August 5 order; however, that issue notwithstanding, the Commission clearly has the authority to address assessments

---

<sup>1</sup> This issue will be more fully addressed in KCPL's legal brief which is due to be filed by agreement of the parties on October 6, 1998.

14.

against public utilities, including the types of expenses properly included in such assessments and the circumstances under which any amount may be withdrawn from the Fund.

The Commission's assessment authority is found at Sec. 386.370 RSMo 1997 Supp. Specific to the issues in this case, subsection (4) provides in pertinent part:

The state treasurer shall credit such payments to a special fund, which is hereby created, to be known as "The Public Service Commission Fund," which fund ... shall be devoted solely to the payment of expenditures actually incurred by the commission and attributable to the regulation of such public utilities subject to the jurisdiction of the commission, as aforesaid. Any amount remaining in such special fund ... at the end of any fiscal year shall not revert to the general revenue fund, but shall be applicable by appropriation of the general assembly to the payment of such expenditures of the commission in the succeeding fiscal year and shall be applied by the commission to the reduction of the amount to be assessed to such public utilities in such succeeding fiscal year ....

This statute clearly states that all funds deposited into the Fund are to be "*devoted solely to the payment of expenditures actually incurred by the commission and attributable to the regulation of such public utilities.*" It is certainly not apparent how any transfers related to Article X refunds the Commission might be ordered to make, or which the Commission might agree to make, from the Fund would be legal given the express limitations placed on that Fund by the wording of the statute. Furthermore, even if the Commission appropriately transferred Article X refunds from the Fund to the state's general revenue fund pursuant to an Executive Order, the legality of assessing public utilities for such transfer is questionable as Article X refunds are clearly not expenditures attributable to the regulation of public utilities.

KCPL concurs with Joint Applicants, therefore, that it is reasonable and appropriate for the Commission to stay the effectiveness of its assessment order to the extent that the assessments have been increased by said Article X transfers. In addition, KCPL concurs with Joint Applicants that the appropriate remedy is a hearing to address the propriety of the

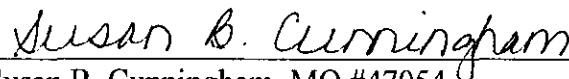
assessments and a supplemental assessment order consistent with the evidence and/or legal argument presented.

Although KCPL questioned the portion of its assessment related to Article X transfers, KCPL timely remitted the first of its quarterly assessments without protest. Since the time of KCPL's initial payment, the Joint Applicants filed their Application for Rehearing and Stay and the Commission docketed this matter for further investigation. In the event the Commission should enter a supplemental order revising its public utility assessments to exclude Article X refunds, KCPL maintains it would be eligible to benefit from the decreased assessment notwithstanding its failure to pay its first quarter assessment under protest.

Finally, as requested by the Commission, the total amount of Article X distributions received by KCPL in 1995 and 1996 is \$606,574 (\$191,809 for 1995; \$414,765 for 1996).

WHEREFORE, Kansas City Power & Light Company respectfully submits the foregoing response pursuant to the Commission's request for information from parties granted intervention in this case.

Respectfully submitted,



Susan B. Cunningham, MO #47054

Staff Attorney

Kansas City Power & Light Company

1201 Walnut Street

Kansas City, MO 64106

Telephone: (816) 556-2483

Telecopy: (816) 556-2787

ATTORNEY FOR

KANSAS CITY POWER & LIGHT COMPANY

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the above and foregoing Application of Kansas City Power & Light Company to Intervene was deposited in the United States Mail, postage prepaid, on the 11<sup>th</sup> day of September, 1998, and addressed to the following:

James C. Swearngen  
Paul A. Boudreau  
Brydon, Swearngen & England P.C.  
P.O. Box 456  
Jefferson City, MO 65102-0456

Michael C. Pendergast  
Laclede Gas Company  
720 Olive St., Room 1520  
St. Louis, MO 63101

James M. Fischer  
101 W. McCarty St., Ste. 215  
Jefferson City, MO 65101

Robert J. Hack, Senior Attorney  
Missouri Gas Energy  
3420 Broadway  
Kansas City, MO 64111-2404

Jeremiah W. Nixon  
Attn: Ron Molteni  
P.O. Box 899  
Jefferson City, MO 65102

General Counsel  
Attn: William Haas  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

Paul G. Lane, Leo J. Bub,  
Anthony K. Conroy, Katherine C. Swaller  
Southwestern Bell Telephone Company  
One Bell Center, Room 3520  
St. Louis, MO 63101

Karen Winn  
Office of the Commissioner of Admin.  
Capitol Bldg., Room 125  
Jefferson City, MO 65101

Susan B. Cunningham  
Susan B. Cunningham