

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of Kansas City                    )  
Power & Light Company for Approval to Make                    ) Case No. ER-2007-0291  
Certain Changes in its Charges for Electric                    )  
Service to Implement its Regulatory Plan.                        )

**RESPONSE OF KANSAS CITY POWER & LIGHT COMPANY**

Kansas City Power & Light Company (“KCPL” or “Company”) states the following in response to the Order Directing Filing issued on January 2, 2008:

On January 2 the Commission directed KCPL to respond by January 14, 2008 to the applications for rehearing filed by the Office of the Public Counsel (“OPC”) and Praxair, Inc. (“Praxair”), as well as the motion for stay filed by Praxair on December 31, 2007. This response complies with the Commission’s directive and addresses the points raised by OPC and Praxair in these pleadings.

**I.     Procedural History**

1.     In its December 6, 2007 Report and Order, the Commission ordered KCPL to file tariffs which comported with its decision no later than December 13, 2007. The Commission also ordered Staff to file a recommendation concerning the December 13 tariffs by December 18 and established a December 18 deadline for any party to object to those tariffs.

2.     In response to the Report and Order, KCPL filed 56 tariff sheets on December 13 which bore an effective date of January 12, 2008, consistent with the standard 30-day provisions of Section 393.140(11). This filing was accompanied by a request that for good cause the Commission should permit the tariff sheets to become effective January 1, 2008, in order to carry out the decisions of the Report and Order that granted KCPL a rate increase.

3. Upon KCPL's filing on December 13, the Staff of the Commission began its conscientious review of the tariff sheets. As detailed in the Staff Recommendation to Approve Tariff Sheets, the Staff's Energy Department requested that KCPL file five subsequent tariff sheets. As noted in the Memorandum attached to the Staff Recommendation, KCPL did so on December 18 and then subsequently filed (also on December 18) six substitute tariff sheets to correct errors and address certain concerns raised by Trigen-Kansas City Energy Corporation ("Trigen"), as requested by Staff. See Staff Recommendation to Approve Tariff Sheets at 1-2 and Appendix A at 1.

4. Neither OPC nor Praxair filed a substantive objection to the content of KCPL's tariff sheets. OPC filed a response objecting to the expedited treatment requested by KCPL. Praxair filed a response on December 19, 2007 (after the Commission's December 18 deadline), objecting to KCPL's request for expedited treatment and raising a general claim that there was insufficient evidence for the Commission to know if KCPL's tariffs were in compliance with the Report and Order. Praxair also filed on December 19 an objection to the Affidavit of James Watkins and a motion to schedule a hearing.

5. On December 21, 2007 the Commission issued an Order approving KCPL's tariffs and determined that the tariffs complied with the December 6 Report and Order. The Commission also found that good cause existed for the tariffs to go into effect earlier than the thirty-day notice provision of Section 393.140(11)

6. After 3:00 p.m. on New Year's Eve, December 31, 2007, OPC and Praxair both filed applications for rehearing of the Commission's December 21, 2007 Order Approving Tariffs, with Praxair also filing a Motion to Stay the effectiveness of that December 21 Order.

## **II. The January 1, 2008 Tariff Effective Date was Supported by Law.**

7. OPC argues that the Commission should ignore the mandatory eleven-month rate case timetable of Section 393.140(11) and review at its leisure the post-hearing compliance tariffs that the Commission ordered KCPL to file, consistent with the Report and Order. OPC claims that the Commission has rushed the effective date of the tariffs unnecessarily and that no party has had an opportunity to be heard. OPC's argument ignores the fact that all parties had five days to review the tariffs which was a reasonable period of time for Staff to complete its study and analysis of the tariffs. Moreover, it was a sufficient period of time for Trigen to raise objections to the tariffs and have its concerns addressed by Staff and KCPL. Trigen has not objected to the process followed by the Commission or Staff. OPC, on the other hand, had the same opportunity to review the tariffs and filed no substantive objections. The tariff review period established by the Commission was clearly reasonable for those parties sufficiently interested in the language and figures in the tariffs to have their concerns addressed.

8. As KCPL stated in its December 13, 2007 Motion for Expedited Consideration and Approval of Tariff Sheets, the January 1, 2008 effective date is consistent with the requirements of Section 393.150.1 and with long-standing Commission custom, practice and precedent.

9. The adoption of OPC's argument regarding Section 393.150 would not only violate state law, but would eliminate one of the original purposes of the Public Service Commission Law, which was designed "so that hearings are not hampered or clogged by technicalities" but conducted rather with "businesslike simplicity, speed, and efficiency" to determine just and reasonable rates. See State ex rel. Barker v. Kansas City Gas Co., 163 S.W. 854, 860 (Mo. 1913). OPC's argument is, in fact, contrary to the spirit of Section 393.150, which provides that in the event that the full eleven months is taken to process a rate case, "the

commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.” See § 393.150.2 (emphasis added). Extending the process, post-hearing and post-decision, of the filing and review of compliance tariffs would be contrary to the intent of the law.

10. It must also be recognized that both OPC and Praxair were parties to the 2005 Regulatory Plan Stipulation which provided for a specific schedule of rate cases. This pending proceeding, referred to as “Rate Filing # 2 (2007 Rate Case)” in the Stipulation, was called for in order to permit KCPL an opportunity to recover costs associated with certain specific expenses and investments, including the environmental retrofits installed at LaCygne Unit No. 1. See Stipulation and Agreement at 34-37 and Appendix D-1, Case No. EO-2005-0329. This Stipulation also calls for Rate Case # 3 to be commenced in early 2008. Given the many goals of KCPL’s Regulatory Plan and the current rising cost environment in which these projects are being constructed, this is not the time to abandon the timetable that was agreed to in the Stipulation.

11. Both OPC and Praxair assert that the Commission erred in finding “good cause” to approve the tariffs on less than 30-days notice. However, good cause existed for shortening the standard 30-day effective period so that KCPL could recover in rates the cost of service found to be just and reasonable. Given the findings of the Report and Order, KCPL was entitled under Missouri law to recover in rates the costs which it is now incurring as it provides safe and reliable service to its customers. Only if such tariffs are allowed to go into effect in a timely fashion will a proper balance reflecting “substantial justice between patrons and public utilities” be maintained. See § 386.610; State ex rel. Laundry, Inc. v. PSC, 34 S.W.2d 37, 42 (Mo. 1931). Clearly, good cause existed under 4 CSR 240-2.080(16).

12. As Staff observed in its Recommendation: “Given that the Commission’s Report and Order inescapably leads to the conclusion that the Commission has found [KCPL’s] existing tariff does not generate sufficient revenues and the Commission authorized [KCPL] to file tariff sheets that ‘comport with the Report and Order,’ the purpose of the thirty (30) days’ notice requirement of Section 393.140(11) ... has been accomplished.” See Staff Recommendation at 2-3.

13. Contrary to Praxair’s assertion that the Commission is following a new standard to judge “good cause,” the Commission utilized the same analysis that it has in previous cases filed by other electric utilities. See Order Granting Expedited Treatment, Approving Certain Tariff Sheets and Rejecting Certain Tariff Sheets, In re Tariffs of Aquila, Inc. Increasing Electric Rates, No. ER-2007-0004 (May 25, 2007); Order Granting Expedited Treatment and Approving Compliance Tariff, In re Union Elec. Co. d/b/a/ AmerenUE’s Tariffs Increasing Rates, No. ER-2007-0002 (July 16, 2007). Similarly, if KCPL’s new rates failed to go into effect within eleven months, the Company would be deprived of the opportunity to earn the increase in revenue that the Commission determined was just and reasonable in its Report and Order.

### **III. The Commission is not Required to Hold a Hearing on KCPL’s Compliance Tariffs.**

14. Both OPC and Praxair complain that the Commission was required to hold a formal hearing to consider KCPL’s compliance tariffs. However, the Commission correctly reasoned that because it has the authority under Section 393.140(11) to permit a tariff to change rates without a formal evidentiary hearing, no such hearing was required on KCPL’s compliance tariffs.

15. The Commission’s decision not to conduct a formal evidentiary hearing when it approves compliance tariffs is also supported by its longstanding practice where, pursuant to Section 386.240, the Commission authorized members of its Staff to perform acts which the

Commission is authorized to perform. The Commission traditionally has relied on its Staff to review the tariffs that a utility files to make certain they reflect the Commission's orders or opinions. After Staff and the other parties review tariff filings, it is typical that substantive objections and other technical points are raised. Once these matters are resolved in Staff's opinion, it files its recommendation with the Commission and the Commission may then approve the tariff. See, e.g., Staff's Recommendation to Approve Tariff Sheets, In re Tariff Filing of Union Elec. Co., d/b/a AmerenUE to Implement a General Rate Increase, No. ER-2007-0002 (July 13, 2007); Staff's Recommendation to Reject Tariff Sheets, In re Tariff Filing of Aquila, Inc. to Implement a General Rate Increase, No. ER-2007-0004 (May 29, 2007), Staff's Recommendation to Approve Tariff Sheets, Id. (June 25, 2007).

16. This is exactly the process that was followed in this case. All parties had the opportunity to file substantive objections or requests for clarification. Only two parties -- Trigen and the Staff -- filed such objections or clarification requests. Those concerns were either worked out by the parties, corrected by KCPL by the filing of substitute tariff sheets, or resolved by the Commission.

17. OPC and Praxair's objections to KCPL's compliance tariff are not based on specific issues relating to individual tariff sheets. Rather, they complain about KCPL's request for expedited treatment and demand that the Commission hold additional hearings to determine if KCPL's tariffs comply with the Report and Order. However, the Commission properly did not hold an additional hearing since the Staff had already determined, after the opportunity for comment by all the parties, that the tariffs were in compliance with the Report and Order.

18. Moreover, the Commission has the authority to grant an increase in rates without a hearing under Section 393.140(11). As it utilized its past practice of relying upon Staff pursuant to Section 386.240 to determine if the tariffs complied with the Report and Order, the

Commission properly determined that it could approve KCPL's compliance tariff sheets without a hearing.

#### **IV. The Commission Factual and Legal Findings Were Adequate**

19. OPC and Praxair challenge the legality of the Commission's Order on the ground that its findings of fact and conclusions of law are inadequate to show that the tariffs comply with the Report and Order.

20. For a decision to be lawful, the Commission must include appropriate findings of fact and conclusions of law that are sufficient to permit a reviewing court to determine if it is based upon competent and substantial evidence. See State ex rel. Monsanto Co. v. PSC, 716 S.W.2d 761, 795 (Mo. 1986); State ex rel. A.P. Green Refractories v. PSC, 752 S.W.2d 835, 838 (Mo. App. 1988); State ex rel. Fischer v. PSC, 645 S.W.2d 39 (Mo. App. 1982), cert. denied, 464 U.S. 819 (1983). The legal test for the sufficiency of findings of fact for administrative agencies was discussed by the Court of Appeals in Glasnapp v. State Banking Board, 545 S.W.2d 382, 387 (Mo. App. 1976):

The overall principle generally subscribed to is summarized in 2 Am.Jur.2d Administrative Law § 455, p. 268, as follows: "The most reasonable and practical standard is to require that findings of fact be sufficiently definite and certain or specific under the circumstances of the particular case to enable the court to review the decision intelligently and ascertain if the facts afford a reasonable basis for the order without resorting to the evidence."

21. The Commission's Order meets the requirements that will allow a reviewing court to determine if the decision is based upon competent and substantial evidence. With regard to the findings of the overall revenue requirement and the level of additional amortizations, the Commission's December 21 "Order Approving Tariffs in Compliance with Commission Report and Order" cited the following from Staff's December 18, 2007 Recommendation at page 2:

Staff stated that the tariff sheets denominated YE-2008-0369 comply with the Commission's December 6, 2007 Report and Order, and recommended that the Commission approve them. Staff also stated that the Commission's December 6,

2007 Report and Order states good cause for the Commission to approve the tariffs on less than 30 days' notice because that Report and Order finds that KCPL does not have adequate revenue to meet its cost of service. In addition, Staff comments on the Report and Order's effect of allowing KCPL \$24,585,087 in traditional revenue requirement, with \$10,723,827 in Experimental Regulatory Plan additional amortizations, for a total of \$35,308,914 additional revenue requirement. Staff asks that any order approving KCPL's tariffs include this language.

22. The Commission's findings of fact and conclusions of law in the Report and Order dictate the amount of KCPL's revenue requirement. It is those findings and conclusions that a reviewing court would evaluate. With regard to the tariff sheets, the findings of fact and conclusions of law in the December 21 Order are "sufficiently definite and certain" to enable a court to review the Commission's decision if a specific objection to the tariffs is raised.

V. **As No Formal Evidentiary Hearing was Necessary to review the Tariff Sheets, The Commission was Not Required to Allow Cross-Examination of Staff Witness Watkins.**

23. Because the Commission was not required to hold a hearing on KCPL's tariff filing, the Commission was similarly not required to allow Staff Witness James Watkins to undergo cross-examination on the contents of his affidavit. Although this general rate case proceeding became a contested case within the meaning of Sections 536.063 and 536.070(12) when the Commission set the matter for hearing on February 6, 2007, KCPL's filing of tariffs on December 13 and subsequently did not trigger the full due process requirements of law. When the formal evidentiary hearings were concluded in November on the tariffs first filed in this case (with post-hearing briefing on all contested issues), and once the Commission issued its Report and Order directing the filing of new tariffs, a new phase began.

24. While the Commission could have assigned a different case number to the tariffs filed by KCPL on December 13, it instead gave the new tariff filing a different tariff number

from those originally filed and allowed them to go into effect.<sup>1</sup> Pursuant to the Staff process that occurred, the Commission considered the compliance tariffs in this docket. That procedure did not trigger the full panoply of due process rights because the Commission acted under Section 393.1450(11) and did not set the tariffs for hearing. Consequently, there was no error in the Commission denying OPC and Praxair the right to cross-examine Mr. Watkins on his affidavit.

**VI. Praxair's Motion to Stay Must be Denied**

25. The Motion to Stay of Praxair is premised solely upon its belief that the Commission must correct the alleged errors that it catalogued in its Application for Rehearing. As there is no reason for the Commission to grant rehearing, Praxair's Motion to Stay must be similarly denied.

WHEREFORE, Kansas City Power & Light Co. requests that the Applications for Rehearing and the Motion for Stay be denied.

/s/Karl Zobrist  
Karl Zobrist, MBN 28325  
Roger W. Steiner, MBN 39586  
Sonnenschein Nath & Rosenthal LLP  
4520 Main Street, Suite 1100  
Kansas City, MO 64111  
Telephone: (816) 460-2545  
Facsimile: (816) 531-7545  
email: [kzobrist@sonnenschein.com](mailto:kzobrist@sonnenschein.com)  
email: [rsteiner@sonnenschein.com](mailto:rsteiner@sonnenschein.com)

James M. Fischer, MBN 27543  
Fischer & Dority, P.C.  
101 Madison Street, Suite 400  
Jefferson City, MO 65101  
Telephone: (573) 636-6758  
Facsimile: (573) 636-0383  
email: [jfischerpc@aol.com](mailto:jfischerpc@aol.com)

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<sup>1</sup> The tariffs filed on February 1, 2007 were designated Tariff No. YE-2007-0541. The tariffs approved by the Commission on December 21 were assigned Tariff No. YE-2008-0369.

William G. Riggins, MBN 42501  
General Counsel  
Curtis Blanc, MBN 58052  
Managing Attorney - Regulatory  
Kansas City Power & Light Company  
Telephone: (816) 556-2785  
Facsimile: (816) 556-2787  
email: [bill.riggins@kcpl.com](mailto:bill.riggins@kcpl.com)  
email: [curtis.blanc@kcpl.com](mailto:curtis.blanc@kcpl.com)

Attorneys for Kansas City Power & Light Co.

**CERTIFICATE OF SERVICE**

I do hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 14th day of January, 2008.

/s/Karl Zobrist  
Attorney for Kansas City Power & Light Co.