

**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 Certain Changes	)	<b><u>Case No. ER-2007-0291</u></b>
In its Charges for Electric Service to	)	
Implement Its Regulatory Plan	)	

**REPLY POSTHEARING BRIEF**

**OF**

**PRAXAIR, INC.**

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ATTORNEYS FOR PRAXAIR,  
INC.

November 16, 2007

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COMES NOW Praxair, Inc. ("Praxair"), by and through the undersigned counsel, pursuant to the Commission's October 18, 2007 Order Setting Briefing Schedule, and submits its Reply Posthearing Brief on the issue set forth below.

**ISSUE 22: LARGE POWER SERVICE RATE DESIGN**

In its Initial Brief, Praxair attempted to anticipate the arguments that would be raised in opposition to the proposed adjustment to the Large Power Service ("LPS") rate schedule. Praxair was successful in this regard. As such, rather than entirely repeat the arguments that were contained in its Initial Brief, Praxair will instead summarize the argument and reference the appropriate pages of the Initial Brief.

**A. DOES THE STIPULATION AND AGREEMENT INCORPORATING THE KCPL EXPERIMENTAL REGULATORY PLAN THAT THE COMMISSION APPROVED IN CASE NO. EO-2005-0329 ALLOW THE SIGNATORIES TO THE STIPULATION AND AGREEMENT TO MAKE RATE DESIGN MODIFICATIONS WITHIN THE LARGE POWER SERVICE RATE SCHEDULE?**

KCPL continues to argue that an “equal percentage increase” is mandated by the terms of the Regulatory Plan Stipulation.<sup>1</sup> In the Regulatory Plan Stipulation, the parties reached the following agreement as to rate design for this case “[t]he Signatory Parties agree not to file new or updated class cost of service studies or to propose changes to rate structures in Rate Filing #2.”<sup>2</sup> KCPL broadly interprets the prohibition against proposing changes to “rate structures” as precluding any changes to the current rate design reflected in those tariffs. As such, KCPL contends that the Regulatory Plan Stipulation mandates an “equal percentage increase.”<sup>3</sup>

In support of its position, KCPL directs the Commission’s attention to two treatises which it claims supports a “broader definition” of the term “rate structure.” While each appears to take an expansive view of the term “rate structure,” it is properly argued that these interpretations are being taken out of context. Specifically, KCPL points out that the Phillips treatise defines the “rate structure” as involving “the establishment of rates (prices) to be charged consumers.”<sup>4</sup> The inapplicability of the Phillips definition is best seen when one realizes that the prohibition against a change in

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<sup>1</sup> KCPL Initial Brief at page 44 (“Anything other than an equal shift in rates uniformly to all classes does not comply with the provisions of the Stipulation”).

<sup>2</sup> Exhibit 29, page 35.

<sup>3</sup> KCPL Initial Brief at pages 39-40.

<sup>4</sup> *Id.* at page 47 (citing to Exhibit 209, page 2).

rate structure, under his definition, would preclude the very rate increase that KCPL now seeks.<sup>5</sup>

Actually, the definition of rate structure is not capable of a single, all encompassing definition. Rather, the definition must consider the context in which it is made. That is to say, the definition will differ based upon the phase of the rate case to be considered. As Mr. Brubaker notes:

Parties sometimes refer to a rate case as consisting of a revenue requirement phase and a rate design phase. In this context, the rate design phase is broadly understood to include class cost of service studies, interclass revenue allocations, rate structure and rate design. In the sense in which the term “rate design” is used in that context, it has a much broader meaning than it does in the context of the S&A [Stipulation and Agreement].<sup>6</sup>

Therefore, while “rate structure” may mean one thing in the context of the revenue requirement phase or in the context of ratemaking in general, it has a completely different meaning in regards to the rate design phase. Specifically, in the context of ratemaking in general, rate structure has the broad meaning attributed to Dr. Phillips – “the establishment of rates (prices) to be charged consumers.” On the other hand, in the context of the rate design phase, it has a more specific meaning. In this context, rate structure “may generally be thought of as the number of rate schedules, the types of charges within the rate schedule and the number of blocks through which revenues are collected as a function of customer consumption.”<sup>7</sup> Only by using this interpretation may the Commission give meaning to the Regulatory Plan Stipulation while still allowing KCPL to pursue its rate increase.

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<sup>5</sup> Tr. 1032.

<sup>6</sup> Exhibit 602, pages 4-5.

<sup>7</sup> *Id.* at page 3.

The illogical nature of KCPL's interpretation, using the prohibition against rate structure changes as an implied agreement to employ an "equal percentage increase" is further highlighted by the industry's demonstrated ability to implement such across-the-board increases where appropriate. As Praxair points out in its Initial Brief, the parties and the Commission have repeatedly demonstrated an understanding of an "equal percentage increase." By rejecting the phrase "equal percentage increase" in the Regulatory Plan Stipulation, it is apparent that the parties and the Commission intended something entirely different. In this case, the parties intended to preclude changes to the "rate structure" (i.e., the number of schedules, demand and energy blocks)<sup>8</sup> while simultaneously providing the opportunity for rate design changes between and within those rate structures.

**B. IF SO, WHAT ARE THE APPROPRIATE DEMAND AND ENERGY CHARGES FOR THE LARGE POWER SERVICE RATE SCHEDULE?**

In reading its Initial Brief, it is apparent that KCPL is relying heavily on its Regulatory Plan Stipulation argument because it is unable to attack the merits of Mr. Brubaker's adjustment. Actually, KCPL addresses the merits of Mr. Brubaker's adjustment in only two short paragraphs.<sup>9</sup> In these paragraphs, KCPL suggests two problems with Brubaker's adjustment. First, the adjustment will "benefit the highest load factor customers in this class, while increasing the cost above the average for the lower load factor customers in the class."<sup>10</sup> Second, because it may cause these lower load factor customers to consider migration to a general service rate schedule, it would require

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<sup>8</sup> As Mr. Brubaker notes, "[r]ate structure may generally be thought of as the number of rate schedules, the type of charges within the rate schedule and the number of blocks through which revenues are collected as a function of customer consumption." Exhibit 602, page 3.

<sup>9</sup> KCPL Initial Brief at pages 49-50.

<sup>10</sup> *Id.* at page 50.

an adjustment to ensure the appropriate collection of revenues from the LPS rate schedule.<sup>11</sup> Praxair thoroughly addressed both of these points in its Initial Brief.<sup>12</sup>

KCPL first criticism is misplaced. Praxair will not repeat the entirety of its response to this criticism, it is fully set forth in Praxair's Initial Brief at pages 6-9 and 11-14. Movements to correct non-cost-based rate levels are neither a "benefit" to those currently overcharged nor a detriment to those whose below-cost rate would be discontinued. Distinction between customers is appropriate where there is a cost basis for the distinction. Even KCPL's witness admitted that "the average cost to serve a high load factor customer is lower than the average cost to serve a low load factor customer."<sup>13</sup> Given the difference in cost between the two customers, it is appropriate for low load factor customers to pay "above the average." KCPL's argument is nothing more than a red herring.

KCPL second argument, that certain low load factor customers may "migrate" to a general service rate schedule and cause an undercollection from the LPS rate schedule is a design issue, and not a fundamental criticism.<sup>14</sup> Praxair readily admits this in its testimony and initial brief. Nevertheless, the simple solution to this design issue is contained in KCPL's own brief – "an adjustment to correct for the deficiency."<sup>15</sup> As Mr. Brubaker points out:

While it would be important to make the adjustment in an appropriate manner, an adjustment is appropriate because the intent was not to cause KCPL to suffer a loss of revenue as a result of this customer migration. It

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<sup>11</sup> *Id.*

<sup>12</sup> See, Praxair Initial Brief at pages 6-9, 11-12 and 13-14 regarding effect on low load factor customers and page 14 regarding an adjustment to account for migration to the general service rate schedule.

<sup>13</sup> Tr. 753-754.

<sup>14</sup> Staff suggests a similar adjustment at page 44 of its Initial Brief.

<sup>15</sup> KCPL Initial Brief at page 50.

is my understanding that the amount of revenue difference would be less than 2% of the LPS revenues.<sup>16</sup>

In its Brief, Staff appears to adopt an argument initially raised by KCPL, but seemingly dropped when KCPL filed its brief. Specifically, Staff contends that the energy rates in the LPS rate schedule should not be reduced “below KCPL’s incremental energy cost.”<sup>17</sup> Again, Praxair fully addressed this criticism at pages 14-16 of its Initial Brief. In summary, the problem with Staff’s criticism is that it inappropriately compares the “incremental energy costs,” contained in the parallel generation tariff, with the “average energy costs” contained in the LPS rate schedule.

The average energy cost, as acknowledged by KCPL, is 1.4¢/kWh.<sup>18</sup> That said, the marginal or incremental cost for KCPL to generate an additional kWh of energy is approximately 2.4¢, as reflected in its Parallel Generation Tariff.<sup>19</sup> This is entirely logical. The average energy cost reflects the cost of generation using all of KCPL’s generation facilities including KCPL’s low cost nuclear and coal units – the high fixed costs of which are paid through the demand costs, not energy charge. In addition to paying the demand charges, customers have to pay for the majority of their energy at the higher prices in the first two energy blocks before they can buy any energy at the lowest priced rate in the high load factor block.

On the other hand, the marginal cost will reflect only the variable cost of operating the last generating unit in the economic dispatch order. This will invariably be the cost of generation associated with a less efficient, high-cost gas unit or the cost of purchasing power in the market.

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<sup>16</sup> *Id.*

<sup>17</sup> Staff Initial Brief at pages 43-44.

<sup>18</sup> Exhibit 20, page 3.

<sup>19</sup> Exhibit 602, page 7.

Given that the energy charges in the rate schedules are based upon average cost, it is apparent that KCPL's comparison to the Parallel Generation tariff is "apples and oranges". The inapplicability of KCPL's incremental cost is well demonstrated by existence of other KCPL rate schedules that have an energy charge that is below KCPL's incremental cost of 2.4¢/kWh. Specifically, KCPL's time of use tariff has an energy charge that is 2.0¢/kWh.<sup>20</sup>

Finally, Staff attempts to bootstrap its concern with the LPS rate schedule to Mr. Brubaker's adjustment. Specifically, Staff suggests reduction or elimination of the declining block demand charges.<sup>21</sup> As pointed out in Praxair's Initial Brief, such a change not only is completely unsupported, but would clearly violate the Regulatory Plan Stipulation which precludes any proposed changes to the rate structures. Nevertheless, as demonstrated at pages 17-18 of Praxair's Initial Brief, Staff's proposal on this point is misplaced.

### **C. CONCLUSION**

In a recent issue of *Public Utility Fortnightly*, the Commission's Chairman discussed the incentives associated with decoupling of utility returns from sales volumes. In his interview, the Chairman correctly pointed out that the Commission's decision in the recent Atmos and MGE rate cases, by adopting the "straight fixed variable" rate design, "shifts costs away from high-use [high load factor] customers and can ensure customers are paying the actual costs associated with maintaining gas lines running to their homes."<sup>22</sup>

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<sup>20</sup> Tr. 771.

<sup>21</sup> Staff Initial Brief at page 44.

<sup>22</sup> *Public Utility Fortnightly*, November 2007, at page 37.



Mr. Brubaker's proposal in this case would continue the logic reflected in those Commission decisions and cited in the Chairman's interview. At pages 11-12 of its Initial Brief, Praxair discussed the cases referenced by the Chairman. Many of the benefits recognized by the Commission in its Orders which adopted the straight fixed variable rate design, and referenced by the Chairman in his interview, would be implemented through Mr. Brubaker's proposal. Specifically, this adjustment would: "(1) remove disincentives for utilities to encourage and assist customers in making conservation and efficiency investments; and (2) reduce the effects of weather on utility revenues and customers bills."<sup>23</sup> Furthermore, this adjustment would "eliminate the inherent conflict between the shareholders (whose returns increase if more gas [energy] is sold) and the ratepayers (who will only pay less by using less)."<sup>24</sup>

By adopting Mr. Brubaker's adjustment, the Commission can reaffirm its commitment to the concept of the straight fixed variable rate design. Moreover, this adjustment would "ensure customers are paying the actual costs associated with maintaining" the facilities which provide power to their locations.

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at page 20.

Respectfully submitted,



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ATTORNEYS FOR PRAXAIR, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



David L. Woodsmall

Dated: November 16, 2007