BEFORE THE PUBLIC SERVICE COMMISSION
OF STATE OF MISSOURI

In the Matter of a Proposed Experimental Regulatory Plan of Kansas City Power & Light Company	**)** **)** **)**	**Case No. EO-2005-0329**

OPPOSITION OF KANSAS CITY POWER & LIGHT CO. TO THE MOTION FOR REHEARING OF SIERRA CLUB AND CONCERNED CITIZENS OF PLATTE COUNTY

Kansas City Power & Light Co. ("KCPL" or "Company") hereby states the following in opposition to the Motion for Rehearing of the Sierra Club and Concerned Citizens of Platte County:

The Motion for Rehearing filed by the Sierra Club and the Concerned Citizens of Platte County[1] has raised no argument that should cause this Commission to grant rehearing or reconsideration of its Report and Order ("Order") issued July 28, 2005. Each and every point asserted in the Motion for Rehearing is a rehash of issues that have been thoroughly briefed or otherwise addressed by the parties. None of them poses an impediment to the Commission's approval of KCPL's Experimental Regulatory Plan, as embodied in the Stipulation and Agreement ("Stipulation"), and as approved by the Order. The Motion for Rehearing should be denied.[2]

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[1] Hereafter collectively referred to as "Sierra Club."

[2] A person who appears to be a Lawrence, Kansas architect began efforts on August 8 to file an untimely and bizarre "Petition for Rehearing, Reopening of the Case Captioned herein for Consideration of KCP&L's Material Fraud before Commission in Violation of Decision of July 28, 2005" on behalf of an entity called the Solar Development Cooperative. Because Section 386.500.2 requires that applications for rehearing be filed "before the effective date of such order or decision," this attempt to file for rehearing must also be denied as the Commission's Report and Order bears an effective date of August 7, 2005. The petition also violates Rule 4 CSR 240-2.040(5) because the Solar Development Cooperative is not represented by a Missouri attorney.

1. The Experimental Regulatory Plan is in the Public Interest.

The Commission found that the proposed Experimental Regulatory Plan ("Plan") contained in the Stipulation was in the public interest because it set forth "a comprehensive framework that appropriately addresses the need for a cost-based but diverse resource adequacy program." See Order at 41, ¶ 11. Contrary to the Sierra Club's allegations, the Commission found that the evidence demonstrated that the Plan offered "a reasonable proposal for safe and adequate service well into the future" by "[c]ombining the best elements of proven and latest technology, coal-fired generation, environmental controls, renewable wind energy, and affordability, demand response and efficiency programs." Id.

The Commission carefully scrutinized the evidence provided by the Sierra Club's witnesses. However, it found their testimony both "contradictory and unconvincing," noting that while Ned Ford opposed wind generation (both as a baseload and a peaking source), Troy Helming favored wind but admitted that KCPL should not construct the 1,600 MW wind farm that he once advocated. See Order at 25. The Commission concluded properly that "wind generation alone, energy efficiency alone, or a combination of both, cannot meet KCPL's customers' needs for additional baseload capacity during the term of the Experimental Regulatory Plan." Id.

Contrary to the Sierra Club's view, the environmental aspects of the Plan will lower emissions from the existing Iatan 1 and LaCygne 1 units, use state-of-the-art equipment at Iatan 2, and promote clean air policies. Id. at 10. Such facts support the Commission's finding that the Plan is "in the public interest and firmly supported" by competent and substantial evidence on the record as a whole. Id. at 31, ¶ 3.

2. The Plan Properly Addresses Supply Issues.

The Sierra Club claims the Commission's Order is unlawful because the Plan addresses supply adequacy issues that do not exist. To the contrary, the Commission's weighing of the evidence showed that "there is a reasonably projected need for additional baseload capacity in the year 2010." Id. at 23. KCPL's John Grimwade testified that with no changes to existing generation and no additional demand side management, based on a 12% required capacity margin and a projected peak load of 3,959 MW, KCPL will have a capacity shortfall of 431 MW in 2010. Id. The Commission found that his analysis reasonably demonstrated that the addition of a 500 MW share of a super-critical pulverized coal unit to the KCPL system would result in the lowest Present Value of Revenue Requirements, and that the optimal timing of this addition would be in the 2010 to 2012 period. Id. The Commission noted that Staff witnesses Warren Wood, Lena Mantle, Henry Warren and David Elliott generally agreed with this analysis. The Commission specifically found that Staff's evidence that demand response and energy efficiency programs could not reduce the load growth to the point that Iatan 2 would not be needed in 2010 was more credible than the Sierra Club's evidence. See Order at 25-26.

The Commission specifically noted that Sierra Club witness Ford failed to attend any of the KCPL workshops, failed to acquaint himself with KCPL data regarding load forecasting and integrated resource plans, and failed to analyze the reasons why other parties decided to endorse the Stipulation. Id.

To the extent that off-system sales occur, they will continue to be treated, as they are today, "above the line" for ratemaking purposes. KCPL will not propose any adjustment that will remove any portion of these sales from its revenue requirement determination in any rate case during the period that the Plan is in effect. Any such revenues and associated expenses will

be a part of the ratemaking process. KCPL further agreed during the hearing that such ratemaking treatment for off-system sales would continue as long as Iatan 2 costs were included in the Company's rate base. See Order at 18-19.

3. The Commission's Jurisdiction has been Properly Invoked.

The Commission's jurisdiction was properly invoked pursuant to the provisions of Chapters 386 and 393, which were cited in detail. See Order at 31-34, ¶ 4. The Commission noted that while Rule 4 CSR 240-2.115 allows parties to file a stipulation and agreement to resolve a contested case, nothing in Missouri law prohibits parties from submitting a stipulation arising from other proceedings. Id. at 30-33. The Commission correctly viewed the Stipulation, with the Experimental Regulatory Plan, as a series of joint recommendations that were part of a non-unanimous stipulation. Id. at 9. Moreover, the Commission properly observed that it has the power to waive any of its rules of practice and procedure for good cause under Rule 4 CSR 240-2.015.

Finally, the Sierra Club complains that the Order is unlawful because it approves a Plan that is part of a Stipulation that was entered into pursuant to the workshop process that occurred in Case No. EW-2004-0596. The truth is that the workshop process served as the foundation to the lengthy and complex settlement negotiations that ultimately led to the Stipulation. The workshop proceedings formally closed on February 18, 2005. No party agreed to anything in the workshop case. This can be seen from the record of that case, which at the Sierra Club's request has been officially noticed for purposes of this proceeding. See Transcript at 122-23.

The parties conducted extensive settlement discussions, and on March 28, 2005 the Stipulation and Agreement was submitted to the Commission. Plainly, the Order of the

Commission is premised upon the evidence presented at the hearing, not the workshops. See Order at 8-9.

Finally, given the fact that no customer rate or charge is approved in the Commission's Order, let alone discussed or suggested in the Stipulation, the Sierra Club's allegation that the workshops "set in place" unspecified "[r]ate increases" is absurd. See Motion for Rehearing at 4, ¶ 12.

4. The Experimental Regulatory Plan is Lawful.

The Commission properly found that the Stipulation creates obligations for the signatories, but not for the Commission itself. See Order at 34, ¶ 5. The Stipulation is a contract among the signatory powers, who have been directed by the Commission to carry out its provisions. Id. at 42. However, the Commission is not a party to the Stipulation which plainly states that it "does not constitute a contract with the Commission." See Stipulation, § III.B.10.g. at 53-54.

Sierra Club complains that the Stipulation calls for the organization of a Customer Program Advisory Group ("CPAG"), and therefore creates a public governmental body whose activities will be contrary to Sections 610.010-.032, the Missouri Open Meetings Act. However, the CPAG is simply designed to provide advice to KCPL on its proposed Demand Response, Efficiency and Affordability Programs, and to receive updates on the status of those programs. See Stipulation, ¶ III.B.5 at 47. The Commission's call for the parties to carry out *their* agreement to form an advisory CPAG is a far cry from an entity which the Commission creates. Because the CPAG has no authority to set or even recommend public policy, and was not created by the Commission, it does not fall within the definition of a "public governmental body" found in Section 610.010(4).

Moreover, no signatory party who participates in the group waives its right to assert any argument in a future general rate case regarding any customer program, its design, its costs, or any other matter considered by the CPAG. See Stipulation at 48. The Commission itself retains complete jurisdiction over any future rate cases. Id. at 54.

The Sierra Club also claims that KCPL's Certificate of Convenience and Necessity for the Iatan Generating Station has expired for Iatan 2 because KCPL only built one plant within the two-year period set forth in Section 393.170.3. However, it clear from the Commission's 1973 Report and Order that the Certificate issued to KCPL was for the Iatan Steam Electric Generating Station, a "multi-unit site designed for four generating units to be constructed and operated by KCPL." See In re Kansas City Power & Light Co., Case No. 17,895 (Mo. P.S.C. Nov. 14, 1973) at 6. It is uncontested that KCPL did begin construction at the Iatan Generating Station within two years of the issuance of the Certificate by this Commission and has therefore complied with the requirements of Section 393.170.3.

Sierra Club complains that the version of the Stipulation considered by the Commission was not the final version. However, the Commission properly noted the amendments to the Stipulation that were agreed upon by the parties. See, e.g., Order at 18-19. It also indicated that the case would remain open until the Kansas Corporation Commission issued its order. Id. at 20, 42. The Order Approving Stipulation and Agreement issued by the Kansas Commission on August 5, 2005 was filed with this Commission by KCPL on that same date.

Finally, the Sierra Club attacks this Commission's approval of the Experimental Regulatory Plan because it permits adjustments to amortization costs. As noted in the Order, the Commission's approval of experimental regulatory plans has been affirmed by the courts for many years, most recently in the Union Electric Company cases. See Union Electric Co. v. PSC,

136 S.W 3d 146, 149, 152 (Mo. App. 2004); State ex rel. Laclede Gas Co. v. PSC, 535 S.W. 2d 561, 566-67 (Mo. App. 1976). The provisions relating to current and special amortizations are in the public interest because, as the Commission found, they will be managed to maintain KCPL's financial integrity in a manner similar to tax normalization and accelerated depreciation techniques, which have also been approved by the courts. State ex rel. Utility Consumers Council of Missouri, Inc. v. PSC, 606 S.W. 2d 222, 224-26 (Mo. App. 1980). As the Commission noted, similar adjustments and amortizations have been approved for KCPL in the past. See Order at 35-36, ¶ 6.

None of the issues raised by the Sierra Club and the Concerned Citizens of Platte County merit any rehearing, reconsideration or other remedial action. The Report and Order properly considered all of the evidence presented during four days of hearing, which occurred on a schedule specifically requested by the Sierra Club and granted by the Commission. The Report and Order reflects the proper exercise of this Commission's jurisdiction and its broad statutory authority over public utilities. The Motion for Rehearing should be denied.

Respectfully submitted,

/s/ Karl Zobrist _____
Karl Zobrist, MBN 28325
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

James M. Fischer, MBN 27543

email: jfischer@aol.com
Larry W. Dority, MBN 25617
email: lwdority@sprintmail.com
Fischer & Dority, P.C.
101 Madison Street, Suite 400
Jefferson City, MO 65101
Telephone: (573) 636-6758
Facsimile: (573) 636-0383

William G. Riggins, MBN 42501
General Counsel
Kansas City Power & Light Company
Telephone: (816) 556-2785
Facsimile: (816) 556-2787
email: bill.riggins@kcpl.com

Attorneys for Kansas City Power & Light Company

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed to all counsel of record this 10th day of August, 2005.

/s/ Karl Zobrist_____