

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 8th day of
April, 2008.

In the Matter of the Application of Kansas City)	
Power & Light Company for a Waiver or Variance of)	<u>Case No. EE-2008-0238</u>
Certain Provisions of the Report and Order in)	
Case No. ER-2007-0291)	

ORDER ESTABLISHING PROCEDURAL SCHEDULE

Issue Date: April 8, 2008

Effective Date: April 8, 2008

On January 23, 2008, Kansas City Power & Light Company (KCPL) applied for a waiver or variance regarding the rates it may charge certain all-electric and electric heating customers. The Commission allowed Missouri Gas Energy (MGE), Praxair, Inc., and Trigen-Kansas City Energy Corporation to intervene. At a prehearing conference held on March 24, the Presiding Officer directed the parties to submit a proposed procedural schedule by March 31.

KCPL, on behalf of itself and Staff, Public Counsel and MGE, filed a proposed procedural schedule on March 31. On the same date, Trigen filed a pleading objecting to the establishment of any procedural schedule at this time. In addition to its general objection, Trigen took issue with several particular aspects of the procedural schedule proposed by the other parties.¹ On April 1, the Commission ordered that any party wishing

¹ Praxair did not take part in the prehearing conference and did not file a proposed procedural schedule.

to respond to the proposed procedural schedule or Trigen's objections to that schedule do so no later than 1:00 p.m. on April 4. KCPL filed a response at 3:00 p.m. on April 4.

Trigen explains that it opposes the establishment of a procedural schedule at this time because it intends to file a dispositive motion, asking the Commission to dismiss KCPL's application, by April 18. Trigen indicates other parties may file similar motions at the same time. If the Commission grants a dispositive motion, there would be no need for a further procedural schedule. More importantly, the parties could avoid the time and expense of conducting discovery and preparing testimony for a hearing that may never happen. This concern is particularly great for Trigen because it will need to hire an outside expert if it wants to have access to information designated as highly confidential by KCPL.

On the other hand, the Commission's decision to grant or deny KCPL's application will have an impact on the electric rates paid by numerous customers. Everyone involved deserves a prompt decision from the Commission. Simply waiting until dispositive motions have been decided to establish a procedural schedule could unfairly delay a final resolution of the case. Therefore, the Commission will establish a procedural schedule at this time.

In addition to its general objection to establishment of any procedural schedule, Trigen objects to several aspects of the particular procedural schedule proposed by KCPL and the other parties. First, Trigen points out that the proposed procedural schedule calls for a "local hearing" in Kansas City for the same week as the evidentiary hearing, proposed for June 25 and 26, in Jefferson City. The proposed procedural schedule does not explain what sort of "local hearing" is envisioned, but Trigen contends KCPL intends to use the local hearing to elicit live testimony from its customers who would be affected by the waiver

or variance that it seeks. Trigen complains that such a proceeding would deny Trigen's due process right to meaningful cross-examination of the testimony of such witnesses.

The Commission does not know what KCPL and the other parties intend to be the purpose for a local hearing in Kansas City. KCPL's application for waiver or variance would affect only a narrow and known group of commercial and industrial customers who have committed financial resources in anticipation of receiving the discounted rates for all-electric and space heating services that the Commission restricted in KCPL's most recent rate case. There is no need to have a local public hearing to gauge the mood of the general rate-paying public, and the Commission will not allow KCPL to use the local hearing to avoid prefiling testimony from its affected customers. The Commission is, however, mindful of the burden that could be placed on KCPL's affected customers who would be required to travel to Jefferson City to be cross-examined on any prefiled testimony they may file. For that reason, the Commission will reserve a hearing day before the beginning of the hearing in Jefferson City for the purpose of allowing that cross-examination to occur in Kansas City.

The proposed procedural schedule required KCPL to prefile its direct testimony on April 4. Since KCPL may want to prefile additional direct testimony, the Commission will allow additional time for it to do so.

Trigen's second objection is to the amount of time the proposed procedural schedule would allow between the filing of rebuttal and surrebuttal/cross-surrebuttal testimony. The proposed schedule would have rebuttal testimony filed on May 30, with surrebuttal filed one week later on June 6. In its response, KCPL indicated its willingness to move that filing date back to June 13. The Commission will do so.

Finally, Trigen objects that the two hearing days proposed may not be sufficient. This concern is partially addressed by the reservation of an additional day for cross-examination in Kansas City. If the hearing cannot be completed in the time allotted, the Commission will add more hearing time as needed.

The Commission finds that the following conditions shall be applied:

(A) Testimony shall be prefiled as defined in Commission Rule 4 CSR 240-2.130. All parties must comply with this rule, including the requirement that testimony be filed on line-numbered pages.

(B) The parties shall agree upon and Staff shall file a list of the issues to be heard, the witnesses to appear on each day of the hearing, the order in which they will be called, and the order of cross-examination for each witness. Any issue not contained in this list of issues will be viewed as uncontested and not requiring resolution by the Commission.

(C) Each party shall file a simple and concise statement summarizing its position on each disputed issue.

(D) All pleadings, briefs, and amendments shall be filed in accordance with Commission Rule 4 CSR 240-2.080. Briefs shall follow the same list of issues as filed in the case and must set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission.

(E) All parties are required to bring an adequate number of copies of exhibits that they intend to offer into evidence at the hearing. The party offering an exhibit must bring, in addition to the copy for the court reporter, copies for the five Commissioners, the Presiding Judge, and all counsel.

IT IS ORDERED THAT:

1. The following procedural schedule is established:

Direct Testimony Filed by KCPL	-	April 15, 2008
Dispositive Motions Filed	-	April 18, 2008
Responses to Dispositive Motions Filed	-	April 28, 2008
Rebuttal Testimony Filed by Staff Public Counsel and Intervenors	-	May 30, 2008
Surrebuttal and Cross-Surrebuttal Testimony filed by All Parties	-	June 13, 2008
List of Issues, Order of Witnesses, And Order of Cross filed by Staff	-	June 17, 2008
Statements of Position filed by All Parties	-	June 20, 2008
Hearing for Cross-Examination of Kansas City Witnesses	-	June 24, 2008, beginning at 8:30 a.m. (location in Kansas City to be determined)
Hearing for Cross-Examination of Witnesses in Jefferson City	-	June 25 and 26, 2008, beginning at 8:30 a.m.

2. The June 25 and 26 hearing will be held at the Commission's office at the Governor Office Building, Room 310, 200 Madison Street, Jefferson City, Missouri. This building meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this hearing, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the hearing.

3. This order shall become effective on April 8, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Clayton,
and Jarrett, CC., concur.

Woodruff, Deputy Chief Regulatory Law Judge