

**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 in its Charges for Electric)	<u>Case No. ER-2006-0314</u>
to Service Begin the Implementation of Its)	
Regulatory Plan)	

**RESPONSE TO KANSAS CITY POWER & LIGHT COMPANY’S
RESPONSE TO RECONCILIATION FILED BY STAFF**

COME NOW The Office of the Public Counsel and for its Response to Kansas City Power & Light Company’s Response to Reconciliation Filed by Staff states as follows:

1. On December 1, 2006, the Staff of the Commission filed an updated reconciliation to show the dollar impacts of the various parties’ positions on the issues as of the true-up cut-off date. Staff conferred with Public Counsel in developing that reconciliation, and Public Counsel believes it to be accurate. With the exception of the Kansas City Power & Light Company (KCPL) response discussed herein, no party has raised any issues regarding that reconciliation.

2. On December 8, 2006, KCPL responded to the reconciliation. In that response KCPL alleges that “Line 33 and Line 39, which relate to the off-system sales margin figures proposed by the Office of the Public Counsel and the Department of Energy, respectively, do not comport with trued-up data submitted by KCPL.”¹ While this may be technically true, it dodges the point. KCPL did provide data **to the parties** purporting to show updates to Mr. Schnitzer’s analysis. Mr. Schnitzer apparently did some sort of an update of this study, and filed it as True-up Rebuttal Testimony. None of the parties have had the opportunity to respond in testimony to

¹ KCPL Response, paragraph 4;

the new study, nor have they had the opportunity to cross-examine Mr. Schnitzer on it. KCPL attempted to make Mr. Schnitzer's new study a part of the record in this case, but it was explicitly and specifically excluded. (see Transcript, pp. 1653-1655).

3. KCPL, in its response, suggests that the Commission "may wish to request KCPL and the parties to include in the scenarios the impact of the updated figures to September 30, 2006, with the 50th percentile point **so that the record is complete....**"² Unfortunately for KCPL, the record is already complete, and evidence it so desperately wants the Commission to consider was excluded from that record. KCPL sought neither reconsideration nor rehearing of the Commission's decision to exclude Mr. Schnitzer's updated figures, but now seeks to have the Commission consider this excluded evidence by having the parties include it in scenario responses.

4. For all the same reasons, and more, that it was proper to exclude Mr. Schnitzer's True-up Rebuttal Testimony, it is also appropriate to not allow it into the record as part of scenario submissions. It was excluded in part because it was not proper rebuttal testimony, but rather should have been direct testimony. Allowing it in as rebuttal would have precluded parties from addressing it in their rebuttal testimony, which would have been a violation of the Commission's testimony filing rules (4 CSR 240-2. 130(7)), would have been grossly unfair to other parties, and would have violated their due process rights. It was also excluded in part because Mr. Schnitzer was not available to stand cross-examination concerning the updated study. Neither of these reasons would be addressed if this update somehow becomes part of the record through the scenario process. Moreover, KCPL has not complied – and indeed could not comply – with the Commission's rule on reopening a record to take additional evidence (4 CSR

² KCPL Response, paragraph 1.

240-2.110(8)). The evidence KCPL seeks to get into the record was available at the time of the hearing, and was in fact offered at the hearing, but was excluded on procedural and due process grounds.

5. Nonetheless, there is ample evidence in the record concerning Mr. Schnitzer's analysis to allow the Commission to adopt the position advocated by Public Counsel and many of the other parties. Mr. Schnitzer's testimony in the main phase (i.e., before the true-up) of this case was accepted into the record, as was the testimony of any number of witnesses responding to it.³ If the Commission wants to adopt the position advocated by Public Counsel and other parties (that is, use the 50th percentile point of Mr. Schnitzer's analysis as the level of off-system sales revenues to include in setting rates), the evidence is there. In fact, Mr. Schnitzer's analysis went largely unchallenged; KCPL proposed it and relied on it, and many of the other parties used it as the basis of their off-system sales proposals. Staff did not use it (Staff used historical rather than forward-looking data, and so did not really even address Mr. Schnitzer's analysis), but did not attack it, either. While it is possible that there are more current numbers on this issue than those in the record – as is the case with many of the issues the Commission is considering – the fact that those numbers are not in the record does not prevent the Commission from deciding this issue on the basis of Public Counsel's proposal.

WHEREFORE Public Counsel respectfully requests that the Commission disregard KCPL's request in its Response to Reconciliation Filed by Staff to have the Commission consider information that was explicitly excluded from the record in this case.

³ See, e.g., Exhibits 30, 31, 32 (KCPL witness Schnitzer direct, rebuttal, and surrebuttal), 204, 205 (Public Counsel Witness Kind rebuttal and surrebuttal), 210 and 212 Public Counsel witness Smith direct and surrebuttal).

Respectfully submitted,

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