

**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)	

PUBLIC COUNSEL’S REPLY TO RESPONSES TO ORDER DIRECTING SCENARIOS

COMES NOW The Office of the Public Counsel and for its Reply to Responses to Order Directing Scenarios states as follows:

1. On December 14, 2006, Kansas City Power & Light Company (KCPL) filed a pleading entitled “Kansas City POWER & LIGHT COMPANY’S RESPONSE TO ORDER DIRECTING SCENARIOS.” In that response, KCPL once again deliberately tries to mislead the Commission as to what is in the record in this case. KCPL states that: “The updated figures to September 30, 2006 with the 50th percentile point are a matter of record in True-up Rebuttal Testimony of Steve Traxler, however, as well as in the True-up workpapers provided to the parties on November 9, 2006.” Neither of these points are true.

2. The True-up Rebuttal Testimony of Staff witness Traxler **does not contain** the off-system sales number that KCPL wants the Commission to use. Mr. Traxler testified in passing that he was aware of an updated study that Mr. Schnitzer performed, and that Mr. Schnitzer’s updated study tended to support Staff’s number. Mr. Traxler noted that the updated 50th percentile number was somewhere within a range of \$5 million. He did not identify where in that range the actual number was. (Exhibit 164HC, Traxler True-up Rebuttal, p. 12). And, in fact, the number that KCPL has repeatedly and falsely told the Commission is in the record is

outside of the range that Mr. Traxler referred to.¹

Furthermore, Mr. Traxler did not endorse or support Mr. Schnitzer's approach, and in fact testified he "reject[ed] entirely the NorthBridge analysis as a basis to set off-system sales." (Transcript, p. 839). Even if Mr. Traxler had made reference to the number that KCPL claims he did – which he did not – his mere reference to it would not make it evidence on which the Commission could rely, particularly since Mr. Traxler's sworn testimony is that he entirely rejects the analysis.

3. KCPL also claims that the off-system sales number it wants the Commission to use in the record because it is "in the True-up workpapers provided to the parties on November 9, 2006." Workpapers provided to the parties are not part of the record, and counsel for KCPL is well aware of that fact. The parties routinely exchange workpapers as part of the discovery process. Information obtained in discovery is not part of the record, unless it is offered and admitted into the record at the hearing. The number that KCPL claims is part of the record **was specifically excluded** from the record at the hearing. KCPL does not acknowledge or even mention that fact in either of its pleadings filed in the last week, nor has it sought reconsideration or rehearing of the decision to exclude it. Instead it has chosen to deliberately mischaracterize the state of the record. The Commission is required by law to make its decisions based on record evidence. In this case, the Commission must make its own determination of what is in the record rather than relying on the false statements made by KCPL.

4. Public Counsel concurs in the Response to Order Directing Scenarios filed by Staff on December 14, 2006. Unlike KCPL, Staff actually used evidence in the record to perform its scenario calculations.

¹ KCPL has designated as "Highly Confidential" the number that it wants the Commission to use to quantify Public Counsel's position, and so it is not set out in this pleading. It can be found in Paragraphs 4 and 9 of KCPL's December 14 filing. It is more than \$400,000 outside of the range noted in Mr. Traxler's testimony.

WHEREFORE Public Counsel respectfully requests that the Commission accept Staff's Response to Order Directing Scenarios, and reject KCPL's Response to Order Directing Scenarios.

Respectfully submitted,

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Certificate of Service

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