

**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)	<u>Case No. ER-2007-0291</u>
for Electric Service to Implement its)	
Regulatory Plan)	

APPLICATION FOR REHEARING

COMES NOW the Office of the Public Counsel and for its Application for Rehearing states as follows:

1. On December 6, 2007 the Commission issued its Report and Order in this case. That order is unjust, unreasonable, arbitrary and capricious, and unlawful for the following reasons. The Report and Order is unlawful, unjust, unreasonable and unconstitutional in that it completely fails to separately and adequately identify conclusions of law and findings of fact. The Report and Order is unlawful, unjust, and unreasonable in that it is not based upon competent and substantial evidence of record.

2. Capital Structure

The Commission failed to make adequate findings of basic facts. The Commission's "Findings of Fact" section on this issue is only two paragraphs, and much of that brief section is discussion and conclusion rather than findings of fact. The Commission, although it concludes that KCPL acted properly by not issuing "the debt it planned to issue," ignores evidence that KCPL could have issued at least \$100 million instead. It ignores evidence that the Regulatory Plan contemplated an equity ration of 51 percent. It ignores evidence that KCPL's management has sole discretion to set capital

structure and, unless the Commission exercises its statutory duty to protect them, ratepayers are forced to pay higher rates if the equity ratio is unreasonably high. The Commission made no findings about why a 58 percent equity ratio – way out of line with any number of measures in the record – is reasonable. It simply concludes that actual capital structure is more reasonable than the one proposed by Public Counsel because the actual capital structure “is known and measurable.” Similarly, the Commission reaches the complementary conclusion that Public Counsel proposes is unreasonable simply because it is not the actual capital structure of Great Plains Energy (GPE). The Commission erred by ignoring the overwhelming evidence that GPE’s capital structure is unreasonable and way out of the norm. The Commission erred by analyzing the Return on Equity issue with an eye on a zone of reasonableness, but arbitrarily ignoring the question of whether GPE’s actual capital structure was reasonable in light of other measures.

The Commission erred in that it completely failed to distinguish its decision in this case from the 1993 rate case¹ involving St. Joseph Light and Power Company (SJLP) cited by Public Counsel, in which the Commission was faced with a set of facts almost identical to what it faced in the instant case. While the Commission is not bound by *stare decisis*, it cannot decide cases on a whim. If it decides two identical fact patterns in diametrically opposite ways, it must have a well-explained reason for doing so. If not, its actions are arbitrary and capricious. The Commission correctly agreed that a capital

¹ In the matter of St. Joseph Light & Power Company's proposed tariffs to increase rates for electric service provided to customers in the Missouri service area of the Company, consolidated with Staff of the Missouri Public Service Commission, Complainant, vs. St. Joseph Light & Power Company, a Missouri corporation, Respondent. Case Nos. ER-93-41 and EC-93-252; 1993 Mo. PSC LEXIS 36; 2 Mo. P.S.C. 3d 248; June 25, 1993.

structure should contain a reasonable balance of debt and equity, but erred in using the inapposite “known and measurable” standard as the sole criteria of reasonableness. Furthermore, the Commission never explains why the fact that a particular capital structure is the actual capital structure of a utility’s parent makes it reasonable for the purpose of setting rates, and it failed to find any facts that would show it reasonable by any measure other than the “known and measurable” standard.

The Commission has a general discussion about the relative positions of shareholders and bondholders, but failed to make any findings as to why or how any of those generalities would apply to the basic facts of this case, if the Commission were to have found any basic facts.

3. Off-system Sales

The Commission’s decision on off-system sales is unjust, unreasonable, arbitrary and capricious, and unlawful for the following reasons. The Commission’s use of the 25th percentile to calculate a level of revenues for off-system sales awards KCPL with a 3:1 chance of achieving a higher level of off-system sales revenues than the amount included in the rate-setting calculation. This is unjust and unreasonable in that it deliberately allows KCPL a strong chance to earn a return higher than that authorized. It is also unlawful and unreasonable in that it violates both the letter and the spirit of the Regulatory Plan that the Commission approved in EO-2005-0329. Furthermore, the Commission’s decision is contrary to the Regulatory Plan in that it found: “With these factors in mind, the Commission finds that it should tilt the revenue requirement balance more towards traditional ratemaking and revenue requirement, and away from additional amortizations....” (Report and Order, page 25). The Commission also erred in that it

failed to adequately hold KCPL accountable for its high level of forced outages. While the Commission has at least attempted to explain why it has shifted the market risk of off-system sales margins from the utility to the ratepayers, it has made no attempt to explain why the revenue shortfall from KCPL's failure to keep its plants running should be shifted to ratepayers.

4. Shift of Revenue Responsibility to Residential Ratepayers

The Commission erred in shifting \$3.5 million of revenue responsibility to the Residential class. The Commission makes this shift despite a finding that it is "unsure" that any class other than Medium General Service has a problem with rate of return. (Report and Order, page 62). The Commission bases this shift, at least in part, on speculation about what might happen in future cases. The Commission refers to a "massive increase in rate base **if** Iatan 2 is placed in service." (Report and Order, page 63; emphasis added). The Commission admits that it is simply speculating about what may happen in the future.² Such speculation should not be the basis of an increase to residential ratepayers.

The Commission is setting residential rates based on the costs of a new facility before it is fully operational and used for service, in derogation of Section 393.135 RSMo 2000.

Furthermore, the Commission ignores the impact of the cessation of regulatory amortizations at the time Iatan 2 goes into service. Regulatory amortizations, if the third rate case envisioned in the Regulatory Plan is filed as anticipated, will likely be \$40

² For example, the Commission notes that it "**could** be caught in a quandary," that "Iatan 2 **likely** will be placed in rate base," and that there "**could** be ...rate shock" in the future. (Report and Order, page 64; emphasis added).

million³ or more at the time the final case (the one which puts Iatan 2 into cost-of-service, if it goes in service) is decided. This amounts to an automatic \$40 million offset to whatever rate increase would otherwise be needed. The Commission failed to acknowledge this fact.

The Commission shifts costs to residential ratepayers based on a group of studies, but it never makes any findings about how those studies were conducted or whether they are reliable. In fact, the only study the Commission specifically discusses is the Time-of-Use study conducted by Public Counsel which shows that only a *de minimis* (0.41%) inter-class shift is needed. Although it makes no specific finding as to this study's reliability, the Commission does note that it has relied on such studies in the past; that is more affirmation than any of the other studies it mentions only in passing.

WHEREFORE, Public Counsel respectfully requests that the Commission grant rehearing of its December 6, 2007, Report and Order.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Lewis R. Mills, Jr.

By: _____

Lewis R. Mills, Jr. (#35275)
Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-1304
(573) 751-5562 FAX
lewis.mills@ded.mo.gov

³ Even if it is not, or if no additional amortizations are needed in that case, already-known Regulatory Amortizations from the first two cases are greater than \$30 million.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 14th day of December 2007:

Office General Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

Nathan Williams
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Nathan.Williams@psc.mo.gov

Dean L Cooper
312 East Capitol
P.O. Box 456
Jefferson City, MO 65102
dcooper@brydonlaw.com

Mark W Comley
601 Monroe Street., Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537
comleym@ncrpc.com

Diana C Carter
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
DCarter@brydonlaw.com

Diana M Vuylsteke
211 N. Broadway, Suite 3600
St. Louis, MO 63102
dmvuylsteke@bryancave.com

James M Fischer
101 Madison Street--Suite 400
Jefferson City, MO 65101
jfischerpc@aol.com

Larry W Dority
101 Madison, Suite 400
Jefferson City, MO 65101
lwdority@sprintmail.com

Curtis D Blanc
1201 Walnut, 20th Floor
Kansas City, MO 64106
Curtis.Blanc@kcpl.com

William G Riggins
1201 Walnut
Kansas City, MO 64141
bill.riggins@kcpl.com

Karl Zobrist
4520 Main Street
Suite 1100
Kansas City, MO 64111
kzobrist@sonnenschein.com

Roger W Steiner
4520 Main Street, Suite 1100
Kansas City, MO 64111
rsteiner@sonnenschein.com

Shelley A Woods
P.O. Box 899
Jefferson City, MO 65102-0899
shelley.woods@ago.mo.gov

Duncan E Kincheloe
2407 W. Ash
Columbia, MO 65203
dkincheloe@mpua.org

Arthur P Bruder
1000 Independence Ave. SW
Washington , DC 20585
arthur.bruder@hq.doe.gov

Lewis O Campbell
P.O. Box 51508
Albuquerque, NM 87181-1508
LCampbell4@comcast.net

Paul N Jones
PO Box 5400
Albuquerque, NM 87185-5400
pnjones@doeal.gov

David Woodsmall
428 E. Capitol Ave., Suite 300
Jefferson City, MO 65102
dwoodsmall@fcplaw.com

Jeremiah D Finnegan
3100 Broadway, Suite 1209
Kansas City, MO 64111
jfinnegan@fcplaw.com

Stuart Conrad
3100 Broadway, Suite 1209
Kansas City, MO 64111
stucon@fcplaw.com

Charles B Stewart
4603 John Garry Drive, Suite 11
Columbia, MO 65203
Stewart499@aol.com

Jeffrey A Keevil
4603 John Garry Drive, Suite 11
Columbia, MO 65203
per594@aol.com

Peggy Whipple
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Peggy.Whipple@psc.mo.gov

/s/ Lewis R. Mills, Jr.
