

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

STATE CORPORATION COMMISSION

APR 20 2011

In the Matter of the Petition of Kansas City)
Power & Light Company ("KCP&L") for)
Determination of the Ratemaking Principles)
and Treatment that Will Apply to Recovery in)
Rates of the Cost to be Incurred by KCP&L for)
Certain Electric Generation Facilities Under)
K.S.A. 66-1239.)

Docket No. 11-KCPE-581-PRE



**STAFF'S RESPONSIVE COMMENTS TO
PREHEARING OFFICER'S REPORT AND RECOMMENDATION**

COMES NOW the Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission" respectively), and for its responsive comments to the Prehearing Officer's Report and Recommendation ("R&R"), filed April 13, 2011, Staff states the following:

BACKGROUND

1. The proposed and negotiated schedules for this docket, and primarily the evidentiary hearing dates, have been moved earlier and earlier on the calendar to the point that Staff believes the prehearing activities have been compressed past the point of reasonableness. A review of the history of the proposed schedules is necessary.

2. During 2010, Kansas City Power & Light Company ("KCP&L") and Staff discussed the timing of KCP&L's filing of this Application. Staff expressed a concern that KCP&L might file its Application without having actual bids received from contractors bidding to construct the proposed environmental additions to the LaCygne power plant. In an Open Meeting held December 10, 2010, this Commission expressed its view that the Application should not be filed based on speculative costs and that actual bids would be appropriate.

3. KCP&L filed its Application for predetermination of ratemaking principles on February 23, 2011, at which time KCP&L had obtained bids for the proposed LaCygne

upgrades. Under K.S.A. 2010 Supp. 66-1239, this Commission is required to issue its order by August 22, 2011. KCP&L filed a Motion for Procedural Schedule contemporaneous with its Application in this docket and proposed a hearing date of July 11-13, 2011. It is unknown whether KCP&L contacted the Commission prior to filing its Application to determine if the particular filing date would be problematic for scheduling a hearing in the months of June or July. Nevertheless, KCP&L decided to file its Application when it did.

4. As stated in the Prehearing Officer's R&R, the Prehearing Officer identified that the proposed schedule did not provide the opportunity for responsive post-hearing briefs. As a result, the Prehearing Officer proposed to the parties that the evidentiary hearing commence on June 17, 2001, which would allow for reasonable prehearing activity and post-hearing briefs and responsive briefs.

5. Counsel for KCP&L expressed a personal conflict with a late June hearing date. As a result, a Prehearing Conference was scheduled to discuss the aforementioned issues, as well as other issues in the docket.

6. The Prehearing Conference was held on March 21, 2001, at which time the parties attempted to accommodate KCP&L's counsel's schedule and agreed to an evidentiary hearing to be held June 13-15, 2011, as proposed by the Prehearing Officer as being available for the Commission. (The Prehearing Officer's R&R, in the chart on p. 5, incorrectly states the agreed hearing date as June 9-10, and 13, 2011, when it was actually June 13-15 as stated above in the text of the R&R, para. 9.) The other prehearing and post-hearing activities were also agreed by the parties, as correctly set forth in the Prehearing Officer's R&R. Staff and CURB were concerned about the compressed nature of the prehearing schedule, but nevertheless agreed to the June 13-15 hearing dates.

7. Staff's concern, in particular, is that this is a relatively complex set of issues for Staff and its consultants to consider, analyze, render opinions, and prepare testimony. Staff is incurring significant expense to assure that it has properly and thoroughly considered all of the issues and implications raised in KCP&L's application for predetermined rate treatment of environmental upgrades that may or may not be in the public interest when compared to other alternatives. Staff has already faced time consuming challenges regarding discovery responses from KCP&L, and experienced longer than anticipated delays in obtaining key data from SPP, but Staff is working overtime to deal with these circumstances in a timely manner. But concern over the deadline for Staff's initial testimony has steadily grown since the prehearing conference.

8. This concern was greatly increased when the parties were informed well after the Prehearing Conference that the Commission had a conflict with the June 13-15 time frame resulting in a new date for the hearing to commence, June 9, 2011. Although the hearing date moved four days earlier, many key prehearing activities did not correspondingly change by a meaningful amount of time. For example, afternoon deadlines were moved to morning deadlines on the same day, leaving the parties with four fewer days to prepare for settlement conferences, prehearing motions, contested issues lists, etc.

9. The initial change in dates was an attempt to accommodate the Applicant. The subsequent changes result in a prehearing schedule so compressed that prejudice to the other parties is unavoidable. For weeks Staff has been working overtime to meet the schedule agreed to at the Prehearing Conference. Staff Consultants have been working many hours, at great expense, to meet the existing compressed schedule. Further compression is likely to result in excessive work hours, creating the potential for inaccurate work. This docket, the ratepayers, and other parties would suffer should the hearing commence on June 9, 2011.

STAFF PROPOSALS

10. Staff proposes several alternatives without, admittedly, knowing what the Commission can or cannot do to rearrange its own schedule to accommodate this docket:

i. June 9, 10, and 13, 2011, Evidentiary Hearing

11. Staff would recommend that if this Commission decides to start the evidentiary hearing on June 9, 2011, that change should be accompanied by the following schedule changes:

KCP&L and Westar Rebuttal Testimony	May 27 th (from June 1 st)
Settlement Conference	May 31 st (from June 3 rd)
Discovery Cut-off	June 3 rd (from June 7 th)
Prehearing Motions Due	June 6 th at Noon (from June 8 th)
Contested Issues List	June 6 th at 2:30 p.m. (from June 8 th)
Prehearing Conference	June 6 th at 2:30 p.m. (from June 8 th)

12. The Applicant selected the filing date and should share the pain resulting from the compression of a schedule which has been altered to accommodate the Applicant.

13. This is not Staff's preferred hearing date and Staff is of the opinion that all interested parties would be prejudiced by this date, including this Commission.

ii. June 13-15, 2011, Evidentiary Hearing

14. This is the evidentiary hearing date agreed upon by the parties at the prehearing conference. If this Commission is able to resolve its conflict, Staff would obviously agree to all of the deadlines agreed to in the prehearing conference and listed on pp. 5-6 of the Prehearing Officer's R&R, with the exception of the hearing dates listed in the chart on the bottom of p. 5 of the R&R.

15. This is also not Staff's preferred hearing date, but Staff would agree to this set of dates under the accommodation agreement reached with KCP&L and CURB at the prehearing conference.

iii. June 17, 20-21, 2011 Evidentiary Hearing

16. Staff would recommend this Commission consider the original dates proposed by the Prehearing Officer, June 17, 20-21, 2011. The parties have attempted in good faith to accommodate personal conflicts, but Staff recognizes that this Commission has its own complex docket and schedules to manage. As such, it would be reasonable for this Commission to set the hearing date for June 17, 20-21, 2011, which is a far more reasonable date than those earlier in June. The prehearing and post-hearing deadlines can also be adjusted accordingly to allow for a decompression of prehearing deadlines and allow for proper hearing preparation.

iv. July 11-14, 2011 Evidentiary Hearing

17. CURB inquired into whether KCP&L's original proposed hearing dates starting on July 11th were available on the Commission's calendar, and they appear to be. CURB proposed this to KCP&L with an informal request that KCP&L waive its statutory deadline for a Commission order by approximately 10 days to allow for post-hearing briefs and to give the Commission reasonable time to formulate an order. KCP&L refused to do so citing problems that would arise with their construction bidding process.

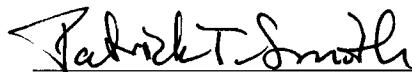
18. As such, Staff respectfully requests the Prehearing Officer and this Commission to consider a July 11, 2011, commencement date for the evidentiary hearing and an adjustment to the post-hearing schedule to reasonably accommodate the Commission's work within a time frame that will allow all parties to meet the August 22, 2011, order date. Staff would agree to simultaneous briefs without response briefs to accommodate this shorter post-hearing schedule. Staff would also respectfully request that the prehearing schedule be adjusted accordingly to allow for a decompression of prehearing deadlines and allow for proper hearing preparation.

CONCLUSION

19. Staff and Intervenors made good faith efforts to accommodate the Applicant and reach the agreed schedule resulting from the prehearing conference, even though it further compressed an already tight schedule dictated by the statutory deadline for a Commission Order. However, the proposed movement to an even earlier hearing date, June 9, 2011, causes the schedule to be compressed beyond reasonableness. This docket involves over \$1 billion in proposed upgrades, which is no small matter to Kansas ratepayers – both Westar and KCP&L ratepayers – and should not be unreasonably rushed through the key prehearing stages.

20. The newly-proposed schedule sets an evidentiary hearing 2 ½ months prior to the final order date. While such a schedule may be reasonable in some circumstances, it is unreasonable in this particular circumstance. Staff suggests its request, that this Commission set a schedule which will allow Staff and its consultants to properly conduct its investigation, prepare testimony, and prepare for a hearing of the issues, is imminently fair under all the circumstances. The later on the calendar the evidentiary hearing takes place, the better the parties can prepare the evidence for this Commission's consideration and determination.

Respectfully submitted,



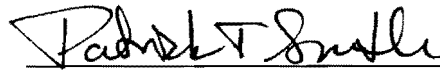
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For Commission Staff

VERIFICATION

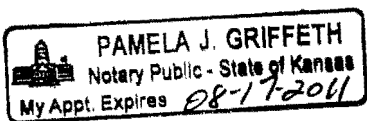
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

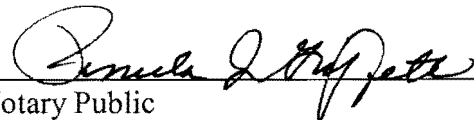
Patrick T. Smith, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the Kansas Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Staff's Responsive Comments to Prehearing Officer's Report and Recommendation* and believes that the statements therein are true to the best of his knowledge, information and belief.



Patrick T. Smith # 18275
Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 20th day of April, 2011.





Notary Public

My Appointment Expires: August 17, 2011

CERTIFICATE OF SERVICE

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I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Staff's Responsive Comments to Prehearing Officer's Report and Recommendation was served by electronic service on this 20th day of April, 2011, to the following parties who have waived receipt of follow-up hard copies.

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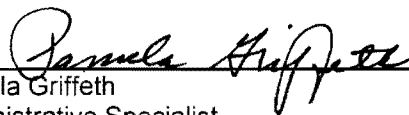
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