

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

NOV 03 2011

by
State Corporation Commission
of Kansas

In the Matter of Kansas City Power & Light)
Company's Compliance Filings as Required) Docket No. 12-KCPE-258-CPL
by Commission Order in Docket No. 11-)
KCPE-581-PRE.)

**REPLY TO STAFF'S RESPONSE AND KCPL'S
OBJECTION TO CURB'S PETITION TO INTERVENE**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and files its reply to Staff's Response to the Petition to Intervene of the Citizens' Utility Ratepayer Board ("Staff's Response") and Kansas Power & Light Company's Objection to Intervention of the Citizens' Utility Ratepayer Board ("KCPL's Objection") in the above-captioned proceeding. In support of its reply, CURB states and alleges as follows:

1. CURB filed its Petition to Intervene on October 18, 2011.
2. Staff's Response and KCPL's Objection were filed on October 28, 2011.
3. In Docket No. 11-KCPE-581-PRE ("581 Docket"), the Commission specifically ordered that KCPL's monthly status reports comply with K.A.R. 82-1-221a: "To the extent any such filing [compliance report] or portion thereof is confidential, KCPL&L shall adhere to K.A.R. 82-1-1221a.¹ KCPL acknowledged its obligation to adhere to K.A.R. 82-1-1221a in KCPL's Objection, ¶
- 6.
4. On October 14th, KCPL filed its October 2011 monthly status report on the La Cygne Environmental Project in Docket No. 12-KCPE-258-CPL. Pursuant to the Commission's direction, KCPL specifically stated in the October 2011 monthly status report:

¹ Order on Petitions for Reconsideration and Order *Nunc Pro Tunc* ("October 5th Order"), October 5, 2011, ¶ 64, ordering clause ¶ (B), 11-KCPE-581-PRE ("581 Docket").

Attached hereto as Exhibit A is KCP&L's first monthly report entitled La Cygne Environmental Project - Monthly Status Report (October 2011). Certain sections of this report contain information that is considered to be confidential and those sections are being filed under seal in accordance with the provisions of K.S.A. 66-1220a and K.A.R.82-1-221a. Confidential information within the report is designated as Confidential using the required ** ** markings. Each attachment for which confidential status is asserted has been clearly marked "CONFIDENTIAL." The reason for each such confidential classification is set forth on Exhibit B.²

5. KCPL has therefore filed a public version of its first monthly report, as required by the Commission's October 5th Order in the 581 Docket (and Kansas law), with confidential information designated as confidential using the required "*** ___ ***" markings. Pursuant to K.S.A. 45-217 (f) (1) [(g) (1)], KCPL's first monthly report is therefore a public record under Kansas law, as "Public record' means any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency ..."

6. CURB's intervention does not seek access to the confidential information that has been redacted from the monthly compliance reports, nor does CURB seek to interfere with or complicate Staff's duty to review the monthly reports and monitor the progress of the La Cygne Project in any respect. CURB seeks to intervene in this compliance docket to enable CURB to continue to represent the interests of residential and small commercial ratepayers in the ongoing proceedings related to the La Cygne environmental retrofits approved by the Commission in the 581 docket. By intervening, CURB will be notified when the monthly reports have been filed and will be able to access the *non-confidential* versions of the monthly compliance reports in furtherance of CURB's statutory mandate to represent the interests of residential and small commercial ratepayers.

² Kansas City Power & Light Company's October 2011 Monthly Status Report On the La Cygne Environmental Project, p. 1, Docket No. 12-KCPE-258-CPL (emphasis added)

7. Staff and KCPL both argue CURB is not entitled to intervene in this *proceeding* under an aligned yet convoluted interpretation of the term “*proceeding*” under K.A.R. 82-1-214 and K.A.R. 82-1-225. Neither Staff nor KCPL provide any basis for their tortuous interpretation of the word “*proceeding*.” The word “*proceeding*” is not defined under K.A.R. 82-1-214 or K.A.R. 82-1-225. However, Black’s Law Dictionary provides the following definition:

In a general sense, the form and manner of conducting juridical business before a court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment. Term also refers to administrative proceedings before agencies, tribunals, or the like.

An act which is done by the authority or direction of the court, agency, or tribunal, express or implied; an act necessary to be done in order to obtain a given end; a prescribed mode of action for carrying into effect a legal right. All the steps or measures adopted in the prosecution or defense of an action. The word may be used synonymously with “action” or “suit” to describe the entire course of an action at law or suit in equity from the issuance of the writ or filing of the complaint until the entry of a final judgment, or may be used to describe any act done by authority of a court of law and every step required to be taken in any cause by either party. The proceedings of a suit embrace all matters that occur in its progress judicially.

Term may refer not only to a complete remedy but also to a mere procedural step that is part of a larger action or special proceeding. Term includes action and special proceedings before judicial tribunals as well as proceedings pending before quasi-judicial officers and boards. In a more particular sense, any application to a court of justice, however made, for aid in the enforcement of rights, for relief, for redress of injuries, for damages, or for any remedial object.³

8. Neither Staff nor KCPL have provided any authority for their suggestion that this compliance docket is not a *proceeding* as contemplated under K.A.R. 82-1-214 and K.A.R. 82-1-225. Contrary to their unsupported interpretation, this compliance docket is clearly: an administrative proceeding before the Kansas Corporation Commission; an act which is done by the authority or direction of the agency; an act necessary to be done in order to obtain a given end; a prescribed mode of action for carrying into effect a legal right. Staff and KCPL’s argument that this

³ Black’s Law Dictionary, Abridged Fifth Edition (emphasis added).

compliance docket is not a *proceeding* under K.A.R. 82-1-214 and K.A.R. 82-1-225 is simply without merit.

9. Staff's further argument that this *proceeding* (compliance docket) does not affect CURB's legal rights, privileges, immunities, or other legal interests as required by K.A.R. 82-1-225(a)(2), is also without merit. This *proceeding* was ordered by the Commission to ensure compliance by KCPL with its order approving over \$1.2 billion in environmental upgrades at the La Cygne coal plants in Docket No. 11-KCPE-581-PRE. Compliance with the Commission's order in the 581 docket clearly affects the rights, privileges, immunities, or other legal interests of residential and small business ratepayers who will be obligated to pay the costs of the La Cygne environmental upgrades. For Staff to argue this compliance proceeding does not affect the legal rights, privileges, immunities or other legal interests of the residential and small commercial ratepayers of KCPL completely ignores CURB's statutory mandate under K.S.A. 66-1223, as will be discussed further below.

10. Staff and KCPL also erroneously argue that K.S.A. 66-1223 limits CURB's intervention powers to "cases filed with the state corporation commission" and "formal complaints." First, Staff overlooks the plain language of K.S.A. 66-1223 specifically quoted in Staff's Response. While, *inter alia*, CURB is the statutorily authorized "official intervenor"⁴ in cases filed with the Commission (including but not limited to rate increase requests) under K.S.A. 66-1223 (b), CURB is also expressly authorized to "represent residential and small commercial ratepayers before the state corporation commission" under K.S.A. 66-1223 (a). The statute does not require (as Staff argues) that the cases be filed by a utility, nor does CURB's express statutory authority to represent

⁴ *Citizens' Utility Ratepayer Board v. State Corporation Commission*, 24 Kan. App.2d 63, 68, 941 P.2d 424 (1997).

residential and small commercial ratepayers before the Commission contain any language requiring a “case” under the interpretation Staff argues.⁵

11. CURB’s petition to intervene specifically states that it seeks intervention to represent the interest of residential and small commercial ratepayers whose rates paid and service received will or may be affected by any Commission order or activity in this proceeding.⁶ As a result, CURB’s requested intervention clearly constitutes “representing residential and small commercial ratepayers before the state corporation commission” in the compliance docket, as authorized by K.S.A. 66-1223 (a).

12. Nothing in the enumeration of CURB’s powers limits under K.S.A. 66-1223 restricts CURB’s involvement in this compliance docket. Following Staff’s logic, CURB would be precluded from representing the interests of residential and small commercial ratepayers in a general investigation docket because a general investigation docket is not a “case” filed by a company. Staff’s interpretation of K.S.A. 66-1223 is clearly unreasonable and without merit.

13. Furthermore, Staff and KCPL overlook the fact that this compliance docket is merely an extension of the 581 docket, which the Commission ordered to be opened for “*purposes of compatibility with the Commission’s current computer system.*”⁷ CURB’s interest in representing residential and small business ratepayers in this compliance docket is the same interest that the Commission found sufficient to justify CURB’s intervention in the 581 docket.

⁵ Staff’s suggestion that a “case” must be filed by the utility to give CURB authority to intervene under K.S.A. 66-1223(b) is erroneous, but even assuming it to be true for purposes of argument only, K.S.A. 66-1223(a) does not contain the “case” limitation suggested by Staff.

⁶ Petition to Intervene by the Citizens’ Utility Ratepayer Board, ¶ 4.

⁷ Order on Petitions for Reconsideration and Order *Nunc Pro Tunc*, October 5, 2011, ¶ 64.

14. Without citing any authority, KCPL attempts to establish the purpose of a compliance docket.⁸ Contrary to KCPL's attempt to create its own definition, compliance dockets are not defined by Kansas statutes or Commission regulation, but as noted above have only recently been opened by the Commission for "*purposes of compatibility with the Commission's current computer system.*" In any event, nothing about the nature of the compliance docket opened by the Commission would preclude CURB from intervening to represent the interests of residential and small commercial ratepayers.

15. KCPL misleadingly and erroneously states that CURB has not been party to compliance processes in the past.⁹ To the contrary, CURB has been involved with compliance processes in numerous dockets.

16. It is difficult to believe that KCPL has so quickly forgotten the four-year compliance process recently completed for KCPL's regulatory plan in Docket 04-KCPE-1025-GIE, where CURB was provided compliance reports despite the fact that CURB was not a signatory to the regulatory plan settlement approved by the Commission. Moreover, without having the opportunity to fully research all compliance proceedings CURB has been involved in, several quickly come to mind: 06-SCCC-200-MIS; 06-GIMX-679; 02-MDWG-517-GPR; 02-GRLG-364-GPR; 02-KGSG-414-GPR; 02-UTCG-371-GPR; 03-MDWE-464-EPR; 03-SEPE-459-EPR; 03-KEPE-460-EPR; 03-AQLE-319-EPR; 06-EPDE-1016-EPR; 03-AQLG-1076-TAR; 03-ATMG-539-TAR; 98-KGSG-475-CON; and 11-PNRT-315-KSF.

17. Staff alleges CURB's intervention in this compliance docket will somehow unnecessarily complicate Staff's duty to review the monthly reports and monitor the progress of the

⁸ KCPL's Objection ¶ 9.

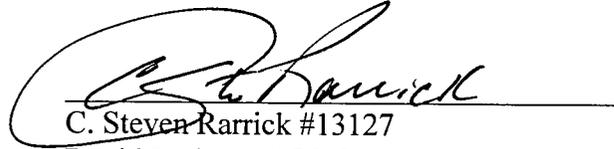
⁹ KCPL's Objection ¶ 9.

La Cygne Project, yet Staff fails to specify or demonstrate in any respect how their duty to review and monitor would be complicated by CURB's intervention. As stated above, CURB does not seek access to the confidential information that has been redacted from the monthly compliance reports. As a result, CURB's intervention will not complicate or affect Staff's duty to review the monthly reports and monitor the progress of the La Cygne Project in any respect, but will merely allow CURB the opportunity to monitor the status of the compliance review as reflected in public documents filed in the docket.

18. Finally, Staff and KCPL erroneously argue that the Commission has already addressed third-party participation in this compliance docket in the Commission's October 5th Order. Nothing in the October 5th Order precludes CURB or any other Intervenors from intervening in this docket to monitor the progress of the compliance filings made by KCPL, especially with respect to public documents that have redacted confidential information. Sierra Club requested access to the *confidential information* contained in the compliance reports under the protective order and non-disclosure agreements in the 581 docket. CURB has not requested confidential information, and in this reply makes it crystal clear it is not requesting redacted confidential information, but only the *non-confidential information* that constitutes a public record under Kansas Open Records law.

19. WHEREFORE, CURB respectfully requests that the Commission grant its petition to intervene in this docket on behalf of residential and small commercial ratepayers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Steven Rarrick", is written over a horizontal line. The signature is stylized and cursive.

C. Steven Rarrick #13127

David Springe #15619

Citizens' Utility Ratepayer Board

1500 SW Arrowhead Road

Topeka, KS 66604

(785) 271-3200

(785) 271-3116 Fax

VERIFICATION

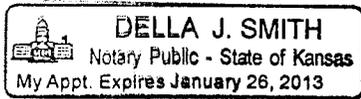
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the above named petitioner; that he has read the above and foregoing Intervention, and, upon information and belief, states that the matters therein appearing are true and correct.


C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 3rd day of November, 2011.




Notary Public

My Commission expires: 01-26-2013.

CERTIFICATE OF SERVICE

12-KCPE-258-CPL

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, or hand-delivered this 3rd day of November, 2011, to the following:

TERRI PEMBERTON, ATTORNEY
CAFER LAW OFFICE, L.L.C.
3321 SW 6TH STREET
TOPEKA, KS 66606

GLENDA CAFER, ATTORNEY
CAFER LAW OFFICE, L.L.C.
3321 SW 6TH STREET
TOPEKA, KS 66606

HEATHER A. HUMPHREY, GENERAL COUNSEL
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PLACE 1200 MAIN STREET (64105)
P.O. BOX 418679
KANSAS CITY, MO 64141-9679

DENISE M. BUFFINGTON, CORPORATE COUNSEL
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PLACE 1200 MAIN STREET (64105)
P.O. BOX 418679
KANSAS CITY, MO 64141-9679

ANDREW SCHULTE, ASSISTANT LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027

****Hand Delivered****


Della Smith
Administrative Specialist