

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

Before Commissioners: Shari Feist Albrecht, Chair
 Jay Scott Emler
 Dwight D. Keen

In the Matter of the Application of Kansas)
City Power & Light Company to Make) Docket No. 18-KCPE-480-RTS
Certain Changes in Its Charges for Electric)
Service.)

**ORDER DENYING INTERVENTION TO AMERICAN FUEL & PETROCHEMICAL
MANUFACTURERS, MAGELLAN PIPELINE COMPANY, L.P., AND PETROLEUM
MARKETERS AND CONVENIENCE ASSOCIATION OF KANSAS, INC.**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having reviewed the pleadings and record, the Commission finds and concludes as follows:

1. On May 1, 2018, Kansas City Power & Light Company (KCP&L) filed for a \$32.9 million revenue increase, including property tax rebasing.¹ As a result of its merger with Westar Energy, Inc., KCP&L has reduced its requested revenue increase to \$22.6 million.²

2. On August 21, 2018, American Fuel & Petrochemical Manufacturers (AFPM), Magellan Pipeline Company, L.P. (Magellan), and Petroleum Marketers and Convenience Association of Kansas, Inc. (PMCA) filed a Petition to Intervene.

3. AFPM is a nonprofit trade association of over 300 members that purchase and process crude oil.³ AFPM states two of its members, HollyFrontier El Dorado Refining LLC and Flint Hills Resources, LLC, own or use two terminals in KCP&L’s service territory and purchase

¹ Application, May 1, 2018, ¶ 3.

² Supplemental Direct Testimony of Darrin R. Ives, June 26, 2018, pp. 4-5.

³ Petition for Intervention, Aug. 21, 2018, ¶¶ 1-2.

electricity from Westar Energy (Westar).⁴ PMCA is also a nonprofit trade association of hundreds of independently-owned Kansas energy marketing and retail businesses, and claims those unnamed members have legal rights, duties, privileges, or other legal interests that will be substantially affected by this Docket.⁵

4. Magellan and its affiliates own and operate a pipeline system and storage facilities.⁶ Magellan claims it is a KCP&L ratepayer that will be substantially affected by this Docket.⁷

5. On August 30, 2018, KCP&L filed its Response to Petition for Intervention, opposing the intervention of both AFPM and PMCA, and recommending Magellan be forced to identify its specific Kansas facilities before it is allowed to intervene.⁸ Specifically, KCP&L notes that it has been unable to confirm accounts for either HollyFrontier El Dorado Refining LLC and Flint Hills Resources, LLC, the only members AFPM alleges are KCP&L customers.⁹ Similarly, KCP&L explains PMCA has not identified any members who are customers of KCP&L.¹⁰ With regard to Magellan, KCP&L seeks confirmation that the two accounts in Olathe and the one account in Paola are the customers whose interest it intends to represent if allowed to intervene.¹¹

6. AFPM, PMCA, and Magellan have not responded to KCP&L's concerns.

7. To qualify for intervention, a petition must: (1) be in writing; (2) state facts demonstrating that the petitioner's legal rights, duties, privileges, and immunities, or other legal interests may be substantially affected by the proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and (3) not impair the interest of justice and the orderly and

⁴ *Id.*, ¶¶ 3-4.

⁵ *Id.*, ¶ 6.

⁶ *Id.*, ¶ 5.

⁷ *Id.*

⁸ Response of Kansas City Power & Light to Petition for Intervention, Aug. 30, 2018, ¶ 5.

⁹ *Id.*, ¶ 7.

¹⁰ *Id.*, ¶ 13.

¹¹ *Id.*, ¶ 12.

prompt conduct of the proceedings.¹² The Commission has broad discretion in deciding whether to grant a petition for intervention.¹³ At any time during a proceeding, the Commission may impose limitations on an intervenor's participation.¹⁴

8. In Docket No. 13-MKEE-447-MIS (447 Docket), the Commission clarified its standards for intervention:

Intervention in Commission proceedings is not automatic. In the future, the Commission will require petitions to include a more detailed demonstration of their interests and an explanation of why those interests are not properly represented by other parties. In keeping with the requirements of K.S.A. 77-521, prospective intervenors should provide docket-specific facts demonstrating their rights, duties, privileges, immunities, or other legal interests affected by the proceeding and the relief they seek from the Commission.¹⁵ The Commission notes in proceedings with multiple parties asserting an attenuated or speculative nexus about the possible impact of a Commission decision on their interests can impair the orderly and prompt conduct of the proceedings and may not add materially to the record upon which the Commission must base its decisions.¹⁶

9. The Commission finds the simple recitation of boilerplate language in the Petition for Intervention does not satisfy the standards for intervention announced in the 447 Docket. The Petition for Intervention is largely speculative in nature and fails to articulate facts demonstrating how AFPM's, PMCA's, or Magellan's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding. Specifically, PMCA does not even allege any of its members are KCP&L customers. While AFPM purports to have two members that are KCP&L customers, KCP&L is unable to locate customer accounts for either member. Magellan states it is a KCP&L ratepayer, but it is unclear whether Magellan claims itself or one of its affiliates is a KCP&L customer.

¹² K.S.A. 77-521(b); K.A.R. 82-1-225(b).

¹³ K.S.A. 77-521; K.A.R. 82-1-225.

¹⁴ K.S.A. 77-521(c).

¹⁵ See K.S.A. 77-521(a)(2).

¹⁶ Order on Jurisdiction and Standing, Docket No. 13-MKEE-447-MIS, Apr. 26, 2013, ¶ 9.

10. In Docket No. 05-WSEE-981-RTS (981 Docket), the Commission denied intervention to a group that failed to identify which of its members it was seeking to represent. The Commission explained, “without identification of the interests represented by KIC, it is unable to determine that the petition should be granted.”¹⁷ Similarly, in the 08-WSEE-1041-RTS (1041 Docket), the Commission denied intervention to a group that failed to identify its members. There, the Commission applied the rationale from K.A.R. 82-1-214(i)(2), which provides, “[n]o unincorporated association shall obtain party status in a proceeding without identifying its membership”¹⁸ to assert its “interest in knowing the explicit identity of interests an intervening party represents.”¹⁹ In the 1041 Docket, the Commission applied the principle of K.A.R. 82-1-204(a)(2) to corporate entities.²⁰

11. Consistent with the approach taken in both the 981 Docket and the 1041 Docket, the Commission finds AFPM, PMCA, and Magellan are required to identify with specificity which of its members it claims are KCP&L customers. The Commission directs AFPM to demonstrate that HollyFrontier El Dorado Refining LLC and Flint Hills Resources, LLC, are currently customers of KCP&L, since KCP&L claims neither entity has an account with KCP&L. Likewise, the Commission directs Magellan to confirm if it seeks to intervene based on accounts that KCP&L speculates it may have in Olathe and Paola. Without knowing the identity of the members and whether they are KCP&L customers, the Commission is unable to conclude any of AFPM’s, PMCA’s, or Magellan’s members have a valid interest that would satisfy the requirements of K.A.R. 82-1-225 and K.S.A. 77-521. Therefore, the Commission has no choice but to deny the

¹⁷ Order Denying Petition to Intervene and Order Granting Petition to Intervene, Docket No. 05-WSEE-981-RTS, May 20, 2005, ¶ 8.

¹⁸ K.A.R. 82-1-204(a)(2).

¹⁹ Order Denying Petition to Intervene for the Kansas Industrial Consumers Group, Inc., and Granting Intervention for ProtectionOne, Inc. and Cessna Aircraft Company as Part of the Kansas Industrial Consumers Group, Inc., 08-WSEE-1041-RTS, July 18, 2008, ¶ 9.

²⁰ *Id.*

Petition for Intervention filed by AFPM, PMCA, and Magellan. If AFPM, PMCA, or Magellan identifies specific members that are KCP&L ratepayers and that may be affected by this Docket, the Commission may reconsider their ability to intervene.

THEREFORE, THE COMMISSION ORDERS:

A. The Petition for Intervention filed by American Fuel & Petrochemical Manufacturers, Magellan Pipeline Company, L.P., and Petroleum Marketers and Convenience Association of Kansas, Inc. is denied.

B. Any party may file and serve a petition for reconsideration pursuant to requirements and time limits established by K.S.A. 77-529(a)(1).

C. The Commission retains jurisdiction over the subject matter and the parties to enter further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 09/20/2018



Lynn M. Retz
Secretary to the Commission

BGF

CERTIFICATE OF SERVICE

18-KCPE-480-RTS

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 09/20/2018.

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