

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

OCT 28 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.)

**KANSAS CITY POWER & LIGHT COMPANY'S OBJECTION TO INTERVENTION
OF THE CITIZENS' UTILITY RATEPAYER BOARD**

Kansas City Power and Light Company ("KCP&L") objects to the Petition To Intervene filed in this compliance docket by the Citizens' Utility Ratepayer Board ("CURB") on the basis that intervention in a compliance docket by a party other than Staff is inappropriate, unnecessary and not provided for under the Commission's regulations. In support of its objection, KCP&L states as follows:

I. BACKGROUND AND OVERVIEW

1. On August 19, 2011, the Kansas Corporation Commission ("Commission" or "KCC") issued its *Order Granting KCP&L Petition For Predetermination Of Rate-Making Principles and Treatment* ("August 19th Order") in Docket No. 11-KCPE-581-PRE ("the 581 Docket"). The Commission's August 19th Order approved KCP&L's application for predetermination pursuant to K.S.A. 2010 Supp. 66-1239 asking the Commission to determine rate-making principles and treatment to recover in rates the cost to make environmental upgrades to La Cygne Unit 1 and Unit 2 (the "Project").

2. One issue in the 581 Docket was the method and content of reporting KCP&L should submit to the Commission updating the Commission Staff on the progress of the Project during its planning and construction. Staff witness, Mr. Michael Wegner, recommended in

testimony that KCP&L use the Earned Value Management (“EVM”) process for measuring the performance of the Project work against what was planned. He explained that EVM reporting would allow Staff to monitor the actual costs incurred as of the date of the report, the planned value as of that date, and evaluate the percentage of completeness of the Project. He further recommended that the reports be provided on a monthly basis.¹

3. Following the receipt of Mr. Wegner’s testimony, Staff and KCP&L agreed to the reporting metrics KCP&L would use to allow Staff to monitor the Project. Staff and KCP&L also agreed that the reports should be filed on a quarterly basis. Those reporting terms were included as an attachment to the rebuttal testimony of KCP&L witness, Mr. Chris Giles.² The Commission rejected quarterly reports in favor of monthly reports, but otherwise approved the metrics agreed to between Staff and KCP&L and incorporated Mr. Giles’ attachment into the August 19th Order as Attachment B.³

4. Attachment B is titled “Kansas City Power & Light Company’s Project Controls Reporting to *KCC Staff* for La Cygne Environmental Retrofit Project”, and it specifically states that, “KCP&L will provide *Staff* with a project status update, ...”⁴ In approving the metrics agreed upon by KCP&L and Staff, the Commission stated,

Staff shall review the reports as submitted by KCP&L and shall bring to the attention of the Commission any information reflecting a significant event or problem regarding implementation of the La Cygne Project. KCP&L will submit these monthly reports *for Staff’s review* by filing them in a sub-docket of this proceeding using compliance Docket No. 11-KCPE-581-PRE-CPL-1. (Emphasis added.)⁵

¹ August 19th Order, p. 49, para. 91.

² Giles Rebuttal filed in the 581 Docket on June 24, 2011, Schedule CBG2011-5.

³ August 19th Order, p. 50, paras. 92-93. (The Order references Attachment 2; however, the Attachment is actually marked as “B”.)

⁴ *Id.*, Attachment B. (Emphasis added.)

⁵ *Id.* at p. 50, para. 93.

5. In Sierra Club's Petition For Reconsideration of the August 19th Order, Sierra Club requested the Commission require additional information be included in the reports KCP&L would be submitting to Staff. In addition, Sierra Club requested the Commission order that all parties be provided the reports and that the protective order and non-disclosure agreements from the 581 Docket continue to apply to these reports.⁶ KCP&L opposed some of the Sierra Club's requests, specifically objecting to the suggestion that these reports should be provided to parties other than Staff. KCP&L stated that the reports would contain highly confidential commercially sensitive information, and pointed out that Staff is the only entity responsible for protecting the public interest in Kansas.⁷

6. In its Order on Petitions For Reconsideration issued October 5, 2011 ("October 5th Order"), the Commission approved Sierra Club's request to include certain additional information in the reports, rejected its request that other additional information be included, and specifically rejected Sierra Club's request that the reports be provided to all parties. The Commissions stated as follows:

The Commission further denies the Sierra Club's request to order these reports provided to all parties. *Staff shall review the reports* and, if any questions or concerns arise, investigate those issues with KCP&L. *Staff shall report to the Commission* any concerns regarding the construction of the La Cygne Project. Any Staff reports shall be filed in the compliance docket that shall be created to receive the reports.⁸

In addition, regarding the reports to be submitted by KCP&L, the Commission clarified in the October 5th Order that it had changed its method for handling compliance filings and needed to correct its instructions regarding KCP&L's filing of its reports. The Commission ordered that the language from paragraph 93 of the August 19th Order be stricken and replaced by the following sentences,

⁶ Sierra Club Petition in the 581 Docket, para. 51.

⁷ KCP&L Response to Petitions For Reconsideration, 581 Docket, filed September 16, 2011, para. 19.

⁸ October 5th Order, pp. 37-38, para. 55.

For purposes of compatibility with the Commission's current computer system, KCP&L shall file all future reports as discussed in the August 19, 2011 Order, para. 93, in a new Compliance Docket, captioned "In the Matter of Kansas City Power & Light Co.'s Compliance Filings as Required by Commission Order in Docket No. 11-KCPE-581-PRE." To the extent any such filing or portion thereof is confidential, KCP&L shall adhere to K.A.R. 82-1-1221a.⁹

7. On October 14, 2011, KCP&L filed its first Monthly Status Report ("Report"), as required by the Commission's Orders. The Report was submitted as a compliance filing and assigned a compliance docket number. It included a two page cover sheet, the nine page narrative of the Report, and Attachments A – F to the Report. The filing included an explanation of the confidential nature of the Report and the information contained in the Report pursuant to K.S.A. 66-1221a and K.A.R. 82-1-221a. The cover pages were published on the Commission's website; the Report and its Attachments were not made publically available.

8. On October 8, 2011, CURB filed a Petition to Intervene in this compliance docket. KCP&L opposes CURB's intervention because intervention in a compliance docket by a party other than Staff is inappropriate, unnecessary and not provided for under the Commission's regulations.

II. ARGUMENT

9. The purpose of a compliance docket is to provide a vehicle by which information can be submitted to the Commission and its Staff to allow it to monitor a public utility's implementation of a Commission Order and/or determine if a public utility is in compliance with a previous Order of the Commission. The filings are made subsequent to a proceeding within which interested parties had the opportunity to intervene, conduct discovery, participate in hearing and present their position on the issues involved. The Commission and its Staff are charged with the obligation to regulate public utilities, which includes monitoring activities to

⁹ *Id* at p. 41, para. 64. (The cite to the regulation should be K.A.R. 82-1-221a.)

ensure compliance with Orders, laws and regulations. The Commission has the statutory power to require a regulated public utility to submit records and information to the agency. The Kansas Legislature has not granted CURB or any other partisan interest group authority to monitor, investigate or demand information from a public utility. Further, these special interest groups do not have a legal right to access such information simply because it is submitted to Staff pursuant to a Commission Order establishing a compliance monitoring process.

10. The Commission is given full power, authority and jurisdiction to supervise and control the electric public utilities doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.¹⁰ The Commission has been given the power to investigate electric public utilities,¹¹ it has statutory rights of general supervision, inquiry and inspection,¹² and it can require electric utilities to furnish accounts, reports and information to show completely and in detail the operation of the public utility in furnishing its product or service to the public.¹³ In contrast, CURB's statutory authority is much narrower. CURB's enabling statutes do not grant CURB standing to become involved in Staff's monitoring activities or to engage in its own investigations. CURB does not represent or protect the public interest, but rather, represents a special interest similar to entities that intervene on behalf of large industrial customers. Pursuant to K.S.A. 66-1223, consumer counsel for CURB may only:

- (a) Represent residential and small commercial ratepayers before the state corporation commission;
- (b) function as an official intervenor in cases filed with the state corporation commission, including rate increase requests;
- (c) initiate actions before the state corporation commission;

¹⁰ K.S.A. 66-101.

¹¹ K.S.A. 66-101d; K.S.A. 66-101e.

¹² K.S.A. 66-101h

¹³ K.S.A. 66-122.

- (d) represent residential and commercial ratepayers who file formal utility complaints with the state corporation commission;
- (e) intervene in formal complaint cases which would affect ratepayers; and
- (f) make application for a rehearing or seek judicial review of any order or decision of the state corporation commission.

11. Historically, post-order compliance reporting by a utility company was accomplished by providing a copy of the required report or information directly to Staff. No docket was opened and nothing was published on the Commission's website. Staff would review the information and work with the company in obtaining any additional information needed to determine whether the company was in compliance, and if any issues regarding compliance arose, Staff would bring the matter before the Commission via a show cause proceeding. Assigning compliance filings a docket number is a fairly recent occurrence at the Commission. KCP&L believes it is a good procedural change, as it allows the Commission a more reliable method for keeping track of what is filed and it provides notice that the required filings are being made. However, the compliance process is an monitoring process; it is not a "proceeding" for which intervention is allowed under the Commission's regulations.

12. K.A.R. 82-1-225 provides that a petition for intervention shall be granted if three conditions are met: (1) the petition is submitted in writing and provided to parties at least three days before hearing; (2) the petition states facts demonstrating that the petitioner's legal rights, duties, privileges, 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) the interests of justice and the orderly and prompt conduct *of the proceedings* will not be impaired by allowing the intervention. (Emphasis added.) The Commission's intervention regulation is clear that it contemplates intervention only in a "proceeding". A "proceeding" is commenced only by "the filing of an application, a complaint, or a petition, or by the issuance of

an order of the commission initiating a proceeding on its own motion.” K.A.R. 82-1-214. A compliance filing is not initiated by the filing of an application, a complaint or a petition. A compliance docket is not commenced by the Commission issuing an order on its own motion. A compliance filing is not a “proceeding” under the Commission’s regulations.

13. A general rule of statutory construction is that a statute cannot be construed by itself but must be considered together with other provisions of the Act within which it resides. The Act must be read as a whole and one statute cannot be read in isolation from the others.¹⁴ In this case, the Commission’s regulations, when read together, clearly do not contemplate interventions in compliance dockets. Since a compliance docket replaces the former process used by Staff to monitor a public utility’s activities (in this case, KCP&L’s activities related to the Company’s implementation of the La Cygne Project approved by the Commission), the regulations are consistent with the Commission’s historical practices. The Staff has monitored numerous public utility compliance activities over the years, and other entities - including CURB - have not been parties to those processes. Until the Staff, CURB, another party or the Commission on its own motion initiates an actual “proceeding”, there is no proceeding into which CURB can intervene.

14. The parties’ interests were litigated and determined in the 11-KCPE-581-PRE proceeding. There are no matters for determination coming before the Commission now as a result of the Report filed by KCP&L in this docket. The Commission will not issue an order on KCP&L’s Report filed October 14, 2011. CURB’s “legal rights, duties, privileges, immunities, or other legal interests” will not be affected in this docket. Even if a compliance docket were a “proceeding” under Commission regulations, CURB lacks standing to intervene in this instance. The 581 Docket is where the issues impacting residential and small commercial ratepayers were

¹⁴ *Davis v. City of Leawood*, 257 Kan. 512, 523 (1995).

determined. Before any additional amount can be passed on to ratepayers in rates, KCP&L must file for approval of that additional amount in a future docket. It is in that future docket that CURB's represented interests will be potentially affected. Monitoring activities conducted by Staff in the interim do not impact residential and small commercial ratepayers. CURB's Petition For Intervention fails to explain otherwise, and as such, it fails to meet the requirements of K.A.R. 82-1-225 as to standing.¹⁵

15. The Commission has already determined the issues involved in the La Cygne predetermination docket. Allowing parties to that docket – such as CURB - to intervene in the compliance monitoring activities of Staff and the Commission opens the door to potential collateral attacks on Commission orders using the post-order reporting docket. If a compliance filing is considered a “proceeding” under Commission practices, then other procedural questions beyond intervention are triggered. There may be requests for discovery, demands for hearing and other “due process” claims that do not reasonably apply to the post-order compliance process. The Commission should make clear in this case that compliance dockets are not “proceedings” and intervention in such dockets is not permitted.

III. CONCLUSION

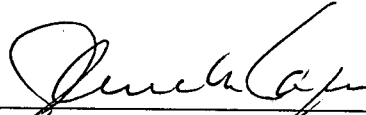
16. KCP&L recognizes that the Commission has historically followed a fairly lenient intervention policy, and, as such, KCP&L has rarely objected to the intervention of a party in one of its dockets. However, KCP&L is unaware of any instance where a party has attempted to

¹⁵ The Commission has denied intervention in at least one case where the petitioner failed to establish in its request for intervention a factual basis sufficient to find standing. See *Order Denying Intervention* of Reorganized FLI, Inc. issued on February 10, 2006 in Docket No. 06-ONEP-646-COC, “After review, the Commission has concluded that FLI does not state any facts sufficient to demonstrate that its legal rights, privileges, immunities or other legal interests may be substantially affected by this Docket. ... The Commission concludes that FLI has no identifiable interest in the outcome of this docket.” (Page 2-3, paragraph 8.)

intervene in a KCP&L post-order compliance investigatory process being conducted by the Commission and its Staff. KCP&L firmly believes that such a practice should not be allowed for the reasons set forth above.

Respectfully submitted,

Heather A. Humphrey (#17594)
General Counsel
Denise Buffington (#24850)
Corporate Counsel
Kansas City Power & Light Company
One Kansas City Place
1200 Main Street – 16th Floor
Kansas City, Missouri 64105
(815) 556-2683
heather.humphrey@kcpl.com
denise.buffington@kcpl.com



Glenda Cafer (#13342)
(785) 271-9991
Terri Pemberton (#23297)
(785) 232-2123
CAFER LAW OFFIC, L.L.C.
3321 SW 6th Avenue
Topeka, Kansas 66606
(785) 233-3040 (fax)
gcafer@sbcglobal.net
terri@caferlaw.com

**COUNSEL FOR KANSAS CITY POWER &
LIGHT COMPANY**

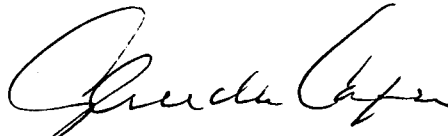
CERTIFICATE OF SERVICE

I hereby certify that a copy of KANSAS CITY POWER & LIGHT COMPANY'S
OBJECTION TO INTERVENTION OF CURB was served on this 28th day of October, 2011 to:

DANA BRADBURY, GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027

MICHAEL SCHMIDT, DIRECTOR OF UTILITIES
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027

STEVE RARRICK
CURB
1500 SW ARROWHEAD ROAD
TOPEKA, KANSAS 66604



Glenda Cafer
COUNSEL FOR KCP&L