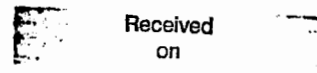


THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

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



'JUL 01 2011

by  
State Corporation Commission  
of Kansas

**CURB'S MOTION TO COMPEL OR STRIKE  
PORTIONS OF STAFF TESTIMONY AND BATES WHITE REPORTS**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and submits CURB's Motion to Compel or, in the alternative, Strike portions of the testimony of Staff witnesses Puga, Cain, Taylor, Slater, and Glass, and portions of the Bates White Report and Supplemental Report dealing with the alternative modeling conducted by Bates White utilizing a confidential data set provided by the Southwest Power Pool (SPP).

**I. BACKGROUND**

1. Pursuant to the procedural schedule, Staff's testimony was to be filed June 3, 2011. Cross Answering Testimony was due to be filed on June 23, 2011.

2. On May 27, 2011, Staff filed a Motion for Extension of Time to File a Portion of its Direct Testimony. In its motion, Staff advised the Commission and parties that it needed additional time to conclude the modeling runs to finalize its testimony, specifically stating that it did not receive a second database from the Southwest Power Pool containing sufficient future asset and transmission topology information representing SPP's long term generation and transmission expansion until April 29, 2011. Staff further advised the Commission and parties that:

5. Furthermore, upon establishing the limited utility of the first SPP database, Bates White asked SPP to provide a different database containing sufficient future asset and transmission topology information. This second database was received on April 29th, 2011, and required a significant amount of Bates White's time to characterize its contents in order to proceed with its customization. Combing through and customizing the database has required about three weeks of time because there are about 100,000 buses and over 400 fuel price time series in this file.

6. Analyzing the various alternatives to the La Cygne environmental retrofit and exploring sensitivities using PROMOD requires rather lengthy intervals of computer run time. For example, a three year hourly modeling run of the Eastern Interconnect takes approximately 12 hours. Each sensitivity run takes the same amount of time. Bates White has two computers running different cases simultaneously to shorten the processing time, but the presence of errors in the database has forced Bates White to abort and rerun cases repeatedly, thus requiring additional time to complete the modeling assignment.<sup>1</sup>

The parties agreed to allow Staff to file Supplemental Testimony one week after the deadline for Staff and Intervenor testimony.

3. On June 3, 2011, Staff filed its Initial testimony, including the Bates White Report. On June 10, 2011, one week after the deadline for Staff and Intervenor Direct testimony, Staff filed its supplemental testimony, including the Bates White Supplemental Report.

4. Portions of the Bates White Report evaluated the analysis and production cost modeling conducted by KCPL in support of its filing and found fundamental flaws, bias, and an unreasonable representation of future risks in KCPL's analysis and production cost modeling, similar to findings by other parties to this docket.

5. However, portions of the Bates White Report and the Bates White Supplemental Report provide alternative analysis production cost and dispatch modeling using PROMOD IV power system analysis software, and utilized a confidential data set provided by SPP that modeled

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<sup>1</sup> Staff Motion for Extension of Time to File a Portion of its Direct Testimony, ¶ 5 (emphasis added).

the whole of the North American “Eastern Interconnect” dealing with expected conditions in the 2021-2023 time period. According to the Bates White Report, this data set “had been subject to some customization by the SPP staff.”<sup>2</sup>

6. On June 10, 2011 - the day CURB received the Bates White Supplemental Report, CURB served Staff with discovery requesting both the modeling software and the underlying data utilized in the modeling performed by Staff.<sup>3</sup> Staff failed to file any objection to these data requests, yet in its June 21, 2011 responses to CURB DRs 158 and 161, Staff refused to provide the modeling software or the underlying data on grounds similar to the position taken by KCPL in an earlier discovery dispute,<sup>4</sup> that CURB would need to obtain this data directly from a third party (SPP).

7. CURB DR 158 and Staff’s response is below:

CURB-158. Please refer to page 2, ¶ (4) C of Exhibit BW-1. Please provide (1) the referenced “economic dispatch model,” (2) full documentation for the model and, if not included in the documentation, a complete list and explanation of the input and output variables for the model, (3) workpapers showing the development of the inputs for the model, and (4) copies of all input and output reports generated in the course of the study, the results of which are presented in Exhibit BW-1. All calculation workpapers should be provided in electronic spreadsheet format with all formulae intact.

Response

...  
PROMOD *N* is a proprietary model licensed by Ventyx to Kenneth Slater of Slater Consulting, Bates White's subcontractor. The terms of his license prevents him from transferring the software to any party outside of his firm. The proprietary nature of the model extends to all of its documentation (model manuals, help files, etc). Thus, we are

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<sup>2</sup> Bates White Report, p. 49, ¶ (140).

<sup>3</sup> CURB DRs.

<sup>4</sup> Prehearing Officer's Order Granting (1) KCP&L's Motion to Amend Protective Order in Part and (2) GPACE's Motion to Withdraw Motion for Extension of Time to File Direct Testimony and Motion to Compel Response to Discovery Requests, ¶¶ 3, 8; Motion to Amend Protective Order, ¶¶ 7-8.

legally bound not to provide the model nor its documentation to CURB (an unlicensed party) as requested. (emphasis added).

8. CURB DR 161 and Staff's response is below:

CURB-161. Please refer to page 49, ¶¶ (140) and (141) of Exhibit BW-1. Please provide a copy of the referenced dataset provided by SPP, which models "the whole of the North American "Eastern Interconnect."

Response

The SPP PROMOD dataset requested has proprietary information from SPP members throughout the SPP region and, as such, SPP releases the data to Staff's consultant under the condition that none of the underlying data be transmitted to any parties in the docket and that any resulting report not contain any means of obtaining the underlying data. Thus, the information requested cannot be provided by Bates White under the confidentiality arrangements with SPP. CURB must obtain the information directly from SPP under separate confidentiality arrangements and under FERC's Critical Energy Infrastructure Information (CEII) guidelines, as a "State Agency Requester" in order to become a qualified CEII "Recipient" in accordance with the provisions of 18 C.F.R. ¶ 388.113(d). These guidelines also prevent Staff from disclosing information classified as CEII. (emphasis added)

9. CURB contacted counsel for Staff and attempted to resolve the discovery dispute by asking Staff to conduct runs regarding cases referenced in the Bates White Supplemental Report that had not been run through the model, in lieu of providing the model and underlying dataset. Counsel for Staff indicated Bates White could make this run, and inquired whether CURB could cover the cost if they were reasonable. When CURB inquired as to what Staff considered reasonable, counsel for Staff indicated on June 24, 2011, that the "Ballpark cost estimate is \$10,000."

10. Counsel for Staff advised CURB that CURB needed to specify exactly what it wanted run through the model, so to formalize this request, CURB issued CURB DR 173 on June 24, 2011:

CURB-173. Please refer to paragraphs (16), (19) and (40)c of Exhibit BW-1S, the Bates White Supplemental Report. Please run Cases 1, 2 and 5

making only the following specified changes to the assumptions: (1) assume the “Full Model Period” CO2 prices referenced in paragraph (19) rather than the Waxman-Markey CO2 Prices – refer to these as Cases 1A, 2A and 5A – and (2) assume the “Delayed CO2 prices” CO2 prices referenced in paragraph (19) rather than the Waxman-Markey CO2 Prices – refer to these Cases as 1B, 2B and 5B. Provide all input and output reports generated for these cases and specify the discount rate used in each case.

11. On June 27, 2011, counsel for Staff advised CURB that the cost for making these runs in their model would actually be \$26,070, not the \$10,000 ballpark amount originally indicated. CURB advised Staff that this cost was not reasonable and that CURB could not pay this cost.<sup>5</sup> Subsequent discussions with counsel for Staff have not resolved the issue, and counsel for Staff has indicated Staff would be filing an objection to CURB DR 173 today, July 1, 2011, the deadline for filing objections and also the deadline for filing pre-hearing motions. Staff is again insisting that CURB obtain the underlying data from SPP.

## **II. ARGUMENT**

12. Staff’s position (that CURB must either pay \$26,070 to run two variations on three cases [retrofit, retire, and retire with no replacement capacity] through the model [alternatives referenced in the Bates Whites Report] or acquire the proprietary software and obtain the underlying data directly from a third party [SPP]) effectively prevents CURB from doing any meaningful investigation or analysis of the Bates White Reports and the data forming the basis for the conclusions contained in the Bates White Reports.

13. As demonstrated in Staff’s Motion for Extension of Time to File a Portion of its Direct Testimony, the SPP database containing future asset and transmission topology information provided to Bates White on April 29th, 2011, “required a significant amount of Bates White’s time to

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<sup>5</sup> \$26,070 is more than 10% of CURB’s annual budget for technical consultants.

characterize its contents in order to proceed with its customization. Combing through and customizing the database has required about three weeks of time because there are about 100,000 buses and over 400 fuel price time series in this file.” There is no reason to believe that CURB’s consultant could perform these functions in less than the three weeks Bates White required. Because the hearing is scheduled to begin on July 11, 2011, this effectively precludes CURB from investigating or analyzing the Bates White Reports or the data that forms the basis for the Bates White Reports, which Staff’s consultants admit “had been subject to some customization by the SPP staff.”<sup>6</sup>

14. Even ignoring the time limitation, CURB is also unable to analyze the underlying dataset utilized by Bates White because Staff refused to produce the PROMOD software requested in CURB DR 158, even though Staff admittedly failed to file any objection to the data request.

15. Admittedly, the abbreviated schedule in this docket has made it difficult for all parties to analyze the modeling and testimony filed by the KCPL on February 23, 2011, just four months ago. However, it is logistically impossible for CURB or other parties to review and analyze the modeling performed by Staff, which was only finalized in the Bates White Supplemental Report filed and served on the parties on June 10, 2011. CURB requested the modeling software and underlying dataset on June 10<sup>th</sup>, did not receive any objection to these data requests, and was only apprised that the information would not be provided when Staff responded to the data requests on June 21, 2011, just 12 business days before the July 11<sup>th</sup> hearing date.

16. CURB proposed a reasonable alternative to providing the software and underlying data, but Staff insists that CURB must pay over \$26,000 for runs on scenarios specifically discussed

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<sup>6</sup> Bates White Report, p. 49, ¶ (140).

in the Bates White Supplemental Report sponsored by Staff witnesses. The unreasonableness of this is more than apparent when considered in light of testimony by numerous parties in this docket, including Staff testimony, that discredits the modeling performed by KCPL as flawed, biased, and unreasonable, providing a substantial competent basis for the Commission to find the Company has failed to meet its burden to obtain preapproval of the Lacyne environmental retrofits. In spite of the evidence showing the Company has failed to meet its burden, Staff's modeling is being relied upon by the Company and Staff in support of the preapproval, yet CURB and other parties are being denied any opportunity to investigate the modeling and data forming the basis for the conclusions contained in the Bates White Reports.

17. Staff's refusal to provide access to the model and the underlying data is indistinguishable from KCPL's argument in seeking to modify the Protective Order, which was rejected by the Prehearing Officer:

The Prehearing Officer rejects KCP&L's suggestion that intervenors can negotiate directly with these vendors for release of proprietary information and should do so if a party wants to access this information. KCP&L submitted its Application relying upon evidence that references information garnered from these vendors and knowing the vendor's contracts limited disclosure of this relevant information. Parties will not be required to negotiate a separate contract with a vendor to access information relevant to this proceeding.<sup>7</sup>

18. Staff's position is indistinguishable from the position taken by KCPL described above. Like KCPL, Staff "submitted the [Bates White Report] relying upon evidence that references information garnered from [SPP] and knowing [SPP's rules] limited disclosure of this relevant

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<sup>7</sup> Prehearing Officer's Order Granting (1) KCP&L's Motion to Amend Protective Order in Part and (2) GPACE's Motion to Withdraw Motion for Extension of Time to File Direct Testimony and Motion to Compel Response to Discovery Requests, ¶¶ 3, 8; Motion to Amend Protective Order, ¶ 8.

information.” CURB should not “be required to negotiate a separate contract with a vendor to access information relevant to this proceeding.”<sup>8</sup>

19. Staff’s position on access to its modeling software and the underlying SPP data is inconsistent with Staff’s Response to KCPL’s Motion to Amend Protective Order:

Staff also recognizes that the material KCP&L is attempting to protect is information which formulates the basis of the composite models that KCP&L is providing to the parties in this docket and that in order to ensure that KCP&L’s composite models are accurate, it is necessary for a party to have the component data that was used to formulate those models.<sup>9</sup>

20. The material Staff is seeking to conceal from the parties (its modeling software and the underlying SPP database) forms the basis for the Bates White Reports that Staff relies upon in testimony in this proceeding. If Staff does not want to disclose that information to CURB and its consultants, then Staff should withdraw the alternative modeling portions of the Bates White Reports, or the Commission should strike Staff’s testimony and the portions of the Bates White Reports that relate to alternative modeling because the underlying data and analyses is being withheld by Staff.

21. The modeling software and the SPP database form the basis for Staff’s recommendation that retrofitting Lacygne is prudent and the least cost alternative, and Staff is required to reveal the underlying basis of its petition.

22. Again, Staff knew this information would need to be reviewed and analyzed by the parties in this docket. If Staff continues to refuse to provide the data and analyses forming the basis of its testimony and the Bates White Reports, Staff should withdraw its petition for predetermination or the Commission should deny the petition because the underlying data and analyses are being

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<sup>8</sup> *Id.*

<sup>9</sup> Staff’s Response to KCPL’s Motion to Amend Protective Order, ¶ 7 (emphasis added).



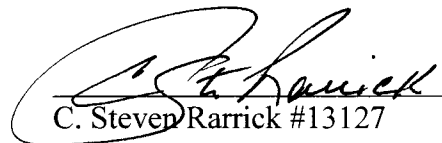
knowingly withheld by KCPL. In the alternative, the Commission should order Staff to provide the information requested in CURB DR 173, the compromise offered by CURB in response to Staff's refusal to provide the modeling software and underlying data.

### III. CONCLUSION

23. CURB respectfully requests that the Commission compel Staff to provide the information requested in CURB DRs 158 and 161, or perform the compromise requested in CURB DR 173.

24. In the alternative, CURB requests that the Commission strike portions of Staff testimony referencing or relying upon the alternative modeling conducted by Bates White utilizing a confidential data set provided by the Southwest Power Pool (SPP), and striking portions of the Bates White Report and Bates White Supplemental Report related to the alternative modeling.

Respectfully submitted,



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**VERIFICATION**

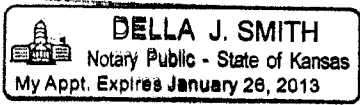
STATE OF KANSAS                                    )  
  )  
COUNTY OF SHAWNEE                            )        ss:

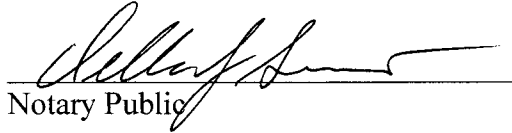
I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the above named petitioner; that he has read the above and foregoing document, 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 1<sup>st</sup> day of July, 2011.



  
Notary Public

My Commission expires: 01-26-2013.

**CERTIFICATE OF SERVICE**

11-KCPE-581-PRE

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, electronic service, or hand-delivered this 1<sup>st</sup> day of July, 2011, to the following:

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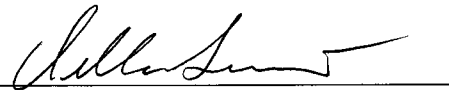
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A handwritten signature in cursive script, appearing to read 'Della Smith', is written above a horizontal line.

Della Smith  
Administrative Specialist