

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

NOV 14 2011

by
State Corporation Commission
of Kansas

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

Docket No. 12-KCPE-258-CPL

**KANSAS CITY POWER & LIGHT COMPANY'S RESPONSE TO THE CITIZENS'
UTILITY RATEPAYER BOARD'S REPLY**

Kansas City Power and Light Company ("KCP&L") responds as follows to the Reply to Staff's Response and KCP&L's Objection to CURB's Petition To Intervene filed by the Citizens' Utility Ratepayer Board ("CURB") on November 3, 2011 ("CURB's Reply").

I. INTRODUCTION

1. KCP&L will not repeat the arguments and analyses presented in its Objection to Intervention of the Citizens' Utility Ratepayer Board ("KCP&L's Objection") filed in this docket on October 28, 2011, except as necessary to respond to the specific assertions and allegations in CURB's Reply. To the extent KCP&L's Objection adequately addressed any matter presented by CURB in its Reply, KCP&L will rely upon its previous filing.

II. CURB HAS NO INTEREST TO REPRESENT IN THIS DOCKET

2. In its Reply, CURB asserts a number of times that it has the right to intervene in this compliance docket to represent the interests of its constituents - residential and small commercial ratepayers. However, CURB fails to explain how *this* docket might impact its constituents.

3. CURB argues that allowing it to intervene ensures that CURB will get notice when the monthly compliance filings are made and then CURB can access the non-confidential

versions of the reports in furtherance of CURB's statutory mandate.¹ For the following reasons, CURB has failed to set forth any interest it represents that could be impacted by the activities in this docket.

4. First, CURB does not need special notice of these report filings. CURB knows these reports will be filed monthly and the Commission's website will indicate each time KCP&L files a report. Second, CURB does not explain why access to a non-confidential version of the report would permit CURB to carry out any particular statutory obligation. CURB fails to explain *how* monitoring KCP&L's compliance with the Commission's Order in Docket No. 11-KCPE-581-PRE (the "581 Order" and the "581 Docket") would impact ratepayers beyond the impact that has already been decided by the Commission in the 581 Docket. Any other potential impact different from that already established by the 581 Order will be decided by the Commission in some future docket – perhaps a KCP&L rate case wherein the cost of the La Cygne Environmental Retrofit Project (the "La Cygne Project") are presented for inclusion in rates. CURB can intervene in that future docket, as it did in the 581 Docket, to represent the interests of its constituency.

5. CURB states that "compliance with the Commission's order in the 581 Docket clearly affects the right 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."² Again, CURB does not explain *how* these interests are "clearly affected." The Commission decided in the 581 Docket that the \$1.23 billion estimate is the reasonable value of the La Cygne Project for ratemaking purposes.³ This compliance docket will not change the

¹ CURB's Reply at p. 2, para. 6.

² *Id.* at p. 4, para. 9.

³ 581 Order, p. 39, para. 71, "If KCP&L completes construction of the La Cygne Project within this definitive estimate of \$1.23 billion, excluding AFUDC and property taxes, and KCP&L does not, in a subsequent

amount ratepayers will be obligated to pay. There will be no Commission order determining anyone's rights as a result of this compliance docket. There is no impact from this monitoring docket; so there is no interest for CURB to represent in this docket.

6. CURB also argues that CURB's authorizing statute, K.S.A. 66-1223, gives CURB the right to intervene in compliance dockets. CURB relies upon subsection (a) which states that CURB counsel may "represent residential and small commercial ratepayers before the state corporation commission".⁴ CURB may do this, but only if the docket CURB requests intervention in is one for which intervention is allowed generally. This subsection of K.S.A. 66-1223 does not give CURB some power beyond that held by other customers of a utility who may wish to intervene. It simply gives CURB's counsel the power to represent a certain group of customers before the Commission in a proceeding for which intervention by outside parties is otherwise allowed.

7. Finally, CURB incorrectly argues, without legal support, that this compliance docket is merely an extension of the 581 Docket and that CURB's interest is the same as what the Commission found sufficient to justify CURB's intervention in the 581 Docket.⁵ CURB's interest in the 581 Docket concerned whether KCP&L would be granted predetermination for the La Cygne Project and, if so, the ratemaking treatment to be given those costs. These issues were decided in the 581 Docket. This compliance docket will not revisit the Commission's decision on predetermination or on the ratemaking principles adopted therein. The issues in the 581 Docket that would impact CURB's constituents simply are not at issue in this compliance docket.

proceeding, request recovery for any amount exceeding this estimate, absent a showing of fraud of other intentional imprudence in the construction project, the Commission would not address prudence issues regarding the reasonable value of the La Cygne Project retrofits."

⁴ *Id.* at p. 5, para. 10.

⁵ *Id.* at p. 5, para. 13.

III. CURB FAILS TO ADDRESS THE SPECIFIC COMMISSION REGULATIONS REGARDING PROCEEDINGS AND INTERVENTIONS.

8. CURB alleges that KCP&L and Staff present a “tortuous interpretation” of the word *proceeding* in their analysis of the Commission’s intervention regulations, K.A.R. 82-1-214 and K.A.R. 82-1-225. CURB then completely ignores the arguments of KCP&L and Staff regarding the language of these regulations, relying instead upon a generic definition of the word “proceeding” in Black’s Law Dictionary.⁶ Contrary to Staff and KCP&L, CURB chose not to address the language of the regulations or the analysis of the regulations submitted by KCP&L and Staff. Instead CURB simply asserts that a compliance docket “is clearly” a proceeding.⁷ CURB has failed to shed any light upon why its generic definition of a “proceeding” should be accepted and the specific language of the Commission’s regulations disregarded. CURB’s allegation that Staff and KCP&L’s interpretation of the regulations is “simply without merit” is merely conjecture and is neither authority nor legal analysis.

9. KCP&L discussed in KCP&L’s Objection, Staff has handled numerous public utility compliance activities over the years, and other entities, including CURB, have not been parties to those processes.⁸ CURB accuses KCP&L of forgetting the many *dockets* CURB has been involved in wherein post-order activities occurred. CURB mischaracterizes KCP&L’s comment. KCP&L was addressing the CPL dockets and the non-docketed activities performed by Staff in the past and drawing a parallel between those and the new monitoring process established by the Commission. In non-docketed compliance activities and in CPL designated dockets, interventions have not occurred. CURB skewed KCP&L’s comment to present support for its unsupportable position. CURB’s position is incorrect and should be denied.

⁶ *Id.* at p. 3, para. 7.

⁷ *Id.* at p. 3, para. 8.

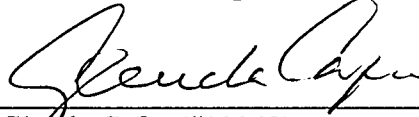
⁸ KCP&L Objection, p. 7, para. 13. (Footnote 9 of CURB’s Reply erroneously cites this as para. 9 of KCP&L’s Objection.)

IV. CONCLUSION

10. KCP&L respectfully requests that, for good cause shown to clarify the record, the Commission consider the above responsive comments, in addition to the arguments previously set forth in KCP&L's Objection, when deciding CURB's pending Petition to Intervene in this compliance docket. KCP&L requests that CURB's Petition be denied for the reasons stated.

Respectfully submitted,

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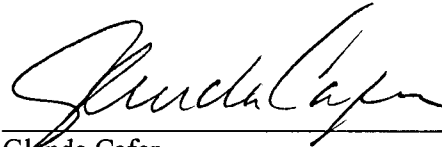
CERTIFICATE OF SERVICE

I hereby certify that a copy of KANSAS CITY POWER & LIGHT COMPANY'S
RESPONSE TO CURB'S REPLY was served on this 14th day of November, 2011 to:

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