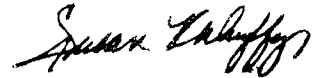


THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Application of Kansas )  
City Power & Light Company for Approval ) Docket No. 09-KCPE-246-RTS  
to Make Certain Changes in its Charges for )  
Electric Service to Continue the )  
Implementation of Its Regulatory Plan. )

STATE CORPORATION COMMISSION

FEB 25 2009



**MOTION FOR EXPEDITED ORDER**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and moves the Corporation Commission of the State of the Kansas ("Commission") for an order striking certain rebuttal testimony of John Weisensee and Steven Jones. In the alternative, CURB requests an order restarting the 240-day timeline pursuant to K.S.A. 66-117(c)(1), extending the procedural schedule, and rescheduling the evidentiary hearing. Because the evidentiary hearing is scheduled to begin March 9, 2009, CURB requests an expedited ruling on its motion. In support of its motion, CURB states and alleges as follows:

**I. Statement of Facts.**

1. On February 23, 2009, KCPL filed rebuttal testimony which significantly increases plant-in-service costs by \$126 million and depreciation expense by nearly \$6 million,<sup>1</sup> with a resulting significant revenue requirement increase.<sup>2</sup> This new evidence was introduced just two weeks prior to the March 9 evidentiary hearing.

<sup>1</sup> Rebuttal Testimony of John P. Weisensee, Exhibit JPW-6.

<sup>2</sup> CURB calculates over \$20 million in additional revenue requirement resulting from the additional plant-in-service and depreciation expense introduced in the rebuttal testimony of Mr. Weisensee and Mr. Jones.

2. Specifically, the rebuttal testimony of KCPL witnesses John Weisensee<sup>3</sup> and Steven Jones<sup>4</sup> introduce increased plant-in-service costs related to (1) changing the plant-in-service date from the March 31, 2009 date contained in the application, to July 4, 2009 (utilizing projected costs rather than actual costs), and (2) including increased costs related to common assets (common costs) shared by Iatan Unit 1 and Iatan Unit 2 (again utilizing forecasted, or projected costs rather than actual costs).

3. Mr. Weisensee admits that the most recent revisions to the updated Iatan Unit 1 AQC system costs occurred too late for either Staff or CURB to adjust our cases.<sup>5</sup> In addition, Mr. Weisensee admits the final results for the cost of the Iatan Unit 1 AQC project as well as the cost of common work will not be known for some time, which leads him to conclude, “estimates must be used for this case.”<sup>6</sup> Finally and most concerning, Mr. Weisensee admits:

However, it should be noted that while the Common Asset valuation is complete, the team led by Mr. Jones is still performing the review to determine how much of the Common Facilities costs resides within the Unit 1 ACQ Control Budget and how much resides within the Unit 2 Control Budget. With those results in hand, KCP&L will adjust the estimate to ensure that there is no double counting of Common Assets within the revenue request.”<sup>7</sup>

4. It is CURB’s understanding that there is currently double counting within the increased plant-in-service costs contained in the Company’s rebuttal testimony, and further that *the team led by Mr. Jones* worked for at least four weeks to calculate the common costs reflected in the rebuttal testimony of Mr. Jones and Exhibit SJ-5. Despite this inordinate amount of post-application work to amend the Company’s filed case, Mr. Jones’ team was still unable to quantify the amount of

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<sup>3</sup> Rebuttal Testimony of John P. Weisensee, pp. 3-9; Exhibit JPW-6.

<sup>4</sup> Rebuttal Testimony of Steven Jones, pp. 22-29; Exhibit SJ-5.

<sup>5</sup> Rebuttal Testimony of John P. Weisensee, p. 6.

<sup>6</sup> Rebuttal Testimony of John P. Weisensee, p. 6.

<sup>7</sup> Rebuttal Testimony of John P. Weisensee, pp. 6-7 (emphasis added).

double counting of common assets contained in the Iatan Unit 1 and Unit 2 Control Budgets at the time the Company filed its rebuttal testimony on February 23, 2009.<sup>8</sup>

5. CURB has roughly calculated that the increased plant-in-service and related depreciation costs contained in the Company's rebuttal testimony adds an additional \$20 million in revenue requirement to the Company's filed case.

## **II. Argument and Authorities.**

6. The relevant portion of K.S.A. 55-117(c)(1) states:

for purposes of the foregoing provisions regarding the period of time within which the commission shall act on an application, any amendment to an application for a proposed change in any rate, which increases the amount sought by the public utility or common carrier or substantially alters the facts used as a basis for such requested change of rate, shall, at the option of the commission, be deemed a new application and the 240-day period shall begin again from the date of the filing of the amendment

7. The increased plant-in-service and related depreciation costs contained in the Company's rebuttal testimony adds an additional \$20 million in revenue requirement to the Company's filed case. By anyone's standards, this constitutes a material increase in the amount contained in the Company's filed case.

8. Moreover, the above-referenced portions of the rebuttal testimony of Messrs. Weisensee and Jones constitute supplemental direct testimony instead of proper rebuttal testimony. "Rebuttal evidence is that which contradicts evidence introduced by an opposing party."<sup>9</sup> Rather than contradict or even address evidence introduced by an opposing party, the rebuttal testimony of

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<sup>8</sup> Rebuttal Testimony of John P. Weisensee, p. 6; Rebuttal Testimony of Steven Jones, p. 28.

<sup>9</sup> *State v. Vontress*, 266 Kan. 248, 254, 970 P.2d 42 (1998); *State v. Shulz*, 225 Kan. 135, 138, 587 P.2d 901 (1978); *State v. Lovelace*, 227 Kan. 348, 353, 607 P.2d 49 (1980). Since the Commission generally applies the rules of evidence when it conducts hearings, case law concerning the allowance of rebuttal testimony by the trial courts is instructive. See, K.A.R. 82-1-230.

Messrs. Weisensee and Jones substantially alters both the basis for and amount of KCPL's requested change in rates.

9. In addition, because of the complex nature of tying the Company's projected and actual costs to the common costs, CURB, Staff, and other intervenors will be denied reasonable discovery of these new and still unraveled combination of actual and projected numbers, will be unable to perform a review of this material change to the application in less than two weeks, and testify knowledgeably about it at the March 9-24 evidentiary hearing. Additionally, the so-called rebuttal testimony itself indicates there appears to be double counting of common costs that the Company itself (Mr. Jones and his team) has yet to unravel.<sup>10</sup>

10. KCPL's so-called rebuttal testimony is actually new direct testimony that substantially amends the Company's filing, the timing of which is patently unfair to all parties, and will leave the Commission without substantial competent evidence upon which it can issue a decision. Allowing this material amendment to the Company's application, without allowing meaningful discovery and a reasonable opportunity to file surrebuttal testimony on issues the Company admits it has yet to unravel, would deny due process to CURB, Staff, and other intervenors.

11. The Kansas Supreme Court has held that, "the basic elements of procedural due process of law are notice and an opportunity to be heard at a meaningful time and in a meaningful manner."<sup>11</sup> Adding over \$20 million in additional revenue requirement claims just two weeks prior to hearing, without adequate time to conduct discovery or an opportunity to submit surrebuttal testimony, denies CURB and other parties an opportunity to be heard and to defend at a meaningful time and in a meaningful manner.

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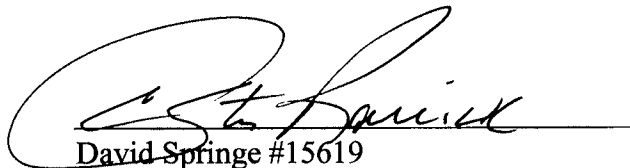
<sup>10</sup> Rebuttal Testimony of John P. Weisensee, p. 6; Rebuttal Testimony of Steven Jones, p. 28.

<sup>11</sup> *In re Petition of City of Overland Park for Annexation of Land*, 241 Kan. 365, 370, 763 P.2d 923 (1987).

12. As a result, the new evidence offered as rebuttal should be stricken, or in the alternative, should result in restarting the 240-day timeline, extending the procedural schedule to allow for discovery, and rescheduling the evidentiary hearing.

WHEREFORE, CURB RESPECTFULLY REQUESTS THE Commission grant its motion for an expedited order striking the rebuttal testimony of John Weisensee and Steven Jones related to increased plant-in-service costs, or in the alternative restart the 240-day timeline pursuant to K.S.A. 66-117(c)(1) and extend the procedural schedule and reschedule the evidentiary hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Springe", written over a horizontal line.

David Springe #15619

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**CERTIFICATE OF SERVICE**

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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, e-mailed or hand-delivered this 25th day of February, 2009, to the following:

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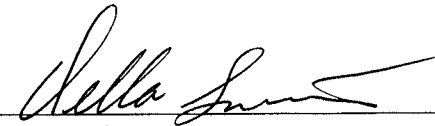
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