THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Kansas City Power & Light Company to Make Certain Changes in Its Charges for Electric Service.	))))	Docket No. 15-KCPE-116-RTS
In the Matter of the a General Investigation into Electric Vehicle Charging Stations.	))	Docket No. 15-GIME-345-GIE

CURB's Objection to KCPL's *Motion for Leave to File Supplemental Testimony* and *Petition to Open General Investigation*

The Citizens' Utility Ratepayer Board (CURB) herein files its objection to the *Motion for Leave to File Supplemental Direct Testimony* (*Motion*) of Kansas City Power & Light (KCPL) that was submitted electronically to the Commission and the parties after business hours on February 6, 2015 (thus, February 9, 2015, is the effective date of its filing and service on the parties). CURB also moves the Commission to deny KCPL's *Petition to Open General Investigation* to address electric vehicle charging stations that was filed on February 5, 2015, but suggests that if the Commission chooses to explore whether utility-sponsored electric charging stations for electric vehicles are a good idea and whether policies should be revised to require ratepayers to fund them, a generic docket would be a more appropriate venue in which to do so than in this rate case.

In its motion, KCPL claims the need to file Direct Testimony in this rate case to "supplement" information that was "discussed" in its Application regarding its Clean Charge Network proposal, which is a plan to install and operate over 1000 electric vehicle charging

stations within KCPL's Kansas service territory and that of its Missouri utility. There are several reasons for denying KCPL's motion. CURB presents its reasons below.

(1) Filing supplemental testimony at this late date is prejudicial to other parties.

The Application of KCPL did not contain testimony about the Clean Charge Network; KCPL wants to file it now. However, K.A.R. 82-1-231(c) requires prefiled testimony to be filed simultaneously with the filing of the Application. While the Commission may waive this requirement for good cause shown (K.A.R. 82-1202(a), KCPL has presented no good cause for accepting this late-filed testimony consisting of roughly 200 pages of testimony and exhibits. In fact, waiving the requirement would prejudice and harm other parties to the docket. It is apparent from remarks made in the *Commission Staff's Objection to KC&L's Motion for Leave to File Supplemental Direct Testimony, Motion to Strike Supplemental Direct Testimony of Darren Ives, and Response to Petition to Open General Investigation Docket* (*Staff Motion)* that was filed on February 13, 2015, that KCPL met with the Commission Staff to discuss its Clean Car Network proposal prior to its public announcement of the project (*Staff Motion*, at p. 4). CURB was not informed of nor invited to that discussion. In its motion, Staff complains of insufficient notice of the project's launch and KCPL's request for recovery of its costs, but CURB had even less notice than Staff did; CURB first learned of the project by reading about its launch on a newspaper website. Getting notice of new issues at this late date—especially issues that are not really new and have apparently been in the planning stage for some time—is simply prejudicial to the other parties.

Further, as a new proposal for this region of the nation, the Clean Car Network project is an unusual project and is not the typical sort of utility expense one would expect to be included

in a rate case application. KCPL could not have possibly imagined that its proposal for ratepayer recovery of the costs of the project would be routinely granted. CURB determined what kind of witnesses it would need to hire for this case based on the contents of KCPL's Application and the policies and issues its Application raised. CURB's contracts with the witnesses have been signed, and they have already devoted a significant amount of time vetting the Application. Adding unusual new projects and new issues at this juncture is prejudicial to CURB and expands the issues that we contracted with our witnesses to address. At this juncture, CURB would not be able to secure a new witness in time to vet an additional 200+-some pages of testimony and exhibits. Further, the roughly 200 pages of exhibits attached to the testimony of Darren Ives are not studies prepared by KCPL, but are hearsay evidence, and its admissibility on those grounds is questionable. All told, the negative impact on the other parties of including this additional testimony and its voluminous exhibits clearly outweighs any reasons for allowing KCPL to file it so late.

(2) The inclusion of post-test year costs of the Clean Charge Network is not permitted by the joint agreement of the parties and the Commission order approving that agreement.

The parties spent a great deal of time last year negotiating and discussing exactly what post-test year claims would be included for recovery in this rate case and when they would be updated. (KCC Docket No. 15-GIME-025-MIS, *Joint Proposed Order*, Aug. 22, 2014). The focus of the discussions was on finding ways to avoid the necessity of KCPL and Westar Energy having to file major rate cases two years in a row. The solution reached by the parties gave both utilities an opportunity to include in their upcoming rate case applications specific post-test year

costs related to two specific capital projects expected to be completed later this year at generating facilities that the two utilities jointly own—LaCygne and Wolf Creek. The parties agreed that in their rate case applications, KCPL and Westar could request recovery of certain specified projected costs and post-test year adjustments and established a deadline of March 15, 2015 for cost updates related to these two projects. The parties submitted their proposal to the Commission and the Commission approved it without modification. (*Id., Order Approving Joint Application*, Sep. 9, 2014).

Now, with the filing of KCPL's motion, the company is exceeding the boundaries of the joint agreement by asking for the recovery of out-of-test year costs of the Clean Charge Network--a project entirely unrelated to the LaCygne and Wolf Creek projects—and in doing so has violated the terms and the purpose of the Commission order approving our joint proposal.

As noted above and in *Staff's* Motion, at no point during the negotiations to reach an agreement on which post-test year costs would be eligible for consideration in this case did KCPL discuss or even mention this project. KCPL announced the launch of the Clean Charge Network project well after the filing of its Application in this rate case. KCPL assures us that it "has moved as quickly as practicable after that public announcement to prepare and submit this Supplemental Direct Testimony." (*Motion*, at 2). However, there was no reason why KCPL declined to inform the parties during the negotiations last year that this project was in the planning stages and that the company planned to seek recovery of costs related to the project in its upcoming rate case. In order for the company to have been able to calculate an estimate of projected costs for the project in time to include in the Application, the planning stage of the project had to be well-advanced. It would have been a simple matter to require the parties to sign a confidentiality agreement if the company regarded the ongoing discussions with potential hosts

as confidential. Therefore, it would not be unreasonable to conclude that KCPL deliberately chose not to discuss this project with the parties during our negotiations, perhaps because the company anticipated that there would be opposition to including the projected costs from this project in rates. Whatever the reason that KCPL chose not to file all of its prefiled testimony simultaneously with the filing of its Application, KCPL has not demonstrated good cause for allowing the company to file it now. KCPL's *Motion* to supplement its testimony should be denied.

(3) The inclusion of hidden costs in the Application does not confer a right on KCPL to seek recovery of those costs.

KCPL freely admits in its motion that it deliberately included the projected costs of the charging station project in its Application to establish so-called "placeholders" for project costs of this project "to ensure consideration in this case." (*Motion*, at 2). The tactic of using unidentified "placeholders" in the Application does not secure the right to consideration of costs for recovery, and should not be condoned by the Commission. These costs are not even remotely related to the projects that the parties agreed could be included in this case. KCPL has no right to seek recovery of the charging station costs in this case whether it called dibs or not.

Furthermore, KCPL's assertion that these projected costs were "discussed" in testimony filed with the Application is patently false. (See *Motion*, at p. 1, Footnote 1). The *adjustments* in which the costs are buried are discussed, but this project is never mentioned in those discussions. Rate base adjustment RB-20, in which the capital costs are buried, is described in some detail by KCPL witness Klote, who identified several projects included in the adjustment in a page-long description of the adjustment that might be characterized as a "discussion", but he did not mention this project at all. (Klote, Dir. Test., at 10-11). In the one-sentence "discussion"

describing the contents of Miscellaneous Expense Adjustment CS-49, in which the expenses of the project are buried, Klote described the adjustment as including post-year "maintenance" cost, which is an inaccurate description of new project costs; the expenses of this soon-to-be built project weren't even buried in the appropriate adjustment. There was simply no discussion of the Clean Car Network at all in the Application, and the costs were not broken out and identified or quantified anywhere in the application. KCPL may regard the burial of the costs in these adjustments as "placeholders" that would ensure recovery, but the burial spots had no markers identifying what was buried there.

KCPL had the opportunity to identify and discuss these costs with the parties at any time after it decided to pursue the project, but did not. It had the opportunity to identify and support these costs in its Application, but did not. KCPL should not be permitted to bury unidentified costs in its Application without any supportive testimony, then come back later to claim that the hidden costs are "placeholders" that justify allowing the company to file "supplemental" testimony to support its claims. KCPL's motion should be denied.

(4) The involvement of KCPL in the development of the Clean Car Network and its proposal to require ratepayers to fund the project requires consideration of major policy issues that that are too complex to sort out in a rate case.

As Staff pointed out in its motion, there are some complex issues to sort out in considering whether to approve this project. Among the issues are the following:

- **Should ratepayers fund a project that is not necessary for the provision of service to customers?** The Clean Charge Network is not a project related to the maintenance, repair or construction of utility infrastructure necessary for the

provision of efficient and sufficient service to KCPL ratepayers. The only ratepayers it may serve are those who own electric cars. A decision to require recovery of its costs from ratepayers would require justifying a major policy shift away from cost-of-service ratemaking.

- **Should ratepayers fund projects that will not serve an essential public interest for the community at large?** The New York Times reported in April 2014 that only 72,000 "pure electric" vehicles were on the road in the US in 2013, and that most of them are concentrated in urban areas of California; no Midwestern cities are in the top ten electric vehicle cities.[1] Providing 1000 charging stations for electric cars throughout the company's service territories in Kansas and Missouri is providing convenience to a tiny segment of car buyers who freely chose to buy a vehicle with limited range and therefore limited utility.[2] While utilities do have a general obligation to serve the public interest, the Commission would have to find that a project that serves a tiny portion of the public serves a public interest. That is a policy decision that deserves serious deliberation.

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1 Cheryl Jensen, *Experian Study Highlights Differences Between Hybrid and E.V. Owners,* New York Times, April 23, 2014 (available at www.nytimes.com). The other areas identified as having high concentrations of electric cars are located on the East Coast and in the Pacific Northwest.

2 It is common knowledge that the percentage of electric-only cars on the road is quite small. For comparison of actual numbers, the Kansas Department of Revenue Annual Report for 2013 reports that the total number of automobiles registered in Johnson, Wyandotte, Miami and Douglas counties was 562,806, and the total number of electric-only vehicles registered in these counties through July 2014 is provided in Schedule DRI-8, at p. 8; this information is deemed "Highly Confidential" by KCPL. CURB objects to the admission of this entire presentation into evidence, but CURB would not object to the admission into evidence of the information provided on page 8, which is useful information that would enable the Commission to compare the totals in making its decisions concerning this project.

- **Is it public policy in Kansas to require ratepayers to fund a project that serves a wealthier segment of the community?** The tiny community of electric car owners is significantly better off financially than the typical KCPL ratepayer. Federal census data indicates that households (not individuals) in the Greater Kansas City Metro Area (which includes the bulk of KCPL's Kansas territory) in 2010 had a median household income of around $72,000. By contrast, Forbes reports that nearly 21% of the individuals (not households) who buy electric-only vehicles (cars that will be served by the charging stations) have incomes of $175,000 or greater. The Commission would have to consider whether it is good public policy to require the typical KCPL household to fund a project that serves a tiny segment of the community[3] that is wealthier than the typical KCPL household.
- **How risky is KCPL's decision to invest in this project? Will it leave stranded costs?** The segment of the car-buying public that is willing to settle for a vehicle that can be driven less than 50 miles before it runs out of juice is likely to remain quite small. It is easy to foresee that these limited-range vehicles will be supplanted in the near future by newer designs that won't require such frequent charges, or by solar-powered vehicles that may not need charging stations at all. This raises the distinct possibility that KCPL's charging stations could become obsolete before they are depreciated—and KCPL undoubtedly would expect ratepayers to pick up the stranded costs. Before the Commission considers

3 Jim Gorzelany, *Electric-Car Buyers Younger And Richer Than Hybrid Owners*, Forbes, April 22, 2014 (available at www.forbes.com)

requiring ratepayers to fund this project, the Commission should consider the policy implications of requiring ratepayers to shoulder the costs of a risky investment that may leave behind stranded costs if the equipment is rendered obsolete by advances in other clean-car technologies.

- **Is this project consistent with policies that support efforts to reduce demand?** The Commission has approved cost recovery for KCPL projects and programs intended to decrease demand and to conserve energy under a broad policy that it is beneficial to customers to slow down the pace of increasing demand because it helps delay the need for costly new generation plants. Since the Clean Car Network is anticipated to increase demand on existing generation resources, there should be a discussion of whether this project is consistent with the policy to support efforts to reduce demands and whether it would be consistent to ask ratepayers to fund both types of programs.

CURB suggests that these are complex policy issues that aren't amenable to resolution in a docket limited to 240 days. Thus, CURB believes that this rate case docket is the inappropriate forum in which to develop sound policy on these complex issues.

(5) In the event that the Commission wants to address these issues, a generic docket would be the appropriate forum in which to consider issues that involve complex issues of public policy.

KCPL has filed a request with the Commission to open a general investigation into electric vehicle charging stations. (See *Petition to Open General Investigation,* Docket No. 15-GIME-345-GIE). The Commission should summarily dismiss KCPL's petition on the grounds

that the investigation is not necessary because any proposal to ask customers to pay for these stations is forbidden by the long-standing regulatory principle that requires that rates charged to customers should be rationally based on the cost of serving those customers. The costs of investments in projects that are not necessary for the provision of sufficient and efficient service to KCPL's ratepayers cannot be included in customer rates under existing regulatory policy. It would be a waste of time to devote resources to investigating a proposal that the Commission clearly could not approve under current law and regulatory policy.

However, if the Commission chooses to explore the general issue of whether utility-sponsored charging stations for electric cars are a good idea and whether policies should be revised to require ratepayers to fund them, a generic docket would be an appropriate venue in which to do so. The policy questions raised by CURB above in Section (4) would be good starting points for the Commission's inquiry. Determining the scope of a generic docket is the prerogative of the Commission, whether it chooses to grant KCPL's petition or to open a generic docket on its own initiative.

(6) Conclusions and request for relief

The inclusion of post-test year costs of the Clean Charge Network is not permitted by regulatory policy or by the joint agreement of the parties and the Commission order approving that agreement. KCPL's inclusion of hidden costs in the Application does not confer a right on KCPL to seek recovery of those costs. Further, the involvement of KCPL in the development of the Clean Car Network and its proposal to require ratepayers to fund the project requires consideration of major policy issues that that are too complex to sort out in this rate case.

Therefore, CURB respectfully requests that the Commission deny KCPL's *Motion for Leave to File Supplemental Direct Testimony* and its *Petition to Open General Investigation.*

However, in the event that the Commission chooses to explore the general issue of whether utility-sponsored charging stations for electric cars are a good idea and whether policies should be revised to require ratepayers to fund them, a generic docket would be a more appropriate venue in which to do so than this rate case. It makes no difference whether the Commission or KCPL first proposes opening the docket, because the Commission may determine the appropriate scope and topics to be considered in the docket whether it grants KCPL's *Petition to Open General Investigation* or chooses to open a docket on its own initiative.

Therefore, while CURB respectfully requests that the Commission decline to open a general investigation, CURB acknowledges that a generic docket would be a more appropriate venue in which to explore these issues than KCPL's rate case.

Respectfully submitted,

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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, Niki Christopher, of lawful age, being first duly sworn upon her oath states:

That she is an attorney for the above named petitioner; that she has read the above and foregoing Intervention, and, upon information and belief, states that the matters therein appearing are true and correct.

Niki Christopher

SUBSCRIBED AND SWORN to before me this 18th day of February, 2015.

Notary Public

DELLA J. SMITH
Notary Public - State of Kansas
My Appt. Expires January 26, 2017

My Commission expires: 01-26-2017.

CERTIFICATE OF SERVICE

15-KCPE-116-RTS
15-GIME-345-GIE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 18th day of February, 2015, to the following parties:

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