

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

JUN 29 2012

by  
State Corporation Commission  
of Kansas

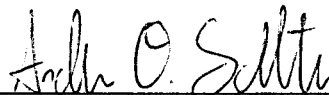
In the Matter of the Application by Kansas City )  
Power & Light Company for a Waiver ) Docket No. 12-KCPE-862-MIS  
Regarding the Kansas Renewable Energy )  
Standards Act for 2012. )

**NOTICE OF FILING OF STAFF REPORT AND RECOMMENDATION**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) files its Report and Recommendation regarding the application of Kansas City Power & Light Company (KCP&L or Company) for an order allowing KCP&L until December 31, 2012 to satisfy the requirements of the Renewable Energy Standards Act (RES Act) or a waiver of penalties for failure to comply with the RES Act for 2012. Staff recommends that the Commission reject KCP&L's request to allow the Company until December 31, 2012 to comply with the RES Act and instead grant KCP&L's request to waive penalties for failure to comply with the RES Act for 2012.

WHEREFORE Staff requests the Commission consider its Report and Recommendation and for such other and further relief as the Commission deems just and proper.

Respectfully submitted,



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Andrew O. Schulte, #24412  
Litigation Counsel  
1500 S.W. Arrowhead Road  
Topeka, KS 66604  
(785) 271-3110 phone  
(785) 271-3167 fax  
[a.schulte@kcc.ks.gov](mailto:a.schulte@kcc.ks.gov)  
Attorney for Commission Staff

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



Phone: 785-271-3100

Fax: 785-271-3354

<http://kcc.ks.gov/>

STATE CORPORATION  
COMMISSION, Governor

Mark Sievers, Chairman  
Thomas E. Wright, Commissioner

**REPORT AND RECOMMENDATION  
UTILITIES DIVISION**

**JUN 26 2012**

**PATRICE PETERSEN-KLEIN  
EXECUTIVE DIRECTOR**

**TO:** Chairman Mark Sievers  
Commissioner Thomas E. Wright

**FROM:** Jaime Stamatson, Senior Research Economist

**DATE:** June 26, 2012

**DATE SUBMITTED TO EXECUTIVE DIRECTOR:** 6/26/12

**DATE SUBMITTED TO LEGAL:** 6-27-12

**DATE SUBMITTED TO COMMISSIONERS:** 6-29-12

**SUBJECT:** Docket No, 12-KCPE-862-MIS, *In the Matter of the Application by Kansas City Power & Light Company for a Waiver Regarding the Kansas Renewable Energy Standards Act for 2012.*

**EXECUTIVE SUMMARY:**

Kansas City Power & Light Company (KCPL) has filed a request with the Commission for an Order allowing KCPL until December 31, 2012, to satisfy the requirements of the Renewable Energy Standards Act (RES Act) or a waiver of penalties for failure to comply with the RES Act for 2012. Under the RES Act, KCPL is required to possess 10% of its previous three year peak retail demands in the form of renewable capacity. This requires 167.2 MW, which KCPL is currently 34.6 MW short. As a result of a 2012 Request for Proposals (RFP), KCPL has purchase power agreements (PPAs) for 231.9 MW from two new windfarms in Kansas—99.7 MW of which will be allocated to Kansas. One windfarm came online June 11, 2012, before the July 1<sup>st</sup> compliance deadline, but the other will not be online until the fall of 2012.

K.S.A. 66-1261(b) gives the Commission the option to not administer penalties for noncompliance with the RES Act in the years 2011 and 2012 if a utility shows a good faith effort towards compliance. Staff views the two new windfarms KCPL has PPAs with as being a good faith effort towards compliance and, therefore, recommends the Commission waive any penalties for noncompliance.

**BACKGROUND:**

The Renewable Energy Standards Act (RES Act)<sup>1</sup> requires cooperatively-owned (co-ops) and investor-owned utilities (IOUs) to meet a portion of the average of their three previous annual peak retail demands with either renewable generation capacity or renewable energy credits (RECs).<sup>2</sup> Affected utilities are required to have at least 10% of their peak demand<sup>3</sup> come from renewable resources for calendar years 2011 through 2015, at least 15% of their peak demand come from renewable resources for calendar years 2016 through 2019, and at least 20% of their peak demand come from renewable resources for calendar years 2020 onward. Capacity built in Kansas after January 1, 2000, is given an extra 10% capacity rating toward compliance. The statute states that RECs may be used to comply with the RES in the years 2011, 2016, and 2020, and in any other years the Commission allows.

Affected utilities must file annual reports with Commission Staff by August 1<sup>st</sup>, with an online generation cutoff of July 1<sup>st</sup>, every year detailing their efforts to comply with the RES.<sup>4</sup> If a utility fails to comply with the RES, the Commission may impose penalties to promote compliance after the Commission's consideration of good faith efforts to comply, mitigating circumstances, and any other factors, in accordance with the following provisions laid out in K.A.R. 82-16-3:

- (a) The standard minimum penalty shall be equal to two times the market value during the calendar year of sufficient RECs to have met the portfolio requirement.

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<sup>1</sup> K.S.A 2010 Supp. 66-1256 – 66-1262.

<sup>2</sup> RECs are measured in units of energy (MWhs) and must be converted to capacity (MWs) via the following formulas:

$$\text{Capacity (MWs)} = \text{Energy (MWhs)} / (\text{Capacity Factor} \times 8760 \text{ hours})$$

and

$$\text{Capacity Factor}_i = \frac{12}{n} \sum_{t=1}^n \frac{E_{i,t}}{8760 \times C_{i,t}}$$

where

i = The individual renewable generation facility.

n = The number of months the facility has been in operation over the past 24 months,

$$12 \leq n \leq 24.$$

E<sub>i,t</sub> = The total energy output (MWh) by renewable generation facility i during compliance period t.

C<sub>i,t</sub> = The average total generator capacity (MW) by renewable generation facility i during compliance period t.

<sup>3</sup> One-hour retail peak demand.

<sup>4</sup> Reporting requirements can be found in K.A.R. 82-16-2.

(b) The penalty may be set by the commission above or below the standard minimum based on consideration of the relevant facts including the following, in addition to evidence of good faith efforts to comply or mitigating circumstances:

- (1) The reasons for noncompliance;
- (2) the degree of noncompliance;
- (3) plans to achieve compliance;
- (4) the impact of noncompliance on utility costs and revenues; and
- (5) the impact of noncompliance on the environment.

Additionally, K.S.A. 66-1261(b) states that:

For the calendar years 2011 and 2012, the commission is not required to assess penalties if the affected utility can demonstrate it made a good faith effort to comply with the portfolio standards requirement. The commission shall exempt an affected utility from administrative penalties for an individual compliance year if the utility demonstrates that the retail rate impact described in K.S.A. 2011 Supp. 66-1260, and amendments thereto, has been reached or exceeded and the utility has not achieved full compliance with K.S.A. 2011 Supp. 66-1258, and amendments thereto. In imposing penalties, the commission shall have discretion to consider mitigating circumstances. Under no circumstances shall the costs of administrative penalties be recovered from Kansas retail customers.

Kansas City Power & Light Company (KCPL) has petitioned the Commission in Docket No. 12-KCPE-862-MIS for an Order allowing KCPL until December 31, 2012, to satisfy the requirements of the RES Act or a waiver of penalties for noncompliance with the RES Act for 2012 based on its good faith effort to comply with the RES Act and associated RES administrative rules.<sup>5</sup> KCPL currently possesses approximately 280.1 MW<sup>6</sup> of renewable generation online for allocation between both Kansas and Missouri. With a 43% allocation to Kansas based on Kansas' proportion of total retail energy sales in both jurisdictions, adding in 0.1085 MW of net metered systems in Kansas, and applying the 1.1 multiplier; KCPL has approximately 132.6 MW of renewable capacity towards compliance with the RES Act for 2012. As a result of a 2010 Request for Proposals (RFP), KCPL entered into two 20-year purchase power agreements (PPAs) for a combined 231.9 MW of wind in the State of Kansas. One windfarm was just recently completed, while the other is currently under construction.

Cimarron II is 131.1 MW and is located in Gray County, KS. This windfarm came online June 11, 2012, ahead of the July 1<sup>st</sup> compliance deadline of this year. Spearville 3 is 100.8 MW and is located in Ford County adjacent to the existing Spearville 1&2 sites and was originally expected to be online no later than December 31, 2012. However, construction is currently tracking ahead of schedule and Spearville 3 is expected to be online in either September or October of this year.<sup>7</sup>

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<sup>5</sup> *Application*, paragraph 9.

<sup>6</sup> This consists of Spearville 1 at 100.5 MW, Spearville 2 at 48.5 MW, and Cimarron II at 131.1 MW. The 0.1085 MW of net metered systems in KS is directly applied toward the RES Act so it is not included in this calculation. It is included after the allocation between KS and Missouri when the multiplier effect is included.

<sup>7</sup> *Application*, paragraph 10.

In addition to these two windfarms, KCPL also has a 10-year PPA for up to 63 MW of hydro power with Central Nebraska Public Power Irrigation District (CNPPID) with a commencement date of January 1, 2014. The hydro power is to be supplied by three units: Jeffrey; Johnson No. 1; and Johnson No. 2, located along CPPID's irrigation canal. These units are currently operational but under contract with another party.<sup>8</sup>

### **ANALYSIS:**

In Docket No. 11-WSEE-438-MIS,<sup>9</sup> Westar Energy, Inc. and Kansas Gas and Electric Company (collectively Westar) petitioned the Commission to use self-generated RECs to comply with the RES for the years 2011 and 2012. During the time of this petition, Westar had PPAs in place for approximately 369 MW of wind capacity under construction at two separate wind farms—201 MW of capacity from Post Rock and 167.9 MW of capacity from Ironwood. Both of these windfarms were due to come online during the 4<sup>th</sup> quarter of 2012. Without the capacity they were to provide, Westar would have been in violation of the RES Act for 2011 and 2012 without Commission approval to use RECs. Westar had enough self-generated RECs banked that it could cover the deficit without the need to purchase additional RECs and thus the additional cost of using RECs toward compliance was zero.

Staff's recommendation in that Docket was that the Commission either:

- a) Approve Westar's request to use self-generated RECs for 2011 and 2012; or
- b) Alternatively, grant Westar's request to waive administrative penalties for failure to comply with the RES for years 2011 and 2012,<sup>10</sup> finding that Westar had made a good faith effort to comply, in accordance with K.A.R. 82-16-3(b).

In its Order, the Commission chose to approve Westar's request to use self-generated RECs in 2011 and 2012, and did not comment on a waiver of administrative penalties as none would be accrued under its decision. However, the Commission acknowledged that K.S.A. 66-1261(b) granted it latitude on whether it chooses to administer penalties for noncompliance in years 2011 and 2012 based on a utility's good faith effort to comply with the RES.<sup>11</sup>

KCPL is in a similar situation that Westar was in, except that it doesn't possess self-generated RECs to cover its renewable capacity deficit for 2012. KCPL is required to possess 167.2 MW of renewable capacity for 2012 compliance with the RES Act.<sup>12</sup> KCPL currently has a deficit of approximately 34.6 MW of renewable capacity. When Spearville 3 comes online by this fall, KCPL will no longer have a renewable capacity deficit, but it will be outside of the July, 1 2012, compliance deadline set forth in KAR 82-16-2. The only practical method for KCPL to comply with the RES Act for 2012 is to purchase RECs, which would cost the Company an estimated \$150,000 to \$300,000.<sup>13</sup> These costs would ultimately be borne by Kansas ratepayers.

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<sup>8</sup> *Ibid*, paragraph 11.

<sup>9</sup> *In the Matter of the Notice and Application of Westar Energy Inc. and Kansas Gas and Electric Company for Approval of Use of RECs to Satisfy the Renewable Energy Standards Act for 2011 and 2012.*

<sup>10</sup> Westar asked the Commission for a waiver of administrative penalties based on its good faith effort to comply with the RES, to the extent the Commission felt it was necessary.

<sup>11</sup> *Order*, paragraph 4.

<sup>12</sup> *Application*, paragraph 14.

<sup>13</sup> *Application*, paragraph 20.

KCPL argues that the RES Act does not clearly define the point during a calendar year that a utility must have renewable generation in place in order to meet the statutory requirements for that particular calendar year and this lack of clarity is continued by the RES Rules' use of a July 1<sup>st</sup> reporting date without clearly defining a compliance date each year.<sup>14</sup> However, Staff believes that KCPL is confusing reporting date and compliance date. K.A.R 82-16-2(b) states that:

... The report shall specify the renewable generation that has been put into service or the portion of the utility's portfolio of renewable generation resources served from purchased energy, RECs, or net metering systems on or before July 1 of each calendar year. The first report shall be due on or before August 1, 2011 for the year 2011. *An annual report shall be due on or before August 1 of each subsequent year (italics added).*

Staff interprets this passage to imply that the calendar year for compliance ends on July 1<sup>st</sup>, being that the annual report detailing compliance is due the following August 1st. This is how Staff handled utility compliance with the RES Act for 2011 and Staff sees no need for the Commission to allow KCPL to deviate from this compliance timeline.

K.A.R. 82-16-3 gives the Commission wide latitude in the degree to which it chooses to administer penalties for noncompliance with the RES Act. Additionally, K.S.A. 66-1261(b) gives the Commission the specific option not to administer penalties in the years 2011 and 2012 if the utility shows a good faith effort was made towards compliance. In writing the RES Act, the legislature appears to acknowledge that during the first few years the RES Act is in effect, utilities may not be able to meet deadlines for compliance. One reason is that demand for labor and capital may temporarily exceed supply, leading to shortages. Kansas is not unique in having a renewable portfolio standard (RPS). These standards have been the primary driver for the demand for renewable generation. Another reason that utilities may be unable to meet compliance deadlines is because build cycles are blocky. Windfarms tend to be built in approximately 100 MW chunks that tend to come online all at once. This can lead to utilities exceeding their renewable needs for some periods and falling short possibly in others.

KCPL has PPAs for two new windfarms, one that just recently came online and another that is due to come online by the end of 2012. KCPL also has a hydro PPA due to commence on January 1, 2014. It is abundantly clear that KCPL has made a good faith effort towards compliance with the RES Act for 2012 and is continuing to make efforts towards compliance in future years. Staff believes KCPL purchasing RECs to plug its renewable deficit would be an inefficient use of resources. The Commission is not required to assess penalties for noncompliance in 2012 if a good faith effort towards compliance is shown.

### **RECOMMENDATION:**

Staff recommends that the Commission reject KCPL's request to allow the Company until December 31, 2012, to comply with the RES Act and instead grant KCPL's Application for a Waiver of Penalties for failure to comply with the RES Act for 2012. K.A.R 82-16-2(b) states that affected utilities shall report renewable generation put into service or the portion of the utility's portfolio of renewable generation resources served from purchased energy, RECs, or net

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<sup>14</sup> Application, paragraph 17.

metered systems on or before July 1<sup>st</sup> of each calendar year, with reports due annually on or before August 1<sup>st</sup> of that year. Staff interprets this to mean the 2012 compliance deadline is July 1, 2012. K.S.A. 66-1261(b) gives the Commission the option to waive administering penalties in the years 2011 and 2012 if a utility shows a good faith effort was made towards compliance. Staff views KCPL's two PPAs for a total of 231.9 MW of wind power (approximately 99.7 MW being allocated to Kansas), along with a PPA for up to 63 MW of hydro power from Nebraska as evidence of a good faith effort towards compliance. Cimarron II came online before the July 1<sup>st</sup> compliance deadline and Spearville 3 will be online in the fall of 2012. Both of these windfarms together would give KCPL enough renewable capacity to comply with the 2012 RES Act standard.

cc: Patrice Petersen-Klein, Executive Director  
Jeff McClanahan, Director of Utilities  
Robert Glass, Chief of Economics and Rates

## CERTIFICATE OF SERVICE

12-KCPE-862-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Notice of Filing of Staff Report and Recommendation was placed in the United States mail, postage prepaid, or hand-delivered this 29th day of June, 2012, to the following:

GLENDА CAFER, ATTORNEY  
CAFER LAW OFFICE, L.L.C.  
3321 SW 6TH STREET  
TOPEKA, KS 66606  
Fax: 785-233-3040  
glenda@caferlaw.com

TERRI PEMBERTON, ATTORNEY  
CAFER LAW OFFICE, L.L.C.  
3321 SW 6TH STREET  
TOPEKA, KS 66606  
Fax: 785-233-3040  
terri@caferlaw.com

NIKI CHRISTOPHER, ATTORNEY  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
n.christopher@curb.kansas.gov  
\*\*\*Hand Delivered\*\*\*

C. STEVEN RARRICK, ATTORNEY  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
s.rarrick@curb.kansas.gov  
\*\*\*Hand Delivered\*\*\*

DELLA SMITH  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
d.smith@curb.kansas.gov  
\*\*\*Hand Delivered\*\*\*

SHONDA SMITH  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
sd.smith@curb.kansas.gov  
\*\*\*Hand Delivered\*\*\*

DAVID SPRINGE, CONSUMER COUNSEL  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604  
Fax: 785-271-3116  
d.springe@curb.kansas.gov  
\*\*\*Hand Delivered\*\*\*

DENISE M. BUFFINGTON, CORPORATE COUNSEL  
KANSAS CITY POWER & LIGHT COMPANY  
ONE KANSAS CITY PLACE 1200 MAIN STREET (64105)  
P.O. BOX 418679  
KANSAS CITY, MO 64141-9679  
Fax: 816-556-2787  
denise.buffington@kcpl.com

MARY TURNER, DIRECTOR, REGULATORY AFFAIRS  
KANSAS CITY POWER & LIGHT COMPANY  
ONE KANSAS CITY PLACE 1200 MAIN STREET (64105)  
P.O. BOX 418679  
KANSAS CITY, MO 64141-9679  
Fax: 816-556-2110  
mary.turner@kcpl.com

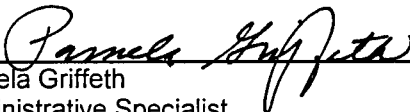
ANDREW FRENCH, ADVISORY COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3314  
a.french@kcc.ks.gov  
\*\*\*Hand Delivered\*\*\*



**CERTIFICATE OF SERVICE**

12-KCPE-862-MIS

ANDREW SCHULTE, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3354  
a.schulte@kcc.ks.gov  
\*\*\*Hand Delivered\*\*\*

  
\_\_\_\_\_  
Pamela Griffeth  
Administrative Specialist