

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

Before Commissioners:                    Mark Sievers, Chairman  
    Thomas E. Wright

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

**ORDER WAIVING PENALTIES ASSOCIATED WITH KCP&L'S NONCOMPLIANCE  
WITH THE RENEWABLE ENERGY STANDARDS ACT FOR CALENDAR YEAR 2012**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files and records and being fully advised in the premises, the Commission finds and concludes as follows:

**Background**

1.     On June 1, 2012, Kansas City Power & Light Company (KCP&L) filed an Application requesting the Commission allow KCP&L until December 31, 2012, to comply with the requirements of the Kansas Renewable Energy Standards Act, K.S.A. 66-1256, *et seq.* (RES Act), and the Electric Utility Renewable Energy Standards, K.A.R. 82-16-1, *et seq.* (RES Rules), for the calendar year 2012 (Application). In the alternative, KCP&L requests the Commission waive any potential penalties associated with failure to comply with the RES Act for calendar year 2012, so long as KCP&L complies no later than December 31, 2012. (Application ¶¶ 17-18.)

2.     On June 5, 2012, the Citizens' Utility Ratepayer Board (CURB) filed a Petition to Intervene in this matter. The Commission granted CURB intervention on June 19, 2012.

3. On June 29, 2012, Commission Staff (Staff) filed its Report and Recommendation (R&R). In its R&R, Staff recommends "the Commission reject KCPL's request to allow [KCP&L] 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." (R&R, p. 5.)

4. On July 9, 2012, CURB filed a Response to the Staff Report and Recommendation (CURB Response). In its Response, CURB disagrees with Staff's recommendation that the Commission should waive penalties against KCP&L. Instead, CURB argues, the Commission should waive the Commission's July 1, 2012, deadline for good cause shown and also find KCP&L is not yet out of compliance with the substantive requirements of the RES Act. (CURB Response, ¶ 4.)

5. Staff filed a Reply to CURB's Response (Staff Reply) on July 19, 2012. In its Reply, Staff repeats its original recommendations. Staff contends there is no basis for the Commission to grant a waiver of its July 1 deadline. (Staff Reply, ¶ 5.) Furthermore, Staff asserts there is no support for the argument that KCP&L is not yet out of compliance with the RES Act's 2012 standards. (Staff Reply, ¶ 6.)

### Discussion

6. The RES Act requires the Commission to "establish by rules and regulations a portfolio requirement for all affected utilities to generate or purchase electricity generated from renewable energy resources or purchase renewable energy credits." The statute continues:

Such portfolio requirement shall provide net renewable generation capacity that shall constitute the following portion of each affected utility's peak demand:

(1) Not less than 10% of the affected utility's peak demand for calendar years 2011 through 2015, based on the average demand of the prior three years of each year's requirement . . . K.S.A. 66-1258(a).

7. Commission regulation K.A.R. 82-16-2 ensures compliance with the RES Act by confirming the Act's requirements and creating deadlines for affected utilities to demonstrate compliance:

(a) Each utility shall meet the portfolio requirement in K.S.A. 66-1258, and amendments thereto, by maintaining a portfolio of renewable capacity from generation, purchased energy, RECs, or net metering systems.

(b) Each utility shall submit a report to the commission detailing that utility's compliance with the portfolio standards established by the act. A generation and transmission cooperative may submit a collective report on behalf of the electric distribution cooperatives it represents. If this collective report is submitted, the electric distribution cooperatives shall not be required to file their own reports as required by this subsection. 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.

#### **I. The Nature of the RES Rules' July 1 Deadline**

8. In its Application, KCP&L asserts neither the RES Act nor the RES Rules clearly define a date by which a utility must comply with the portfolio standards. KCP&L argues the July 1 deadline in the RES Rules is a "reporting date," but there is no "clearly defined date by which a utility must comply with the RES Act each year." KCP&L cites this alleged ambiguity and KCP&L's proximity to compliance in requesting an extension until December 31, 2012, to demonstrate compliance. (Application, ¶ 17.)

9. In its R&R, Staff responds, "Staff believes that KCPL is confusing reporting date and compliance date . . . Staff interprets [the RES Rules] 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 1<sup>st</sup>. 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." (R&R, p. 5.)

10. In its Response, CURB suggests the Commission is altering the substantive requirements of the RES Act if it treats July 1 as an actual compliance deadline. CURB appears to argue the legislature intended each utility only to demonstrate compliance by the end of a calendar year. (CURB Response, ¶¶ 7-10.)

11. In its Reply, Staff addresses CURB's comments regarding legislative intent. Countering CURB's assertion the legislature intended utilities to comply by the end of a calendar year, Staff notes, "The Legislature did not specify *when* during the calendar year utilities must achieve compliance. Instead, the RES Act gives the Commission authority to establish rules and regulations to effectuate the portfolio requirements." (Staff Reply, ¶ 6.)

12. As Staff suggests, KCP&L appears to be mistaken by the inclusion of both a compliance deadline and a reporting deadline in the RES Rules. The Commission concludes a careful reading of the RES Rules reveals a *report* must be filed by August 1 which demonstrates *compliance* as of July 1. Therefore, a utility is not in compliance if it cannot demonstrate it met the standards by July 1.

13. Furthermore, CURB's assertion that the legislature intended a utility to merely demonstrate compliance by the end of a particular calendar year is meritless. As Staff points out, the RES Act is silent as to when during a calendar year each utility must demonstrate compliance. The legislature could have intended compliance for the entire year (January 1), at least one day of the year (December 31), or at any other point in the year at the discretion of the Commission. Because no date is specified and because the Commission was given authority to create rules and regulations implementing the Act, the Commission concludes the Legislature

intended for the Commission to determine the compliance deadline. The Commission used its experience and expertise to exercise this authority and set the deadline at July 1.

## **II. Whether the Commission Should Grant KCP&L a Waiver of the July 1, 2012, Deadline**

14. All parties agree that KCP&L was not in compliance with the 2012 RES Act portfolio standards requirement by July 1, 2012. (Application, ¶¶ 14-16; R&R, p. 4; CURB Response, ¶ 2.) However, the parties also accept KCP&L is on pace to comply with the standards before the end of calendar year 2012. (Application, ¶ 16; R&R, p. 4; CURB Response, ¶ 6.)

15. In its Application, KCP&L states, "Because KCP&L will meet its RES requirement *during* calendar year 2012, KCP&L requests a Commission order allowing until December 31, 2012 to satisfy the requirements of the Kansas RES Act and RES Rules for the calendar year 2012." (Application, ¶ 17.)

16. In Staff's R&R, Staff recommends the Commission deny KCP&L's request for an extension, stating only, "Staff sees no need for the Commission to allow KCPL to deviate from [the July 1] compliance deadline. (R&R, p. 5.)

17. In its Response to the R&R, CURB argues the Commission should waive its July 1, 2012, procedural deadline for good cause shown. In support, CURB again contends the deadline should be interpreted as merely procedural, and asserts the Commission rarely requires parties to provide evidence showing good cause for a waiver. Furthermore, CURB seems to argue good cause is shown because KCP&L is on track to be in compliance by late fall. (CURB Response, ¶ 5.)

18. In its Reply, Staff disagrees with CURB's characterization of the July 1 deadline as "procedural," when it is, in fact, a compliance deadline. In support, Staff cites the plain

language of the RES Act and RES Rules and multiple prior dockets where CURB confirmed July 1 as a substantive deadline. Staff also argues CURB offers no specific basis for the Commission to grant a waiver. (Staff Reply, ¶¶ 5-7.)

19. The Commission finds and concludes KCP&L is not in compliance with the requirements of the Kansas RES Act and RES Rules for calendar year 2012, and a waiver of the July 1, 2012, compliance deadline is inappropriate. The July 1 deadline is not a component of a mere internal procedural schedule; it is a formal deadline memorialized in Commission regulations. While the Commission may be able to waive the deadline, a simple showing that the utility will be in compliance soon, with no other extenuating circumstances, is an insufficient rationale for a waiver.

**III. Whether the Commission Should Waive Penalties Associated with KCP&L's Noncompliance with the RES Act for Calendar Year 2012**

20. The Commission is allowed to assess penalties on affected utilities for failure to comply with the RES Act. K.S.A. 66-1261(a). However, the Commission is not *required* to assess those penalties in 2011 and 2012 if the affected utility can show a good faith effort to comply with the portfolio requirements of the RES Act. In imposing penalties, the Commission is granted discretion to consider mitigating circumstances. K.S.A. 66-1261(b).

21. The RES Rules state, in relevant part,

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. K.A.R. 82-16-3(b).

22. KCP&L's application addresses each factor listed above. (Application, ¶ 19.)

KCP&L explains its reasons for noncompliance largely center on timing issues. KCP&L sent

out requests for proposals in 2010 for wind energy projects. Unfortunately, some of the chosen projects – the best choices for KCP&L's portfolio – could not be completed until Fall 2012. (Application, ¶ 19(1).)

23. Furthermore, KCP&L's degree of noncompliance is slight. KCP&L is slated to complete its projects "only a couple of months" after the July 1 deadline. KCP&L notes, considering the size of its wind generation projects, this degree of noncompliance "should be considered a minor exception." (Application, ¶ 19(2).)

24. KCP&L's plans to achieve compliance also support its penalty waiver request. As detailed above, KCP&L is on schedule to achieve compliance soon. Also, KCP&L is planning for the future and "has already secured renewable energy resources to meet its obligations through 2012 including a significant portion of the 2012 step-up requirements." (Application, ¶ 19(3).)

25. KCP&L contends its slightly-delayed compliance will have no significant impact on utility costs and revenues. Also, because it will be in compliance within a few months, KCP&L opines its noncompliance will not significantly impact the environment. (Application, ¶ 19(4)-(5).)

26. Staff does not make specific findings tied to the factors listed in the RES Rules. However, Staff does analyze KCP&L's current compliance efforts and concludes, "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 also acknowledges several additional factors which have likely contributed to timing issues faced by KCP&L projects:

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 . . . 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. (R&R, p. 5.)

27. CURB made no specific observations but did agree "that KCPL has made a good-faith effort to comply with the Commission's regulation . . ." (CURB Response, ¶ 4.)

28. The Commission finds KCP&L has made a good faith effort to comply with the 2012 RES Act standards. This finding is supported by the factors detailed above and is undisputed by any party. In recognition of KCP&L's efforts, the Commission concludes penalties associated with KCP&L's noncompliance with the RES Act for the calendar year 2012 should be waived.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. Kansas City Power and Light Company's Application for an extension until December 31, 2012, to comply with the requirements of the Kansas Renewable Energy Standards Act, K.S.A. 66-1256, *et seq.* (RES Act), and the Electric Utility Renewable Energy Standards, K.A.R. 82-16-1, *et seq.* (RES Rules), for the calendar year 2012 is denied.

B. Kansas City Power and Light Company's alternative request for a waiver of penalties associated with noncompliance with the RES Act for calendar year 2012, so long as KCP&L complies no later than December 31, 2012, is granted.

C. Parties have 15 days, plus three days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2011 Supp. 77-529(a)(l).

D. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order, or orders, as it may deem necessary and proper.



**BY THE COMMISSION IT IS SO ORDERED.**

Sievers, Chairman; Wright, Commissioner

Dated:           AUG 0 8 2012          

  
ORDER MAILED AUG 0 9 2012

Patrice Petersen-Klein  
Executive Director

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PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

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ORDER MAILED AUG 09 2012

The Docket Room hereby certified that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

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ORDER MAILED **AUG 09 2012**

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