

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

JUN 08 2009

**CURB'S RESPONSE TO KCP&L'S MOTION TO STRIKE
ADDITIONAL DIRECT TESTIMONY OF BRIAN KALCIC**

 Docket Room

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB"), and submits its response to Kansas City Power & Light Company's ("KCP&L") Motion to Strike Additional Direct Testimony of Brian Kalcic. In support of its response, CURB states and alleges as follows:

I. Statement of Facts.

1. KCP&L seeks to have CURB witness Brian Kalcic's additional testimony stricken from the record on the grounds that both the procedural schedule language and paragraph 10 of the Commission's Revised Scheduling Order Granting Parties' Joint Motion Filed March 6, 2009 ("Revised Scheduling Order") "imply" that Staff and Intervenors' testimony should be restricted to KCP&L's May 5, 2009 Additional Direct.¹

2. CURB respectfully disagrees. While paragraph 10 of the Commissions' Revised Scheduling Order did reserve to the parties "the right to modify or otherwise change their revenue requirement adjustments, disallowances, and recommendations in light of and directly related to such

¹ KCP&L's Motion to Strike Additional Direct Testimony of Brian Kalcic and Donald Johnstone; Response to MUUG's Motion to File Additional Testimony; and Motion for Expedited Treatment ("KCP&L's Motion to Strike"), June 2, 2009, ¶9.

updated Iatan Unit 1, common and non-Iatan plant costs,”² nothing in the Revised Scheduling Order limits the right of Staff and Intervenors to include other matters in their additional direct testimony.

3. However, both the March 6, 2009 Joint Motion for Commission Approval of Amendments to Procedural Schedule (“Joint Motion”) and the Revised Scheduling Order do contain language specifically limiting what KCP&L may include in its additional direct testimony:

10. KCP&L's Direct Testimony *will only include testimony directly related to actual costs for Iatan Unit 1 and Iatan common costs paid or approved for payment through April 30, 2009*, and directly related to the updated costs on non-Iatan plant through March 31, 2009, as addressed in KCP&L's rebuttal testimony. Such testimony will also detail the effects of these updated costs on KCP&L's requested overall increase. No costs incurred, invoiced, or approved for payment after April 30, 2009 may be included in KCP&L's Direct Testimony, and KCP&L may not increase its overall request above the original application for a \$71.6 million increase. KCP&L may not add to or otherwise materially change the costs presented in this docket related to the costs of Iatan Unit 1 up to, and included in, the May 5, 2009, Direct Testimony after such testimony has been filed because KCP&L agrees that the May 5, 2009, filing is their final position on the aforementioned costs upon which KCP&L will rely throughout the remainder of this docket. The inclusion of the updated costs for the non-Iatan plant may be contested by any party and those parties reserve the right to present their position in that regard in their Direct Testimony. KCP&L's ability to claim a traditional revenue requirement in excess of the amount contained in the Company's original Application or a CIAC less than the amount contained in the Company's original Application may be contested by CURB or interveners and those parties reserve the right to present their position in that regard in their Direct Testimony; however, this provision is not intended to affect Staff in either an enabling or preclusive manner. The parties also reserve the right to modify or otherwise change their revenue requirement adjustments, disallowances, and recommendations in light of and directly related to such updated Iatan Unit 1, common and non-Iatan plant costs.³

4. The Joint Motion, drafted by the parties to reflect our agreement, demonstrates that the parties intended to restrict *what KCP&L could include in additional direct testimony*. No such specific limiting language applied to Staff or Intervenors, which leaves KCP&L with its argument

² Id.

³ Revised Scheduling Order, ¶ 10 (emphasis added). *See also*, Joint Motion, ¶ 10.

that the Joint Motion and Revised Scheduling Order “imply” that Staff and Intervenors’ testimony should be restricted to responding to KCP&L’s May 5, 2009 additional direct testimony.

5. Neither the Joint Motion nor the Revised Scheduling Order restricts Staff or Intervenors’ testimony to responding to KCP&L’s May 5, 2009 additional direct testimony. However, even if the language of the Joint Motion and the Revised Scheduling Order did limit Staff and Intervenors’ direct testimony, Mr. Kalcic’s additional direct testimony revises his earlier testimony to incorporate and reflect revised revenue requirement numbers calculated by CURB witness Andrea Crane, which is based in part on the actual costs information contained in KCP&L’s additional direct testimony.

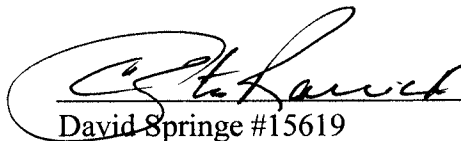
6. While Mr. Kalcic’s additional direct testimony does modify his initial rate design recommendation to accommodate concerns raised by the Company and MUUG, CURB fails to see any prejudice in allowing Mr. Kalcic’s additional direct testimony into the record. The Revised Scheduling Order gives KCP&L the opportunity to respond to Mr. Kalcic’s additional direct testimony, and CURB has no objection to the additional time requested by KCP&L to respond to Mr. Kalcic’s testimony (on or before 5:00 p.m. on Monday, June 8, 2009).

7. KCP&L has been provided substantial leeway by the Commission and the parties in this docket for substantial delays attributable to events and circumstances solely under the control of KCP&L, including extending the time to file the application and the recent revision of the procedural schedule caused by KCP&L’s February 23, 2009, rebuttal testimony. KCP&L appears to believe only the Applicant should be provided any accommodation in this docket.

8. Like MUUG,⁴ CURB is surprised the Company would deny the Commission the opportunity to consider Mr. Kalcic's additional testimony. Mr. Kalcic's additional direct testimony provides an updated and more moderate rate design proposal on behalf of CURB, one that takes into consideration the actual costs recently submitted by the Company (and utilized by CURB witness Andrea Crane in reaching her revenue requirement recommendation), as well as the concerns raised by the Company and MUUG with respect to CURB's initial rate design recommendation.

WHEREFORE, CURB respectfully requests the Commission deny KCP&L's Motion to Strike Additional Direct Testimony of Brian Kalcic.

Respectfully submitted,



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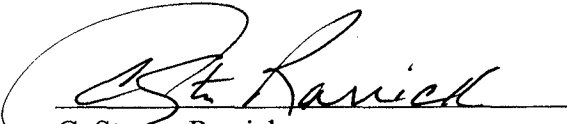
⁴ Reply of Midwest Utility Users Group to Motion to Strike Testimony of Donald Johnstone, ¶ 3.

VERIFICATION

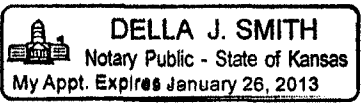
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

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


C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 8th day of June, 2009.




Notary of Public

My Commission expires: 01-26-2013.

CERTIFICATE OF SERVICE

09-KCPE-246-RTS

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 8th day of June, 2009, to the following:

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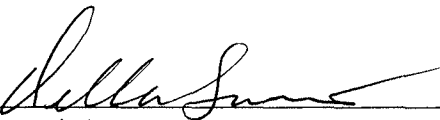
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