

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

NOV 28 2011

by
State Corporation Commission
of Kansas

In the Matter of Kansas City Power & Light
Company's Compliance Filings as Required)
by Commission Order in Docket No.)
11-KCPE-581-PRE.)
)

Docket No. 12-KCPE-258-CPL

*KANSAS CITY POWER & LIGHT COMPANY'S RESPONSE TO THE CITIZENS' UTILITY
RATEPAYER BOARD'S MOTION TO STRIKE
AND ALTERNATIVE MOTION TO SUPPLEMENT PREVIOUS RESPONSE*

Kansas City Power & Light Company ("KCP&L") responds as follows to the Motion to Strike filed by the Citizens' Utility Ratepayer Board ("CURB") on November 15, 2011 ("CURB Motion").

1. On October 18, 2011, CURB filed to intervene in this compliance docket. On October 28, 2011, KCP&L filed an objection to CURB's intervention ("KCP&L Objection"). On November 3, 2011, CURB filed a reply to KCP&L's objection ("CURB Reply"), and on November 14, 2011, KCP&L filed a response to CURB's reply ("KCP&L Response").

2. CURB argues that KCP&L's Response should be struck from the record because (1) K.A.R. 82-1-218 does not specifically provide for a response to a reply (CURB Motion at ¶¶ 5-6), and (2) KCP&L's Response was not verified as required by K.A.R. 82-1-219(g) (CURB Motion at ¶¶ 7-8). Neither argument supports striking KCP&L's Response.

3. *First*, there is no language in K.A.R. 82-1-218 that prohibits the Commission from considering a response to a reply. If the Commission believes the response provides information of value in making its decision, the Commission is within its legal authority to consider the response. Indeed, the Commission's practice is to consider all responsive pleadings

when it helps to complete the record and assists the Commission in its understanding and resolution of the issues.¹ CURB presented new arguments for the first time in its Reply to KCP&L's Objection and, therefore, KCP&L's Response provided the only opportunity to clarify the record and, in so doing, assist the Commission in deciding the issues before it.

4. *Second*, CURB fails to explain why the signature of KCP&L's counsel on the pleading does not comply with K.A.R. 82-1-219(g), which states:

Verification. All pleadings shall be verified by the party or *by the party's attorney*, if the attorney has actual knowledge of the truth of the statements in the pleading or reasonable grounds to believe that the statements are true. All pleadings shall be verified upon oath before any person authorized by law to administer oaths. Pleadings by corporations or associations may be verified by an officer or director of the corporation or association. Written verification may be waived by the commission by order at its discretion. [emphasis added]

The regulation provides that the truth of the statements in the pleading must be verified, and they can be verified by counsel as long as counsel has actual knowledge of their truth or reasonable grounds to believe they are true. KCP&L's counsel provided such verification by signing KCP&L's Response without attaching a separate, redundant verification.

¹ See, e.g., *In the Matter of the Application of Western Resources, Inc. for Approval to Make Certain Changes in its Charges for Electric Service, et al.*, Docket No. 01-WSRE-436-RTS, Discovery Order and Rulings on Petitions for Reconsideration at ¶¶ 6, 9-10 (issued Mar. 20, 2001) (addressing statements made in Applicant's response (filed Mar. 19, 2001) to Wichita's reply (filed Mar. 15, 2001) to Applicant's response (filed Mar. 8, 2001) to Wichita's motion to compel (filed Feb. 26, 2001)); *In the Matter of the Application of Mid-America Pipeline Company, LLC for the Establishment of Initial General Commodity Transportation Rates*, Docket No. 12-MDAP-068-RTS, Order Denying Request for Interim Relief at ¶ 21 (issued Sept. 19, 2011) (relying on statements made by Coffeyville in paragraph 7 of its second response (filed Sept. 12, 2011) to Staff's reply (filed Sept. 9, 2011) to Coffeyville's first reply (filed Sept. 6, 2011) to Staff's Report and Recommendation (filed Aug. 26, 2011)); *In the Matter of the Application of Mid-America Pipeline Company, LLC for the Establishment of Initial General Commodity Transportation Rates on its Conway to Coffeyville and Coffeyville to El Dorado Segments*, Docket No. 12-MDAP-068-RTS, Prehearing Officer's Order Denying Motion to Compel at ¶¶ 11-12 (issued Nov. 22, 2011) (considering and citing Coffeyville's second response (filed Nov. 4, 2011) in paragraph 11 and stating in paragraph 12 "the pleadings and arguments made by each party" were reviewed).

5. When an attorney, who is an officer of the court, signs a pleading before a tribunal, the attorney

[C]ertifies that to the best of the person's knowledge, information and belief formed after an inquiry reasonable under the circumstances:

- (1) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation;
- (2) the claims, defenses and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

K.S.A. 60-211(b). By signing the pleading, KCP&L's counsel provided the verification required by the Commission's regulation. It is unnecessary for KCP&L's counsel to verify the pleading a second time on a separate, redundant sheet of paper that does no more than what is accomplished by the attorney's signature on the pleading itself.

6. While CURB fails to cite any supporting case law for its verification arguments, the Commission previously has addressed certain verification challenges, although not on the grounds set forth above. For example, in Docket No. 00-SWBT-1094-TAR, Southwestern Bell Telephone Company ("SWBT") objected to the Motion to Intervene of Kansas Payphone Association ("KPA") on various grounds, including an allegation that the Motion was unverified in violation of K.A.R. 82-1-219. The Commission denied the Motion to Intervene for failure to provide verification.² KPA filed for reconsideration, alleging the missing verification was a "scrivener error," citing to the fact that the rules set out by the Kansas Supreme Court in proceedings before the District Courts (Rule 111) and proceedings before the Appellate Courts

² *In the Matter of the Application of Southwestern Bell Telephone Company Filing Tariff Revisions to Reduce the Monthly Price of Smart Coin Service to \$2.25*, Docket No. 00-SWBT-1094-TAR, Order Approving Tariff Revision and Denying Kansas Payphone Association's Motion to Intervene, at ¶ 11 (issued June 16, 2000).

(Rule 1.05) do not require verifications of pleadings other than the signature of counsel.³ KPA requested a waiver of the verification requirement or approval to late-file the verification. The Commission rejected KPA's request.⁴

7. KPA did not assert that its counsel's signature met the verification requirements of the Commission's regulation, and therefore, the Commission's order did not include an analysis of the verification requirement in the context of K.S.A. 60-211(b) [recited above.] When counsel signs a pleading without a separate verification by a company representative, counsel is verifying that counsel "has actual knowledge of the truth of the statements in the pleading or reasonable grounds to believe that the statements are true."⁵ KPA argued for a waiver or permission to late-file; the Commission's order reflects those arguments.

8. Additionally, in Docket No. 04-SWBT-879-COM, SWBT moved to strike the brief of Black & Veatch ("B&V") because it was not verified.⁶ Similar to KPA, B&V requested a waiver of the verification requirement or permission to late-file, rather than explaining why counsel's signature constituted compliance with the verification regulation. Again, the Commission did not address the merits of the issue in the context of K.S.A. 66-211(b).⁷

9. A separate verification is necessary if someone other than counsel takes responsibility for verifying the contents of the pleading, in part because company representatives do not sign pleadings. However, when counsel takes this responsibility, counsel's signature on

³ KPA's Petition for Reconsideration, Docket No. 00-SWBT-1094-TAR, at ¶ 1 (filed June 30, 2000).

⁴ *In the Matter of the Application of Southwestern Bell Telephone Company Filing Tariff Revisions to Reduce the Monthly Price of Smart Coin Service to \$2.25*, Docket No. 00-SWBT-1094-TAR, Order Denying KPA's Petition for Reconsideration, at ¶ 1 (issued July 17, 2000).

⁵ K.A.R. 82-1-219(g). *See also supra* ¶ 4 above.

⁶ SWBT Motion to Strike the Brief of B&V, Docket No. 04-SWBT-879-COM, at ¶ 2 (filed July 26, 2004).

⁷ *In the Matter of the Complaint Against Southwestern Bell Telephone Co. by Black & Veatch*, Docket No. 04-SWBT-879-COM, Order Addressing SWBT's Motion to Strike (issued Aug. 16, 2004).

the pleading meets the requirements of K.A.R. 82-1-219(g), and a separate verification for counsel adds nothing to the pleading except an additional sheet of paper.

10. As explained herein, KCP&L has properly verified its Response. However, to ensure that its Response is considered by the Commission in its deliberations on this matter, KCP&L is requesting, in the alternative, Commission approval to amend its Response to include a separate verification by counsel. Such verification is attached hereto as Attachment A.

WHEREFORE KCP&L respectfully submits good cause exists for the Commission to consider KCP&L's Response, that it is properly verified and may appropriately be considered by the Commission in determining this matter for the reasons set forth above and CURB's Motion to Strike is without merit and should be denied.

Respectfully submitted,

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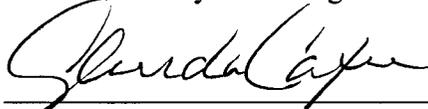
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VERIFICATION

I verify under penalty of perjury that the foregoing document entitled *KANSAS CITY POWER & LIGHT COMPANY'S RESPONSE TO THE CITIZENS' UTILITY RATEPAYER BOARD'S MOTION TO STRIKE AND ALTERNATIVE MOTION TO SUPPLEMENT PREVIOUS RESPONSE* is true and correct to the best of my knowledge and belief.



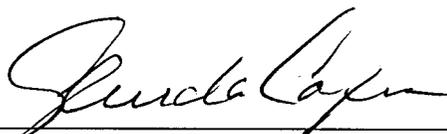
Glenda Cafer

Counsel for KCP&L

[Prepared in Accordance with K.S.A. 53-601]

VERIFICATION

I verify under penalty of perjury that Kansas City Power & Light Company's Response to the Citizens' Utility Ratepayer Board's Reply, filed in Docket No. 12-KCPE-258-CPL on November 14, 2011, is true and correct to the best of my knowledge and belief.



Glenda Cafer
Counsel for KCP&L

[Prepared in Accordance with K.S.A. 53-601]

ATTACHMENT A

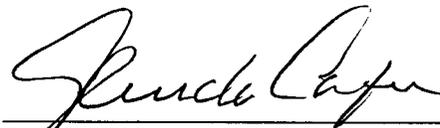
CERTIFICATE OF SERVICE

I hereby certify that a copy of *KANSAS CITY POWER & LIGHT COMPANY'S RESPONSE TO THE CITIZENS' UTILITY RATEPAYER BOARD'S MOTION TO STRIKE AND ALTERNATIVE MOTION TO SUPPLEMENT PREVIOUS RESPONSE* was served on this 28th day of November, 2011 to:

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