

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Kansas)
City Power & Light Company to Make) Docket No. 14-KCPE-272-RTS
Certain Changes in its Charges for Electric)
Service.)

RESPONSE TO KCPL PETITION FOR RECONSIDERATION

The Citizens' Utility Ratepayer Board ("CURB") submits its response to Kansas City Power & Light Company's Petition for Reconsideration of Prehearing Officer Order Setting Procedural Schedule ("Petition for Reconsideration"). In support of its response, CURB states and alleges as follows:

1. On December 09, 2013, Kansas City Power & Light Company ("KCPL") filed an application with the Kansas Corporation Commission for approval to make certain changes in its charges for electric service.
2. On December 26, 2013, the Prehearing Officer issued the Prehearing Officer Order Setting Procedural Schedule ("Procedural Schedule Order").
3. On January 10, 2014, KCPL filed its Petition for Reconsideration,¹ seeking clarification and/or reconsideration of Paragraph 8 of the Procedural Schedule Order that states,

The Commission's rules regarding presentation and distribution of evidentiary exhibits are described in K.A.R. 82-1-221. Absent a Commission order to the contrary, all evidentiary exhibits, *including those on rebuttal*, that parties intend to offer as evidence shall be pre-marked (*e.g.*, Staffs Exhibit #1). [citing K.A.R. 82-1-221(b)]. Exceptions may only be granted if a party shows good cause. [citing K.A.R. 82-1-221(b)]. If the parties are represented by multiple attorneys, only one copy need

¹ It appears that KCPL's Petition for Reconsideration was inadvertently not served on parties to the docket, perhaps related to the Commission's new electronic filing system.

be provided. *PowerPoint slides or other visual aids used in opening statements shall be marked as an exhibit and entered into the record.* (emphasis added).

4. K.A.R. 82-1-221(b) states, in pertinent part,

Unless otherwise directed by the commission or hearing examiner, *an original and seven copies* of any exhibit a party intends to offer into evidence, *other than in rebuttal*, shall be filed with the commission at least 10 days before the date of the hearing, and one copy of each such exhibit shall be furnished to every other party to the proceeding at least 10 days before the date of hearing.

...

Each party desiring to introduce an exhibit *during the course of the hearing* shall furnish *six copies to the commission* and one copy to every other party to the proceeding.

5. CURB agrees with KCPL that the language of paragraph 8 of the Procedural Schedule Order is inconsistent and contrary to the provisions of K.A.R. 82-1-221(b) relied upon by the Prehearing Officer. KCPL correctly notes that K.A.R. 82-1-221(b) explicitly excludes rebuttal exhibits from the ten-day pre-filing deadline. CURB likewise agrees with KCPL that K.A.R. 82-1-221(b) only applies to exhibits offered as part of pre-filed testimony, not to hearing rebuttal exhibits introduced during live cross and re-direct examination at hearing to rebut assertions by other parties.

6. As noted in the italicized language of K.A.R. 82-1-221(b) above, pre-filed exhibits are treated different than exhibits offered in rebuttal (exhibits introduced *during the course of the hearing*). The regulation clearly requires an *original and seven copies* of pre-filed exhibits to be filed with the commission *at least ten days before the hearing*, but specifically *excludes* rebuttal exhibits from these requirements. Instead, the regulation requires parties to provide the Commission with *six copies* of exhibits introduced *during the course of the hearing*.

7. CURB also agrees with KCPL that K.A.R. 82-1-221(c) applies to the *marking* of exhibits, not K.A.R. 82-1-221(b) as indicated in the Scheduling Order.² K.A.R. 82-1-221(c) states, “[t] presiding commissioner or hearing examiner shall assign numbers to the exhibits *at the time they are marked for identification at the hearing.*” (emphasis added). Pre-marking rebuttal and demonstrative exhibits used in opening statements ten days before the hearing is not required by Commission regulation and is simply not practical or reasonable. It is not practical because these rebuttal and demonstrative exhibits are often not finalized until shortly before the hearing and the need for specific cross and re-direct exhibits may not be realized until live testimony is presented at hearing. It is not reasonable to require pre-marking of rebuttal exhibits ten days in advance of hearing because this will require parties to conduct substantial trial preparation far in advance of the hearing, resulting in substantial unnecessary rate case costs when settlement is reached by the parties. Requiring pre-marking of cross and re-direct exhibits may also result in the pre-marking of far more documents than necessary by counsel seeking to avoid not having sufficient evidence to respond to live testimony that may be different than pre-filed testimony or discovery responses.

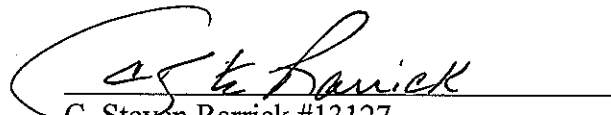
8. The Commission should therefore reconsider the language in paragraph 8 of the Procedural Schedule Order and clarify that exhibits introduced with pre-filed testimony should be marked in accordance with K.A.R. 82-1-221(b) and previous Commission practice, and rebuttal exhibits introduced at hearing during cross and re-direct examination should be marked for identification at the hearing pursuant to K.A.R. 82-1-221(c) and previous Commission practice.

WHEREFORE, for the reasons set forth above and in KCPL’s Petition for Reconsideration, CURB respectfully requests the Commission clarify that the ten-day pre-filing requirement of K.A.R.

² Scheduling Order, ¶ 8; footnote 9.

82-1-221(b) does not apply to rebuttal exhibits related to live cross and re-direct examination, nor to demonstrative exhibits used in opening statements. To any extent the Procedural Schedule Order intended for the ten-day pre-filing requirement to apply to cross-examination, re-direct examination, and/or opening statement exhibits, CURB joins KCPL in respectfully requesting the Commission to reconsider its Procedural Schedule Order.

Respectfully submitted,

A handwritten signature in cursive script, reading "C. Steven Rarrick", is written over a horizontal line.

C. Steven Rarrick #13127
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VERIFICATION

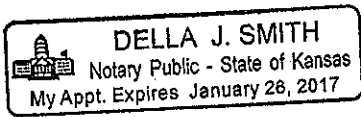
STATE OF KANSAS)
)
 COUNTY OF SHAWNEE)

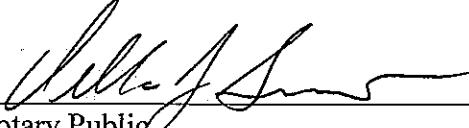
ss:

I, C. Steven Rarrick, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.


 C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 14th day of January, 2014.




 Notary Public

My Commission expires: 01-26-2017.

CERTIFICATE OF SERVICE

14-KCPE-272-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 14th day of January, 2014, to the following parties:

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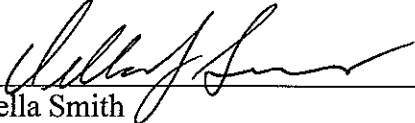
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