

The Schools appreciate the Commission's decision to investigate the electricity rates charged to school customers of KCP&L and examine whether a new "schools rate" should be established. The Schools intend to fully participate in this proceeding – in collaboration with the other parties. Because this is a unique and important opportunity to evaluate school rates, and because the KCC and the parties will dedicate material resources to this proceeding, the Schools want to ensure the investigation is comprehensive and well-conceived. It is in this spirit that the Schools note certain portions of the KCC's Order are inconsistent with the Settlement and the parties' scope recommendations and would likely hinder the objective of an efficient and

meaningful proceeding. Therefore, to ensure a full and fair proceeding, the Schools respectfully request the KCC reconsider or clarify certain portions of its Order Opening Investigation as set forth below.

## **I. Background**

1. On February 1, 2018, Kansas City Power & Light Company ("KCP&L") filed an Application requesting authorization to make certain changes to its charges for retail electric service in Kansas. The matter was docket as 18-KCPE-480-RTS.

2. On October 15, 2018, the Schools, KCP&L, the Staff of the Commission ("Staff"), the Citizens Utility Ratepayer Board ("CURB"), and other parties filed a Unanimous Settlement Agreement ("the Settlement") addressing all issues raised in the KCP&L rate proceeding. In the Settlement, the parties agreed the Commission "should initiate a general investigative docket on or before July 1, 2019, to evaluate whether KCP&L should implement one or more School tariffs and how such a tariff(s) should be designed and implemented." The parties further agreed KCP&L should be authorized to utilize certain accounting treatments to facilitate implementation of a new schools tariff before KCP&L's next rate case.<sup>1</sup> Finally, assuming a schools tariff is implemented, the parties agreed KCP&L will "separately identify schools tariff customers in the class cost of service study filed in its next rate case."<sup>2</sup>

3. On December 13, 2018, the Commission issued its Order Approving Unanimous Settlement Agreement. In its Order, the Commission expressly found a general investigation to evaluate whether KCP&L should establish a separate tariff or tariffs for schools is appropriate.<sup>3</sup>

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<sup>1</sup> Docket No. 18-KCPE-480-RTS, Unanimous Settlement Agreement, filed as Attachment to Joint Motion for Approval of Unanimous Settlement Agreement, October 15, 2018, ¶ 34.a. (Settlement, ¶ 34.a.)

<sup>2</sup> Settlement, ¶ 34.c.

<sup>3</sup> Docket No. 18-KCPE-480-RTS, Order Approving Unanimous Settlement Agreement, December 13, 2018, ¶ 25.

In preparation for the investigation, the Commission directed the Schools and KCP&L to file comments in this docket delineating the scope of the general investigation.<sup>4</sup> The Commission further directed Staff to file a Report and Recommendation based on the parties' comments.

4. On February 5, 2019, the Schools filed comments on the scope of the schools tariff investigation. In their comments, the Schools proposed a two-phased approach. In the first phase, the Commission would answer the first question posed in the Settlement: "whether KCP&L should implement one or more School tariffs."<sup>5</sup> In the second phase, the Commission would consider the second issue set forth in the Settlement: "how such a tariff(s) should be designed and implemented."<sup>6</sup> For both inquiries, the Schools emphasized the Commission should accept any relevant evidence but listed various specific inquiries they expected to be relevant. While most of these inquiries were quantitative and data-driven, some of the considerations would necessarily involve issues of policy for the Commission's determination.<sup>7</sup>

5. On February 5, 2019, KCP&L also filed comments on the scope of the schools tariff investigation. In its Comments, KCP&L also suggests a two-phase proceeding similar to the Schools' proposal.<sup>8</sup> However, KCP&L's proposal would allow the Company to independently evaluate the issues and file a report – rather than collaborate with the other parties. KCP&L's

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<sup>4</sup> Order Approving Unanimous Settlement Agreement, ¶ 25.

<sup>5</sup> Docket No. 18-KCPE-480-RTS, Comments on Scope of School Tariff Investigation, February 5, 2019, ¶ 5. (Schools Comments, ¶ 5.)

<sup>6</sup> Schools Comments, ¶ 6.

<sup>7</sup> For example, the Commission could consider evidence demonstrating the prevalence of separate "schools rates" among other electric and gas utility's regulated by the KCC and throughout the state of Kansas.

<sup>8</sup> Docket No. 18-KCPE-480-RTS, Initial Comments of Kansas City Power & Light Company, February 5, 2019, ¶ 9, KCP&L does not expressly separate the phases but recognizes there will be additional proceedings to "establish the design of a proposed tariff" if implementation of a new schools rate is "justified." (KCP&L Comments, ¶ 9.)

suggested areas of inquiry were generally similar to the Schools.<sup>9</sup> KCP&L suggested two areas of inquiry would not be relevant: rate levels of other utilities and school tariffs from other states.<sup>10</sup>

6. On February 12, 2019, both the Schools and KCP&L filed Reply Comments. The Schools were concerned with KCP&L's approach of preemptively defining a precise methodology for the investigation – to the exclusion of other potentially relevant evidence. In its Reply Comments, KCP&L expressed concern with certain areas of inquiry raised in the Schools' comments, which it desired to bar the Commission from considering.

7. On March 18, 2019, the Staff filed a detailed Report & Recommendation ("R&R") summarizing, comparing, and evaluating the comments filed by the Schools and KCP&L.<sup>11</sup> In its R&R, Staff specifically recommends a two-phase investigation, similar to the recommendations of the Schools and KCP&L.<sup>12</sup> Staff goes on to make more specific recommendations regarding the scope and procedure for this investigation. In general, Staff's recommendations involved a blending of the Schools' and KCP&L's comments.<sup>13</sup>

8. On June 27, 2019, the Commission issued its Order Opening General Investigation in accordance with the Settlement approved in the KCP&L rate case. In its Order, the Commission briefly addresses the comments of KCP&L and the Schools. The Commission does not address

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<sup>9</sup> KCP&L Comments, ¶ 9.

<sup>10</sup> KCP&L Comments, ¶ 10.

<sup>11</sup> Docket No. 18-KCPE-480-RTS, Staff Report & Recommendation, filed as Attachment to Notice of Filing of Staff's Report & Recommendation, March 18, 2019. (Staff R&R.)

<sup>12</sup> Staff R&R, pp. 2, 7.

<sup>13</sup> See, e.g., Staff R&R at p. 2: "Staff recommends that the scope of the general investigation be split between the issue of the separate rate class and the issue of the formulation and implementation of a rate design. The reason to split the issues is that investigating the rate design issue is contingent upon whether it is appropriate to have a separate School rate class. The evaluation of the separate School rate class would entail a technical, quantitative evaluation, as advocated by KCP&L. If it is determined that schools should be in a separate rate class, then the investigation would expand to the second issue: the formulation and the implementation of a schools rate design based on quantitative, policy, and fairness considerations." and Staff R&R at p. 7: "Staff's proposed procedure for the general investigation is a combination of KCP&L's and the Schools' procedural suggestions."

or cite Staff's analysis and recommendations. It is unclear whether the Commission considered Staff's recommendations.

## **II. Petition for Reconsideration**

9. The Schools request the Commission reconsider or clarify certain portions of its Order Opening Investigation as set forth below. Specifically, the Schools request reconsideration of four items set forth in paragraphs 8 and 9 of the Commission's Order.

### **a. The Standard for whether a Schools Tariff should be Implemented**

10. At paragraph 9 of the Commission's Order, the Commission comments that the question of whether a schools rate is appropriate will be "based on whether the available data shows the schools are homogenous enough to form a class." This language appears to set an incomplete standard, which was not recommended by any party. Further, it implies the Commission may not consider other, much more relevant evidence to determine whether a schools tariff should be implemented. Such a position conflicts with the recommendations of all the parties and creates an unnecessary and unreasonable limitation on the proceeding.

11. While the "homogeneity" of the schools customers may be one relevant piece of information, it is far from being the most important factor in determining whether a schools tariff is implemented. In fact, the homogeneity of the group is much more relevant to the question of tariff *design*. As explained by Staff witness Dr. Robert Glass during the Settlement hearing, "So if you have a...fairly heterogeneous group...either you're going to have to come up with a very flexible rate, a very flexible educational tariff, or you're going to have to come up with several different tariffs."<sup>14</sup> For example, the usage patterns of community colleges and high schools might be similar – but very distinct from primary school buildings. This would likely indicate two

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<sup>14</sup> Docket No. 18-KCPE-480-RTS, Transcript of Evidentiary Hearing held October 24, 2018, p. 62. (Tr., p. 62.)

separate school tariffs are needed (or a flexible tariff similar to that of Westar Energy) – not that a schools tariff is inappropriate.

12. Ultimately, the question of whether KCP&L should implement a schools tariff will involve the review of several different factors – in addition to the similarity of load profiles. For instance, the parties all emphasized the need to compare the "relative rates of return" of schools customers to existing KCP&L customer classes to understand whether the schools are paying inordinately high rates.<sup>15</sup> And the parties need to quantify the average rates paid by schools customers to understand whether KCP&L's current rates are flexible enough to handle those accounts.<sup>16</sup> In addition, the Commission can consider policy considerations such as the fact that schools tariffs are nearly universally offered by other Commission-regulated utilities in Kansas.<sup>17</sup>

13. As noted above, no party has suggested "homogeneity" of load profiles should be the sole test for whether a schools rate is warranted. Such a standard only serves to unnecessarily tie the parties' hands in addressing this issue. The parties – and the Commission – should have the flexibility to consider all the relevant evidence in determining whether a new schools rate is warranted. The Commission will, undoubtedly, find certain evidence more persuasive and other evidence less persuasive. But there is no reason for the Commission to preemptively adopt an incomplete standard which may operate to exclude highly relevant evidence.

14. The Schools respectfully request the Commission reconsider the portion of its Order stating that whether a schools rate is appropriate will be "based on whether the available

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<sup>15</sup> KCP&L Comments, ¶ 9; Staff R&R, p. 4-5, Schools Comments, ¶ 5.

<sup>16</sup> KCP&L Comments, ¶9, "... make appropriate billing and rate comparisons on a \$/kwh or \$/kw basis against related rate classes...."; Staff R&R, p. 4-5.

<sup>17</sup> See Docket No. 18-KCPE-480-RTS, Motion for Administrative Notice, October 26, 2018, listing school tariffs approved by the KCC, including those of Westar Energy (four school tariffs), Empire District Electric Company, Midwest Energy, Kansas Gas Service, and Atmos Energy.

data shows the schools are homogenous enough to form a class" and clarify that the parties will be allowed to consider and present any evidence relevant to this issue.

**b. The Timing for KCP&L to Implement a Schools Tariff**

15. Assuming a new schools tariff is warranted, the Order directs KCP&L "to propose a tariff design for its next general rate case" (rates effective in December 2023).<sup>18</sup> However, in two separate provisions, the Settlement creating this investigation expressly contemplated the implementation of a new schools tariff before KCP&L's next rate case. Therefore, this portion of the Commission's Order, which automatically precludes implementation before the year 2023, is unreasonable and inconsistent with the Settlement.

16. In the Settlement approved by the Commission, the parties unanimously agreed KCP&L is authorized to track and account for any lost revenue resulting from migration of school customers to a new schools tariff before its next rate case – with the opportunity to request recovery of such revenue in the rate case.<sup>19</sup> In addition, assuming a schools tariff is implemented, the parties agreed KCP&L will "separately identify schools tariff customers in the class cost of service study filed in its next rate case."<sup>20</sup> This provision inherently requires KCP&L to implement the schools tariff before its next rate case. Otherwise, there would be no class of "schools tariff customers" to identify in the study.

17. As described above, the Settlement approved by the Commission clearly contemplates implementation of a schools tariff before KCP&L's next general rate case. Therefore, this part of the KCC's Order is inconsistent with the Settlement approved by the

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<sup>18</sup> Order Opening Investigation, ¶ 9; Pursuant to the Settlement approved in Docket No. 18-KCPE-095-MER, KCP&L's five-year base rate moratorium ends in December 2023. See Order Approving Merger Application, May 24, 2018, ¶ 32.i. of Non-Unanimous Settlement Agreement attached to Order.

<sup>19</sup> Settlement, ¶ 34.a.

<sup>20</sup> Settlement, ¶ 34.c.

Commission. The Schools respectfully request the Commission reconsider the above-cited language and clarify that the Commission is not predetermining the timing of tariff/rate implementation.

**c. The Procedural Timeline of the Investigation**

18. As required by the rate case Settlement, the Commission opened this investigation on July 1, 2019. However, at paragraph 9 of its Order, the Commission sets a deadline of May 1, 2020 for KCP&L to file its initial report. And the Schools' response deadline is August of 2020, more than a year from now.

19. While it takes time to analyze complex electrical usage data and pricing information, no party requested the extremely slow timeframe ordered by the Commission. In fact, Staff witness Dr. Robert Glass testified during KCP&L's rate case that this investigation should be completed by the summer of 2020.

20. The Commission's rationale for distant procedural deadlines appears to be a concern that the Schools will need time to retain a ratemaking consultant.<sup>21</sup> However, the Schools worked diligently to retain consulting services before this proceeding was opened on July 1, 2019, and are ready to begin the investigation immediately. Therefore, the Schools request the Commission shorten the listed deadlines by approximately 3 months, allowing KCP&L until January 31, 2020, to file its report, allowing the Schools until May 4, 2020 to file a response, and allowing Staff until August 7, 2020, to file a report & recommendation.

**d. The Procedure for Defining a "School" under the Tariff**

21. At paragraph 8 of its Order, the Commission directs the parties to define a "school" immediately, solely through negotiation, without any opportunity for the parties to review the

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<sup>21</sup> Order Opening Investigation, ¶ 10, "The August 3, 2020 deadline should ensure the Schools have ample time to retain a consultant to review KCP&L's report."



electrical load profiles and pricing data of different school entities and facilities. The Schools believe a more efficient and logical process would allow the parties to define a school following such an examination.

22. While the definition of a "school" is partially a policy decision for the Commission, the Schools also expect the load and pricing data will inform the decision of which customers and facilities a schools tariff should apply to. In fact, the Schools expected a detailed analysis of the usage and pricing data would be necessary to address this issue.<sup>22</sup> The KCC Staff took the same position during prior testimony.<sup>23</sup>

23. All three parties – KCP&L, the Schools, and Staff – recommended a two-phase approach where the definition of a school was considered during either the first or second phase.<sup>24</sup> No party has recommended the definition of a "school" be determined solely by negotiation. Therefore, the Schools respectfully request the Commission reconsider its directive for the parties to immediately define a "school" and instead allow the parties to examine that issue during their review of electrical load profile data. Alternatively, the Commission could direct the parties to propose a broad "preliminary" definition of schools, which will be subject to further refinement following review of the data.

WHEREFORE, the Schools respectfully request the Commission accept their Petition for Reconsideration and issue an order consistent with the recommendations set forth above or set the above matters for further proceedings on reconsideration.

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<sup>22</sup> As an example, the load and pricing data may indicate KCP&L's current tariffs adequately serve high schools – but are not flexible enough to handle elementary and middle schools.

<sup>23</sup> Tr., pp. 61-62.

<sup>24</sup> The Schools recommended the availability of a schools rate be determined during the tariff design phase. KCP&L and Staff recommended the availability of a schools rate be addressed during the first of two phases when examining whether a tariff should be established.

Respectfully submitted,

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VERIFICATION


STATE OF KANSAS       )  
                                  )  
COUNTY OF JOHNSON    ) ss:

Andrew J. French, being duly sworn upon his oath, deposes and states that he is the Attorney for the Schools, that he has read and is familiar with the foregoing *Petition for Reconsideration*, and the statements therein are true to the best of his knowledge, information, and belief.



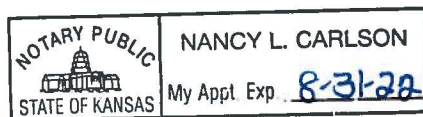
Andrew J. French

SUBSCRIBED AND SWORN to before me this 12<sup>th</sup> day of July, 2019.

  
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Notary Public

My Appointment Expires:

August 31, 2022



### **CERTIFICATE OF SERVICE**

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or regular U.S. mail (unless otherwise noted), the 12<sup>th</sup> day of July, 2019, to the parties below:

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