

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

JUL 19 2012
by
State Corporation Commission
of Kansas

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

STAFF'S REPLY TO CURB'S RESPONSE

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) pursuant to K.S.A. 2011 Supp. 77-519 and K.A.R. 82-1-218(d), respectfully submits its Reply to the Citizens' Utility Ratepayer Board's (CURB's) Response to the Staff Report and Recommendation, and states:

1. On June 1, 2012, Kansas City Power & Light (KCP&L) filed its application with the Commission requesting until December 31, 2012 to satisfy 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 calendar year 2012. In the alternative, KCP&L requested an order waiving any potential penalty associated with failure to comply with the RES Act.

2. On June 29, 2012, Staff filed its Report and Recommendation which recommended that the Commission reject KCP&L's request to allow the Company until December 31, 2012 to comply with the RES Act and instead grant KCP&L's request for a waiver of penalties for failure to comply with the RES Act for 2012.

3. On July 9, 2012, CURB filed its Response to the Staff Report and Recommendation. CURB argued that the Commission should grant KCP&L a waiver of the

Commission's July 1 deadline for good cause shown and that KCP&L is not yet out of compliance with the RES Act's 2012 standards.

A. CURB's Response Provides no Basis for Granting a Waiver of the July 1 Deadline

4. K.A.R. 82-16-2 requires each utility to submit a report to the commission detailing that utility's compliance with the portfolio standards established in the act. K.A.R. 82-16-2 further states,

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.

5. CURB supports granting a waiver of the regulation's deadline since KCP&L appears to be on schedule to be in compliance with the legislature's 2012 standard by the end of 2012.¹ Additionally, CURB claims, "When a party requests a waiver of a procedural deadline, the Commission rarely requires the party provide evidence of good cause, and simply accepts the party's explanation or rejects it."² First, CURB mischaracterizes the July 1 deadline imposed by K.A.R. 82-16-2 as a "procedural deadline" (discussed in detail in Part B, below). Second, CURB uses a generic hypothetical with no citations to any statute, regulation or Commission order for the principal that the Commission "simply accepts the party's explanation or rejects it." Although a waiver may be appropriate in certain circumstances; as written, CURB's argument provides no basis for granting a waiver of the July 1 deadline in this case.

B. CURB's Claim that KCP&L Is Not Yet Out of Compliance with the RES Act's 2012 Standards is Unsupported

¹ CURB's Response to the Staff Report and Recommendation, ¶ 6, Docket No. 12-KCPE-862-MIS (July 9, 2012) [hereinafter CURB's Response].

² *Id.*

6. CURB claims that KCP&L is not yet out of compliance with the RES Act's 2012 standards.³ CURB's claim rests on the unsupported assumption that the Renewable Energy Standards Act does not require utilities to comply with the portfolio requirement until December 31 of a given year. However, the RES Act does not specify a compliance deadline; instead, the RES Act states:

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.⁴

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.⁵ Moreover, all grants of authority and jurisdiction made to the Commission shall be liberally construed.⁶ Therefore, in the absence of a clear deadline in the statute, the Commission enacted regulations that set the deadline as July 1. The July 1 deadline promotes compliance for at least half of the calendar year. Such a deadline is a compromise between compliance for the entire year and compliance for a single day of the year. The July 1 deadline was fully vetted through the process for adopting regulations, which includes publication in the Kansas Register, public hearings, and review by the Secretary of Administration, the Attorney General, and the Joint Committee on Administrative Rules and Regulations.⁷ CURB's claim that the deadline should be December 31 and that July 1 is merely a "procedural deadline" is unsupported by a plain reading of the statute and the regulations.

³ *Id.* at ¶¶ 7-8.

⁴ K.S.A. 2011 Supp. 66-1258(a) (emphasis added).

⁵ K.S.A. 2011 Supp. 66-1258(a) & (d); 66-1261(a) & (c); 66-1262(a) & (b).

⁶ K.S.A. 66-101g.

⁷ See Kansas Rules and Regulations Filing Act, K.S.A. 2011 Supp. 77-415 *et seq.*

7. Moreover, prior dockets before the Commission have confirmed that July 1 is a substantive deadline rather than a procedural deadline.⁸ CURB was a party to those dockets and filed testimony and signed a settlement agreement that confirmed July 1 is a substantive deadline. For example, in Docket No. 11-WSEE-377-PRE, CURB witness Andrea Crane filed the following testimony:

It is my understanding that *beginning July 1, 2011*, the RES Act requires utilities to serve their loads with renewable energy resources that have a name plate capacity equal to at least 10% of the utility's average retail peak demand for the preceding three years. The RES requirement increases to 15% for the period July 1, 2015 -July 1, 2020, and to 20% after July 1, 2020.”⁹

In the same docket, CURB joined a Stipulation and Agreement that included the following term:

Based on its most recent peak demand, the RES Act requires Westar to add approximately 160 MW of renewable generation to its fleet *by July 1, 2011* (and growing to 200 MW by 2015 as its average peak demand grows), an additional increment of 260 MW by July 1, 2016, and another additional increment of 270 MW by July 1, 2020. Greenwood Direct, pp. 8-9; Ludwig Direct, p. 25.¹⁰

The Order in Docket No. 11-WSEE-377-PRE approved the Stipulation and Agreement and included the following finding:

As discussed above, the Commission finds that based on Westar's most recent peak demand, the RES Act requires Westar to add approximately 160 MW of renewable generation to its fleet *by July 1, 2011* (and growing to 200 MW by 2015 as its average peak demand grows), and additional increment of 260 MW *by July 1, 2016*, and another additional increment of 270 MW *by July 1, 2020* ...¹¹

8. In Docket No. 11-WSEE-438-MIS, Westar Energy Inc. (Westar) acknowledged the July 1 substantive deadline:

If Westar were required to purchase new RECs to meet the requirements of the Renewable Energy Standards Act, it estimates the cost, using current market prices, would be approximately \$1.4 million per year. Thus, use of these available

⁸ Docket No. 11-WSEE-377-PRE; Docket No. 11-WSEE-438-MIS.

⁹ Direct Testimony of Andrea C. Crane on behalf of CURB, p. 8, In. 1-5, Docket No. 11-WSEE-377-PRE (Feb. 17, 2011) (emphasis added).

¹⁰ Stipulation and Agreement, ¶ 15, Docket No. 11-WSEE-377-PRE (Mar. 25, 2011) (emphasis added).

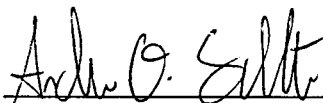
¹¹ Final Order, Ordering Clause ¶ A, Docket No. 11-WSEE-377-PRE, (May 9, 2011) (emphasis added).

RECs to meet the requirements of K.S.A. 66-1258 *beginning on July 1, 2011*, and for 2012 will minimize the cost of compliance to Westar's customers because Westar will be able to avoid purchasing RECs in the market at an additional cost to customers while it is in the process of developing new renewable generation and transmission in Kansas in order to continue to meet the Act's requirements in 2013 and beyond."¹²

9. In summary, the legislature directed the Commission to adopt rules and regulations for implementing the RES Act and granted it authority to do so. The Commission fulfilled the directive by enacting the RES Rules through the collaborative process required by the Kansas Rules and Regulations Filing Act. The Commission, Staff, CURB, and the utilities have operated pursuant to the July 1 compliance deadline in previous dockets. Neither KCP&L nor CURB provided persuasive arguments for amending the regulations or reversing the Commission's prior interpretation of the regulations.

WHEREFORE Staff requests the Commission reject KCP&L's application to allow the Company until December 31, 2012 to comply with the RES Act and instead grant KCP&L's application for a waiver of penalties for failure to comply with the RES Act for 2012, as recommended in Staff's Report and Recommendation.

Respectfully submitted,



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¹² Notice and Application, ¶ 20, Docket No. 11-WSEE-438-MIS (Dec. 10, 2010) (emphasis added).

CERTIFICATE OF SERVICE

12-KCPE-862-MIS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Staff's Reply to CURB's Response was placed in the United States mail, postage prepaid, or hand-delivered this 19th day of July, 2012, to the following:

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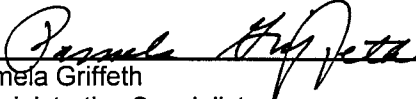
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