

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

OCT 28 2011

by
State Corporation Commission
of Kansas

In the Matter of the Petition of Kansas City)
Power & Light Company's Compliance) Docket No. 12-KCPE-258-CPL
Filings as Required by Commission Order in)
Docket No. 11-KCPE-581-PRE.)

**STAFF'S RESPONSE TO THE PETITION TO INTERVENE OF THE CITIZENS'
UTILITY RATEPAYER BOARD**

The Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively), pursuant to K.S.A. 2010 Supp. 77-519 and K.A.R. 82-1-218(d), respectfully submits its Response to the Petition to Intervene of the Citizens' Utility Ratepayer Board ("CURB"). In support of its Response, Staff states:

1. On August 19, 2011, in Docket No. 11-KCPE-581-PRE, the Commission approved an agreement reached between Kansas City Power & Light Company ("KCP&L") and Staff under which KCP&L will file reporting metrics on a monthly basis throughout the life of the La Cygne Project.¹ The Commission's Order stated:

The monthly reporting requirement will begin on the first day of October, 2011, and continue during the life of the La Cygne Project. Staff shall review the Reports as submitted by KCP&L and shall bring to the attention of the Commission any information reflecting a significant event or problem regarding implementation of the La Cygne Project.²

2. The Commission reaffirmed its decision regarding the monthly reports in its Order on Petitions for Reconsideration and Order *Nunc Pro Tunc*, issued on October 5, 2011.³

The Commission also ordered KCP&L to include in its reports to Staff an explanation linking

¹ Order Granting KCP&L Petition for Predetermination of Rate-Making Principals and Treatment at ¶ 93, Docket No. 11-KCPE-581-PRE (Aug. 19, 2011).

² *Id.*

³ Order on Petitions for Reconsideration and Order *Nunc Pro Tunc* at ¶ 55, Docket No. 11-KCPE-581-PRE (Oct. 5, 2011).

costs incurred with the corresponding item in the definitive cost estimate and an explanation of costs incurred under the contingency budget.⁴

3. On October 14, 2011, KCP&L filed its first monthly report on the La Cygne Project in Docket No. 12-KCPE-258-CPL (“Compliance Docket”). On October 18, 2011, CURB filed its Petition to Intervene in the Compliance Docket.

4. Staff recommends that the Commission deny CURB’s Petition to Intervene. The Compliance Docket is not a “proceeding” as that term is used in K.A.R. 82-1-214 (Commencement of a Proceeding) and K.A.R. 82-1-225 (Intervention). K.S.A. 66-101b, K.S.A. 66-101d, K.S.A. 66-101e, and K.S.A. 66-101f set forth when the Commission is required to conduct an investigation and hearing: such as when setting rates, establishing new rules and regulations, or investigating a complaint. None of those actions are occurring in the Compliance Docket, nor is there an application for a change of rates or schedules under K.S.A. 66-117 or any other action that can reasonably be considered a “proceeding.” Rather, the Compliance Docket is an internal monitoring tool so the Commission can administratively track compliance with its final orders.

5. Even if the Compliance Docket is considered a “proceeding,” CURB has not met the requirements of the K.A.R. 82-1-225(a)(2), which direct the petitioner to provide:

... facts demonstrating that the petitioner’s legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law.

Internal monitoring tools, such as compliance dockets, do not substantially affect the legal rights, duties, privileges, immunities or other legal interests of CURB and are outside of CURB’s enumerated statutory powers.⁵

⁴ *Id.*

⁵ K.S.A. 66-1223.

6. K.S.A. 66-1223 restricts CURB to specifically enumerated powers. Those powers are listed as follows:

- (a) Represent residential and small commercial ratepayers before the state corporation commission;
- (b) function as an official intervenor in cases filed with the state corporation commission, including rate increase requests;
- (c) initiate actions before the state corporation commission;
- (d) represent residential and commercial ratepayers who file formal utility complaints with the state corporation commission;
- (e) intervene in formal complaint cases which would affect ratepayers; and
- (f) make application for a rehearing or seek judicial review of any order or decision of the state corporation commission.

As provided in K.S.A. 66-1223, CURB's intervention powers are limited to "cases filed with the state corporation commission," and "formal complaints." Neither action has occurred in this docket. There was no "case" filed by KCP&L; the company merely filed a compliance report, as ordered by the Commission in Docket No. 11-KCPE-581-PRE. Likewise, the Compliance Docket clearly does not involve a formal complaint.

7. CURB's Petition to Intervene also fails to satisfy K.A.R. 82-1-225(a)(3), which requires that "the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention." Staff's duty to review the monthly reports and monitor the progress of the La Cygne Project will become unnecessarily complicated if the Commission allows third-party intervenors to participate. The prospect of ongoing litigation in the Compliance Docket impairs the orderly and prompt conduct of the Compliance Docket's objectives.

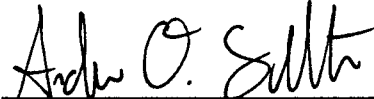
8. Finally, the Commission already addressed third-party participation in the Compliance Docket in its October 5, 2011 Order, when it denied the Sierra Club's request to order the compliance reports provided to all parties.⁶ The Commission explained that:

Staff shall review the reports and, if any questions or concerns arise, investigate those issues with KCP&L. Staff shall report to the Commission any concerns regarding the construction of the La Cygne Project. Any Staff reports shall be filed in the compliance docket that shall be created to receive the reports.⁷

Therefore, consistent with Kansas law and the orders issued in Docket No. 11-KCPE-581-PRE, the Commission should deny CURB's Petition to Intervene.

WHEREFORE, Staff submits its Response to CURB's Petition to Intervene.

Respectfully submitted,



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⁶ Order on Petitions for Reconsideration and Order *Nunc Pro Tunc* at ¶ 55, Docket No. 11-KCPE-581-PRE (Oct. 5, 2011).

⁷ *Id.*

CERTIFICATE OF SERVICE

12-KCPE-258-CPL

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Staff's Response to the Petition to Intervene of the Citizens' Utility Ratepayer Board was placed in the United States mail, postage prepaid, or hand-delivered this 28th day of October, 2011, to the following:

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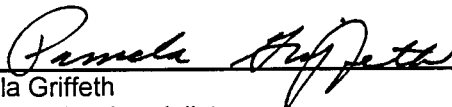
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