

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

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

**PETITION FOR RECONSIDERATION OF PREHEARING OFFICER ORDER  
SETTING PROCEDURAL SCHEDULE**

Kansas City Power & Light Company (“KCP&L” or “Company”), pursuant to K.S.A. § 66-118b, K.S.A. § 77-526, § 77-527, § 77-529, and K.A.R. § 82-1-235, hereby respectfully petitions the State Corporation Commission of the State of Kansas (“Commission”) for clarification and, if necessary, reconsideration of the Prehearing Officer Order Setting Procedural Schedule issued in this docket on December 26, 2013 (“Order”). In support of its Petition, KCP&L states the following:

1. In paragraph eight (8) of the Order, the Prehearing Officer requires evidentiary exhibits be provided in accordance with K.A.R. 82-1-221 and goes on to state, that “[a]bsent a Commission order to the contrary, all evidentiary exhibits, *including those on rebuttal*....shall be pre-marked.” In support for requiring the pre-marking of exhibits, the Order cites to K.A.R. 82-1-221(b). Additionally, the Order states that, “PowerPoint slides or other visual aids used in opening statement shall be marked as an exhibit and entered into the record”. This paragraph of the Order is unclear and requires clarification as explained below.

**A. *FILING OF EXHIBITS***

2. The timing for the marking and entering of *rebuttal* exhibits is unclear under the Order. K.A.R. 82-1-221(b) states that exhibits a party intends to offer into evidence shall be

filed with the commission at least 10 days before the date of the hearing, but it explicitly *excludes* rebuttal exhibits from the ten-day deadline. In contrast, the Order explicitly *includes* rebuttal exhibits, but may only be addressing the *marking* of such exhibits, not their *filing*. KCP&L assumes the Order is intended to be consistent with the regulation, and therefore, that the ten-day pre-filing requirement is not applicable to rebuttal exhibits (which includes cross-examination and redirect exhibits) and that the Order is simply requiring that the parties have the court reporter mark their rebuttal exhibits prior to the time the hearing commences, if possible.<sup>1</sup>

3. K.A.R. 82-1-221 governs the treatment and use of exhibits and documentary evidence throughout the entirety of a Commission proceeding, much like K.A.R. 82-1-219 governs the filing of pleadings, and K.A.R. 82-1-229 governs the use of pre-filed testimony. The ten-day pre-filing requirement of KAR 82-1-221(b) specifically applies only to exhibits offered as part of pre-filed testimony, and not to hearing exhibits that may be used in the course of live re-direct and cross-examination at hearing to rebut another party's assertion. Exhibits related to redirect and cross-examination are "rebuttal" exhibits not subject to the ten-day pre-filing provision, and the treatment of such exhibits is contemplated in a later provision of K.A.R. 82-1-221(b) that states, "[e]ach 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" (emphasis added). Historically, K.A.R. 82-1-221(b) has consistently been complied with because, in most cases, the Commission establishes a procedural schedule that requires pre-filed testimony to be filed more than the ten days prior to hearing, as set forth in KAR 82-1-229.

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<sup>1</sup> Similarly, the Order states that exhibits used during opening statements shall be marked and entered into the record. The ten-day advance filing provision would not apply to such exhibits. They would just need to be marked prior to the hearing commencing and entered into the record as an exhibit at the time of hearing.

**B. MARKING OF EXHIBITS**

4. In support of requiring the *pre-marking* of exhibits, the Order cites to K.A.R. 82-1-221(b) which discusses the *filing* of certain exhibits, not the *marking* of exhibits.<sup>2</sup> The marking of exhibits is addressed in K.A.R. 82-1-221(c), which states,

The presiding commissioner or hearing examiner shall assign numbers to the exhibits at the time they are marked for identification at the hearing.

Exhibits related to pre-filed testimony, whether direct, cross-answering or rebuttal, are always attached to the testimony and marked with an exhibit number when it is pre-filed. Exhibits not included with pre-filed testimony but which a party intends to use during its opening statement or introduce during cross-examination would be marked by the court reporter immediately prior to the hearing or during breaks in the hearing whenever possible. Copies would be provided to the Commission and other parties, as required by K.A.R. 82-1-221(b). However, there may be other exhibits that become necessary due to events occurring during the hearing, and those exhibits might need to be marked at the time they are presented to a witness. Pre-marking in the latter case is not a practical requirement because a party does not know what exhibits might be needed for the rebuttal of issues as part of re-direct until its witness has been cross-examined at hearing. Similarly, the need for an exhibit on cross-examination of another party's witness may not become known until that witness testifies at hearing since the witness will be subject to cross-examination by other parties and the Commissioners.

**C. REQUEST FOR CLARIFICATION**

5. KCP&L seeks clarification of the Order and confirmation from the Commission that so long as KCP&L pre-files documents and marks exhibits in accordance with previous

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<sup>2</sup> See footnote 9 of the Order, page 4.

Commission practice, and as outlined above in Sections A and B, that it will be in compliance with the Order. KCP&L believes that previous Commission practice has been consistent with this interpretation of K.A.R. 82-1-221.

***D. ALTERNATIVE REQUEST FOR RECONSIDERATION***

6. To the extent the Commission intends for the ten-day pre-filing requirement to apply to re-direct and cross-examination exhibits (a/k/a rebuttal exhibits), KCP&L objects to such a requirement and requests reconsideration thereon.

7. It would be impractical to impose a ten-day prior-to-hearing deadline on re-direct and cross-examination exhibits. As noted above, re-direct and cross-examination are tools used to rebut another party's assertion(s), and as such, the exhibits used on rebuttal are explicitly exempted from the ten-day pre-filing requirement.<sup>3</sup> In practical application this is logical because a party does not know what exhibits might be needed for re-direct until its witness has been cross-examined at hearing. Similarly, exhibits for cross-examination will be not finalized until immediately before the hearing and additional exhibits may become necessary based upon testimony presented at hearing.

8. The standard procedural schedule adopted by the Commission in most dockets does not contemplate a requirement that exhibits other than those related to pre-filed testimony will be filed prior to hearing. The early months of the schedule are reserved to the Staff and other intervenors to allow them to conduct necessary investigations and prepare responsive testimony. The latter part of the schedule is almost always tight, with deadlines for filing rebuttal testimony, prehearing motions and unanimous/non-unanimous settlement agreements

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<sup>3</sup> K.A.R. 82-1-221(b).

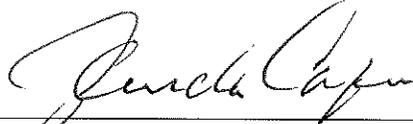
falling right before the time of hearing. Additionally, discovery continues to take place until shortly before hearing, tasking the parties with issuing and answering discovery in addition to preparing rebuttal testimony (in the case of the Applicant), conducting settlement discussions and drafting related documents, and attempting to prepare for hearing, all during a very condensed time period, usually only a few weeks. Commission proceedings continue to evolve up to the time of hearing and that evolution accelerates as the hearing approaches, making impracticable a ten-day cut-off for filing certain exhibits that fall in the rebuttal category, such as exhibits related to live re-direct and cross-examination.

***E. SUMMARY***

9. In summary, KCP&L seeks:
  - a) clarification of the Order and confirmation from the Commission that so long as KCP&L pre-files documents and marks exhibits in accordance with previous Commission practice, and as outlined above, that it will be in compliance with the Order;
  - b) clarification from the Commission that the ten-day pre-filing requirement of KAR 82-1-221(b) does not apply to rebuttal exhibits related to live re-direct and cross-examination, nor to demonstrative exhibits used in opening statements; and
  - c) to the extent the Commission intends for the ten-day pre-filing requirement to apply to re-direct, cross-examination, and/or opening statement exhibits, KCP&L respectfully requests the Commission reconsider the matter.

Respectfully submitted,

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**ATTORNEYS FOR  
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## CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above *Petition for Reconsideration* was served electronically by e-mail, hand-delivered or mailed, postage prepaid, this 10<sup>th</sup> day of January, 2014 to:

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