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THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

by  
State Corporation Commission  
of Kansas

In the Matter of the Application of Kansas )  
City Power & Light Company to Modify Its ) Docket No. 10-KCPE-415-RTS  
Tariffs to Continue the Implementation of Its )  
Regulatory Plan. )

2011.05.24 17:00:57  
Kansas Corporation Commission  
of Thomas A. Day

**CURB'S RESPONSIVE COMMENTS TO THE  
PREHEARING OFFICER'S REPORT AND RECOMMENDATION**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB"), and files its Responsive Comments to the Prehearing Officer's Report and Recommendation ("Responsive Comments"). In support of its Responsive Comments, CURB states as follows:

1. The Prehearing Officer's Report and Recommendation set deadlines for filing Initial Comments to the Prehearing Officer's Report and Recommendation by May 10, 2011, and Responsive Comments by May 24, 2011. In the Prehearing Officer's Order Amending Deadline for Filing Comments to Report and Recommendation, the deadline for filing Initial Comments was changed from May 10, 2010, to May 2, 2010. The deadline for Responsive Comments remained May 24, 2010.

2. In Kansas City Power & Light Company's ("KCPL") Responsive Comments to the Prehearing Officer's Report and Recommendation ("Initial Comments"), filed on May 2, 2010, KCPL supported the Prehearing Officer's Report and Recommendation with one exception – KCPL's perceived need to file post-hearing briefs.<sup>1</sup>

3. In its Initial Comments, KCPL argues that it is necessary to "marry"<sup>2</sup> the facts presented at the hearing to the law presented in the prehearing briefs. KCPL's perceived need for

<sup>1</sup> KCPL Initial Comments, ¶1.

<sup>2</sup> *Id.*, at ¶¶ 1, 3.

post-hearing briefs is misplaced. With prehearing briefs addressing legal issues related to rate case expense being filed three weeks prior to the evidentiary hearing, the Commission is more than qualified to “marry” the facts with applicable law at the conclusion of the evidentiary hearing. This is consistent with findings previously made by the Commission:

In making its review here, the Commission, like a trial court reviewing attorney fees, should be considered an expert in making this decision and will draw from its knowledge and expertise in evaluating the value of services rendered in this proceeding.<sup>3</sup>

In determining an appropriate amount, the Commission, like a trial court in deciding attorney fees, should be considered an expert and will draw from its knowledge, expertise, and experience in evaluating services rendered in this proceeding.<sup>4</sup>

4. KCPL mistakenly states that “[w]hile filing prehearing briefs on the legal issues related to rate case expense is an appropriate vehicle for framing the principles and standards to be evaluated by the Commission in determining rate case expense, it does not provide the parties an opportunity to marry the facts presented *at the hearing* (or through prefiled testimony) in this proceeding with the law.”<sup>5</sup> To the contrary, the schedule proposed by the Prehearing Officer provides parties the opportunity to join the facts with applicable law *in closing arguments*.

5. The prehearing briefs addressing the legal standards applicable to rate case expense will be filed *three weeks prior to the evidentiary hearing*. The Commission, as an expert in making rate case expense decision, will draw on its knowledge, expertise, and experience in “marrying” the facts presented at the hearing to the law briefed by the parties in the prehearing briefs. Closing

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<sup>3</sup> Order: 1) Addressing Prudence; 2) Approving Application, in Part; & 3) Ruling on Pending Requests, November 22, 2010, p. 88.

<sup>4</sup> Order Granting KCPL’s and CURB’s Second Petitions for Reconsideration and Clarification, February 21, 2011, ¶23. *See also*, Prehearing Officer’s Report and Recommendation, April 19, 2011, ¶12.


<sup>5</sup> KCPL Initial Comments, ¶ 3.

arguments will provide an adequate opportunity for the parties to argue their positions on the facts under applicable law.

6. There is no need to further prolong this proceeding by reformulating the evidence after the hearing. The Commission will have already reviewed the law and the prefiled testimony prior to the hearing. The Commission will hear testimony through cross-examination and re-direct during the hearing. The Commission will then hear from counsel in closing arguments on how parties believe the facts in the record should be applied to the law applicable to rate case expense at the conclusion of the hearing. The additional briefing proposed by KCPL is unnecessarily repetitive, given the Commission's expertise in deciding rate case expense issues.

7. In conclusion, CURB respectfully requests that the Commission deny KCPL's request to unnecessarily prolong this reconsideration proceeding by ordering post-hearing briefs. Instead, CURB urges the Commission to accept the Prehearing Officer's recommendation to schedule prehearing briefs on the law with closing arguments at the conclusion of the hearing.

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

10-KCPE-415-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, electronic service, or hand-delivered this 24<sup>th</sup> day of May, 2011, to the following:

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