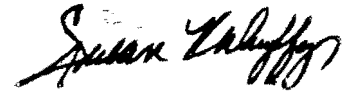


STATE CORPORATION COMMISSION

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

JAN 10 2011



In the Matter of a General Investigation Into)
KCP&L and Westar Generation Capabilities,) Docket No. 11-GIME-~~442~~-GIE
Including as these Capabilities May Be)
Affected by Environmental Requirements)

**STAFF'S PETITION FOR GENERAL INVESTIGATION INTO THE
GENERATION CAPABILITIES OF KANSAS CITY POWER AND LIGHT CO.
AND WESTAR, FOCUSING ON BUT NOT LIMITED TO UNITS CURRENTLY
SUBJECT TO ENVIRONMENTAL REQUIREMENTS
AND FOR RELATED RELIEF**

The Staff of the Kansas Corporation Commission (Commission) seeks a Commission investigation into the generation capabilities of: 1) Kansas City Power and Light (KCP&L) and 2) Westar Energy, Inc. and Kansas Gas and Electric Company (collectively referred to as "Westar"), particularly as these capabilities may be affected by environmental upgrade requirements. In addition, Staff seeks the establishment of criteria to be used when evaluating retrofit, decommission, or replacement decisions, as more fully described at paragraph 11. In furtherance of and to facilitate the Commission's investigation and findings, Staff seeks the immediate entry of a Commission order: 1) opening a general docket for the purpose of addressing the issues described in this Petition, 2) establishing a procedural schedule, and 3) assessing costs of this docket to KCP&L and Westar.

1. Westar and KCP&L face environmental regulatory requirements for retrofits of existing plants if they want to continue operating these plants. The Commission Staff wants to ensure that the full scope of the environmental retrofit decisions and alternative options are fully considered, and, if necessary, guidance given by the Commission to the companies, prior to commitment of additional funds or

resources to executing the currently-contemplated retrofit decisions. Staff recognizes the companies have been involved in consideration and planning for some time and have legitimately viewed the process from their own points of view. Staff seeks the establishment of this docket so that the Commission has an opportunity to consider these issues from its own wider point of view, which includes in particular the public interest. Staff views this as essential due to the very long-term financial impact of the expenditures at issue. The full scope of the retrofitting decision involves three fundamental questions:

a. Is the capacity and/or energy provided by the plant to be retrofitted needed by the utility?

b. If the capacity and/or energy is needed, then is the decision to retrofit a more economically efficient choice than decommissioning the existing plant and building a new plant?

c. If the retrofit choice is the better choice, then has the utility chosen the best retrofitting option?

2. Staff contends the appropriate time to examine these questions is before the utilities incur financial obligations that could potentially be charged to ratepayers and before the commencement of construction executing a retrofitting decision. Accordingly, Staff now seeks to ensure that these questions are fully investigated within a formal structure with understood criteria for evaluation of the answers to the three fundamental questions.

BACKGROUND

3. In support of its Petition, Staff asserts the broad jurisdiction of the Commission, describes the dynamic environmental regulatory environment in which decisions about electricity generation are being made, provides an overview of the pertinent generation fleet of the subject utilities and specifies the relief now sought, as follows:

4. Pursuant to K.S.A. 66-101, the Commission has full power, authority and jurisdiction to supervise and control the electric public utilities operating in Kansas and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. K.S.A. 66-101b states that electric utilities subject to the Commission's jurisdiction are "required to furnish reasonably efficient and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied or produced by such electric public utility, to establish just and reasonable rates, charges and exactions and to make just and reasonable rules, classifications and regulations." K.S.A. 66-101g states that the provisions of the Kansas Public Utilities Act and all grants of power, authority, and jurisdiction made to the Commission shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of this act are expressly granted and conferred upon the Commission. The Commission has previously found that KSA 66-1239, the statute providing for predetermination of rate-making principles, does not limit the Commission's broad authority to continue to oversee a utility's investment and operations.¹

5. In 1977, the Clean Air Act (CAA) was amended by the addition of §169 to protect visibility in Class I designated areas (e.g. national parks, wilderness areas, and

¹ Final Order, Docket No. 08-WSEE-309-PRE, ¶13 (Dec. 27, 2007)

international parks) from regional haze.² In 1980, the Environmental Protection Agency (EPA) codified regulations at 40 C.F.R. 51.300-51.307 addressing regional haze within designated Class I areas “reasonably attributable” to specific anthropogenic sources of pollution. “Anthropogenic sources” refers to those pollution sources resulting from the influence of human beings on nature. Under 40 C.F.R. 51.302, states were required to determine which facilities should install Best Available Retrofit Technology (BART) to control pollutants contributing to visibility impairment in Class I areas. The CAA was again amended in 1990 by adding §169B, which made §169 now §169A, authorizing the EPA to conduct further research and to assess progress.³

6. In 1999, the EPA finalized the Regional Haze Rule requiring each state that contributes to visibility impairment to develop a state implementation plan (SIP) addressing regional haze visibility impairment.⁴ Under 40 C.F.R. 51.308, states are required to set reasonable progress goals for achieving natural visibility conditions, to establish a long-term emissions reduction strategy, and to develop monitoring and recordkeeping procedures to assess and report on visibility.⁵ Section 51.308(e) specifically outlines requirements for applying best available retrofit technology (BART) to interstate emission sources that contribute to visibility impairment in any Class I federal area, irrespective of state boundaries.⁶

7. In 2005, the EPA amended the 1999 regulations and established guidelines

² State of Kansas Air Quality State Implementation Plan: Regional Haze, Kan. Dep’t. of Health and Env’t (October 26, 2009) p. 9 [hereinafter KDHE SIP], available at <http://www.kdheks.gov/bar/reghaze/KDHERegHaze.pdf>. KCP&L Regional Haze Agreement, Kan. Dept. of Health and Env’t, p. 2 (Dec. 5, 2007).

³KDHE SIP, *supra* note 2, at 9.

⁴ *Id.* at 7.

⁵ *Id.*

⁶ *Id.*

for states to identify facilities subject to BART, to set presumptive emission limits for coal-fired electrical generating units (EGUs), and to determine the level of control technology required to implement BART.⁷ Using the methodology prescribed by the EPA's BART Guidelines, the Staff of the Kansas agency charged with carrying out these duties, the Kansas Department of Health and Environment (KDHE),⁸ identified the following five EGU units subject to BART controls under the Regional Haze Rule: KCP&L-La Cygne 1, KCP&L-La Cygne 2, Westar-Gordon Evans 2, Westar-Jeffrey 1, and Westar-Jeffrey 2.⁹ Each owner, KCP&L and Westar, was then provided with a guidance document for conducting its own BART analysis.¹⁰

8. Westar submitted its BART Five Factor Analysis for Jeffrey Units 1 and 2 and Gordon Evans Unit 2 in August 2007.¹¹ Subsequently, Westar entered into an agreement with KDHE to meet the presumptive BART Nitrogen Oxide (NO_x) emission rates for Jeffrey Units 1 and 2 using new low NO_x burner systems for each unit.¹² In addition, Westar agreed to meet the Sulfur Dioxide (SO₂) presumptive limit of 0.15 lb/MMBtu for Jeffrey Units 1 and 2 by rebuilding the existing wet scrubber on each unit.¹³ For Gordon Evans, Westar agreed to switch from No. 6 fuel oil to natural gas with

⁷ On July 6, 2005, EPA published a revised final rule, including Appendix Y to 40 C.F.R. part 51 "Guidelines for BART Determinations under the Regional Haze Rule (BART Guidelines), which provides direction to states on determining which of these older sources may need to install BART and how to determine BART." KDHE SIP, *supra* note 2, at 44; Westar Energy Inc. Regional Haze Agreement, Kan. Dept. of Health and Env't, p. 3 (Feb. 29, 2008).

⁸ KDHE has general jurisdiction of over matters involving air quality under the Kansas Air Quality Act, pursuant to KSA 65-3001 et seq. Westar Energy Inc. Regional Haze Agreement, Kan. Dept. of Health and Env't, p. 1 (Feb. 29, 2008).

⁹ KDHE SIP, *supra* note 2, at 25, 45-49.

¹⁰ *Id.* at 49.

¹¹ The document was amended with additional modeling analysis for Gordon Evans in May 2009. KDHE SIP, *supra* note 2, at 50.

¹² KDHE SIP, *supra* note 2, at 50.

¹³ *Id.*

1% sulfur content or less by weight to achieve the visibility improvement requirements.¹⁴ Under a separate settlement agreement with the EPA, Westar further agreed to install a selective catalytic reduction (SCR) system on at least one of its three Jeffrey units by the end of 2014, estimated to cost approximately \$200 million.¹⁵ Westar has installed low NO_x burners and upgraded the wet scrubbers on all three units and is currently in the process of engineering the SCR.¹⁶ It bears mentioning that Westar is a 50% owner of La Cygne Units 1 and 2, which are operated by KCP&L.

9. KCP&L also submitted its own BART Five Factor Analysis.¹⁷ During the course of implementing a BART agreement with KDHE, KCP&L proposed limits more restrictive than the presumptive BART limits.¹⁸ KCP&L agreed to the higher limits in order to be consistent with its agreement with the Sierra Club and with the expectation that the Kansas City metro area would likely be designated a nonattainment area for ozone.¹⁹ “Nonattainment area for ozone” means the standards are not being met.²⁰ Since that agreement, Kansas City has been designated a nonattainment area for ozone.²¹ Pursuant to its agreement with KDHE, KCP&L plans to install wet scrubbers, baghouses,

¹⁴ Id. at 50-51. Westar Energy, Inc. Regional Haze Agreement, Kan. Dept. of Health and Env’t, p. 5 (Feb. 29, 2008).

¹⁵ The EPA settlement agreement requires the company to install a selective catalytic reduction (SCR) system on one of the three Jeffrey Energy Center coal units by the end of 2014. Depending on the NO_x emission reductions attained by that SCR and attainable through the installation of other controls on the other two coal units, a second SCR system would need to be installed on another Jeffrey coal unit by the end of 2016, if needed to meet the reduction targets. Westar Energy, Inc., Quarterly Report (Form 10-Q), at 26 (For the quarterly period ended September 31, 2010).

¹⁶ SNL Financial, Jeffrey Energy Center Unit Emission Controls Report (Jan. 4, 2011); Westar’s KCC Major Construction Update, September 10, 2010; E-mail from Leslie Wines, administrative assistant to Dick Ross, Westar Energy, to Bob Glass, Chief of Economic Policy, KCC (Jan. 4, 2011) (on file with KCC).

¹⁷ KDHE SIP, *supra* note 2, at 49-50.

¹⁸ KDHE SIP, *supra* note 2, at 50.

¹⁹ Id.

²⁰ Environmental Protection Agency, Ground-level Ozone Standards Designation, <http://www.epa.gov/ozonedesignations/> (last visited Jan. 6, 2011)

²¹ KCP&L Annual Report (Form 10-K), p. 14 (For the fiscal year ended December 31, 2009).

and a common chimney for La Cygne Units 1 and 2 as well as a selective catalytic reduction (SCR) system and low NOx burners for unit 2.²² KCP&L provided to Staff a confidential estimate of the expected cost of the retrofit project.²³ In its 2009 Annual 10k filed with the Securities Exchange Commission, KCP&L noted the various rules issued by the EPA are in a state of flux then said: “Great Plains Energy’s and KCP&L’s current estimates of capital expenditures (exclusive of allowance for funds used during construction and property taxes) to comply with the currently effective Clean Air Interstate Rule (CAIR) and with the best available retrofit technology rule (BART) is (sic) a range of approximately \$0.8 billion - \$0.9 billion.”²⁴ As noted in the preceding paragraph, Westar has estimated a cost of approximately \$200.0 million to install an SCR on one of its three Jeffrey units by the end of 2014. KCP&L, which has an ownership interest in the Jeffrey Units, notes that Westar has estimated the cost of two SCRs at Jeffrey—if an additional SCR unit is required—will be approximately \$500 million.²⁵ As the Commission recognized in its November 22, 2010 Order in 10-KCPE-415-RTS, page 111, the cost of upgrading La Cygne “will be very expensive.” This is only an initial cost estimate, not a definitive cost estimate, of the retrofit construction and does not include the cost of any additional construction needed to extend the life of the two generators at La Cygne, which are more than 30 years old. While most steam production coal units built in the 1950s through the 1970s had an initial life span of 40 years, these life spans were increased to more appropriate life spans in the 55 to 60 year range following capital improvements to the boiler or turbine. Specifically, the Commission recently determined

²² Memorandum from Curtis D. Blanc, Senior Director of Regulatory Affairs, KCP&L, to Michael R. Schmidt, Director of Utilities, KCC (September 30, 2010) (on file with KCC).

²³ Id.

²⁴ KCP&L Annual Report (Form 10-K), p. 14 (For the fiscal year ended December 31, 2009).

²⁵ Id. at 15.

the life spans for La Cygne Units 1 and 2 were 59 and 55 years, respectively.²⁶ Construction on the common chimney at La Cygne has already begun and construction on the remaining elements of the retrofit is expected to begin in 2011 to be completed by the June 1, 2015 KDHE Agreement deadline.²⁷

CURRENT ISSUES

10. Great expense to ratepayers will result from the continued implementation of these negotiated and agreed solutions, which involve agreements over which the Commission had no regulatory oversight. Until now the companies have implemented the described solutions, often independent of meaningful Commission involvement in considering the alternatives. Traditionally, the Commission would not review the prudence and reasonableness of such decisions and costs until the utility has incurred the costs. Staff contends the Commission should review the short and long term planning decisions necessitated by environmental requirements to help ensure all alternatives have been considered *before* costs are incurred to provide guidance to utilities about what the Commission concludes is the most reasonable and efficient approach to the generation fleet. Even more expense will occur if additional environmental requirements are imposed on the aging EGUs owned by these companies.²⁸ The basis in law for the

²⁶ Order: 1) Addressing Prudence; 2) Approving Application, in Part; and 3) Ruling on Pending Requests, Docket No. 10-KCPE-415-RTS, p. 66, 111 (Nov. 22, 2010) (Adopting a 60-year lifespan for Iatan 2 and finding that the average life span for KCP&L's other steam production units is 59.4 years).

²⁷ Interview with KCP&L at La Cygne Generating Station. (Nov. 2, 2010).

²⁸ As stated by Westar in its 2009 annual report: "Environmental requirements have been changing substantially and have become more stringent over time. Accordingly, we may be required to further reduce emissions of presently regulated gases and substances, such as SO₂, NO_x, particulate matter and mercury, and we may be required to reduce or limit emissions of gases and substances not presently regulated (e.g., carbon dioxide (CO₂)). Proposals and bills in those respects include: the EPA's national ambient air quality standards for particulate matter and ozone, regulations being developed by the EPA that will require emissions controls for mercury and other hazardous air pollutants, additional legislation introduced in the past few years in Congress requiring reductions of presently unregulated gases related primarily to concerns about climate change, state legislation introduced recently that could require mitigation of CO₂ emissions, and additional requirements regarding storage and disposal of non-hazardous

environmental requirements imposed on these KCP&L and Westar EGUs is well-established, but alternatives to these expensive solutions should be analyzed to evaluate the efficient use of ratepayer cost-recovery. Alternatives to environmental retrofit that the Commission should consider include decommissioning or replacement.

11. Decisions to implement expensive solutions for individual EGUs must be understood within the broader context, taking into account the marginal capacity requirements of electric utilities and the effect of these decisions on local and state economies. Accordingly, Staff now seeks to establish Commission guidelines for the types of analysis expected from electric utilities facing these decisions as well as to clarify the decision mechanism and criteria to be used when evaluating retrofit, decommission, or replacement decisions. Staff contends these criteria should be established now to serve as a basis for the Commission's consideration and findings when addressing issues such as those in a predetermination docket more fully described at paragraph 14.

12. During the investigation phase in this docket, the Commission's order should require KCP&L and Westar to answer the following questions:

- a. What EPA and KDHE regulatory programs apply to each EGU within the KCP&L and Westar fleets?
- b. What are the emission allowances for each unit?

fossil fuel combustion materials, including coal ash. If enacted, the impact of these proposed laws and regulations on our consolidated financial results cannot be accurately predicted because of various factors outside our control including, but not limited to, the specific terms of such laws or regulations, the amount and timing of required capital expenditures, the cost of any emission allowances or credits we may be required to purchase and our ability to recover additional capital and operating expenses in prices. Based on currently available information, we cannot estimate our costs to comply with these proposed laws and regulations, but we believe such costs could be material." Westar Energy, Inc., Annual Report (Form 10-K), p. 19 (For the fiscal year ended December 31, 2009).

c. What are Westar and KCP&L's expected capacity and/or energy needs over the appropriate investment planning horizons (e.g. 10, 15, 25 years) given the Companies' existing generation portfolios?

d. If capacity and/or energy is not needed, then how should non-compliant plants be treated?

e. If capacity and/or energy is needed, should KCP&L and Westar retrofit existing non-compliant plants or build new plants?

f. What criteria should be employed to determine optimal retrofit configurations to meet regulatory requirements? Has this analysis been performed for individual plants? Which plants?

g. Do the environmental retrofit projects that are currently installed, under construction or planned represent the end of the upgrading process for their corresponding generation units, or will the environmental retrofit projects, in-turn, require additional improvements to these units?

h. For any planned but incomplete environmental upgrades, has analysis been performed on how the planned upgrades may impact the expected life of the plant at the completion of the upgrades? If so, what criteria for analysis was used?

i. If replacement of a plant is considered as an option, what criteria should be used to determine the size and type of the generation plant to be built?

j. What factors were considered in any hypothetical resource portfolio scenarios which have been run?

k. How do Westar and KCP&L plan to regulate the wind and other renewable generation that is required by the Renewable Energy Standards Act (KSA 66-1256 through 66-1262)? If Westar and KCP&L plan to add generation to regulate wind and other renewable generation, how much generation and what fuel sources are planned to be used at these new plants used for regulation?

13. In addition to addressing the questions contained in the preceding paragraph, the parties should provide additional comments to assist the Commission in its consideration of the impact of potential environmental upgrade requirements on all EGUs owned by them.

14. KCP&L has informed Staff of its intent to file, pursuant to KSA 66-1239(c), a docket pertaining to environmental upgrades at La Cygne (Predetermination Docket). In this Predetermination Docket, the Commission will be asked to determine, within 180 days of the date of filing of the petition, the rate-making principles and treatment that will be applicable to KCP&L as it pertains to the La Cygne upgrades. Staff contends the criteria discussed in paragraph 11 should be promptly established here to provide a basis for the Commission's consideration and findings in the Predetermination Docket, and suggests it is essential that the Commission have an adequate opportunity to establish the criteria before taking up the issues with which it will be presented in the Predetermination Docket. Staff notes 2009 Supp. K.S.A. 66-1239(c)(2) requires a company seeking predetermination to describe, among other things, its ten-year generation and load forecasts and all power supply alternatives considered to meet the utility's load forecasts, but Staff maintains additional information, including that identified in paragraph 12, is also needed. Mindful that the La Cygne project has time

constraints, and based on its contention the Commission will be hampered in its ability to fully consider issues presented in KCP&L's Predetermination Docket until progress is made in this docket, Staff asks the Commission to move forward with this docket without undue delay and proposes the following aggressive procedural schedule for this docket:

a. KCP&L and Westar answer questions set out in paragraph 12 within 30 days of the order opening docket or no later than February 11, 2010, whichever occurs first;

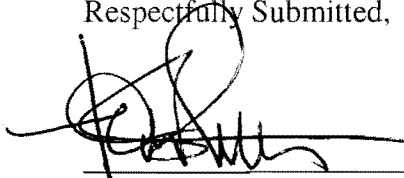
b. KCP&L and Westar, as well as intervening parties, file comments to the issues identified in the Commission's order opening docket within 30 days of the order; and

c. Upon receipt and consideration of answers to paragraph 12 questions and comments, and with the goal of establishing guidelines for analyzing retrofit, decommission, or replacement decisions and of clarifying the decision mechanism, the Commission should determine what other and further proceedings may be necessary. In its discretion, the Commission may decide that responses are needed to the Companies' answers to questions and comments, by Staff and other parties. In that case, Staff requests the Commission consider the scope and complexity of the issues addressed in setting a deadline for response.

WHEREFORE, Staff seeks a Commission order that opens this general docket for purposes of a general investigation into the status of the subject KCP&L and Westar EGUs, particularly as that status may be affected by current or future environmental requirements, establishes the procedural schedule suggested in paragraph 14, assesses the

costs of this docket to KCP&L and Westar, and for other and further relief as the Commission deems appropriate.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Tom Stratton', written over a horizontal line.

Tom Stratton, #11916
Patrick T. Smith, # 18275
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604
Phone: 785-271-3110
Fax: 785-271-3167
t.stratton@kcc.ks.gov
p.smith@kcc.ks.gov

ATTORNEYS FOR KCC STAFF

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Staff's Petition For General Investigation was placed in the United States mail, postage prepaid, or hand-delivered this 10th day of January, 2011, to the following:

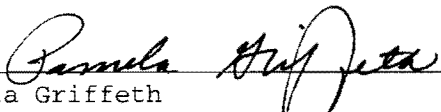
CURTIS D. BLANC, SR. DIR. REG. AFFAIRS
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PLACE
1200 MAIN STREET (64105)
P.O. BOX 418679
KANSAS CITY, MO 64141-9679
Fax: 816-556-2787
curtis.blanc@kcpl.com

HEATHER A. HUMPHREY, GENERAL COUNSEL
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PLACE
1200 MAIN STREET (64105)
P.O. BOX 418679
KANSAS CITY, MO 64141-9679
Fax: 816-556-2787
heather.humphrey@kcpl.com

MARY TURNER, DIRECTOR, REGULATORY AFFAIRS
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PLACE
1200 MAIN STREET (64105)
P.O. BOX 418679
KANSAS CITY, MO 64141-9679
Fax: 816-556-2110
mary.turner@kcpl.com

MARTIN J. BREGMAN, EXEC DIR, LAW
WESTAR ENERGY, INC.
818 S KANSAS AVENUE
PO BOX 889
TOPEKA, KS 66601-0889
Fax: 785-575-8136
marty.bregman@westarenergy.com

MIKE LENNEN, VP REGULATORY AFFAIRS
WESTAR ENERGY, INC.
818 S KANSAS AVENUE
PO BOX 889
TOPEKA, KS 66601-0889
Fax: 785-575-8119
michael.lennen@westarenergy.com



Pamela Griffeth
Administrative Specialist