

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Thomas E. Wright, Chairman
 Ward Loyd

In the Matter of a General Investigation Into)
KCP&L and Westar Generation Capabilities,) Docket No. 11-GIME-492-GIE
Including as These Capabilities May Be)
Affected by Environmental Requirements.)

ORDER OPENING DOCKET, SETTING SCHEDULE, GRANTING CURB
INTERVENTION, DESIGNATING PREHEARING OFFICER AND ASSESSING COSTS

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The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and being fully advised of all matters of record, the Commission summarizes the arguments of the parties and finds and concludes as follows:

1. On January 10, 2011, the staff of the Commission (Staff) filed a Petition asking that a general investigation be opened (1) to determine how environmental upgrade requirements may affect the generation capabilities of (a) Kansas City Power and Light (KCP&L) and (b) Westar Energy, Inc., and Kansas Gas and Electric Company (collectively Westar), and (2) to establish criteria to be used when evaluating retrofit, decommission, or replacement decisions. To assist this investigation, Staff asked the Commission to immediately enter an order opening a docket to address issues described in Staff's Petition, establishing a procedural schedule, and assessing costs of the docket to KCP&L and Westar. Staff Petition, ¶¶ 1-2.

2. On January 14, 2011, the Citizens' Utility Ratepayer Board (CURB) filed a Petition to Intervene and Response Supporting Staff Petition for General Investigation (CURB Petition & Response). On January 20, 2011, KCPL filed a Response to Staff's Petition for General Investigation (KCP&L Response). Westar has not filed a Response.

3. The Commission has jurisdiction to open this investigation under its authority to supervise and control the electric public utilities operating in Kansas. K.S.A. 66-101, K.S.A. 66-1-1b, K.S.A. 66-101g. Staff Petition, ¶ 4.

FINDINGS AND CONCLUSIONS

4. The Commission notes that Staff's Petition, in its Background section, summarizes the dynamic environmental regulatory environment under which electric utilities, such as KCP&L and Westar, must make decisions about electricity generation. Staff Petition, ¶¶ 5-7. This Background also provides an overview of the pertinent generation fleet of the subject utilities. Staff Petition, ¶ 8 (Westar) and ¶ 9 (KCP&L). The Commission recognizes that KCP&L in its Response corrected two factual statements regarding its fleet; KCP&L clarified that construction of a common chimney at LaCygne has not begun and that EPA has not yet formally designated the Kansas City area as non-attainment for the 2008 ozone standard. KCP&L Response, ¶ 9, *correcting* Staff Petition, ¶ 9. Rather than extend the length of this Order, the Commission incorporates by reference the Background section of Staff's Petition, ¶¶ 5-9, and includes the two corrections noted in KCP&L's Response, ¶ 9.

I. Opening Docket and Setting Schedule

5. In explaining reasons to open this investigation, Staff noted Westar and KCP&L face both existing and emerging EPA regulatory requirements regarding air quality, water use, and ash disposal, which will require utilities operating existing coal generation units to choose whether to install control equipment or to retire, decommission, and/or replace plants. Utilities will likely request that the costs attendant with any such choice be paid by their customers. Therefore, Staff urged opening this investigation to ensure the full scope of environmental retrofit decisions and alternative options are considered, and, if necessary, to allow the Commission to

give guidance to these companies before they commit additional funds or resources to currently-contemplated retrofit decisions. Recognizing the companies have been involved in planning these decisions for some time from their points of view, Staff pointed out establishment of this docket will give the Commission an opportunity to consider these issues from its own wider view that includes in particular the public interest. Such review is essential because expenditures resulting from these decisions will have a very long-term financial impact. Staff Petition, ¶ 1.

6. Staff asserted the full scope of the retrofitting decision will involve three fundamental questions:

First, is the capacity and/or energy provided by the plant to be retrofitted needed by the utility?

Second, 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?

Third, if the retrofit choice is the better choice, then has the utility chosen the best retrofitting option?

Staff urged that these questions be examined before the companies incur financial obligations that could potentially be charged to ratepayers and before construction executing a retrofitting decision commences. Staff Petition, ¶¶ 1-2.

7. To evaluate possible solutions to these questions, Staff proposed the Commission review short and long term planning decisions necessitated by both existing and emerging environmental requirements to ensure all alternatives have been considered before utilities incur costs. Although some environmental requirements imposed on KCP&L and Westar electric generating units (EGUs) may be established by law, the Commission should consider alternatives to these expensive solutions to effectively evaluate the efficient use of ratepayer cost-recovery. Alternatives to environmental retrofit include decommissioning or replacement. Staff Petition, ¶ 10.

8. A decision to implement an expensive solution for an individual EGU must be understood within the broad context of the marginal capacity requirements of an electric utility and the effect of this decision on local and state economies and on customers/ratepayers. Staff has urged the Commission to establish guidelines for the types of analysis expected from electric utilities facing these decisions and to clarify the decision mechanism and criteria that will be used in evaluating retrofit, decommission, or replacement decisions. Staff Petition, ¶ 11. In its Petition, Staff has proposed a list of questions that it asks the Commission order KCP&L and Westar to answer. The questions listed by Staff are as follows:

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

Staff Petition, ¶ 12.a. - k. In addition to answering these questions, Staff proposed that the Commission direct the parties to provide additional comments to assist in considering the impact of potential environmental upgrade requirements on all EGUs owned by Westar and KCP&L. Staff Petition, ¶ 13.

9. Staff pointed out that KCP&L has indicated its intent to file a docket pertaining to environmental upgrades at LaCygne pursuant to K.S.A. 2009 Supp. 66-1239(c). Although mindful the LaCygne project has time constraints, Staff asserted the Commission should have an opportunity to develop criteria in this proceeding before considering the anticipated predetermination docket. Thus, Staff asked the Commission to move forward with this docket without undue delay to allow full consideration of issues identified in this proceeding. Staff

proposed an aggressive procedural schedule for parties to respond to questions in paragraph 12, paraphrased as follows:

(a) KCP&L and Westar answer questions set out in ¶ 12 of Staff's Petition within 30 days of the opening of this docket but no later than February 11, 2010;

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

(c) Upon receipt of answers to questions in paragraph 12 and of comments to issues identified in the Commission's order, the Commission should determine what further proceedings are necessary. In determining any further proceedings, Staff asked the Commission to consider the scope and complexity of the issues addressed in setting a deadline.

10. In its Response, KCP&L described meetings between its representatives and Staff and CURB regarding the LaCygne Station environmental retrofit project. KCP&L noted the retrofit project for LaCygne Unit 1 has been a part of KCP&L's capital investment plans since 2004 and was reported to Staff and CURB since 2006 as part of KCP&L's Quarterly Reports in compliance with Docket No. 04-KCPE-1025-GIE (1025 Docket). KCPL Response, ¶ 2. While retrofits to LaCygne Unit 1 may well have been discussed in KCPL's Quarterly Reports, along with a multitude of other issues, the record has not made clear that all initial proposals for retrofitting Unit 1 as part of the 1025 Docket came to fruition.¹ The Commission has not addressed whether all commitments to retrofit LaCygne Unit 1 were completed. In any event, filing of quarterly progress reports in the 1025 Docket is not the equivalent of KCPL filing an application and receiving Commission approval to construct an environmental retrofit project.

11. On September 30, 2010, KCP&L served the Director of Utilities at the Commission with a letter describing the environmental compliance project on LaCygne Units 1 and 2. KCP&L Response, ¶ 3, and Exhibit A. In its Response to Staff's Petition, KCP&L stated

¹ "Environmental investments related to Iatan 1 and LaCygne 1 for compliance with environmental regulations will consist of a Selective Catalytic Reduction (SCR) facility, a Flue Gas Desulphurization (FGD) unit and a Baghouse at both Iatan-1 and LaCygne 1. It is anticipated that the SCR at LaCygne 1 will be in service by December 31, 2007, the FGD and Baghouse at LaCygne 1 by May 31, 2010, and the environmental equipment at Iatan 1 by December 31, 2008." 1025 Docket, Stipulation and Agreement attached to Joint Motion to Approve Stipulation and Agreement, filed April 27, 2005, Appendix A, p. 2.

it has provided Staff with requested information, including data used to evaluate the decision to proceed with the LaCygne project. KCP&L also stated it is working to provide Staff with data requested to populate a model Staff plans to run, although the data is voluminous and not readily available. KCP&L Response, ¶ 4. KCP&L has also had discussions with Staff regarding its filing of a predetermination docket for the LaCygne project under K.S.A. 2009 Supp. 66-1239. KCP&L Response, ¶ 5.

12. KCPL argued issues Staff has proposed be addressed in this generic docket will be addressed as part of a predetermination docket. KCPL stated it needs to file a predetermination request in the near future to meet tight construction timelines to complete the LaCygne project by June 1, 2015, as stipulated in KCP&L's agreement with the Kansas Department of Health and Environment (KDHE); otherwise, LaCygne will be shut down on that date. KCP&L further argued Staff's concerns and questions can be satisfied in a predetermination docket under K.S.A. 2009 66-1239. KCP&L Response, ¶¶ 7-8. KCP&L continues to develop its predetermination filing. KCP&L asked the Commission to carefully consider what the impact will be if this generic docket is opened and how this general investigation will fit together with KCP&L's upcoming predetermination docket without using resources inefficiently or duplicating efforts but still enable KCP&L to meet the June 1, 2015 compliance date. KCP&L Response, ¶ 10.

13. CURB supported Staff's request to open this general investigation in light of the adequate capacity available to KCP&L at this time. Due to this available capacity, CURB asserted the Commission has a rare opportunity to evaluate whether the economics of adding environmental upgrades to older coal units is preferable to shutting down older units and building new efficient generation or increasing demand-side management activities. CURB urged the Commission to determine a long-term solution for ratepayers that will provide for reliable service, a robust and diverse portfolio of generation resources, and the lowest reasonable rates going forward. CURB Petition & Response, ¶ 5.

14. The Commission grants Staff's request to open a general investigation into the generation capabilities of KCP&L and Westar. This investigation will focus on, but is not limited

to, units currently subject to environmental requirements as discussed in Staff's Petition, ¶¶ 5-9. The Commission recognizes that KCP&L has pledged to "cooperate fully" in this investigation. KCP&L and Westar are directed to answer questions proposed by Staff that are listed above in paragraph 8 of this Order. Answers to these questions will assist the Commission and its Staff in understanding the issues that should be considered in analyzing decisions to mothball, retrofit, decommission, or replace generation capacity units. In light of KCP&L's concern about moving quickly due to the pending deadlines involving LaCygne, the Commission agrees that an aggressive procedural schedule should be adopted. To this end, the Commission directs KCP&L and Westar to provide answers to questions listed above in paragraph 8 by February 18, 2011.

15. Second, the Commission directs that the parties to this proceeding, including KCP&L, Westar, and any intervenors, file Initial Comments that address any additional information a party believes the Commission should consider regarding the potential environmental upgrade requirements on the EGUs owned by KCP&L and Westar. The Commission directs that these Initial Comments discuss the three fundamental questions identified by Staff and listed in paragraph 6, and answer additional questions posed by the Commission as follows:

(a) If a utility has selected a specific option (i.e., mothball, retrofit, decommission, and/or build new plant), why were other options rejected, not just why the option chosen was appropriate?

(b) If a utility is successful in a predetermination proceeding, then it has shifted some risk from its shareholders to its ratepayers. Should the utility's stake in the generating facility, which was the subject of the predetermination proceeding, have different rate-making principles and treatment applied than would have been applied in a traditional rate case?

(c) Will pre-approval reduce the utility's risk profile going forward? If so, should an adjustment be made to the utility's return on equity in connection with whatever preapproval is granted to the utility?

(d) Given the broad selection of alternatives (i.e., mothball, retrofit, decommission, and/or build new plant), what are the forecasted effects on rates and on the financial performance of the respective company with traditional regulatory treatment and with predetermination treatment?

Parties shall file Initial Comments answering these questions by February 18, 2011. Responsive Comments will be allowed to respond to issues raised in Initial Comments of another party or answers by another party to questions listed in paragraph 8, but parties will not be allowed to introduce new issues in Responsive Comments. The deadline for a party to file Responsive Comments is March 4, 2011. The Commission will determine what additional procedures are needed after reviewing the answers to questions in paragraph 8 and Comments filed by the parties.

II. Granting CURB Intervention

16. CURB supported opening this docket and sought intervention in this proceeding to represent the interests of the residential and small commercial ratepayers of Kansas, noting rates paid and service received by these customers will or may be affected by a decision in this proceeding. In addition to adding counsel to the service list of this proceeding, CURB asked that two representatives, as listed in CURB's Response & Petition, ¶ 9, be included for electronic notices, pleadings, and correspondence regarding Staff's Petition.

17. The Commission has broad discretion to grant a petition for intervention if it is in the interests of justice, if the intervention will not impair the orderly and prompt conduct of the proceedings, and if the party has stated facts demonstrating its legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding. K.S.A. 77-521(a)(3); K.A.R. 82-1-225. At any time during a proceeding the Commission may impose limitations on an intervenor's participation. K.S.A. 77-521(c).

18. The Commission grants CURB intervention. In addition to counsel listed at the end of CURB's petition, the Commission directs that the following two representatives be added to the service list of this docket:

Shonda Smith, Officer Manager
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604
email: sd.smith@curb.kansas.gov

Della Smith, Administrative Specialist
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604
Email: d.smith@curb.kansas.gov

III. Designating Prehearing Officer

19. Although the Commission will conduct any evidentiary hearing in this docket, the Commission designates a prehearing officer to conduct any prehearing conferences that might be needed in this proceeding and to address any matters that are appropriately considered in a prehearing conference, including all items listed in the Kansas Administrative Procedure Act (KAPA) at K.S.A. 77-517(b). These items include, for example, conversion of the proceeding to another type; exploration of settlement possibilities; clarification of issues; rulings on identity and limitation of the number of witnesses; objections to proffers of evidence; determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form, and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person; order of presentation of evidence and cross-examination; discovery orders and protective orders; and such other matters as will promote the orderly and prompt conduct of the hearing. The Commission designates Martha J. Coffman, Advisory Counsel, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, telephone 785-271-3105, email address m.coffman@kcc.ks.gov, to act as Prehearing Officer in this proceeding. K.S.A. 77-516; K.S.A. 2009 Supp. 77-551(c). The Commission, as it deems necessary, may designate other staff members to serve in this capacity.

20. The attorneys designated to appear on behalf of the agency in this proceeding are W. Thomas Stratton, Chief Litigation Counsel, telephone number 785-271-3272, and Patrick T.

Smith, Interregional Counsel, telephone number 785-271-3173, 1500 SW Arrowhead Road, Topeka, KS 66604-4027. K.S.A. 2009 Supp. 77-518(c)(2); K.S.A. 77-516(c)(2).

IV. Assessing Costs

21. The Commission finds that expenses reasonably attributable to this investigation will exceed \$100. These expenses are assessed equably against KCP&L and Westar pursuant to K.S.A. 66-1502. Expenses attributable to this docket shall be assessed beginning three days after notice of this assessment is given by service of this Order by United States mail. KCP&L and Westar are hereby notified that they have an opportunity to request a hearing on this assessment in accordance with the provisions of the KAPA, K.S.A. 2009 Supp. 77-501, *et seq.*

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Commission hereby grants Staff's Petition to open a general investigation into the generation capabilities of KCP&L and Westar, particularly as these capabilities may be affected by environmental upgrade requirements, as discussed in this Order.

(B) The Commission directs KCP&L and Westar to answer questions listed in paragraph 8, by February 18, 2011, as discussed in paragraph 14.

(C) The Commission directs KCP&L, Westar, and any intervenors to file Initial Comments by February 18, 2011 addressing information regarding potential environmental upgrade requirements on the EGUs owned by KCP&L and Westar, including questions listed in paragraphs 6 and 15. Any party may file Responsive Comments by March 4, 2011.

(D) The Commission grants CURB intervention and orders inclusion of CURB's representatives on the service list, as set forth in paragraph 18.

(E) The Commission designates Martha J. Coffman to serve a Prehearing Officer in this proceeding, as discussed in paragraph 19.

(F) KCP&L and Westar are assessed the costs of this investigation pursuant to K.S.A. 66-1502, as stated in paragraph 21.

(G) Parties have fifteen days, plus three days if service of this Order is by mail, from the date of service of this Order in which to petition the Commission for reconsideration of any matter decided herein. K.S.A. 66-118b; K.S.A. 2009 Supp. 77-529(a)(1).

(H) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Wright, Chmn; Loyd, Com.

Dated: JAN 27 2011

ORDERED MAILED

JAN 27 2011

Susan K. Duffy EXECUTIVE
DIRECTOR

Susan K. Duffy
Executive Director

mjc

IN RE: DOCKET NO. 11-GIME-492-GIE

DATE

JAN 27 2011

PLEASE FORWARD THE ATTACHED DOCUMENT(S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
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ORDER MAILED JAN 27 2011

The Docket Room hereby certified that on this ____ day of _____, 20____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.

IN RE: DOCKET NO. 11-GIME-492-GIE _____ DATE _____

PLEASE FORWARD THE ATTACHED DOCUMENT(S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
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The Docket Room hereby certified that on this _____ day of _____, 20____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.