

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

JUN 02 2011

by
State Corporation Commission
of Kansas

In the Matter of the Petition of Kansas City)
Power & Light Company (“KCP&L”) for) Docket No. 11-KCPE-581-PRE
Determination of the Ratemaking Principles)
and Treatment that Will Apply to Recovery)
in Rates of the Cost to be Incurred by)
KCP&L for Certain Electric Generation)
Facilities Under K.S.A. 66-1239.)

**CURB’S RESPONSE TO
KCPL’S MOTION TO AMEND PROTECTIVE ORDER**

COMES NOW, the Citizens’ Utility Ratepayer Board (“CURB”) and submits CURB’s response to Kansas City Power & Light Company’s (KCPL) Motion to Amend Protective Order filed May 23, 2011.

1. KCPL filed a Motion to Amend Protective Order on May 23, 2011, seeking to amend the current Protective Order to limit disclosure of alleged proprietary vendor information to only non-consultant members of the Commission Staff who are involved in this docket.¹

2. The alleged proprietary vendor information contains information relating to energy markets and price forecasts, which is the same material KCPL sought to conceal from the parties in its February 23, 2011 Motion for Two-Tier Protective Order. KCPL again seeks to prevent parties from accessing this information, this time under the theory that the contracts that KCPL voluntarily entered into with its vendors to prepare its Petition for Preapproval in this docket “restricts KCP&L’s dissemination of information contained in the models, output of the models and the vendors’ analyses.”²

¹ KCPL Motion to Amend Protective Order, p. 4.

² *Id.*, ¶ 4.

3. KCPL voluntarily entered into those agreements knowing full well that parties to this docket would need to examine the “information contained in the models, output of the models and the vendors’ analyses” in order to review and analyze whether the predetermination sought by KCPL in its Petition should be granted or denied. If KCPL voluntarily and contractually agreed to withhold from parties to this docket information relied upon in its Petition, the Petition should be dismissed.

4. As stated in Staff’s Response to KCPL’s Motion to Amend Protective Order,

Staff also recognizes that the material KCP&L is attempting to protect is information which formulates the basis of the composite models that KCP&L is providing to the parties in this docket and that in order to ensure that KCP&L's composite models are accurate, it is necessary for a party to have the component data that was used to formulate those models.³

5. The material KCPL is seeking to conceal from the parties relating to energy markets and price forecasts form the basis for KCPL’s petition for predetermination. If KCPL does not want to disclose that information to CURB and its consultants, or even Staff’s consultants, then KCPL should withdraw its petition for predetermination or the Commission should deny the petition because the underlying data and analyses is being withheld by KCPL.

6. Further, KCPL’s current Motion to Amend the Protective Order is indistinguishable from the Motion for Two-Tier Protective Order filed by KCPL contemporaneously with its petition. KCPL alleges that allowing all parties access to the information that forms the basis for its petition is “problematic” because it alleges:

Some of the parties to this docket have filed non-disclosure certificates for their consultants who may be considered competitors of KCP&L's vendors. In addition, some participants in this docket may also be future potential clients of the vendors. Allowing all parties access to the information is not only problematic under KCP&L's vendor contracts, but is also potentially damaging to the vendors.⁴

³ Staff’s Response to KCPL’s Motion to Amend Protective Order, ¶ 7.

⁴ Motion to Amend Protective Order, ¶ 6 (emphasis added).

7. KCPL's allegations do not identify the specific parties involved in this proceeding that triggers its concern, but it only alleges those parties "may" be considered competitors or "may" also be future "potential" clients. KCPL's motion should be denied for the same rationale contained in the Commission's prior Order Denying KCP&L's Motion for Two-Tier Protective Order, because "KCPL has made no effort to identify specific parties involved in this proceeding that has triggered its concern and the need for heightened scrutiny of confidential information."⁵

8. KCPL is merely attempting a second bite at the apple after it failed to prevent disclosure of this information in its Motion for Two-Tier Protective Order. Here, however, KCPL's attempt to prevent disclosure of the information underlying its petition for predetermination is based upon contractual terms KCPL voluntarily entered into with its vendors.

9. KCPL's suggestion that the parties seeking access to the energy market analyses and price forecasts "have the option of contacting the vendors directly for purposes of negotiating terms for release of the proprietary information"⁶ is disingenuous and an attempt to circumvent its obligation to provide the underlying basis for its petition for predetermination in this docket. The energy market analyses and price forecasts form the basis for KCPL's petition for predetermination, and KCPL is required to reveal the underlying basis of its petition.

10. Moreover, KCPL's opinion that it "has found that composite forecasts have advantages over individual vendor forecasts"⁷ is likewise disingenuous and irrelevant. The individual energy market analyses and price forecasts forming the basis for KCPL's decisions and its

⁵ Order Denying KCP&L Motion for Two-Tier Protective Order, ¶ 18.

⁶ KCPL Motion to Amend Protective Order, ¶ 8.

⁷ *Id.*

petition for predetermination are discoverable by the parties, and the existing protective order is sufficient to protect any proprietary information that may exist.

11. As noted by the Commission in its Order Denying KCPL's Motion for Two-Tier Protective Order,


In deciding whether a claim of confidentiality is appropriate, the Commission examines each document individually. Thus, the Commission has reviewed the nine pieces of information KCP&L has asked the Commission to designate as "Confidential Restricted." These items involve estimates and forecasts used in analyzing the La Cygne Environmental Project. The Commission finds no basis has been shown to justify assigning items KCP&L has labeled Confidential - Restricted to an additional level of protection above that provided by the standard Protective Order. Additional protection is not needed merely because the information reflected is market-sensitive and based on projections, estimates, and forecasts. Many electric utilities across the United States are involved in projecting their capacity and load for future years to evaluate the impact of required environmental upgrades. Also, KCP&L has cited no incident before this Commission justifying a need for a second level of confidentiality. The Commission finds KCP&L has not demonstrated why additional protection is needed for information it has designated "Confidential -Restricted" in this proceeding. If KCP&L or any party becomes aware of a violation of the Protective Order, this should be brought to the attention of the Commission immediately.⁸

12. In its Motion to Amend Protective Order, KCPL is again attempting to prevent disclosure of material involving estimates and forecasts used in analyzing the La Cygne project. The only basis KCPL cites for concealing this information in this motion that is different from its prior motion is the contractual terms KCPL voluntarily agreed to with its vendors. Again, KCPL knew this information would need to be reviewed and analyzed by the parties in this docket. If KCPL continues to refuse to provide the data and analyses forming the basis of its petition, KCPL should withdraw its petition for predetermination or the Commission should deny the petition because the underlying data and analyses are being knowingly withheld by KCPL.

⁸ Order Denying KCP&L Motion for Two-Tier Protective Order, ¶ 19 (emphasis added).

WHEREFORE, CURB respectfully requests that the Commission deny KCPL's Motion to Amend Protective Order, and further order KCPL to either produce the material requested or withdraw its petition.

Respectfully submitted,



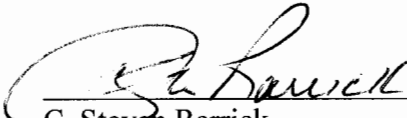
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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

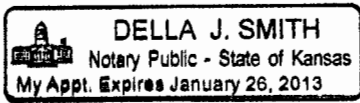
I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the above named petitioner; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.



C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 2nd day of June, 2011.





Notary Public

My Commission expires: 01-26-2013.

CERTIFICATE OF SERVICE

11-KCPE-581-PRE

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 2nd day of June, 2011, to the following:

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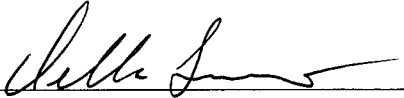
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