

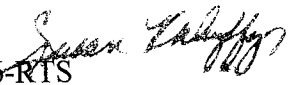
THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

MAR 02 2009

In the Matter of the Application of Kansas )  
City Power & Light Company for Approval )  
to Make Certain Changes in its Charges for )  
Electric Service to Continue the )  
Implementation of Its Regulatory Plan. )

Docket No. 09-KCPE-246-RTS



**MOTION TO REMOVE CONFIDENTIAL DESIGNATION  
ON KCPL's ESTIMATION OF THE AMOUNT OF CIAC REQUIRED  
UNDER ITS REVISED PROJECTIONS AND FOR EXPEDITED ORDER**

COMES NOW, the Citizens' Utility Ratepayer Board ("CURB") and moves the Corporation Commission of the State of the Kansas ("Commission") for an order removing the confidential designation on KCPL's estimation of the amount of Contribution in Aid of Construction (CIAC) required under its revised financial projections referenced in the rebuttal testimony of KCPL witness Michael W. Cline. Because the evidentiary hearing is scheduled to begin March 9, 2009, CURB requests an expedited ruling on its motion. In support of its motion, CURB states and alleges as follows:

**I. Statement of Facts.**

1. On February 23, 2009, KCPL filed the Rebuttal Testimony of Michael W. Cline, which states, in pertinent part:

KCPL estimates that CIAC in the amount of \*\* [REDACTED] \*\*, or \*\* [REDACTED] \*\* above the \$11.2 million requested, would be required in order to generate 2009 FFO / Debt of \*\* [REDACTED] \*\* as outlined in Schedule MWC-4 (Confidential). The calculation of this amount is shown in Schedule MWC-13.<sup>1</sup>

<sup>1</sup> Rebuttal Testimony of Michael W. Cline, p. 13 (Public Version).

2. KCPL publicly disclosed the \$11.2 million CIAC amount requested by KCPL in its application and the \$26.9 million CIAC amount KCPL claims it “could” request in this docket.<sup>2</sup> In addition, KCPL publicly disclosed the CIAC amount sought by KCPL in its 2007 rate case, KCC Docket No. 07-KCPE-905-RTS.<sup>3</sup>

3. On February 19-20, 2009, counsel for CURB asked the Company to release the confidential designation on the amount of CIAC calculated and referenced by Mr. Cline in his rebuttal testimony at page 13. On March 2, 2009, counsel for CURB sent an email to counsel for the Company again asking that the confidential designation be released on the amount of CIAC calculated by Mr. Cline at page 13 of his rebuttal testimony.

4. The pre-evidentiary hearing motion cutoff is March 3, 2009, at 9:00 a.m. In addition, the Commission has scheduled a motion hearing commencing at 3:30 p.m. on March 3, 2009.

5. While only a short time has transpired since counsel for CURB asked the Company to release the confidential designation on the CIAC amount calculated by Mr. Cline in his rebuttal testimony, the motion cutoff date and motion hearing require the filing of this motion today.

## **II. Argument and Authorities**

6. K.S.A. 66-1220a states:

The state corporation commission shall not disclose to or allow inspection by anyone, including but not limited to parties to a regulatory proceeding before the commission, any information which is a trade secret under the uniform trade secrets act (K.S.A. 60-3320 et seq. and amendments thereto) or any confidential commercial information of a corporation, partnership or individual proprietorship regulated by the commission unless the commission finds that disclosure is warranted after consideration of the following factors:

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<sup>2</sup> Direct Testimony of Michael W. Cline, p. 9.

<sup>3</sup> Direct Testimony of Michael W. Cline, p. 4.

- (1) Whether disclosure will significantly aid the commission in fulfilling its functions;
- (2) the harm or benefit which disclosure will cause to the public interest;
- (3) the harm which disclosure will cause to the corporation, partnership or sole proprietorship; and
- (4) alternatives to disclosure that will serve the public interest and protect the corporation, partnership or sole proprietorship.

7. The Commission issued a Protective Order in this Docket on September 26, 2006,

which contains the following:

6. A party may designate as confidential any information that it believes, in good faith, to be a trade secret or other confidential commercial information. ***The party designating the information as confidential must provide a written statement of the specific grounds for the designation at the time the designation is made.*** K.A.R. 82- 1 -221a(a)(5). The party claiming confidentiality has the burden of proving the confidential status of the information. Designating information as confidential does not establish that the information will not be subject to disclosure after review by the Commission. See K.S.A. 66-1220a.

...

8. The following definitions shall apply:

**INFORMATION:** Information refers to all documents, data, including electronic data, studies, and other materials furnished pursuant to requests for information or other modes of discovery, or any other documents or information which are otherwise a part of the Commission record.

**CONFIDENTIAL INFORMATION:** Confidential information refers to information which, if disclosed, would likely result in harm to a party's economic or competitive interest or which would result in harm to the public interest generally and which is not otherwise available from public sources. Confidential information may include but is not limited to: (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration; (6) contract negotiations; and (7) information concerning trade secrets, as well as private technical, financial and business information.<sup>4</sup>

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<sup>4</sup> Protective Order, ¶¶ 6, 8, September 26, 2008.

8. KCPL clearly has the burden of proving the propriety of its confidential designation.

In considering motions challenging confidential designations by Western Resources, Inc. (“WRI”) in KCC Docket No. 01-WSRE-949-GIE (“949 Docket”), the Commission stated:

K.S.A. 66-1220a does not create a presumption that all information regarding a public utility's operation is presumed to be a trade secret or confidential commercial information. K.S.A. 66-1220a is narrow in scope and is applicable only to trade secret or confidential commercial information.

...

The burden of proving the propriety of the confidential designation rests with the party asserting the confidential designation. WRI must identify the specific information that it claims as 'Confidential Information' and explain why public disclosure of the information will harm WRI's economic or competitive interest.

...

With respect to the documents that KIC and CURB identified from the document log WRI filed with the Commission, WRI did not identify what specific information it believed to be confidential Information nor did WRI explain how the economic or competitive interest of WRI would be harmed. It is the substance of the information not the format which is relative to the Commission's determination. *See* K.A.R. 82-1-221a. The Commission, therefore, has no basis upon which to conclude that the information contained within the documents meets the definition of 'Confidential Information' as defined in the Protective Order entered in this matter.<sup>5</sup>

9. KCPL has failed to articulate how its economic or competitive interest would be harmed by the disclosure of the CIAC amount calculated by Mr. Cline in his rebuttal testimony. Further, the Company has waived any confidential status of its CIAC calculations by previously publicly disclosing its CIAC calculations in this and prior dockets. KCPL witness Michael Cline testified publicly regarding the \$11.2 million CIAC amount KCPL was requesting in its application, and further testified publicly about the \$26.9 million CIAC amount KCPL claims it “could” request

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<sup>5</sup> No. 30, *Order on Motions Challenging Confidentiality Designation of Certain Matters*, ¶¶ 11, 13-14, June 27, 2002, KCC Docket No. 01-WSRE-949-GIE.

in this docket.<sup>6</sup> Likewise, KCPL has publicly testified about the \$12.8 million CIAC amount sought by KCPL in the 2007 rate case, KCC Docket No. 07-KCPE-905-RTS.<sup>7</sup>

10. The additional CIAC amount calculated by KCPL based on its revised financial projections is information that should be publicly disclosed. By previously disclosing the CIAC amounts calculated and claimed in the 2007 rate case and in its direct testimony in this docket, KCPL has lost or waived any claimed confidential status of the CIAC amount it calculates, whether based on the original filing, or its revised filing and revised financial projections:

Moreover, KIC's claim that the information contained within the documents is available from public sources was not rebutted by WRI. The United States Supreme Court, in the context of analyzing a takings claim related to an alleged taking of a trade secret, explained that "[o]nce the data that constitute a trade secret are disclosed to others, or others are allowed to use those data, the holder of the trade secret has lost his property interest in the data." ... *A bare allegation of commercial sensitivity does not provide the reasonable nexus between public disclosure and harm as required by the Protective Order and as contemplated by K.A.R. 82-1-221a.* Accordingly, the Commission finds that the information is not Confidential Information as defined by the June 18, 2001 Protective Order.<sup>8</sup>

11. Although Commission orders are not ordinarily precedential, orders interpreting the Commission's own regulations and statutes that govern the agency's power and authority are given deferential treatment by the reviewing courts of Kansas under the doctrine of operative construction.<sup>9</sup>

12. Disclosure of KCPL's estimation of the amount of CIAC required under its revised financial projections will benefit the public interest. This Commission approved KCPL's regulatory plan in the 1025 Docket in 2005 which contains the credit ratios which KCPL has used to estimate this CIAC amount. KCPL has publicly revealed the amount of CIAC it has claimed, both in this

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<sup>6</sup> Direct Testimony of Michael W. Cline, p. 9.

<sup>7</sup> Direct Testimony of Michael W. Cline, p. 4.

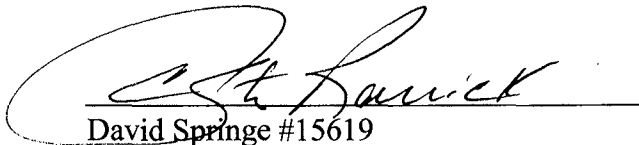
<sup>8</sup> No. 30, *Order on Motions Challenging Confidentiality Designation of Certain Matters*, ¶ 14, June 27, 2002, KCC Docket No. 01-WSRE-949-GIE.

<sup>9</sup> *In re Appeal of Topeka SMSA Ltd. Partnership*, 260 Kan. 154, 162, 917 P.2d 827 (1996).

docket and in the 2007 rate case. The public has the right to know about the amount of CIAC the Company believes would result from applying those credit ratios, and this Commission should carefully, and publicly, examine this estimate to determine whether the CIAC agreed to in the 1025 Docket leads to a reasonable result. Finally, it is ratepayers who will ultimately pay any increased costs approved by this Commission. As a result, the public interest benefits from disclosure. The CIAC amounts resulting from the 1025 agreement should be publicly disclosed, and no harm will result from disclosing the Company's estimated CIAC amount under its revised financial projections in this docket.

WHEREFORE, CURB respectfully requests the Commission grant its motion for an expedited order removing the confidential designation on KCPL's estimation of the amount of CIAC required under its revised financial projections contained in the rebuttal testimony of KCPL witness Michael W. Cline, at page 13.

Respectfully submitted,



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**VERIFICATION**

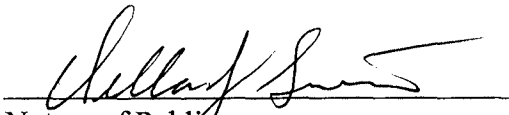
STATE OF KANSAS                                    )  
  )  
COUNTY OF SHAWNEE                            )        ss:

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

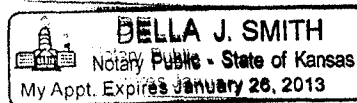
That he is an attorney for the above named petitioner; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.

  
C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 2<sup>nd</sup> day of March, 2009.

  
Notary of Public

My Commission expires: 01-26-2013



**CERTIFICATE OF SERVICE**

09-KCPE-246-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, e-mailed, or hand-delivered this 2nd day of March, 2009, to the following:

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**CERTIFICATE OF SERVICE**

09-KCPE-246-RTS

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Della Smith

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