


THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

MAR 23 2011



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. )

**RESPONSE OF THE CITIZENS' UTILITY RATEPAYER BOARD TO  
KCPL'S THIRD PETITION FOR RECONSIDERATION AND CLARIFICATION**

The Citizens' Utility Ratepayer Board (CURB) hereby files its Response to Kansas City Power & Light Company's Petition for Reconsideration and Clarification of the Commission's Order Granting KCP&L's and CURB's Second Petitions for Reconsideration and Clarification ("KCPL's Third PFR"). In support of its Response, CURB states as follows:

1. KCPL seeks "additional guidance" from the Commission as to certain aspects of the Commission's February 21<sup>st</sup> Order, and states that KCPL "believes" that the Commission erred when it determined the appropriate cut-off for recovery of rate case expense is November 22, 2010, the date the Commission issued its order on revenue requirement.<sup>1</sup>

2. KCPL states that the *Home Telephone*<sup>2</sup> decision requires the Commission to present some justification for disallowing expenses beyond a certain date.<sup>3</sup> However, as recognized by KCPL, the Commission's justification is presented by the Commission in its February 21<sup>st</sup> Order:

The Commission's Order states that one of the main reasons further proceedings on rate case expense are required at this point is because of KCP&L's failure to file sufficient evidence in the record to allow a final decision on this issue in the Order on revenue requirement.<sup>4</sup>

<sup>1</sup> KCPL's Third PFR, ¶ 2.

<sup>2</sup> *Home Telephone Co. v. State Corp. Comm'n*, 31 Kan. App.2d 83 (2006).

<sup>3</sup> KCPL's Third PFR, ¶ 7.

<sup>4</sup> KCPL's Third PFR, ¶ 9 (emphasis added).

3. Instead of acknowledging this justification (KCPL's failure to file sufficient evidence in the record), KCPL instead proceeds to again argue that "the information it presented at hearing was consistent with what has been required by the Commission in previous cases and that KCP&L proceeded in a manner consistent with representations made by Staff and with requirements imposed by Staff in previous rate cases."<sup>5</sup> The Commission has rejected this claim as being without merit.<sup>6</sup>

Specifically, the Commission determined:

As discussed in its November 22, 2010 Order, the Commission has established a policy of requiring utilities to file actual, detailed information about the expenses incurred to recover rate case expense. The Commission has a long-standing policy to allow a company to recover from ratepayers a fair and reasonable rate case expense that was prudently incurred. But the Company bears the burden of proof to present substantial evidence in the record to support its requested adjustments. Substantial evidence must possess something of substantial and relevant consequence and must furnish a substantial basis of fact from which issues can be reasonably resolved. The Commission rejects KCP&L's argument that the Commission has implicitly allowed a utility to recover rate case expense without meeting its burden to provide detailed information supporting an adjustment to revenue requirement. Like any other adjustment to revenue requirement, KCP & L carries the burden to provide substantial evidence in the record as a whole to support its request for rate case expense. The Commission has not changed its policy regarding the level of documentary evidence a utility must file to prove rate case expense.<sup>7</sup>

4. Furthermore, contrary to KCPL's representation about the "information it presented at hearing", KCPL never presented any information at the hearing on additional rate case expense.<sup>8</sup> In fact, KCPL failed to offer any evidence of additional rate case expense to be admitted in the record at any time during or even subsequent to the 14-day evidentiary hearing. This information was never offered to be admitted into the record. Instead, KCPL merely submitted its additional rate case

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<sup>5</sup> KCPL's Third PFR, ¶ 9.

<sup>6</sup> February 21, 2011 Order, ¶¶ 11-15.

<sup>7</sup> *Id.*, at ¶ 13 (footnotes omitted).

<sup>8</sup> Petition for Reconsideration and/or Clarification (CURB's Initial PFR), ¶¶ 1, 10, 14-17; Second Petition for Reconsideration (CURB's Second PFR), ¶¶ 3, 9, 11-28.

expense claim to Commission Staff in data request responses<sup>9</sup> long after the discovery deadline had expired, the hearing had concluded, and the record had been closed. This effectively denying CURB and other parties any opportunity to review the new evidence, conduct discovery on the new evidence, have the new evidence reviewed by consultants, present responding evidence, or cross-examine KCPL witnesses on the new evidence. It is this complete failure that led CURB to ask the Commission to deny any additional rate case expense to KCPL, a request CURB continues to believe should be granted to achieve a just and reasonable result.

5. The only reason any rate case expense will be incurred by KCPL after November 22, 2010 is KCPL's failure to meet its burden of proving rate case expense prior to the Commission's November 22, 2010 Order. CURB gave KCPL and the Commission clear notice in its opening statement that it opposed any claim for rate case expense in excess of the \$2.1 million contained in KCPL's application that was part of the record at the close of the hearing.<sup>10</sup> CURB further gave notice it believed it and other parties were entitled to due process rights with respect to any supplemental claims for additional rate case expense.<sup>11</sup> However, rather than introduce evidence of additional rate case expense during the hearing, or even seek to re-open the record after the hearing in order to introduce such additional evidence, KCPL did nothing other than respond to a discovery request by Commission Staff. Because of this, any such additional rate case expense should therefore be borne by KCPL shareholders, not ratepayers.

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<sup>9</sup> KCPL's responses to data requests 554 and 555 were not offered or admitted into the record, nor has KCPL at any time file a motion to reopen the record to introduce this information into the record of this proceeding.

<sup>10</sup> January 6<sup>th</sup> Order, ¶ 73; November 22<sup>nd</sup> Order, p. 86; Tr. Vol. 1, p. 117 (Rarrick in Opening Statement).

<sup>11</sup> November 22<sup>nd</sup> Order, p. 86; Tr. Vol. 11, pp. 2542-44 (Crane).

6. The “post-order regulatory compliance expenses associated with this rate case”<sup>12</sup> referenced by KCPL are no different than the post-order regulatory compliance expenses associated with all rate cases, which are never recoverable by the utility for the simple and logical reason that they are incurred after the order setting revenue requirement.

7. Further, the “costs related to the forthcoming rate case expense hearing”<sup>13</sup> will likewise be incurred only as a result of KCPL’s failure to file sufficient evidence in the record to allow a final decision on this issue in the November 22, 2010 Order on revenue requirement. The reasonable and equitable decision would be to simply reject KCPL’s claim for additional rate case expense beyond the \$2.1 million in the record. CURB put KCPL on clear notice it intended to challenge any additional rate case expense, and KCPL’s failure to timely submit such evidence during or even shortly after the evidentiary hearing should foreclose its right to recover any additional rate case expense associated with that failure.

8. Because of an agency’s need to close the record in order to reach a decision, it is not an abuse of discretion for a Commission to refuse to consider a party’s rate case expense evidence incurred well after the conclusion of the hearing.<sup>14</sup> Here, the Commission’s November 22, 2010 cut-off for rate case expense is more than reasonable as it is nearly three months after the evidentiary hearing concluded. Any rate case expense incurred by KCPL after that date is due solely to KCPL’s failure to present any evidence of additional rate case expense.

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<sup>12</sup> KCPL’s Third PFR, ¶ 10.

<sup>13</sup> KCPL’s Third PFR, ¶ 9.

<sup>14</sup> *City of Amarillo v. Railway Comm’n of Texas*, 894 S.W.2d 491, 495-96, (1995).

**III. CONCLUSION.**

9. For the foregoing reasons, CURB respectfully requests that the Commission deny KCPL's Third Petition for Reconsideration in its entirety.

Respectfully submitted,



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VERIFICATION

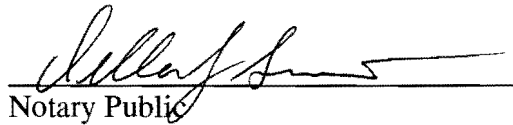
STATE OF KANSAS )  
 ) ss:  
COUNTY OF SHAWNEE )

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

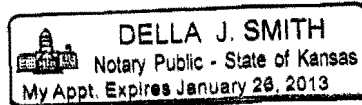
That he is an attorney for the Citizens' Utility Ratepayer Board; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.

  
C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 23<sup>rd</sup> day of March, 2011.

  
Notary Public

My Commission expires: 01-26-2013.



**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 23<sup>rd</sup> day of March, 2011, to the following:

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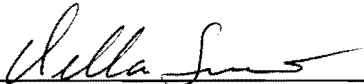
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