

THE STATE CORPORATION COMMISSION
OF THE STATE 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.)

Received
on

JUL 25 2011

by
State Corporation Commission
of Kansas

THE CITIZENS’ UTILITY RATEPAYER BOARD
PROPOSED CONCLUSIONS OF LAW AND FINDINGS OF FACT

COMES NOW, the Citizens’ Utility Ratepayer Board (“CURB”) and submits proposed conclusions of law and proposed finding of fact for consideration by the Kansas Corporation Commission (“Commission”) in the above captioned proceeding. In support thereof, CURB submits the following.

Proposed Conclusions of Law

1. The Commission has broad discretion to supervise and control public utilities. In general, the Commission has the authority to supervise and control public utilities and to do “all things necessary and convenient for the exercise of such authority. (K.S.A 66-101) The authority granted by the legislature shall be liberally construed. (K.S.A. 66-101g)

2. For an order of the Commission to be lawful, it must be within the Commission’s statutory authority and supported by substantial, competent evidence. An order of the Commission is lawful if it is within the statutory authority of the Commission and if the prescribed statutory and procedural rules are followed in making the order. *Central Power Co. v. State Corp. Comm’n*, 221 Kan. 505, 561 P.2d 779 (1977). (See also, *Farmland Industires, Inc. v.*

Kansas Corporation Comm'n, 24 Kan. App. 2d 172, 175, 943 P.2d. 470, rev denied 263 Kan. 885 (1997)

3. The standard of evidence the Commission must meet for its decisions to be lawful and valid was considered in *Zinke & Trumbo Ltd. v. Kansas Corp. Comm'n*, 242 Kan. 470, 749 P.2d 21 (1988). In *Zinke*, the Court held that to be lawful and valid, the Commission's decision must be supported by substantial competent evidence, and must not be unreasonable, arbitrary, or capricious. 242 Kan. at 474. Substantial competent evidence is evidence which "possesses something of substantial and relevant consequence and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved." *Jones v. Kansas Gas & Electric Co. v. Kansas Corp. Comm'n*, 222 Kan. 390, 565 (1977).

4. The Court does not have the authority to substitute its judgment for that of the Commission. The court must recognize that the Commissions decisions "involve complex problems of policy, accounting, economics and other special knowledge." *Western Resources, Inc. v Kansas Corporation Comm'n*, 30 Kan. App. 2d 348, 352, 42 P. 3d 162, rev.denied 274 Kan. 1119 (2002) The court may reverse or nullify a Commission Order only when the decision is so wide of the mark as to be outside the realm of fair debate. *William's Natural Gas Co. v. Kansas Corporation Comm'n*. 22 Kan. App. 2d 326, 335, 916 P.2d 52, rev. denied 260 Kan. 1002 (1996)

5. The interpretation of a statute by an administrative agency which is charged with the responsibility of enforcing that statute is generally entitled to judicial deference, and if there is a rational basis for the agency's interpretation, it should be upheld on judicial review". *Kansas Industrial Customers*, 36 Kan.App.2d 83, 100, 138 P.3d 338 (2006) A clear and unambiguous statute must be given effect as written. If a statute is clear and unambiguous, then there is no

need to resort to statutory construction or employ any of the canons that support such construction. *State v. Robinson*, 281 Kan. 538, 540, 132 P.3d. 934 (2006) A statute is ambiguous when the face of the statute leaves its construction uncertain. *Rose v. Via Christy Health Systems, Inc.*, 279 Kan 523, 526, 113 P.3d 241 (2005)

6. The plain language of K.S.A 66-1239 is clear and unambiguous, containing only a few specific directives. This gives the Commission broad discretion in determining what it may or may not review and what it may or may not order to best protect the public interest in this case.

7. K.S.A. 66-1239 contains only three specific directives. The Commission should not interpret this statute to contain any further directives that may limit this Commission authority or serve to limit a future Commission's authority.

8. The utility "shall as a part of its filing submit the following information: (A) A description of the public utility's conservation measures; (B) a description of the public utility's demand side management efforts; (C) the public utility's ten-year generation and load forecasts; and (D) a description of all power supply alternatives considered to meet the public utility's load requirements". (K.S.A. 66-1239(c)(2))

9. If the K.S.A. 66-1239 (c)(2) requirements are met, the Commission "shall issue an order setting forth the rate-making principles and treatment that will be applicable to the public utility's stake in the generating facility or to the contract in all rate-making proceedings on and after such time as the generating facility is placed in service or the term of the contract commences". (K.S.A. 66-1239(c)(4))

10. The Commission “shall utilize the rate-making principles and treatment applicable to the generating facility or contract” in all proceedings in which the cost of the public utility's stake in the generating facility is considered. (K.S.A. 66-1239(c)(5))

11. The Commission may consider if the public utility issued a request for proposal from a wide audience of participants willing and able to meet the needs identified under the public utility's generating supply plan, and if the plan selected by the public utility is reasonable, reliable and efficient”. (K.S.A. 66-1239(c)(3)) However, the Commission is not required to consider either.

12. K.S.A. 66-1239 (c)(2) contains no language that can be interpreted as a limitation on the Commission’s authority to order any ratemaking principles or treatment that the Commission believes necessary to protect the public interest. The Commission is not limited to considering only those ratemaking principles and treatments proposed by KCPL.

13. K.S.A. 66-1239 precludes recovering costs from the La Cygne retrofit, if approved, through an Environmental Cost Recovery Rider. Any ratemaking principles and treatment issued by the Commission are applicable “on and after such time as the generating facility is placed in service”. K.S.A 66-1239(c)(4) The Commission “in all proceedings in which the cost of the public utility’s in the generating facility....is considered shall utilize the ratemaking principles and treatment applicable to the generating facility”. K.S.A 66-1239(c)(4) Since the ratemaking principles “shall” be utilized “in all proceedings”, and the ratemaking principles can only be applied in proceedings “on or after” the generating facility is placed in service, an ECRR, which requires ratemaking principles to be applied prior to the generating facility being placed in service, would constitute a direct violation of clear language of K.S.A. 66-1239.

14. KCPL, as the application, carried the burden of providing substantial, competent evidence to support its application.

15. Generally, the burden of proof can refer to either the burden of persuasion or the burden of going forward with evidence. Under Kansas rules of evidence, the term "burden of proof" is synonymous with "the burden of persuasion." K.S.A. 60-401(d). The burden of persuasion means a party has an obligation to meet the requirements of a rule of law that the fact to be established must be proven by a requisite degree of belief. K.S.A. 60-401(d). As a general rule, burden of persuasion or the burden of proof lies with the party who initiates an action. The initiating party must prove the allegations of its application by a preponderance of the evidence. *In re Estate of Robison*, 236 Kan. 431, 439, 690 P.2d. 1383 (1984).

16. The burden of going forward with evidence is the duty to a case to refute or explain a particular point, such as the need to make a prima facie showing. The burden of producing evidence is the obligation of a party to introduce evidence sufficient to avoid a ruling against the party on the issue. Under traditional legal theory, the burden of persuasion does not shift at any stage of the proceeding while the burden of coming forward with evidence may shift back and forth as the case progresses. *Black's Law Dictionary*, West Publishing Co., 5th Ed., p. 178. If facts which give rise to a presumption are established, the burden is placed on the party against whom the presumption operates to put forth sufficient evidence to rebut the presumption; if sufficient rebuttal evidence is presented, the presumption vanishes. *Matter of Estate of Lewis*, 549 N.E.2d 960, 962 (1990).

17. This proceeding was initiated upon application of KGS to set the gas sales rate under its COGR tariff. That application incorporates the transportation charges of Kansas Pipeline Company that were incurred under contracts, which were the subject matter of the

Commission's investigation in Docket No. 97-WSRE-312-PGA. KGS must be prepared to establish the basic facts to make a prima facie showing that it has acted prudently to preserve its contract rights against the Kansas Pipeline Company.

18. The Commission cannot rely on Staff or any other party to provide evidence to support KCPL's burden of proof is KCPL has not provide sufficient evidence to meet the burden. Staff's Bates White study was filed so late in the process that intervenor parties had no reasonable opportunity to review the underlying data and modeling that support Staff's conclusion. Staff's conclusion that the La Cygne retrofit is the least cost option is not supported by the Bates White study and must be disregarded.

19. The Collaboration Agreement and KDHE Agreement have not been filed pursuant to K.S.A. 66-136 nor approved by the Commission and are void.

20. K.S.A 66-136 states in relevant part "No franchise or certificate of convenience and necessity granted a common carrier or public utility governed by the provisions of this act shall be assigned, transferred or leased, nor shall any contract or agreement with reference to or affecting such franchise or certificate of convenience and necessity or right thereunder be valid or of any force or effect whatsoever, unless the assignment, transfer, lease, contract or agreement shall have been approved by the Commission".

21. KDHE doesn't consider whether there are cheaper options to meet the reductions, that's the Commission's responsibility. (Gross, Tr. Vol. 3 at 614, lines 3-11)

22. K.S.A 66-136 applied where utility contract had potential to harm utility certificate. The Commission has held that it must assure a proposed collateralization of Kansas utility assets, as requested by Aquila, is reasonable, serves the public interest and is not otherwise

harmful to Kansas utility customers. (Order's dated May 7, 2003 and February 17, 2004, KCC Docket No. 02-UTCG-701-GIG,)

23. The Commission also rejected Westar arguments that the Commission's review authority under K.S.A 66-136 is limited, interpreting case law to hold "there is no disagreement between the majority and dissenting court on whether a public utility had the right to harm its ability to perform its public service obligations. No such right existed". (Order dated November 8, 2002, KCC Docket No. 10-WSRE-949-GIE)

24. CURB recommends that the Commission issue an order that simply states the following:

a. KCPL's modeling and data are inadequate to conclude with any certainty at this time that the La Cygne retrofit is prudent. KCPL has not, at this time, met its evidentiary burden of proof.

b. CPL's management should proceed with the La Cygne retrofit if it believes it is the least cost and prudent course of action. All traditional and normal regulatory principles will be appropriately applied at the time that costs are considered for recovery from customers

Proposed Findings of Fact.

25. KCPL has not met its burden of proof in this case. KCPL's supporting evidence contains data and methodological flaws, fails to consider important alternatives and gives results that are inconclusive. At this time the Commission cannot conclude from this evidence that the La Cygne retrofit is prudent or least cost.

26. KCPL Data and Modeling Are Biased Towards Coal and Inconclusive. Every expert that reviewed KCPL's data and modeling methodology came to the same fundamental

conclusions: KCPL's data and modeling are biased toward coal and favor the La Cygne retrofit, have methodological errors and produce results that cannot be relied upon by the Commission for determining whether the La Cygne retrofit is prudent.

27. Because of errors in methodology, and unreasonable assumption for High and Low factor cases, the KCPL evaluation does not appropriately reflect significant risks that the La Cygne retrofit will, in fact, be uneconomic. (Bates White, Puga Exhibit BW-1 at 65)

28. KCPL's natural gas and coal price forecasting produce biased results. KCPL used forecasts for natural gas and coal prices that are not accurate and overstate the differential between natural gas and coal. (Pavlovic, Direct at 16, line 17) KCPL systematically overprices natural gas in its models, which biases the results towards coal, and the La Cygne retrofit. (Pavlovic, Direct at 18, lines 4-9) KCPL's assumed High and Low natural gas prices are extreme relative to the sensitivities performed by EIA". (emphasis added) (Bates White, Puga Exhibit BW-1 at 65) KCPL's High and Low coal price cases are highly conservative and do not account for coal price risks associated with production, exports and transportation costs. (emphasis added) (Bates White, Puga Exhibit BW-1 at 65)

29. KCPL's scenario probability weightings are arbitrary and produce biased results. KCPL incorrectly assumed a set of arbitrary probabilities of occurrence for each forecast, and then treated each forecast as independent of the other forecasts, ignoring the economic relationship between the economic variables in the model. (Pavlovic, Direct at 15, line 11-19, Crawford, Tr. Vol. 4 at 1069, line 14) KCPL's probability weighting methodology is flawed, and cannot be relied upon as the basis for concluding that the retrofit of La Cygne is economically justified. KCPL's assumed probabilities for its High, Mid and Low cases for each factor are not supported. The implicit assumption that the factors are entirely independent is unrealistic" (Bates

White, Puga Exhibit BW-1 at 64) KCPL's methodological errors give excessive weight to the assumed Mid factor cases, which consistently overstates the robustness of the results and understates the risks associated with the retrofit scenarios". (Bates White, Puga Exhibit BW-1 at 64) These flawed weightings bias the model towards coal.

30. KCPL's CO2 price forecast is unreasonably low and produces biased results. CO2 price is the dominant risk affecting the retrofit proposal and that it is not appropriately represented in KCPL's modeling. (Bates White, Puga Exhibit BW-1, at 65) KCPL's Low CO2 price case assumption of a zero price through 2034 is highly unlikely, and certainly not consistent with the 25% probability assigned by KCPL. (Bates White, Puga Exhibit BW-1, at 65) KCPL's Mid CO2 price case is unreasonably low, and the High case is below a level that would adequately account for the substantial risk that this factor represents to the retrofit proposal". (Bates White, Puga Exhibit BW-1, at 65)

31. Several important resource plans were not evaluated by KCPL. None of KCPL's fifteen possible resource plans considers either the retirement of La Cygne Units 1 and 2 and replacing them with purchased power, or delaying the implementation of the environmental retrofits. (Pavlovic, Direct at 10, lines 16-18) None of the plans considered one or more of the existing units to combined cycle gas. (Schlissel, Direct at 3, lines 3-10) None of the primary plans considered additional investment in demand-side resources (DSM), renewable and natural gas, instead relying on fairly low level of DSM and wind. (Hausman, Direct at 9, line 19 through 10, line 21)

32. KCPL did not properly consider a range of customer discount rates. To reach an accurate decision in this case, the discount rate of the person on whose behalf the decision is being made should be used. (Pavlovic, Direct at 20, line 17-20) Customer discount rate is much

higher than the discount rate of large industry. (Majoros, Direct at 6, line 16 through 7, line 7) KCPL's current Kansas tariff allows it to charge a residential customer a 24% annual fee on delinquent bills, but KCPL charges non-residential customers a lower 12% annual fee on delinquent bills. (Majoros, Tr. Vol. 4 at 867-868) If KCPL uses a higher discount rate in its analysis, the decision whether to retrofit or retire changes. (Crawford, Tr. Vol. 4 at 1169, line 15 through 1170, line 7) At a 25% discount rate, the NPVRR differentials do change, leading to different results. (See also, Pavlovic, Direct at 21, lines 7-19 and Pavlovic Exhibit 6) There is value in evaluating scenario outcomes at different discount rates to provide the Commission with a more full understanding of impact of different scenarios, and KCPL has failed to provide this evidence.

33. KPCL's resource plans are statistically indistinguishable. There is no statistically significant difference between the NPVRR's of the 11 resource plans that cover the alternative dispositions of La Cygne Units 1 and 2-retrofit versus gas-fired replacement of one or both units. (Pavlovic, Direct at 23, lines 3-7, Pavlovic Exhibit 9) The Commission cannot conclude that any single resource plan is superior to another, and therefore cannot conclude at this time that the La Cygne retrofit is prudent.

34. Based on the above findings of fact, the Commission must conclude that there are input and methodological flaws in KCPL's modeling process that create a bias towards the La Cygne retrofit. Further, KCPL's model produces resource plans that are not statistically distinguishable from each other. Therefore, KCPL is simply unable to demonstrate, and the Commission is simply unable to conclude that the proposed retrofit of the La Cygne plant is the least cost prudent supply option. KCPL has not demonstrated, at this time, that its plans for the La Cygne retrofit are reasonable, reliable or efficient.

35. Any order that uses KCPL's modeling and resource planning as its support fails the test of substantial competent evidence, and is therefore unreasonable, arbitrary and capricious

36. Staff's conclusion that retrofitting La Cygne is prudent does not logically follow from the Bates White report. Bates White found only two possible scenarios that could result in the retrofit of La Cygne being a least cost option. The first scenario, retrofitting La Cygne is least cost if there are zero CO2 prices through 2034. However, Bates White found the probability of zero CO2 prices through 2034 to be "vanishingly small". (Bates White, Puga, Exhibit BW-1S at para 27) Bates White does not recommend the Commission consider any analysis that has zero CO2 prices, considering such an option as realistic. (Cain, Tr. Vol. 5 at 1403, lines 18-24)

37. In the second scenario, the La Cygne retrofit is only least cost if Waxman/Markey level CO2 prices are delayed until 2021 and adjusted for inflation only. (Bates White, Puga, Exhibit BW-1S at para 40(e)) This option produces a cost advantage over retirement and replacement with CT's of only \$190 million, and Bates White gives a huge caveat that if the goal is to reduce CO2, delaying Waxman/Markey may cause increased control levels at the later date, thereby "possibly reversing" the effects of the implementation delay. (Id.) The \$190 million is only a 2% NPVRR differential from the other scenarios, well within the margin of error for the study, meaning this scenario is not statistically different than the other scenario's rejected by Bates White. (Pavlovic, Cross-Testimony at 9, line17, through 10, line 4) Bates White discussed several issues that may impact the level of CO2 prices over time, but ultimately concludes that, "this underscores the risk associated with investing in a technology that would be made uneconomic under plausible CO2 prices". (Id. at 40(f))

38. Bates White gives no indication of what the probabilities of any of the potential CO2 scenarios might be, and Staff supplies none to support its recommendation. (Pavlovic,

Cross-Testimony at 8, line12 though 9, line15) Bates White is premised on the assumption that “the reason action on greenhouse gas control has stalled at the Federal level in the U.S. has everything to do with the state of the economy. And despite the extremity of the recent recession, a return to strong economic growth should be considered inevitable based on past experience”. (Bates White, Puga, Exhibit BW-1 at para. 31) Dr. Glass does not agree with this assumption. (Glass, Tr. Vol. 5 at 1666, line 21) Bates White concludes that “it's reasonable to assume that any prospective greenhouse gas control regime will be effective, i.e., it will not be window dressing but will have meaningful effect on CO2 emissions”. (Bates White, Puga, Exhibit BW-1 at para. 31) Dr. Glass appears skeptical, stating “they are a little more optimistic than I am”. (Glass, Tr. Vol. 5 at 1667, line 10) Ultimately, Dr Glass admits that Staff’s conclusion supporting the Bates White Waxman/Markey delayed CO2 price scenario is based on political forecasting. ” (Glass, Tr. Vol. 5 at 1670, lines 21-24) Staff’s conclusion is not supported by the Bates White study.

39. If the Commission determines the La Cygne retrofit to be prudent, CURB urges the Commission to use its discretion to order ratemaking treatments and principles that will balance the interests of KCPL shareholders and customers.

40. The Commission should clearly state that, if the \$1.23 billion is prudent, then any amount spent by KCPL over \$1.23 billion is presumed to be imprudent. KCPL should have the burden of showing that the additional expenditures were prudently incurred in a later rate filing, rather than Staff and CURB having the burden of showing KCPL’s additional spending was imprudent. This clear shifting of the evidentiary burden balances the public interest by adding some level of protection for customers, while still allowing KCPL an opportunity for recovery if the evidence supports the higher spending.

41. The Commission should clearly state that even if the Commission approves the \$1.23 billion figure as a prudent, and determines that \$1.23 billion is the definitive cost estimate for the project, the Commission can and will still review whether KCPL was prudent in its acquisition of the component parts of the construction project. KCPL has agreed that even if the Commission determines \$1.23 billion to be a prudent, the Commission can and should still review KCPL construction of the component parts of the project to assure that KCPL is minimizing costs. (Giles, Tr. Vol, 1 at 146, lines 14-19)

42. If the Commission approves KCPL's predetermination request, KCPL customers will be exposed to risks that include (1) the cost of the retrofits will be higher than the company now projects, (2) that the units will not operate as well as the company currently forecasts, (3) that the coal prices also will be higher than KCPL assumes, (4) that CO2 prices will also be higher, (5) that natural gas prices will be lower, (6) that plant operating costs will be higher, and/or (7) that one or both of the Units will be retired before 2034. (Schlissel, Direct at 3, lines 26-32)

43. KCPL agrees the traditional ratemaking is more risky than a predetermination. According to KCPL "the risk to KCPL in terms of access to and cost of capital, is the negative financial stakeholder response anticipated if the Commission were to reject the Company's request, thereby forcing KCPL to follow the higher-risk traditional ratemaking model if it were to go forward with this very significant investment". (Emphasis added)(Cline, Direct at 13, lines 4-7)

44. A predetermination order shifts risks to consumers. In its order opening the 11-GIME-492-GIE docket, the Commission held, "if a utility is successful in a predetermination proceeding, then it has shifted some risk from its shareholders to its ratepayers". (KCC Docket

No. 11-GIME-492-GIE, Order dated January 27, 2011 at para. 15) The Commission has also held that “granting predetermination arguably involves an increase in the level of risk to customers. This risk should be weighed against benefits to the company and its customers to determine the reasonableness of granting a utility’s requested ratemaking treatment and principles as opposed to requiring the traditional view”. (KCC Docket No. 11-WSEE-377-PRE, Order dated May 9, 2011)

45. Reducing the return on equity for the La Cygne retrofit costs will shift a commensurate benefit from shareholders to customers for customers being assigned the risks that go along with the retrofit preapproval. CURB’s recommended 100 basis point reduction in return on equity for any costs associated with the La Cygne retrofit placed in KCPL’s ratebase is reasonable.¹ (Crane, Direct at 30, lines 5-11)

46. The Environmental Cost Recovery Rider must be denied. The Commission rejected KCPL’s request for this same line item in the recent KCPL rate case. None of the reasons the Commission denied the ECRR have changed since the 415 Order, and KCPL has provided no compelling evidence in this case to reach a conclusion different than that reached in the 415 Order. (McClanahan, Direct at 5, lines 18-22) KCPL customers have had rates increased \$138 million in 5 years due to the four rate cases that accompanied KCPL’s 2005 Resource Plan. An ECRR simply insures a continuing series of annual rate increases.

47. The ECRR process will help KCPL avoid a prudence review. The time allowed for ECRR is too short for a prudence review. Staff gets 30 to 45 days to review a filing and make a recommendation. CURB gets 15 days to respond to Staff’s recommendation. The review

¹ This same ratemaking treatment should also apply to any portion of La Cygne that is placed in Westar’s ratebase.

process generally results in Staff checking invoices and adding up numbers. Even Westar says “they review and audit the project costs that are included in the filing”. (Rohlf, Tr. Vol. 5 at 1523, lines 18-19) When asked directly whether there was a prudence review with Westar’s ECRR, Mr. Rohlf could only answer “there could be”. (Rohlf, Tr. Vol. 5 at 1529, lines 24) “There could be” is not that same as “there is”. Westar does not submit a supply plan model. (Rohlf, Tr. Vol. 5 at 1530, line 12) Westar does not submit load forecast data (Id. at line 4) Westar does not submit demand response data. (Id. at line 6) Westar does not submit data about alternatives to the option it has chosen to pursue. (Id. at line 21)

48. Customers pay more under the ECRR. The net present value amount customers paying up front through the ECRR, which is based on the utility’s full pretax return, will always be more than customers would have paid under traditional AFUDC rates, even with the compound effect the AFUDC carrying charges have on total ratebase.

49. Allowing costs on a single project to be recovered through an ECRR is single issue ratemaking. (Crane, Direct at 33, lines 11-13) An ECRR allows a utility to increase rates as a result of one category of costs that may be increasing, but precludes the Commission’s ability to balance those increases against other areas of the utility’s cost that may be decreasing. KCPL and Westar could be earning far more than allowed by the Commission through general rates, and yet still be able to increase rates further through the ECRR. The Commission should avoid this type of single issue ratemaking.

50. KCPL has voluntarily agreed to not seek an ECRR type mechanism in Missouri until 2015. (McClanahan, Direct at 4, lines 3-4, Giles Tr. Vol. 1 at 69, line 7) There is no valid reason why Kansas customers should begin paying for the La Cygne upgrade years before Missouri customers. The ECRR is of such low priority in Missouri that KCPL simply agreed to

not have one. The Commission finds that it is a low priority in Kansas too, and denies KCPL's request for the ECRR.

51. KCPL as the Applicant has the burden of providing substantial, competent evidence to support its request. In this case, KCPL has failed to do so. Every expert witness in the case agrees there are numerous data and methodological errors with KCPL's model. KCPL's results are biased, unreliable and not statistically distinguishable. The Commission cannot conclude at this time that the La Cygne retrofit proposed by KCPL is the prudent or least cost option. The Commission should issue an order, as required by K.S.A. 66-1239, stating that KCPL has failed to meet its burden of proof, that the Commission cannot conclude that the La Cygne retrofit is prudent, that if KCPL's believes the La Cygne retrofit is prudent that it should proceed and traditional ratemaking principles and treatments will apply at the time KCPL seek recovery from customers. An order of this nature meets every legal requirement in K.S.A. 66-1239.

52. If the Commission determines that the La Cygne retrofit is prudent and is determined to so state in an order, the CURB requests the Commission also order ratemaking principles that balance the shareholder benefit of predetermination and customer having to accept more risk. CURB recommends the Commission order that any amount spent about \$1.23 billion is deemed imprudent but KCPL can overcome this presumption through evidence at the appropriate time, that the Commission will investigate to determine whether KCPL was prudent in its acquisition and construction of the component parts of the project, and that the return on equity shall be reduced by 100 basis points for any costs associated with the La Cygne retrofit that are placed in the rate base of either KCPL or Westar.

53. Finally, the Commission must deny the ECRR and harmful to customers, and unnecessary for KCPL to proceed with the project if it so chooses.

WHEREFORE, CURB respectfully request the Commission issue an order in this proceeding consistent with the conclusions of law and findings of facts set forth above.

Respectfully submitted,



David Springe #15619
C. Steven Rarrick #13127
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604
(785) 271-3200
(785) 271-3116 Fax

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 25th day of July, 2011, to the following:

CRAIG D. SUNDSTROM, ATTORNEY
A NEW ENERGY, LLC
101 N ROBINSON, THIRTEENTH FLOOR
OKLAHOMA CITY, OK 73112

GLENDA CAFER, ATTORNEY
CAFER LAW OFFICE, L.L.C.
3321 SW 6TH STREET
TOPEKA, KS 66606

TERRI PEMBERTON, ATTORNEY
CAFER LAW OFFICE, L.L.C.
3321 SW 6TH STREET
TOPEKA, KS 66606

DENISE M. BUFFINGTON, CORPORATE COUNSEL
KANSAS CITY POWER & LIGHT COMPANY
ONE KANSAS CITY PLACE 1200 MAIN STREET (64105)
P.O. BOX 418679
KANSAS CITY, MO 64141-9679

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

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

ANDREW SCHULTE, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027

CERTIFICATE OF SERVICE

11-KCPE-581-PRE

PATRICK T. SMITH, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027

ROBERT V. EYE, ATTORNEY AT LAW
KAUFFMAN & EYE
112 SW 6TH AVE STE 202
COLUMBIAN BUILDING
TOPEKA, KS 66603-3850

JAMES A. ROTH
PHILLIPS MURRAH P.C.
CORPORATE TOWER, 13TH FLOOR
101 NORTH ROBINSON
OKLAHOMA CITY, OK 73102

ANNE E. CALLENBACH, ATTORNEY
POLSINELLI SHUGHART
6201 COLLEGE BLVD STE 500
OVERLAND PARK, KS 66211-2435

FRANK A. CARO, ATTORNEY
POLSINELLI SHUGHART
6201 COLLEGE BLVD STE 500
OVERLAND PARK, KS 66211-2435

DONALD K. SHANDY, ATTORNEY
RYAN WHALEY COLDIRON SHANDY, PLLC
900 ROBINSON RENAISSANCE
119 NORTH ROBINSON
OKLAHOMA CITY, OK 73102

HOLLY BRESSETT, ATTORNEY
SIERRA CLUB ENVIRONMENTAL LAW PROGRAM
85 2ND ST FL 2
SAN FRANCISCO, CA 94105-3456

CERTIFICATE OF SERVICE

11-KCPE-581-PRE

DOUGLAS HAYES, ATTORNEY
SIERRA CLUB ENVIRONMENTAL LAW PROGRAM
1650 38TH ST STE 102W
BOULDER, CO 80301-2624

GLORIA SMITH, ATTORNEY
SIERRA CLUB ENVIRONMENTAL LAW PROGRAM
85 2ND ST FL 2
SAN FRANCISCO, CA 94105-3456

CHERYL A. VAUGHT, ATTORNEY
VAUGHT & CONNER, PLLC
1900 NW EXPRESSWAY STE 1300
OKLAHOMA CITY, OK 73118-1822

MARTIN J. BREGMAN, EXEC DIR, LAW
WESTAR ENERGY, INC.
818 S KANSAS AVENUE
PO BOX 889
TOPEKA, KS 66601-0889

CATHRYN J. DINGES, CORPORATE COUNSEL
WESTAR ENERGY, INC.
818 S KANSAS AVENUE
PO BOX 889
TOPEKA, KS 66601-0889

C. MICHAEL LENNEN, VP REGULATORY AFFAIRS
WESTAR ENERGY, INC.
818 S KANSAS AVENUE
PO BOX 889
TOPEKA, KS 66601-0889

DICK F. ROHLFS, DIRECTOR, RETAIL RATES
WESTAR ENERGY, INC.
818 S KANSAS AVENUE
PO BOX 889
TOPEKA, KS 66601-0889

CERTIFICATE OF SERVICE

11-KCPE-581-PRE

JAMES P. ZAKOURA, ATTORNEY
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH STREET, SUITE 750
OVERLAND PARK, KS 66210



Della Smith
Administrative Specialist