

Received
on

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

OCT 07 2011

by
State Corporation Commission
of Kansas

In the Matter of the Application of The)
Empire District Electric Company for)
Approval to Make Certain Changes in Its)
Charges for Electric Service.)

Docket No. 11-EPDE-856-RTS

**Response of the Citizens' Utility Ratepayer Board to the
Kansas City Power & Light Petition to Intervene**

COMES NOW, the Citizens' Utility Ratepayer Board (CURB), and files its Response to the Kansas City Power & Light Petition to Intervene (KCPL or KCPL Petition) filed in the above captioned docket. In support of said response, CURB states the following:

1. On June 17, 2011, pursuant to K.S.A. 66-117 and K.A.R. 82-1-231(b)(3)(a), the Empire District Electric Company (Empire) filed this application with the Kansas Corporation Commission (Commission) for approval to make certain changes in its charges for electric service. As an "abbreviated filing" under K.A.R. 82-1-231(b)(3)(a), Empire's request is limited to certain capital expenditures and operation and maintenance costs incurred since Empire's last general rate case related to the construction and operation of certain generation facilities, including Iatan 1, Iatan 2 and Plum Point. Empire was granted approval by the Commission to make this abbreviated filing in a June 23, 2010 Order Approving Stipulation and Agreement in KCC Docket 10-EPDE-314-RTS.

2. On June 20, 2011, CURB filed its Petition to Intervene and Motion for Protective Order in this docket. CURB's Petition to Intervene was granted by the Commission on July 29, 2011.

3. On October 5, 2011, KCPL filed its Petition to Intervene in this docket. In its petition, KCPL alleges it has "direct and unique" interests in the outcome of docket by virtue of being a joint owner of the Iatan Station generating facility and further alleges that "any decisions relating to Iatan Station in this proceeding may directly affect the interests of KCPL." KCPL Petition at para. 3

KCPL does not qualify for intervention

4. KCPL's petition does not provide any basis for intervention. K.A.R. 82-1-225(a)(2) states that the presiding officer shall grant a petition for intervention if "the petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding or the petitioner qualifies for intervention under any other provision of the law". It is clear KCPL has made no such showing.

5. Other than mere association as a joint owner of the Iatan facility, KCPL has alleged no facts demonstrating any legal right or interest that would in any way be affected by this proceeding, let alone "substantially affected" as required by the Commission to gain intervention. KCPL is not a customer of Empire and will not suffer any increased rates that may result from this proceeding. While KCPL may be a joint owner of the Iatan Station, KCPL fails to specify any fact or issue which, if decided in this case, will substantially affect KCPL. The Commission in this case may determine whether certain costs were prudently incurred in the construction of the generating plants

as those costs relate to Empire, but KCPL fails to state how any decision in this case related to Empire and affecting Empire's customers will substantially affect KCPL. In fact, the Commission has already reached a conclusion regarding whether KCPL prudently incurred costs in the construction of the Iatan generating plants in KCC Docket 11-KCPL-415-RTS. The Commission cannot issue a decision in the current Empire docket that will change its previously issued decision in the KCPL docket in a manner that may affect KCPL. Without further facts to support its petition, KCPL has not demonstrated that it will be substantially affected by any decision in this case. Neither has KCPL demonstrated a right to participate in this case under any other provision of the law. Without this demonstration, there is no reasonable basis for KCPL to expend resources on attorneys or other experts to participate in this case and no reasonable basis for KCPL's customers to be exposed to the possibility of having to pay the costs associated with KCPL's participation in this case.

6. K.A.R. 82-1-225(b) states that the presiding officer "may" grant a petition to intervene at any time upon determining that the intervention sought is in the "interests of justice" and "will not impair the orderly and prompt conduct of the proceedings." Again, other than mere association as a joint owner of the Iatan Station, KCPL has alleged no facts that might lead to a conclusion by the prehearing officer that the "interests of justice" will be served by allowing KCPL's intervention in this case at this time. Empire filed this case on June 17, 2011. If KCPL's interests were truly affected, CURB finds it hard to believe that KCPL would wait until one week before Staff and Intervenor testimony is to be filed, to make its application for intervention. If justice is at issue, KCPL is certainly late to the trial.

7. KCPL alleges that allowing it to intervene in this proceeding at this time will not prejudice any party. KCPL Petition at para. 3. It is impossible to determine whether allowing KCPL to intervene at this time will in fact prejudice a party since KCPL's petition does not explain the interest it seeks to protect or how it will go about protecting that interest. CURB and other intervenors must file testimony in less than one week. While CURB is prepared to do so on issues raised by Empire in the Empire filing, adding KCPL to the case at this time raises the possibility of collateral attack on CURB or other intervenors by KCPL on Empire's behalf. CURB will have no other opportunity to address any issue raised by KCPL. This type of collateral attack by KCPL would prejudice CURB's interests in this case. As such, the Commission should not grant KCPL's petition. However, if the Commission does grant KCPL's petition to intervene, CURB requests the Commission limit KCPL's participation, pursuant to K.A.R. 82-1-22(c)(1) to addressing only issues raised by Empire in its application, and specifically precluding KCPL from making a collateral attack on CURB or any other intervenor.

8. KCPL alleges that allowing it to intervene in this proceeding at this time will not impair the orderly conduct of the proceeding. KCPL Petition at para. 3. Allowing KCPL to intervene at this late date and putting KCPL in the position of potentially making collateral attacks on the intervenors to this case may very specifically impair the orderly conduct of these proceedings. If KCPL makes such a collateral attack, intervenors must be granted the opportunity to respond, which may require adjustment to the existing procedural schedule and will certainly expand the time (and cost) needed for trial in this matter. Again, these factors weigh against granting KCPL's petition. However, with the above requested limitations restricting KCPL to addressing only Empire's allegations in its application and specifically precluding KCPL from making collateral attacks on

intervenors, then CURB would be satisfied that KCPL's participation in this case would not impair the orderly conduct of the proceeding.

KCPL customers should not have to pay for KCPL's participation in this case

9. CURB does not believe that KCPL meets the requirements for intervention in this case. However, CURB recognizes that the Commission may in its discretion grant KCPL's petition. Therefore, in addition to the limitations on KCPL's participation requested above, CURB also requests that the Commission require KCPL to segregate and account for any costs incurred by reason of its participation in this case, and to require those costs be paid for by KCPL's shareholders and not passed to KCPL's Kansas customers in any future KCPL case. KCPL has articulated no customer interest at issue in this case and there is no reason why KCPL's Kansas customers should pay for KCPL's participation in this case. If KCPL's shareholders want to spend the resources to participate in this case, then CURB (subject to the requested limitations above) will not object as long as those costs aren't passed to Kansas customers.

WHEREFORE, for the reasons stated above, CURB requests the Commission deny KCPL's Petition to Intervene in this docket. However, in the event the Commission grants KCPL's petition, CURB requests that pursuant to K.A.R. 82-1-22(c)(1) KCPL's participation be limited to addressing only issues raised by Empire in its application, and that KCPL be specifically precluded from making a collateral attack on CURB or any other intervenor. In addition, CURB requests that the Commission order KCPL to segregate and account for any costs incurred by reason of its participation in this case,

and to require those costs be paid for by KCPL's shareholders and not passed to KCPL's
Kansas customers in any future KCPL case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Springe", is written over a horizontal line.

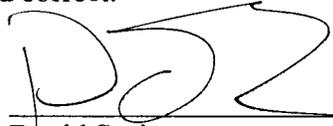
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VERIFICATION

STATE OF KANSAS)
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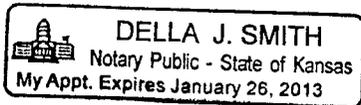
I, David Springe, of lawful age, being first duly sworn upon his oath states:

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.



David Springe

SUBSCRIBED AND SWORN to before me this 7th day of October, 2011.





Notary Public

My Commission expires: 01-26-2013.

CERTIFICATE OF SERVICE

11-EPDE-856-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 7th day of October, 2011, to the following:

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