

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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.)

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**PETITION FOR RECONSIDERATION
OF ORDER ON RATE CASE EXPENSE**

by
State Corporation Commission
of Kansas

The Citizens' Utility Ratepayer Board ("CURB"), pursuant to K.S.A. 66-118b, K.S.A. 77-529, and K.A.R. § 82-1-235, hereby petitions the Commission for reconsideration of its January 18, 2012, Order on Rate Case Expense ("January 18th Order"). CURB is requesting that the Commission reconsider its decision granting KCPL rate case expense in excess of the uncontested \$2.1 million claimed in the Application, as well as the award of \$4.5 million for KCPL-only rate case expense identical to the amount awarded in the Commission's November 22, 2010 Order.¹ In support of its Petition for Reconsideration, CURB states as follows:

1. While Commission's January 18th Order affirms each of the arguments contained in the September 22, 2011 Post-Hearing Brief of the Citizens' Utility Ratepayer Board Regarding KCPL's \$9 Million Revised Claim For Rate Case Expense ("CURB's September 22, 2011 Post-Hearing Brief"), the January 18th Order erroneously awards KCPL rate case expense in excess of the \$2.1 million claimed in the Application and erroneously awards KCPL the identical \$4.5 million in KCPL-only rate case expense awarded in the Commission's November 22, 2010 Order.

¹ November 22, 2010 Order, p. 91.

I. The Commission Should Reconsider Its Decision Awarding KCPL Rate Case Expense in Excess of the Uncontested \$2.1 Million Claimed in the Application.

2. CURB seeks reconsideration of the Commission's January 18th Order awarding KCPL rate case expense in excess of the uncontested \$2.1 million claimed in the Application on the grounds that it is erroneous, arbitrary and capricious, and not based on substantial competent evidence.

3. CURB argued and cited extensive evidence in the record demonstrating that KCPL failed to provide the required detailed information (meticulous, contemporaneous time records),² and the Commission's January 18th Order specifically determined the evidence submitted by KCPL lacked the detail required to calculate rate case expense.³

4. CURB argued and cited extensive evidence in the record demonstrating that KCPL's revised rate case expense claim contained expenses for work performed on other matters improperly charged to this docket that have been block billed,⁴ and the Commission's January 18th Order specifically determined that these charges were inappropriately included in the Company's claim.⁵

5. CURB argued and cited extensive evidence in the record demonstrating that KCPL's revised rate case expense claim contained expenses for duplicative work that have been block billed,⁶ and the Commission's January 18th Order specifically determined duplicative charges were inappropriately included in the Company's claim.⁷

² CURB's September 22, 2011 Post-Hearing Brief, ¶¶ 5-7, 11, 14, 26-27.

³ January 18th Order, ¶¶ 21, 24, 45, 58, 77.

⁴ CURB's September 22, 2011 Post-Hearing Brief, ¶ 28.

⁵ January 18th Order, ¶ 70.

⁶ CURB's September 22, 2011 Post-Hearing Brief, ¶¶ 18-20, 29.

⁷ January 18th Order, ¶¶ 58-71.

6. CURB argued and cited extensive evidence in the record demonstrating that KCPL's rate case fees and expenses were excessive,⁸ and the Commission's January 18th Order agreed, specifically finding the six law firms with 47 timekeepers billing over 16,000 hours and eight outside consulting firms with 46 individual timekeepers billing more than 9,700 hours, for a total in excess of 25,000 attorney and consultant hours, "shock[ed] the conscience of the Commission."⁹

7. CURB argued and cited extensive evidence in the record demonstrating that KCPL failed to develop, monitor, and stay within a reasonable budget for rate case expense.¹⁰ The Commission's January 18th Order agreed, finding that little or no control was exercised by KCPL to match the initial \$2.1 million estimated for rate case expense and that no specific person was assigned the responsibility to monitor or keep overall rate case expense within this budgeted amount, despite the fact that KCPL knew the magnitude of the case included a depreciation study, a class cost of service study, an allocation study, and the prudence issue.¹¹ The Commission further determined that KCPL made no attempt to keep the parties or the Commission informed about the level of rate case costs being incurred, why that level differed so dramatically from the claim included in the filing, or why that level of cost was appropriate.¹²

8. With respect to the evidence submitted by KCPL in support of its rate case expense claim, the Commission made the following specific findings:

- a. The description of work performed given by timekeepers was almost always set out as block descriptions per day rather than breaking out time spent on specific issues, rendering "**impossible** any meaningful comparison of work to identify duplication of effort on issues."¹³

⁸ CURB's September 22, 2011 Post-Hearing Brief, ¶¶ 9-10, 13, 18-1930.

⁹ January 18th Order, ¶ 23.

¹⁰ CURB's September 22, 2011 Post-Hearing Brief, ¶ 31.

¹¹ January 18th Order, at ¶ 36.

¹² *Id.*

¹³ January 18th Order, ¶ 21 (emphasis added).

- b. The lack of detail in the evidence submitted by KCPL “made it **impossible** to rationally analyze billings submitted by multiple attorneys from several different law firms” and for some consultants, “essentially *no description was made that could be used* to decipher what issues were being addressed by individual timekeepers.”¹⁴
- c. The lack of detail in descriptions “made it **impossible** to determine whether the claimed work was actually performed in a competent manner and useful in the rate case, whether the company was prudent in incurring costs for each attorney or consultant, and whether it is just and reasonable to pass these costs through to ratepayers as rate case expense.”¹⁵
- d. Identifying duplication of attorney work among law firms is tedious and requires laborious review of invoices that was made **impossible** here because attorneys billed work using block descriptions rather than detailed descriptions of work efforts.¹⁶
- e. Billings by consultants present issues similar to the law firm billings. Invoices were inconsistent in their detail and it was **impossible** to determine the degree to which work effort was properly undertaken, duplication of work effort occurred, and any effort was made to review and manage billings by consultants.¹⁷
- f. The testimony by KCPL witness Tim Rush that no duplication of billing occurred in this case “**bordered on stating a deliberate falsehood,**” but which the Commission deemed to be a sign of indifference.¹⁸

9. The Commission’s above determinations establish that the evidence presented by KCPL made it: *impossible* to make meaningful comparison of work to identify duplication of effort on issues; *impossible* to rationally analyze billings; *impossible* to determine whether the claimed work was actually performed competently and useful in the rate case, whether the company was prudent in incurring costs for each attorney or consultant, and whether it is just and reasonable to pass these costs through to ratepayers as rate case expense; and *impossible* to determine the degree to which work effort was properly undertaken, duplication of work effort occurred, and any effort was made to review and manage billings by consultants.

¹⁴ *Id.* (emphasis added).

¹⁵ *Id.* (emphasis added).

¹⁶ *Id.*, at ¶ 58 (emphasis added).

¹⁷ *Id.*, at ¶ 77 (emphasis added).

¹⁸ *Id.*, at ¶ 45 (emphasis added).

10. The evidence relied upon by the Commission in awarding KCPL the \$4.5 million in KCPL-only rate case expense does not, by the Commission's own findings, constitute substantial competent evidence upon which the Commission can award rate case expense in excess of the uncontested \$2.1 million contained in the Application.

11. Despite specifically holding the evidence submitted by KCPL rendered *impossible* the above required comparisons, analysis, and determinations, the Commission chose to consider the lodestar calculation method to determine an appropriate amount to award for rate case expense in this proceeding.¹⁹ The lodestar analysis is determined by multiplying the number of hours productively spent by a reasonable hourly rate. When applying the lodestar approach, a court deducts "duplicative, unproductive, or excessive hours."²⁰ Here, the Commission's own findings demonstrate that the evidence submitted by the Company makes those deductions *impossible*.

12. Moreover, as noted by the Commission, courts utilizing the lodestar method require each lawyer for whom fees are sought to provide meticulous, contemporaneous time records documenting the time allotted to specific tasks.²¹ Here, the Commission's findings clearly establish that KCPL failed to provide meticulous, contemporaneous time records documenting the time allotted to specific tasks, despite the fact the Prehearing Officer and the Commission ordered this level of detail be required. As a result, the Commission's attempt to analyze the chaotic mess of voluminous billing records submitted by KCPL under a lodestar analysis is erroneous, arbitrary and capricious, and not supported by substantial competent evidence.

¹⁹ *Id.*, at ¶ 43.

²⁰ *Family Winemakers of California v. Jenkins*, 2011 WL 2312534, at 2.

²¹ *Id.*

13. In light of the findings made by the Commission that (1) the evidence submitted by KCPL rendered *impossible* the required comparisons, analysis, and determinations, and (2) the Company failed to provide meticulous, contemporaneous time records documenting the time allotted to specific tasks, the Commission should reconsider its decision to award rate case expense in excess of the uncontested \$2.1 million contained in KCPL's application.

II. The Commission Should Reconsider Its Decision Awarding \$4.5 Million in KCPL-Only Rate Case Expense.

14. CURB seeks reconsideration of the Commission's January 18th Order awarding \$4.5 million in KCPL-only rate case expense on the grounds that it is erroneous, arbitrary and capricious, and not based on substantial competent evidence.

15. In addition to relying upon evidence that rendered *impossible* the comparisons, analysis, and determinations necessary to determine just and reasonable rate case expense, the Commission's January 18th Order fails to specify how it calculated the identical amount (\$4.5 million) of KCPL-only rate case expense it previously awarded in its November 22, 2010 Order.²² Instead, the Commission states that "The Commission is not persuaded that KCP&L has presented sufficient evidence to justify *increasing* the award of KCP&L-only rate case expense *above what the Commission originally approved* in its November 22, 2010 Order."²³

16. The above statement by the Commission infers that the September 2011 rate case expense proceeding was granted to determine whether KCPL was entitled to a KCPL-only rate case expense award above the \$4.5 million awarded in 2010. However, the issue to be determined in the

²² CURB would note that the \$4.5 million KCPL-only rate case award was based on evidence that was not properly in the record at the time the November 22, 2010 Order was issued.

²³ January 18th Order, ¶ 5 (emphasis added).

rate case expense proceedings was clearly specified in the Commission's February 21, 2011 Order Granting KCPL's and CURB's Second Petitions for Reconsideration and Clarification ("February 21, 2011 Order"):

19. Finally, in its January 6, 2011 Order, ¶ 85, the Commission considered but rejected CURB's argument that rate case expense should be limited to \$2.1 million because evidence in the record was inadequate and based on summarized and estimated fee claims. In reaching its decision, the Commission noted that even CURB's Witness Andrea Crane recognized that the issues involved in the docket were complex. The Commission concluded that, based upon a review of the available evidence, limiting KCP&L to \$2.1 million rate case expense for this proceeding was not appropriate and denied CURB's request. Taking into account the many factors that must be considered in determining an appropriate rate case expense, the Commission recognizes that an appropriate amount of rate case expense for this proceeding may well exceed \$2.1 million. However, the Commission will not prejudge this issue. CURB will be allowed to examine any evidence offered by KCP&L on rate case expense.

20. The Commission will base its decision on rate case expense for this docket upon the evidence presented in this additional proceeding that is limited to this issue. *Thus, the purpose of granting reconsideration and setting a hearing as announced in this Order is to allow development of a record that will provide the Commission with evidence needed to determine an appropriate adjustment for rate case expense that was prudently incurred by KCP&L and that is a just and reasonable amount to recover from KCP&L's ratepayers.* Based upon this review, the Commission may decide to grant a smaller or larger amount for rate case expense for this proceeding than decided in its November 22, 2010 Order.²⁴

17. The issue to be determined in this rate case proceeding, therefore, was to develop a record to provide the Commission with sufficient evidence to determine an appropriate adjustment for rate case expense that was prudently incurred by KCP&L and that is a just and reasonable amount to recover from KCP&L's ratepayers.

18. Careful scrutiny of the Commission's January 18th Order fails to reveal how the Commission came to the identical dollar amount (\$4.5 million) for KCPL-only rate case expense it awarded in the November 22, 2010 Order. It is difficult to understand how the Commission arrived

²⁴ February 21, 2011 Order, ¶ 19 (emphasis added).

at this identical amount, considering KCPL's rate case expense claim increased in amount and the evidence was subjected (for the first time) to extensive discovery and analysis in the subsequent rate case expense proceeding. While the Commission explained some of its reductions from the Company's overall claim, the Commission failed to articulate with any precision how it ultimately landed on the identical \$4.5 million amount of KCPL-only rate case expense awarded in the November 22, 2010 Order.

19. As a result, the Commission's order awarding the \$4.5 million in KCPL-only rate case expense is erroneous,²⁵ unreasonable, arbitrary and capricious,²⁶ and not based on substantial competent evidence when viewed in light of the record as a whole.²⁷ Accordingly, CURB urges the Commission to limit KCPL to the uncontested \$2.1 million rate case expense contained in the record at the close of the 2010 evidentiary hearing. In the alternative, the Commission should adopt the alternative recommendations made by CURB witness Andrea Crane, including a sharing mechanism that the Commission has acknowledged is appropriate in some situations.²⁸

III. Conclusion

20. Based on the above, CURB respectfully requests that the Commission reconsider its decision to award KCPL rate case expense in excess of the uncontested \$2.1 million claimed in the Application and its decision to award the identical \$4.5 million in KCPL-only rate case expense awarded in the Commission's November 22, 2010 Order. CURB urges the Commission to deny all rate case expenses in excess of the uncontested \$2.1 million contained in the Application as a result

²⁵ K.S.A. 77-621(c)(4).

²⁶ K.S.A. 77-621(c)(8).

²⁷ K.S.A. 77-621(c)(7).

²⁸ November 22, 2010 Order, page 85 ("requiring shareholders to share some rate case expenses with ratepayers is appropriate in some situations.").

of KCPL's failure to provide sufficient evidence to justify an award in excess of this uncontested amount.

Respectfully submitted,



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