

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

JUL 09 2012

by
State Corporation Commission
of Kansas

In the Matter of the Application by Kansas)
City Power & Light Company for a Waiver) Docket No. 12-KCPE-862-MIS
Regarding the Kansas Renewable Energy)
Standards Act for 2012.)

CURB's Response to the Staff Report and Recommendation

The Citizens' Utility Ratepayer Board (CURB) files the following response to the *Staff Report and Recommendation*, which was filed in this docket on June 29, 2012.

1. Kansas City Power and Light (KCPL) has filed an application with the Kansas Corporation Commission (KCC or Commission) to allow KCPL until December 31, 2012, to comply with the requirements of the state's Renewable Energy Standard Act for the years 2011 and 2012. CURB supports KCPL's proposal and agrees that the Commission should approve the application.

2. The Commission Staff, in its Staff Report and Recommendation (Report), notes that KCPL has failed to meet the 2012 standard by the Commission's deadline of July 1 for utilities to file a report with the Commission detailing its renewable energy capacity (K.A.R. 82-16-3), but that KCPL will have sufficient renewable capacity sometime this fall when the Spearville 3 wind farm comes on line. (Report, at 4). As Staff notes, the only practical way for KCPL to have met the 2012 standard by the Commission's reporting deadline—having already contracted for the energy from Spearville 3—would have been to purchase renewable energy credits for sufficient capacity to bring the company into compliance. Fortunately, Staff recognizes that Kansas ratepayers, not KCPL, would be penalized by requiring KCPL to purchase the credits, and does not recommend requiring the company to do so. (Unfortunately, Staff did not also recognize that if the Commission were to

order the company to purchase the credits, the Commission could spare the ratepayers the additional expense by ordering the company to bear it.)

3. Staff states that it “sees no need for the Commission to allow KCPL to deviate from this compliance timeline”. (Report, at 5). Staff does, however, note that it views KCPL as having made a “good faith effort” to comply with the 2012 standard, and therefore the Commission can choose to waive the penalties for missing the deadline.

4. CURB agrees that KCPL has made a good-faith effort to comply with the Commission’s regulation, but disagrees with Staff’s recommendation against waiver of the deadline. First, waivers of the Commission’s procedural deadlines are routinely granted by the Commission for good cause shown. Second, for reasons that will be discussed below, CURB believes that any finding that KCPL is out of compliance with the Act’s substantive requirements for 2012 would be premature, if made any sooner than January 1, 2013.

A. The Commission should grant KCPL a waiver of the Commission’s July 1 deadline for good cause shown.

5. There are good reasons for requiring procedural deadlines, but there are also good reasons for waiving them. But other than the existence of the option to waive penalties, it’s simply not clear what good reason lies behind Staff’s opinion that there is “no need” to waive this deadline, especially in circumstances where a utility is on track to be in compliance with the substance and express purpose of the Act within the relevant year. KCPL has made a credible showing that it will be in compliance with the Act by late fall. That’s reason enough to allow KCPL to deviate from what the Staff characterizes as the Commission’s “compliance timeline”. The Commission Staff and other parties are routinely granted waivers of Commission deadlines for all sorts of reasons, most of

them far less compelling than the fact that a multi-million dollar project is going to be completed in October rather than in July. Keep in mind that although the Commission has numerous options before it to penalize parties who miss deadlines, such as finding them in contempt, it rarely utilizes them. When a party requests a waiver of a procedural deadline, the Commission rarely requires that the party provide evidence of good cause, and simply accepts the party's explanation or rejects it. Commission certainly doesn't (1) declare that the party missed the deadline, (2) rule that missing a deadline constitutes contempt of court, (3) find the party has shown good cause for missing the deadline, then (4) waive the penalty for contempt for good cause shown. The Commission simply (1) grants the waiver if it finds the request is reasonable. How elegant. How simple.

6. Compare that elegant solution to Staff's recommendation in this docket. Staff would have the Commission (1) declare the utility has missed a deadline, (2) rule that it is therefore subject to penalties, but (3) because it made a showing of good-faith effort to comply, the Commission will (3) waive the penalties. Why take four steps when one will do? Since KCPL appears to be on schedule to be in compliance with the legislature 2012 standard by the end of 2012, CURB supports simply granting a waiver of the regulation's deadline.

B. KCPL is not yet out of compliance with the Act's 2012 standards.

7. Staff may believe that the Commission's July 1 deadline for compliance in K.A.R. 82-16-3 does not substantively alter the legislature's generalized requirement that the utility attain compliance in 2012, but one must assume that if the legislature did not impose a July 1 deadline in the Act, it did not intend to do so. It is not clear why the Commission, in enacting K.A.R. 82-16-3, chose to interpret the legislature's deadline of "2012" as "July 1, 2012." The logical conclusion is that the date was chosen to ensure that the Commission had notice that a utility was not going to be

in compliance by the end of the year, and that such notice would provide the Commission sufficient time to take appropriate action before the end of the year. The provision seems aimed at ensuring the Commission sufficient time to secure a utility's compliance with the Act if at all possible. After all, it doesn't really matter when during the relevant year the Commission receives the information, if the end result is to be the imposition of penalties for noncompliance. If the intent of the Commission regulation was not to provide some wiggle room for the Commission to take corrective action to ensure a utility's compliance by the end of the relevant year, then the only other logical conclusion one can make is that the Commission has simply imposed an earlier deadline for compliance with the Act than the legislature intended.

8. If there is a compelling reason for the Commission to require utilities to file a report on their compliance by July 1, then a much more reasonable approach would be to deem July 1 a procedural deadline for utilities to report whether they will be in substantive compliance with the Act by December 31. If the utility reports that it will be in compliance by the end of the year, but is not quite there yet, then the Commission should order the utility to make a follow-up filing shortly after the end of the year to verify whether the utility met the Act's standard by December 31.

9. If the utility reports on July 1 that it will not be able to meet the compliance standard by December 31, then the Commission has options and time to implement any corrective measures, if necessary. It could determine whether the utility has attempted to meet the standard in good faith. Or, the Commission could order the utility to purchase renewable energy credits at the utility's expense, or to purchase renewable energy on the spot market. The Commission also could decide whether penalties should be imposed or waived. If the utility is out of compliance at the end of the

relevant year, then it would be reasonable for the Commission to consider imposing sanctions or taking other appropriate action.

10. However, the Commission should make the determination that the utility is out of compliance with the Act no sooner than January 1 of the following year to ensure that it has not created grounds for the utility to appeal that K.A.R. 82-16-3 imposes an earlier deadline than the legislature imposed. The Commission may not have intended to alter the substantive requirements of the statute by imposing the July 1 deadline, but the latitude granted to the Commission by the legislature to design its own procedures for administering and enforcing the Act does not include passing regulations that amend the statutory deadline for compliance with its substantive provisions.

To the extent that the Commission enforces July 1 as a deadline, it should be regarded only as a procedural deadline for the utilities to file progress reports on whether the utility expects to comply with the standards by the end of the relevant year.

11. Therefore, CURB respectfully recommends that the Commission simply waive the July 1 deadline for KCPL's compliance with K.A.R. 82-16-3 for good cause shown, and require the utility to make a follow-up filing after January 1, 2013 to report whether the utility attained compliance with the Act by December 31, 2012. CURB also recommends that the Commission revise K.A.R. 82-16-3 to make it consistent with the Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'D. Springe', written over a horizontal line.

David Springe #15619

Niki Christopher #19311

C. Steven Rarrick #13127

Citizens' Utility Ratepayer Board

1500 SW Arrowhead Road

Topeka, KS 66604

(785) 271-3200

(785) 271-3116 Fax

VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

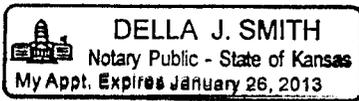
I, Niki Christopher, of lawful age, being first duly sworn upon her oath states:

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



Niki Christopher

SUBSCRIBED AND SWORN to before me this 9th day of July, 2012.



Notary Public

My Commission expires: 01-26-2013.

CERTIFICATE OF SERVICE

12-KCPE-862-MIS

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, or hand-delivered this 9th day of July, 2012, to the following:

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

ANDREW FRENCH, ADVISORY COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027
Hand Delivered

GLENDIA 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

MARY TURNER
DIRECTOR, REGULATORY AFFAIRS
KANSAS CITY POWER & LIGHT COMPANY
1200 MAIN - 19TH FLOOR
KANSAS CITY, MO 64106


Della Smith
Administrative Specialist