

THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

DEC 31 2012

by  
State Corporation Commission  
of Kansas

In the Matter of the Application of Kansas )  
City Power & Light Company to Make ) Docket No. 12-KCPE-764-RTS  
Certain Changes in Its Charges for Electric )  
Service. )

**RESPONSE TO PETITION FOR RECONSIDERATION  
OF KANSAS CITY POWER & LIGHT COMPANY**

COMES NOW the Citizens' Utility Ratepayer Board ("CURB") and submits its Response to Petition for Reconsideration of Kansas City Power & Light Company of the December 13, 2012 Order ("Order") issued by the Commission. In support of its Response, CURB states and alleges as follows:

1. Kansas City Power & Light Company ("KCPL") seeks reconsideration of the portion of the Commission's December 13, 2012, Order awarding KCPL a return on equity ("ROE") of 9.5%. While noteworthy for its lack of brevity, KCPL's petition for reconsideration contains no factual or legal basis for the Commission to reconsider the 9.5% ROE award.

2. Instead, KCPL simply seeks to rehash the evidence because the Commission did not find its proposed ROE credible or supported by substantial evidence. The Commission's ROE award of 9.5% was well within the realm of fair debate as evidenced by the testimony of witnesses for CURB, Commission Staff, and KCPL, and certainly within the expertise of the Commission.

3. The Commission's decision will withstand judicial scrutiny, as the judicial branch may not substitute its judgment for the Commission's findings if the matter is within the realm of fair debate because of its expertise in the field.<sup>1</sup> A court may reverse a Commission rate order as

<sup>1</sup> *Citizens' Utility Ratepayer Board v. Kansas Corporation Comm'n*, 47 Kan.App.2d 1112, 1124 (2012); *Columbus*

arbitrary or otherwise unreasonable only when the decision is so wide of the mark as to be outside the realm of fair debate.<sup>2</sup> KCPL, the party challenging the Commission's ratemaking Order, bears the burden of proof that the order was unlawful, is not supported by substantial competent evidence, or is otherwise unreasonable, arbitrary, or capricious.<sup>3</sup>

4. The Commission's findings were specific enough to allow judicial review of the reasonableness of the order, and its conclusion is supported by findings of fact which are in turn supported by evidence in the record.<sup>4</sup> The Commission made the following specific findings in support of its award of a 9.5% ROE:

- Mr. Hadaway's projected growth rate of 5.7% is "unreasonably optimistic," and that KCPL "is the party ignoring the economic downturn."<sup>5</sup>
- Analysts are no longer expecting double digit returns from the S&P 500, which are going to be riskier and more volatile than electric utility stocks, and thus have higher returns than electric utilities.<sup>6</sup>
- It is now fairly common for commissions to authorize ROEs below 10%, capital costs are as low as they have been since the Eisenhower Administration, and thus commissions are authorizing lower returns.<sup>7</sup>
- The nGDP growth estimates of 4.555% advocated by Staff witness Gatewood were *more credible* than the 5.7% suggested by KCPL witness Hadaway and also consistent with the nominal forecast by the Social Security Administration and Energy Information Administration.<sup>8</sup>
- The 9.5% award was within the range recommended by witnesses for CURB, Staff, and KCPL, and "strikes the proper balance of allowing KCP&L to access capital markets while acknowledging the economic impact on ratepayers."<sup>9</sup>

---

*Telephone Co. v. Kansas Corporation Comm'n*, 31 Kan.App.2d 828, 836, 75 P.3d 257 (2003); *Cities Service Gas Co. v. State Corporation Comm'n*, 201 Kan. 223, 233-234, 440 P.2d 660 (1968).

<sup>2</sup> *Id.*

<sup>3</sup> *Citizens' Utility Ratepayer Board v. Kansas Corporation Comm'n*, 47 Kan.App.2d at 1123.

<sup>4</sup> *Citizens' Utility Ratepayer Board v. State Corp. Comm'n*, 28 Kan.App.2d 313, 323-34 (2000). See, Order, ¶¶ 18-26.

<sup>5</sup> Order, ¶ 22.

<sup>6</sup> Order, ¶ 22 (citing Staff witness Mr. Gatewood).

<sup>7</sup> Order, ¶ 23 (citing CURB witness Dr. Woolridge).

<sup>8</sup> Order, ¶ 25.

<sup>9</sup> Order, ¶ 26.

5. Contrary to lengthy arguments by KCPL, the ROE award of 9.5% was based on substantial competent evidence in the record as a whole. The Commission reviewed all of the evidence provided by the parties, and explained why the evidence supported its findings.

6. CURB therefore urges the Commission to deny the Petition for Reconsideration filed by KCPL in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Steven Rarrick", is written over a horizontal line. The signature is cursive and somewhat stylized.

C. Steven Rarrick #13127

David Springe #15619

Niki Christopher #19311

Citizens' Utility Ratepayer Board

1500 SW Arrowhead Road

Topeka, KS 66604

(785) 271-3200

(785) 271-3116 Fax

VERIFICATION

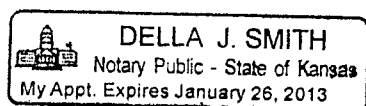
STATE OF KANSAS )  
 ) ss:  
COUNTY OF SHAWNEE )

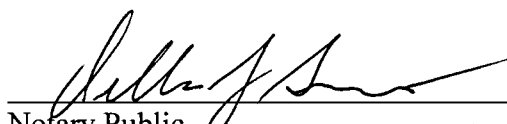
I, C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

That he is an attorney for the above named petitioner; that he has read the above and foregoing Intervention, 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 31<sup>st</sup> day of December, 2012.



  
Notary Public

My Commission expires: 01-26-2013.

**CERTIFICATE OF SERVICE**

12-KCPE-764-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 31<sup>st</sup> day of December, 2012, to the following:

BRIAN G. FEDOTIN  
ADVISORY COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027  
[b.fedotin@kcc.ks.gov](mailto:b.fedotin@kcc.ks.gov)

ANDREW SCHULTE  
LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027  
[a.schulte@kcc.ks.gov](mailto:a.schulte@kcc.ks.gov)

JUDY JENKINS  
LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027  
[j.jenkins@kcc.ks.gov](mailto:j.jenkins@kcc.ks.gov)

GLEND A CAFER, ATTORNEY  
CAFER LAW OFFICE, L.L.C.  
3321 SW 6TH STREET  
TOPEKA, KS 66606  
[glenda@caferlaw.com](mailto:glenda@caferlaw.com)

TERRI PEMBERTON, ATTORNEY  
CAFER LAW OFFICE, L.L.C.  
3321 SW 6TH STREET  
TOPEKA, KS 66606  
[terri@caferlaw.com](mailto:terri@caferlaw.com)

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  
[denise.buffington@kcpl.com](mailto:denise.buffington@kcpl.com)

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  
[heather.humphrey@kcpl.com](mailto:heather.humphrey@kcpl.com)

DARRIN R. IVES, SENIOR 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  
[darrin.ives@kcpl.com](mailto:darrin.ives@kcpl.com)

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  
[mary.turner@kcpl.com](mailto:mary.turner@kcpl.com)

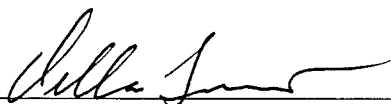
DAVID L. WOODSMALL  
WOODSMALL LAW OFFICE  
807 WINSTON CT  
JEFFERSON CITY, MO 65101-2869  
[david.woodsmall@woodsmalllaw.com](mailto:david.woodsmall@woodsmalllaw.com)

C. EDWARD PETERSON, ATTORNEY  
FINNEGAN CONRAD & PETERSON LC  
1209 PENNTOWER OFFICE CENTER  
3100 BROADWAY  
KANSAS CITY, MO 64111  
[epeters@fcplaw.com](mailto:epeters@fcplaw.com)

REED J. BARTELS, ATTORNEY  
BARTELS LLC  
3100 BROADWAY STE 1209  
KANSAS CITY, MO 64111  
[rbartels@bartels.com](mailto:rbartels@bartels.com)

JAMES P. ZAKOURA, ATTORNEY  
SMITHYMAN & ZAKOURA, CHTD.  
7400 W 110TH ST, STE 750  
OVERLAND PARK, KS 66210-2362  
[jim@smizak-law.com](mailto:jim@smizak-law.com)

CARSON M. HINDERKS, ATTORNEY  
SMITHYMAN & ZAKOURA, CHTD.  
7400 W 110TH ST, STE 750  
OVERLAND PARK, KS 66210-2362  
[carson@smizak-law.com](mailto:carson@smizak-law.com)

  
\_\_\_\_\_  
Della Smith  
Administrative Specialist