

Testimony of
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Kansas Corporation Commission

Before the Senate Utilities Committee
Regarding Issues Related to KCP&L Recent Rate Increase
January 31, 2012

Chairman Apple and Committee Members:

My name is Dana Bradbury and I am the Kansas Corporation Commission's General Counsel. Thank you for allowing me to appear before you this afternoon on behalf of the Commission. I am appearing today to address the Commission's process in rate case proceedings and the Commission's rate design treatment in the KCP&L 415 docket.

Rate Cases

Rate cases are quasi-judicial proceedings with a number of components.

- There are two general issues in every rate case - how much is the company entitled to recover in rates (revenue requirement) and how those rates should be structured (rate design).
 - At a high level, revenue requirement is an estimate of the company's economic cost of service, which includes an estimate of prudent operating costs and a just and reasonable return on the property devoted to public service (the rate base).
 - The rate design portion of rate case apportions the revenue requirement between customer classes (*e.g.*, residential and commercial) and among customers within the same class (*e.g.*, time of day rates, increasing/decreasing block rate structures, etc.).
- Rate case filing requirements are complex and set out in the Commission's regulations, KAR 82-1-231. Discovery is typically very extensive and designed to ensure that the parties have a complete understanding of the issues and the company's financials.
- The KCPL 415 case was typical for a major rate case. It involved approximately 350 pleadings and 50 witnesses.

Rate Case Process

The rate case process is also quasi-judicial. The major procedural components include:

1. Pre-Filing Letter

- Typically filed with the Commission's Staff 30 to 90 days before an application is filed.

- Staff sends its preliminary data requests during this period.

2. Application Formally Filed under KSA 66-117

- Application filed with utility's revenue requirement request, rate design, and supporting testimony.
- There is a statutory 240 day deadline for a Commission order.
- Proceedings after this point are subject to KAPA, KSA 77-501 *et seq.*

3. Pre-Hearing Conference

- Within 10 days of filing, the KCC schedules a pre-hearing conference to discuss and determine procedural schedule, public hearing, etc.
- The Commission will typically appoint a pre-hearing officer to handle routine orders, motions, discovery disputes between the parties, and scheduling.

4. Public Hearing

- Public hearings are not required for rate cases, but have been an historic practice of the Commission.
- If a public hearing is scheduled, KCC rules require notice be given by publication with concise description of application, time, date, and location of public hearing (KAR 82-1-231(g)).
- Historically, notice of public hearing is provided by publication in newspapers that are in general circulation in the service territory and also by billing insert to the utility's customers (takes 30 days for billing cycle).
- Public hearings provide an opportunity for the company to present the details of its Application and for the public to address the Commission and present their concerns. Public hearings have historically been held before Staff and CURB file their testimony to afford them an opportunity to include public comment in their testimony. CURB and Staff are also present at such public hearings.
- The KCC also provides for a written comment period that closes shortly before the evidentiary hearing. Public comments can take the form of oral statements, written statements, e-mails, or phone calls to the Commission and become part of the record in the rate case.
- Further, all testimony and pleadings are placed on the Commission's website (under docket number) soon after filing so interested public can know what is happening at any time in any case.

5. Direct Testimony of Staff & Interveners

- Filed as agreed in the procedural schedule.

6. Cross Answering Testimony

- Filed as agreed in the procedural schedule.

7. Rebuttal Testimony

- Filed as agreed in the procedural schedule.

8. Settlement Conference

- Filed as agreed in the procedural schedule.

9. Evidentiary Hearing

- Filed as agreed in the procedural schedule.

10. Briefs

- Filed as agreed in the procedural schedule.

11. Commission Order

- The Commission's order must set out the basis for the Commission's decisions, which must be supported by evidence in the record, and assess the arguments and evidence presented by the parties that the Commission may have rejected or relied on.

12. Appeals & Remands

- After administrative reconsideration, an appeal from a Commission order is common. A typical appeal will allege that the Commission erred in a legal determination or made a decision that was arbitrary and capricious because it was unsupported by the evidence in the record.
- On appeal, the reviewing Court can affirm the Commission's decision(s), reverse the Commission's determination(s) and make the decision(s) itself, or remand the matter back to the Commission for further proceedings.

Commission's Legal Standards

1. Notice

- For purposes of determining notice of pending matter required to be given to comply with due process, notice should be more than mere gesture; it should be reasonably calculated, depending upon practicalities and peculiarities of the case, to apprise interested parties of pending action and afford them opportunity to present their case. U.S.C.A. Const.Amend. 14; *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950)
- Even if there is a subsequent change in the nature of the proceeding, if the general description of the purpose of the proceeding in the original notice did not become inaccurate or misleading, the original notice is adequate and no further notice is required. *Farmland Industries, Inc. v. State Corp. Com'n of Kansas* 24 Kan.App.2d 172, 943 P.2d 470 (Kan.App.,1997)

2. Rate Treatment

- The Commission ***must establish and maintain rates that are fair, just, and reasonable both to the utility and the public.***
- Rates are fixed within the "zone of reasonableness" after the ***application of a balancing test in which the interests of all concerned parties are considered.*** In rate-making cases, the parties whose interests must be considered and balanced are these: (1) The rate-payers vs. the utility's investors; (2) the present ratepayers vs. the future ratepayers; and (3) the public interest. *Kansas Gas and Elec. Co. v. State Corp. Com'n*, 239 Kan. 483, 720 P.2d

1063, 170-171(Kan. 1986). This inquiry involves the interest of the public, not any particular person or customer class.

- This fair, just, and reasonable legal standard applies to determinations of the revenue requirement and rate design.

Highlights of the Procedural Chronology for Docket No. 10-KCPE-415-RTS

July 24, 2009: Docket 09-KCPE-246-RTS Order Approving Stipulation and Agreement

- The S&A contained the following two requirements for KCP&L's Class Cost of Service in the next rate case, signaling the Commission expected KCP&L's rate design to change dramatically:
 1. A breakout of each residential water heating and space heating subclass from the aggregate Residential Service class; and
 2. A breakout of KCP&L's total allocated cost of service, by rate class, into separate summer- and winter-related revenue requirement components.¹

December 17, 2009: KCP&L Filed Docket No. 10-KCPE-415-RTS Application

- Class Cost of Service filed in the Application. Rate Design specified an overall 11.5 % rate increase across the board.

April 28, 2010: Public Hearing Held

- Notice by publication in two newspapers and bill inserts (cost \$33K) and had comment period closing shortly before evidentiary hearing, interested parties are provided three ways to reach the KCC, and all testimony is available on the KCC website.

June 18, 2010: Staff and CURB Filed Direct Testimony

- Both Staff and CURB proposed rate designs that significantly reduced the discounts received by space and water heating residential customers.

July 2, 2010: CURB Filed Cross-Answering Testimony

July 23, 2010: KCP&L Filed Rebuttal Testimony

- KCP&L offered alternative rate design, based on the company's Class Cost of Service study, which significantly reduced the discounts to residential space and water heating customers.

July 30, 2010: Comment Period Ended

August, 16, 2010: Evidentiary Hearing Began and Lasted Three Weeks

- The first week of August, CURB and Staff sought additional direct testimony to address KCP&L's alternative rate design proposed in rebuttal. On August 9, KCC granted motion allowing additional direct to address the alternative rate design.

¹ Stipulation and Agreement for Docket No. 09-KCPE-246-RTS, para 37.

November 22, 2010: Final Order

- Based on the evidence in the record, in particular KCP&L's Class Cost of Service study, the Commission adopted KCP&L's alternative rate design with three observations:
 1. The Commission reaffirmed its acceptance of the cost causation principle for rate design (*i.e.*, whomever causes costs to be incurred should have those costs reflected in their rates);
 2. The Commission determined a new rate design docket should be opened for KCP&L after the Christensen Associates completes its report and the Fuel Switching Docket (09-GIMX-160-GIV) is completed; and
 3. Other issues such as economic development and energy efficiency can be explored in the rate design docket.

- Both the Christensen study and the Fuel Switching docket are near completion, so the Commission anticipates opening the rate design docket sometime in the near future.
 - In the future rate design docket, KCP&L will provide a Class Cost of Service and propose a rate design. Staff, CURB, and other intervenors will file testimony that takes positions on the proposed rate design. After weighing all evidence in the record, the Commission will determine a rate design for KCP&L that is just and reasonable.

Thank you, Mr. Chairman, for the opportunity to provide comments to the Committee. I will be available to answer questions at the appropriate time.