BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

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| In the Matter of the Application of Kansas City Power & Light Company to modify Its tariffs to begin the implementation of Its Regulatory Plan | ) ) ) ) | Case No. ER-2006-0314 |

**STAFF SUGGESTIONS IN SUPPORT OF NONUNANIMOUS STIPULATION AND AGREEMENT REGARDING KCPL'S REGULATORY PLAN ADDITIONAL AMORTIZATIONS**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the Commission's General Counsel, and files this Staff Suggestions In Support Of Nonunanimous Stipulation And Agreement Regarding KCPL's Regulatory Plan Additional Amortizations. The Staff notes that the Nonunanimous Stipulation And Agreement includes as a signatory party Praxair, Inc. (Praxair), in addition to the Office of the Public Counsel (Public Counsel) and Kansas City Power & Light Company (KCPL). Even with the Nonunanimous Stipulation And Agreement Regarding KCPL's Regulatory Plan Additional Amortizations there still remains the off-balance sheet obligations issue to be decided by the Commission. In support of the Nonunanimous Stipulation And Agreement Regarding KCPL's Regulatory Plan Additional Amortizations, the Staff states as follows:

1. It was indicated early in the hearings that the number of issues under the heading Regulatory Plan additional amortizations had narrowed. Just as the Staff's and Public Counsel's positions on the tax gross-up issue had changed in the rate increase case of The Empire District Electric Company (Empire), and, as a consequence, there was no substantive difference remaining between either the Staff and Public Counsel or Empire on the matter, a similar situation occurred in this proceeding. The Staff, with the involvement of some of the other

parties to the instant case, sought that a stipulation and agreement be drafted that not only the Staff, Public Counsel and KCPL would enter into, but that other parties would enter into also. This effort has been successful in that although the stipulation and agreement is nonunanimous, it is also executed by Praxair in addition to by the Staff, Public Counsel and KCPL. The Staff anticipates that no other party will join in the stipulation and agreement. Due to the effort to reach such an agreement and the demands of other cases that are pending before the Commission, the Staff, Public Counsel, Praxair and KCPL were not able to file the nonunanimous stipulation and agreement before Monday, December 4, 2006. The Staff knows that this protracted effort on its part and on the part of other parties has been and is inconvenient for the Commission, but the Staff believes that in the long run this effort will prove to have been of benefit, even though the stipulation and agreement is nonunanimous.

2. The Staff would note that Staff witness Steve M. Traxler explains in his surrebuttal testimony, which was filed on October 6, 2006, the Staff's change in position on the tax gross-up issue. The Staff notes that Public Counsel witness Russell W. Trippensee also addresses this matter in his surrebuttal testimony filed on October 6, 2006.

3. Moving on from the tax gross-up issue, there is a new component of the Regulatory Plan additional amortizations calculation that arose as an issue for the first time after the rebuttal testimony had been filed, has been resolved by the Staff, Public Counsel, Praxair and KCPL, and is reflected in the Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Additional Amortizations filed on Monday, December 4, 2006. (This matter arose for the first time during the true-up phase of Empire's rate increase case, Case No. ER-2006-0315, and surfaced when the Staff and Public Counsel were required to address the effect of the acquisition by Empire of Aquila, Inc.'s Missouri gas properties which occurred on June 1, 2006.) In the

context of the instant case, this matter first arose in the surrebuttal phase of the case. The Staff characterizes this matter as recognizing for purposes of the two credit metrics Regulatory Plan additional amortizations calculation, the additional net balance sheet investment not in KCPL's rate base. The Public Counsel characterizes this matter as synchronizing for purposes of the two credit metrics Regulatory Plan additional amortizations calculation, capital structure with investment in Missouri jurisdictional retail electric operations.

The Staff and Public Counsel filed surrebuttal testimonies on October 6, 2006 that propose different approaches than the positions employed by them in their direct cases to determine the amount of KCPL's net investment that should be included in KCPL's Regulatory Plan additional amortization calculation. The changes by the Staff and Public Counsel were necessary in order to ensure that the Regulatory Plan additional amortization calculations recognize KCPL's appropriate net investment not included in rate base and reflect only KCPL's Missouri electric operations, not Great Plains Energy, Inc.'s existing nonregulated operations (i.e., Strategic Energy, Inc.). The primary additional investment that is not included in rate base which is recognized in this calculation is KCPL's construction work in progress (CWIP).

The two credit metrics (Funds From Operations (FFO) Interest Coverage and FFO as a Percentage of Total Average Debt) are calculated by Standard & Poor's (S&P) on a total balance sheet approach. KCPL's rate base, for ratemaking purposes, does not include balance sheet assets and liabilities which are either (1) not currently used for the provision of service – CWIP, for example, or (2) reflected in the cash working capital calculation in lieu of rate base recognition of the balance sheet amount – accounts payable, for example. There is a need to calculate the Regulatory Plan additional amortization on a total balance sheet approach, and

include a Balance Sheet Adder which is added to rate base for deriving the net assets used in calculating the two credit metrics.

The Nonunanimous Stipulation And Agreement Regarding KCPL's Regulatory Plan Additional Amortizations reflects that only for purposes of this case, the Staff, Public Counsel, Praxair and KCPL agree that there should be an additional net balance sheet liability in the amount of ($14.2 million) for calculating the Regulatory Plan additional amortization. This agreement of the Staff, Public Counsel, Praxair and KCPL to the amount of ($14.2 million) to be added to KCPL's rate base as of September 30, 2006 is an agreement on a number only, and not an agreement on an underlying methodology for deriving KCPL's Regulatory Plan additional amortization rate base in this proceeding or in any future rate proceeding.

The Regulatory Plan additional amortization discussed in the True-Up Direct Testimony of Staff witness Steve M. Traxler was based upon an analysis of KCPL's balance sheet as of June 30, 2006, not September 30, 2006. At that time, the Staff had not obtained a KCPL balance sheet as of September 30, 2006 in time to reflect the result of updating the Balance Sheet Adder from June 30, 2006 to September 30, 2006. When Mr. Traxler took the stand during the true-up hearing, he preliminarily updated the Staff's Regulatory Plan additional amortization number and revenue requirement cost of service number including the additional amortization.

The True-Up Reconciliation/Reconcilement filed on December 1, 2006 does reflect updating the Balance Sheet Adder as of September 30, 2006 for the purpose of calculating the Regulatory Plan additional amortization and cost of service revenue requirement. The Staff's additional amortization decreased from $64.4 million, referred to in Mr. Traxler's True-Up Direct Testimony, to $56.2 million (referred to by Mr. Traxler at the True-Up Hearing as $55

million (Vol. 15, Tr. 1658) and shown in the Reconciliation/Reconcilement filed on December 1, 2006 as $56,164,390), resulting in a reduction in Staff's total revenue requirement cost of service recommendation for KCPL.[1] The Staff's total revenue requirement recommendation for KCPL decreased from $35.4 million in Mr. Traxler's True-Up Direct Testimony to $27.7 million (referred to by Mr. Traxler at the True-Up Hearing as $27 million (Vol. 15, Tr. 1658) and shown in the Reconciliation/Reconcilement filed on December 1, 2006 as $27,733,639), primarily as a result of updating the Balance Sheet Adder as of September 30, 2006 in the calculation of the Regulatory Plan additional amortization.

The primary contributing factor for the reduction in the Balance Sheet Adder at September 30, 2006 is the reduction in the CWIP balance between June 30, 2006 and September 30, 2006. The reduction in the CWIP balance occurred primarily as a result of the transfer of KCPL's investment in wind generation facilities from CWIP at June 30, 2006 to Plant-in-Service (rate base) at September 30, 2006.[2] The Balance Sheet Adder went from positive at June 30, 2006 to negative at September 30, 2006 because of a significant reduction in assets (i.e., the transfer of wind generation assets from CWIP to Plant-in-Service) and also because of a significant increase in liabilities. For the Staff, the Balance Sheet Adder is the net of assets less liabilities for those items not included in Plant-in-Service.

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[1] In addition, some corrections were included in the Staff's EMS run for annualized revenue, purchased power costs for KCPL's border customers and the tax/book ratio used in calculating the straight-line tax depreciation deduction used in the deferred income tax calculation for the Reconciliation/Reconcilement filed on December 1, 2006.

[2] The Staff's True-Up Direct Testimony was based on Plant-in-Service at September 30, 2006 and the Balance Sheet Adder at June 30, 2006. The Staff did not have a Balance Sheet Adder at September 30, 2006 when it filed its True-Up Direct Testimony. As a consequence, the Staff's Balance Sheet Adder was overstated because CWIP amounts in the Staff's Balance Sheet Adder at June 30, 2006 were also reflected in the Staff's Plant-in-Service at September 30, 2006. If the Balance Sheet Adder were not updated to reflect this transfer of KCPL's investment in wind generation facilities to Plant-in-Service at September 30, 2006, then these assets would be included twice in the Regulatory Plan additional amortization calculation. (Amounts in the Balance Sheet Adder as CWIP also would be in Plant-in-Service.)

KCPL, the Staff, Public Counsel, and Praxair are in agreement with the amount of the Balance Sheet Adder as of September 30, 2006 for purposes of this case only as part of the Nonuanaimous Stipulation And Agreement Regarding KCPL's Regulatory Plan Additional Amortizations. A method for calculating the Balance Sheet Adder has not been agreed to by KCPL, the Staff, Public Counsel, and Praxair for purposes of calculating the Regulatory Plan additional amortization in subsequent KCPL rate cases occurring during the period covered by the Regulatory Plan Stipulation And Agreement.

4. The Balance Sheet Adder includes CWIP only for the purpose of affording KCPL the opportunity to attain the cash flow necessary to maintain the credit metrics necessary to keep an investment grade rating for its debt. Thus, CWIP is utilized only for purposes of the additional amortizations calculation. CWIP is not otherwise afforded any ratemaking recognition. It receives no recognition in KCPL's or any other party's case in chief. It should be remembered that starting in KCPL's very next rate case, which KCPL has indicated it will file February 1, 2007, KCPL's rate base will be reduced/offset by the full amount of the additional amortization that is determined by the Commission in this case. Also, as part of its Regulatory Plan, KCPL has agreed to a 250 basis point reduction in the equity portion of the allowance for funds used during construction (AFUDC) rate applicable to Iatan 2, which reduction will be of benefit to KCPL's ratepayers as will the rate base offset for the additional amortization.

5. Arguably Commission ratemaking has not been free of matters respecting CWIP since the adoption of Proposition No. 1 by popular vote in 1976. It should be remembered that Missouri courts have approved the standard that the Commission applies for granting interim or

emergency rate relief.[3] That standard which requires that a utility cannot obtain funds for operations other than by a rate increase historically has occurred when Missouri utilities are engaged in major construction projects involving generating units. As an example, the Staff would note that on November 16, 1976, St. Joseph Light & Power Company (SJLP) filed with the Commission an application for emergency/interim rate relief with revised tariff sheets

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[3] To be eligible, a utility must show that: (1) it needs the additional funds immediately, (2) that the need cannot be postponed, and (3) that no other alternatives exist to meet the need but rate relief. "Although the Commission has, on occasion, granted interim rate relief in a nonemergency situation, those instances are few and in response to particular pressing circumstances." *Re Missouri Power & Light Company*, Case Nos. GR-81-355 and ER-81-356 (1981). In 1983, the Commission noted that "[t]hat the Commission has traditionally granted interim relief *only* in response to emergency or near emergency conditions." *Re Gas Service Company*, Case No. GR-83-207, 25 Mo.P.S.C.(N.S.) 633, 637 (1983; emphasis added). Thus, the historical standard applied by the Commission since 1949 has consistently required a showing of some emergency or immediate need for rate relief. This standard was first enunciated in a nascent form in *Re Southwestern Bell Telephone Company*, Case No. 11,634, 2 Mo. P.S.C. (N.S.) 131 (1949).

Judicial recognition of the Commission's authority first occurred in *State ex rel. Laclede Gas Co. v. Public Serv. Comm'n*, 535 S.W.2d 561, 567 (Mo.App. K.C.Dist. 1976) where the Western District Court of Appeals held that the Commission has the authority to grant interim rate increases within the broad discretion implied from the Missouri file and suspend statutes and from the practical requirements of utility regulation. Regarding the Commission's standard for interim or emergency rate relief, the Court stated, in part, as follows:

> All of the distracting preliminary issues now having been cleared away, there are finally laid bare the real, substantive issues in this case: (1) What is the proper test to be applied for the allowance of an interim rate increase? (2) Has Laclede proved facts bringing this case within the appropriate test?
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> A majority of the Commission follows the principle that the purpose of a special hearing concerning interim rates is to ascertain whether emergency conditions exist which call for especially speedy relief, and the Report and Order expresses the view that an interim increase should be granted only 'where a showing has been made that the rate of return being earned is so unreasonably low as to show such a deteriorating financial condition that would impair a utility's ability to render adequate service or render it unable to maintain its financial integrity.' Laclede admits that if this be the proper test to be applied, then the ruling in this case must be against it. . . .

*Id*. at 568-69.

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> It may be theoretically possible even in a purposefully shortened interim rate hearing for the evidence to show beyond reasonable debate that the applicant's rate structure has become unjustly low, without any emergency as defined by the Commission having as yet resulted. Although some future applicant on some extraordinary fact situation may be able to succeed in so proving, Laclede has singularly failed in this case to carry the very heavy burden of proof necessary to do so.

*Id.* at 574.

designed to increase annual revenues by approximately $2.5 million on an annual basis.[4] *Re St. Joseph Light & Power Co.*, Case No. ER-77-93, Report And Order, 21 Mo.P.S.C.(N.S.) 356 (1977). SJLP contended that without emergency/interim rate relief, it would default on the Iatan project because no other alternatives for meeting its construction commitments were available. SJLP further contended that default on Iatan would jeopardize its ability to provide adequate service, which would compromise SJLP's status as an independent electric utility and possibly require SJLP to merge with a larger electric utility. The Commission stated that "the pivotal issue in this case is Company's need for the additional generating capacity which Iatan will provide and the secondary issue is how will Company finance its participation in Iatan with or without the emergency rate relief requested in this case." 21 Mo.P.S.C.(N.S.) at 358.

On March 4, 1977 in Case No. ER-77-93, 21 Mo.P.S.C.(N.S.) at 368, 373, the Commission approved emergency/interim rate relief for SJLP contingent upon, among other things, SJLP entering into a binding agreement disposing of 57 to 67 megawatts (MWs) of its 157 MW entitlement to Iatan 1 capacity by the effective date of the final Report And Order issued in connection with SJLP's permanent rate case, *Re St. Joseph Light & Power Co.*, Case No. ER-77-107, Report And Order, 21 Mo.P.S.C.(N.S.) 466 (1977).[5] The Commission authorized emergency/interim rate relief in the amount of an increase of annual gross electric revenues of $1.3 million, exclusive of gross receipts and franchise taxes, pending resolution of SJLP's pending permanent rate increase case on the basis that the "Company's financial integrity

[4] Subsequently on December 20, 1976, as a result of the enactment of Section 393.135 (Proposition No. 1) by voters on November 6, 1976, SJLP filed revised tariff sheets effective as of February 1, 1977 reducing rates by $1.4 million by removing CWIP from rate base. As a consequence, SJLP's requested emergency electric rate increase was for $3.9 million over the rates on file and in effect as of February 1, 1977.

[5] The Case No. ER-77-93 Report And Order reported at 21 Mo.P.S.C.(N.S.) 356 does not reflect the correction made to the date by which SJLP was directed by the Commission to dispose of 57 to 67 megawatts of Iatan 1 capacity. The correction is reflected in an unreported Correction Order issued by the Commission on April 26, 1977 in Case No. ER-77-93.

and credit worthiness will be impaired to the extent that the capital necessary for the provision of safe and adequate service cannot be raised." 21 Mo.P.S.C.(N.S) at 372, 373. The Commission went on to state that it could not ignore the extreme financial burden which full participation in the Iatan project placed on SJLP and its customers. Therefore, the Commission conditioned its authorization of emergency/interim rate relief on SJLP being required to refund the emergency/interim rate relief to its customers if, among other things, it did not submit to the Commission documentary evidence that it had entered into a binding agreement disposing of 57 to 67 MWs of its Iatan 1 entitlement by the effective date of the final Report And Order issued in connection with SJLP's permanent rate case, ER-77-107. *Id.*

On June 3, 1977 KCPL and SJLP executed an amending supplement to their Iatan Memorandum Of Understanding, which adjusted their ownership interests in Iatan upon authorization by the Commission. By a joint application filed July 26, 1977 in Case No. EO-78-12, KCPL and SJLP sought Commission approval of the proposed adjustments to their ownership interests in Iatan as to the site, common facilities and Iatan 1 generating unit. On August 22, 1977 in Case No. EO-78-12, the Commission issued an Order Granting Application To Adjust Ownership Interests (unreported decision) authorizing KCPL and SJLP to adjust their ownership interests in Iatan as requested and as reflected in the First Supplement to their Iatan Memorandum Of Understanding. The Commission concluded that "the authority sought is in the public interest in that it permits SJLP, within the time dictated, to divest itself of a portion of its entitlement at Iatan in compliance with the Commission's order in Case No. ER-77-93."

6. There is a dearth of court cases on Section 393.135. A review of the few cases that exist may be of some benefit: *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n*, 606 S.W.2d 222 (Mo.App. 1980); *State ex rel. Missouri Pub. Serv. Co. v.*

*Fraas*, 627 S.W.2d 882 (Mo.App. 1981); *State ex rel. Union Electric Co. v. Public Serv. Comm'n*, 687 S.W.2d 162 (Mo. banc 1985); and *State ex rel. Union Electric Co. v. Public Serv. Comm'n*, 765 S.W.2d 618 (Mo.App. 1988). The Section 393.135 issues in the first two cases principally involved tax timing difference issues and the last two cases involved UE's requested recovery of the cancellation costs of the abandoned second generating unit at the Callaway nuclear generating station, referred to herein as Callaway II. Some of the issues in these cases might be considered quite arcane. Counsel for the Staff does not relate them for the purpose of going into unnecessary detail but to provide an indication of the context in which Section 393.135 has arisen judicially to date.

The 1980 *UCCM* decision of the Western District Court of Appeals, not to be confused with two earlier notable judicial pronouncements in appeals brought by UCCM, involved UCCM's challenge of the amount permitted by the Commission to be reflected in rates for depreciation, investment tax credit and construction expenses in a Union Electric Company rate case. Of these three items the relevant one for the instant discussion is construction expenses. The category "construction expenses" was comprised of interest, property taxes, pensions and other costs charged to construction, which would be capitalized for ratemaking recovery purposes, but for then current income tax purposes would be deducted from income, resulting in a then current reduction of income taxes paid by the utility. Interest, property taxes, pensions and other costs charged to construction would be added to the cost of the production facilities. The income tax savings for ratemaking purposes would not be "flowed-through" to the ratepayer as the construction expenses were incurred. These construction expenses and the income tax savings would be amortized over the life of the facilities beginning when the facilities were placed in service. The Court stated: "Sec. 393.135, RSMo 1978, prohibits the

company from earning any return upon facilities before they are actually placed in service." 606 S.W.2d at 226. Again, under the tax "normalization" method approved by the Commission, the income tax savings resulting from the current deduction of these expenses from income were not "flowed through" to ratepayers concurrently. *Id.* Flow through treatment requires the utility to charge, as an operating expense and recover in rates from customers, only the amount of taxes actually paid to the Internal Revenue Service (IRS), whereas normalization treatment allows the utility to charge, as an operating expense and recover in rates from customers, the amount of taxes which the utility would have been required to pay to the IRS had it not taken advantage of the accounting practices which allow it to reduce the amount of taxes it pays in the earlier years of payment, but ultimately require the utility to make up in its payments to the IRS in the later years of payment.

The Court held that (1) the Commission's order approving normalization of income taxes for construction expenses was supported by good and valid reasons, (2) UCCM had not demonstrated that the Commission's order regarding this matter was unlawful or unreasonable and (3) the Commission's order regarding this matter was within the zone of allowable discretion which is not to be disturbed upon judicial review. 606 S.W.2d at 227.

The *Missouri Public Service Co.* case, involved several issues, two of which, (a) the flow through, instead of normalizing, certain income tax timing differences and (b) the exclusion from rate base of compensating bank balances, the Western District Court of Appeals found related to Section 393.135, and one of which, (c) the inclusion in rate base of only 25% of the cost of constructing the generating facilities "common facilities," the Western District Court

of Appeals found unrelated to Section 393.135.[6] The Commission filed a Motion To Dismiss with the Western District Court of Appeals on the grounds of mootness because the tariffs at issue had been superseded by subsequent tariffs and thus the reviewing court could not give any relief because any error which may have been made could not be corrected retroactively or prospectively because the tariffs at issue on appeal had been replaced by subsequent tariffs filed and approved. An exception may be made by the Court where an issue presented is of a recurring nature, is of general public interest and importance and will evade appellate review unless the court exercises its discretionary jurisdiction. The Court held that some of the issues on appeal fit into the exception to the mootness rule and others did not. 627 S.W.2d at 884-85.

Taking the normalization versus flow through issue first, the Commission allowed normalization treatment of investment tax credit, accelerated depreciation, amortization of extraordinary purchased power costs and various quick turn around items, but ordered flow through treatment of funds used during construction, pensions and taxes capitalized, Jeffrey Energy Trust deduction and removal costs. The Court in the *Missouri Public Service Co.* case noted that the problem of normalization versus flow through treatment was discussed in *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n*, 606 S.W.2d 222 (Mo.App. 1980) in which it was held that the choice was a matter of administrative discretion. The Court stated:

> . . . The Commission has adopted the policy that "cash flow, interest coverage and internally generated funds analyses will determine the need of a given company for normalization." . . . This presents a purely factual question which does not fall within the exception to the mootness doctrine. This matter therefore will not be reviewed. *State ex rel. Mo. Public Service Co. v. Fraas, supra.*

627 S.W.2d at 891. Thus, the Court applied the mootness doctrine in not ruling on the issue.

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[6] The Court in the context of the attrition issue noted that a future or projected test year, instead of an historical test year "would not be available in Missouri because of the adoption by popular vote of Initiative Proposition 1, now Section 393.135." 627 S.W.2d at 888.

Regarding compensating bank balances, the Commission excluded these monies from the utility's rate base on various grounds including that the lines of bank credit were used to finance CWIP. The Court stated that there are well considered cases that to the extent compensating bank balances are used for the purpose of supporting the financing of CWIP, that cost should not be included in rate base but instead should be allowed in AFUDC. The Court held that this approach seems in accord with and demanded by Section 393.135 and that a declaration of law to that effect is appropriate under the exception to the mootness doctrine.[7] 627 S.W.2d at 890-91.

Concerning the Jeffrey Energy Center common facilities, the Court held that the common facilities issue fell within the exception to the mootness doctrine and Section 393.135 was not applicable. The Jeffrey Energy Center was a four generating unit site. The first of the four units went into commercial service during the test year. The utility sought to include in rate base all of the common facilities. The Commission held that that only 25% of the common facility costs should be allowed in rate base because ratepayers should not be required to pay for facilities that were also for units 2, 3 and 4 which were not in service. The Court reversed the Commission finding that the common facilities were in full use during the test year. 627 S.W.2d at 889-90.

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[7] The Court further explained exception to the mootness doctrine as follows:

> An exception, however, is made where an issue is presented of a recurring nature, is of general public interest and importance, and will evade appellate review unless the court exercises its discretionary jurisdiction. *State ex rel. Laclede Gas Co. v. P.S.C.*, 535 S.W.2d 561 (Mo.App.1976); *State ex rel. The Empire District Electric Company v. Public Service Commission of State of Mo., supra*; *State ex rel. Laclede Gas Co. v. P.S.C.*, 600 S.W.2d 222 (Mo.App.1980). The question of whether to exercise this discretionary jurisdiction comes down to whether there is some legal principle at stake not previously ruled as to which a judicial declaration can and should be made for future guidance. If the matter in dispute is simply a question of fact dependent upon the evidence in the particular case, there is no necessity for a declaration of legal principle such as to call the exception into play.

627 S.W.2d at 885.

Finally, *State ex rel. Union Electric Co. v. Public Serv. Comm'n*, 687 S.W.2d 162 (Mo. banc 1985) and *State ex rel. Union Electric Co. v. Public Serv. Comm'n*, 765 S.W.2d 618 (Mo.App. 1988) involve the cancellation of the Callaway II unit. The Commission first disallowed recovery of the partial construction and cancellation costs of the abandoned Callaway II unit on the basis that the terms of Proposition One, Section 393.135, precluded the Commission from allowing recovery of any amount from ratepayers relating to abandoned construction. In the first appellate court decision respecting UE's effort to recover in rates the costs associated with the abandoned Callaway II unit, the Missouri Supreme Court held that Proposition One, Section 393.135, did not have the purpose and did not have the effect, of divesting the Commission of the authority to make any allowance for the costs of abandoned generating plant construction. The Court based its conclusion "the established practice of allowing such charges, absent a statutory command to the contrary, and on the absence from Proposition One of explicit language dealing with abandoned construction." 687 S.W.2d at 168.

The case was remanded to the Commission for further proceedings. After further proceedings on the remanded issues, the Commission again rejected recovery in rates of the construction and cancellation costs of Callaway II. The Commission held that UE's shareholders had already been compensated for some of their loss through the rates of return in prior UE cases. 765 S.W.2d at 621. Among other things, the Commission determined that UE shareholders had received some compensation for the risk of their investment in UE which included a risk of cancellation of Callaway II. The Court found that the Commission's decision was within the Commission's discretion and was supported by competent and substantial evidence. *Id.* at 623-24.

7. The Staff believes that it is noteworthy that Praxair is a signatory to the instant Nonunanimous Stipulation And Agreement Regarding KCPL's Regulatory Plan Additional Amortizations when it was not a signatory to the Nonunanimous Stipulation And Agreement Regarding Empire's Regulatory Plan Amortizations. The Staff would direct the Commission to Paragraph 6 of the Nonunanimous Stipulation And Agreement Regarding KCPL's Regulatory Plan Additional Amortizations. There is not a comparable paragraph in the Nonunanimous Stipulation And Agreement Regarding Empire's Regulatory Plan Amortizations.

8. As the Commission is aware, 4 CSR 240-2.115 Stipulations and Agreements states, in pertinent part:

> (2) Nonunanimous Stipulations and Agreements:
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> (A) A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all of the parties.
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> (B) Each party shall have seven (7) days from the filing of a nonunanimous stipulation and agreement to file an objection to the nonunanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing.
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> (C) If no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.
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> (D) A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.
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> (E) A party may indicate that it does not oppose all or part of a nonunanimous stipulation and agreement.

The Staff would suggest that now that a Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations has been filed, 4 CSR 240-2.115(2)(B) is applicable.

9. Finally Staff counsel had hoped to file this pleading at an earlier date but other Commission cases have caused this filing to be delayed. Staff counsel apologizes to the Commission and the parties.

WHEREFORE, the Staff files the instant Staff Suggestions In Support Of Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Additional Amortizations and, among other things, suggests that 4 CSR 240-2.115(2)(B) is now applicable.

Respectfully submitted,

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## Certificate of Service

I hereby certify that copies of the foregoing have been mailed by first class postage prepaid, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record on this 11th day of December, 2006.

/s/ Steven Dottheim
Steven Dottheim