KCP&L-223

*Exhibit No.:*
*Issue:* *Income Taxes*
*Witness:* *Paul R. Harrison*
*Sponsoring Party:* *MoPSC Staff*
*Type of Exhibit:* *Surrebuttal Testimony*
*File No.:* *ER-2010-0355*
*Date Testimony Prepared:* *January 05, 2011*

# MISSOURI PUBLIC SERVICE COMMISSION

## UTILITY SERVICES DIVISION

# SURREBUTTAL TESTIMONY

## OF

## PAUL R. HARRISON

**Great Plains Energy, Incorporated**
**KANSAS CITY POWER & LIGHT COMPANY**

**FILE NO. ER-2010-0355**

*Jefferson City, Missouri*
*January 2011*

** Denotes Highly Confidential Information **

Staff Exhibit No. KCP&L-223
Date 1/18/11 Reporter LmB
File No. ER-2010-0355

HC P NP
Version

**TABLE OF CONTENTS**

**SURREBUTTAL TESTIMONY OF**

**PAUL R. HARRISON**

**Great Plains Energy, Incorporated**
**KANSAS CITY POWER & LIGHT COMPANY**

**FILE NO. ER-2010-0355**


EXECUTIVE SUMMARY ..... 2

ADVANCED COAL CREDITS ..... 4

KANSAS CITY (KC) EARNINGS TAX ..... 24

EXCESS DEFERRED INCOME TAXES ..... 30

# SURREBUTTAL TESTIMONY

# OF

# PAUL R. HARRISON

## Great Plains Energy, Incorporated
## KANSAS CITY POWER & LIGHT COMPANY

## FILE NO. ER-2010-0355

Q. Please state your name and business address.

A. Paul R. Harrison, P. O. Box 360, Jefferson City, Missouri 65102.

Q. By whom are you employed and in what capacity?

A. I am a Regulatory Auditor with the Missouri Public Service Commission (Commission).

Q. Are you the same Paul R. Harrison who filed direct testimony and rebuttal testimony in this case?

A. Yes, I am. I contributed to the Staff Cost of Service Report filed on November 10, 2010 and I filed rebuttal testimony on December 8, 2010 in this rate case. In addition, I contributed to the Staff Cost of Service Report filed on November 17, 2010 in the KCP&L Greater Missouri Operations Company (GMO) rate case designated as File No. ER-2010-0356.

Q. With reference to Case No. ER-2010-0355, please provide a summary of your surrebuttal testimony.

A. The purpose of my testimony is to address the rebuttal testimony of Kansas City Power & Light Company (KCPL or Company) witness Melissa K. Hardesty concerning several income tax issues..

## EXECUTIVE SUMMARY

Q. In summary, what does your surrebuttal testimony cover?

A. This testimony will address three issues concerning income taxes.

First, KCPL is alleging that certain investment tax credit (ITC) normalization rules promulgated by the Internal Revenue Service (IRS) will be violated if the Commission accepts the Staff's position that 18% of the advanced coal tax credits be allocated to GMO in this case. The Staff disagrees with KCPL"s contention on this matter, and will also present some alternative rate recommendations on this issue if the Commission determines KCPL's arguments may have merit. More specifically, the Company is addressing this issue on the sole basis that providing any benefit of these tax credits to GMO would result in violation of the federal tax code. However, this is not the issue. The basis for the disagreement between KCPL and Staff is essentially the management decision of KCPL's parent Company, Great Plains Energy, Incorporated (Great Plains or GPE) and KCPL to not provide any part of the $125 million in tax credits resulting from the ownership of Iatan 2 to GMO.

While the normalization rule violation is an important element of this issue, it is one that could have been completely avoided had KCPL acted in a prudent matter to proportionally share the tax benefits awarded to the Iatan 2 owners by the IRS, or at least those owners who are required to pay federal income taxes, namely KCPL, GMO and The Empire District Electric Company (Empire). KCPL was awarded $125 million in tax credits related to the newly constructed Iatan 2 and made the decision to attempt to keep all the tax benefits for itself. Empire was forced to go to arbitration, before Empire could get any of the tax benefits from its ownership share. GMO was not so lucky. KCPL did not request the IRS nor notify the arbitration panel that another Iatan 2 partner and KCPL affiliate, GMO, was an 18% owner of Iatan 2. As no one represented the interest of GMO or

its customers during the dispute, GMO was not awarded any of the tax benefits. Through the rebuttal testimony of Ms. Hardesty, KCPL is now attempting to hide behind the normalization rules of the IRS and claiming a potential tax normalization violation if Staff's position prevails. Even if a normalization violation is the ultimate result of KCPL's past decisions regarding this matter, — that is still not the real issue. KCPL has only itself to blame for the situation they find themselves in regarding the matter in which it treated its partners, more specifically GMO. While Empire was initially treated in the same manner as GMO, as a non-affiliated third party, it had a voice and that voice was heard. Empire was able to get the tax benefits it deserved through arbitration. GMO and its customers had no one representing their interest. Staff requests that GMO be appropriately allocated a portion of the advanced coal credits based upon its 18% ownership share of the Iatan 2 advanced coal tax credits by requiring KCPL to re-apply, at its shareholders' expense, to the IRS for a further reallocation of the $125 million Iatan 2 tax benefit.

The second issue concerns whether the Kansas City (KC) earnings tax for KCPL should be included in the composite income tax rate calculation for rate purposes, or alternatively normalized to an ongoing level based upon actual KC earnings tax amounts paid. Additionally, there is an issue concerning whether a portion of the KC earnings tax should be allocated to the state of Kansas and GMO customers.

The last issue concerns whether the excess deferred income taxes should be flowed back to customers over the approximate depreciable book life of the property for which the deferred taxes are associated. Since Staff is recommending a different average book depreciation rate in this case than what is currently in effect, does the amortization period for excess deferred taxes associated with this depreciation also need to change?

My testimony will address the Staff's position concerning each of these issues.

**ADVANCED COAL CREDITS**

Q. Please describe KCPL's "advanced coal credits."

A. KCPL applied for certain Iatan 2 advanced coal tax credit benefits from the IRS related to its ownership of the qualifying Iatan 2 generating unit. An advanced coal tax credit is considered as one type of investment tax credit, or ITC. KCPL was initially allocated the qualifying advanced coal tax credits by the IRS in the amount of $125 million related to its qualified investment in Iatan Unit 2 in 2008.

Q. How did KCPL initially propose to distribute the advanced coal ITC between itself and the other joint owners of the Iatan 2 unit?

A. Notwithstanding the fact that KCPL was only responsible for 54.71% of Iatan 2 construction expenditures, with the remaining 45.29% being paid by the joint partners, KCPL initially chose to retain 100% of the benefits of the advanced coal ITC for itself.

Q. Who are the other owners of Iatan 2?

A. GMO owns 18% of Iatan 2, Empire owns 12% share of the unit, with Kansas Electric Power Cooperative, Inc. (KEPCO), and Missouri Joint Municipal Electric Utility Commission (MJMEUC) owning the remaining 15.29% share.

Q. Was KCPL later required to share the $125 million advanced coal credit that they were awarded by the IRS?

A. Yes. The amount of KCPL's share of the advanced coal ITC for Iatan 2 was reduced to $107.3 million through arbitration proceedings, initiated by certain joint owners other than GMO, in September 2010. Empire, KEPCO and MJMEUC filed a notice to arbitrate in 2009, asserting that they were entitled to receive proportionate shares (or the

monetary equivalent) of the $125 million of advanced coal ITC awarded to KCPL. I have cited the pertinent paragraphs below of the Final Arbitration Award and attached to this testimony the Final Arbitration Award from the Arbitration Panel as Schedule 1; the Tax Allocation Agreement among GPE and Affiliates as Schedule 2; and the Memorandum of Understanding between the IRS and KCPL to this testimony as Schedule 3.

Based on the pleadings, testimony, exhibits and briefs of the parties, the Highly Confidential findings and opinions of the Arbitration Panel were as follows:

**



HC NP Version

[redacted]



HC NP
Version

_____ **

Accordingly, IT IS HEREBY ORDERED:

** _____

_____ **

Q. What were the results of the arbitration process?

A. While KCPL initially received approval from the IRS for $125 million tax credit, the amount of the advanced coal ITC awarded to KCPL was later reduced to $107.3 million when arbitration proceedings, with certain joint owners other than GMO, were finalized in September 2010. The arbitrators determined that KEPCO and MJMEUC were



HC NP Version

not entitled to a share of the ITCs, but that $17.7 million of advanced coal ITC should be allocated to Empire based upon its ownership of 12% of Iatan Unit 2.

Q Why did the arbitrators determine that KEPCO and MJMEUC were not entitled to a share of the ITC's?

A Section 50(b)(3) of the Internal Revenue Code states that no credit shall be determined under Subpart E with respect to any property used by an organization which is exempt from tax.

Q. Was GMO included in these arbitration proceedings?

A. No. At no time was GMO considered for its share of these tax credits despite having an 18% ownership share of this generating unit, and accordingly being in an equivalent position to Empire in relation to the Iatan 2 unit.

Q. Why didn't GMO seek a proportionate share of the advanced coal ITC through the arbitration proceedings?

A. The Staff believes that GMO was never given opportunity to take this action, as it is an affiliated company with KCPL under the common ownership of Great Plains Energy. The owners of KCPL and GMO chose to discriminate in favor of KCPL and its customers and against the interests of GMO and its customers in this matter.

Q. Since GMO was a joint owner of Iatan 2 and all of the other partners were included in the arbitration process, did KCPL ever represent to Staff why GMO was not represented in the arbitration proceedings?

A. No. On September 9, 2010 Staff had a meeting with KCPL personnel on the subject of income taxes, during which the subject of the advance coal credits was discussed. During this meeting Staff inquired why GMO was not allocated its share of the tax credits.

The only explanation given was that it would be an income tax normalization violation for KCPL to allocate the credits to GMO at that point. Staff asked KCPL what party represented the interests of GMO and its customers during the arbitration proceedings, but Staff never received an answer from KCPL.

Q. Did Staff seek further justification to why GMO was not included on the allocation of the Iatan 2 tax benefits?

A. Yes. Staff submitted Data Request 386 in the current case and Data Request No. 966 in case No. EO-2010-0259 to formally request information on the representation of GMO regarding the Iatan 2 tax credits. (Both documents are attached to this testimony as Schedules 7 and 8, respectively.) Staff's Data Request 386 stated:

> 12. Please identify all personnel who represented the interests of KCPL Greater Missouri Operations relating to the Iatan Advanced Coal Tax Credit issue. Provide all documentation for any input that KCPL Greater Missouri Operations personnel gave to KCPL or GPE regarding the Iatan Advanced Coal Tax Credit issue both prior to GPE's acquisition of GMO and subsequent to the acquisition.

KCPL Response:

> 12. There was no communication whereby GMO employees provided input to GPE or KCPL employees regarding the advanced coal credit issue before GPE acquired GMO. After the acquisition, employees of KCPL also represented GMO's interests regarding the advanced coal investment tax credit and the interests and positions of each affiliated company were considered throughout the process of assessing and recording the advanced coal credits...

Q. Does GMO have any employees?

A. No. All GPE personnel are employees of KCPL. KCPL provides services to all GPE operations, including GMO, through operating agreement. The operating agreement was filed October 10, 2008 in Case No. EM-2007-0374.

Upon the completion of the July 14, 2008 acquisition of the former Aquila, Inc. (Aquila) by GPE, those Aquila employees retained by GPE were transferred to KCPL's operations. Consequently, there was no one at GMO who could represent the interest of that entity or that entity's customers.

Q. After the filing of KCPL's rebuttal testimony on this issue, did Staff request additional information from the Company concerning the arbitration process?

A. Yes. Staff submitted Data Request 124.2 in an attempt to obtain additional information concerning KCPL's reasoning for why GMO was not included in the arbitration process:

> In reference to Melissa Hardesty's rebuttal testimony, page 11, line 17, she says that KCPL can get guidance from the IRS regarding a potential normalization violation. 1.) If KCPL is concerned about losing this credit because of a normalization violation, why hasn't KCPL already made the request for a private letter ruling from the IRS? 2.) How long does KCPL anticipate it would take to get a letter ruling answer from the IRS? 3.) Since the final decision for arbitration and the advanced coal credit was made by the IRS in 2010 and the GPE consolidated 2010 federal tax return has not yet been filed, why can't GMO request arbitration to allow GMO to get its fair portion of the advanced coal federal income tax credit?

KCPL responded as follows:

> 1. A private letter ruling would only be needed if the Commission intends to allocate credits to GMO. The cost to file for a private letter ruling would include the IRS filing fee of $10,000 to $15,000 and the costs to hire outside tax counsel to assist in the process. These costs would be avoided if we did not need to file for the private letter ruling.
>
> 2. KCPL estimates that it would take approximately 6 to 12 months for the IRS to issue a private letter ruling on this matter.
>
> 3. The Company did not pursue an allocation to GMO of the coal credits after the arbitration proceedings were final with Empire because the Company believes that there is a significant risk that all of the credits (including the amounts allocated to KCP&L and Empire) may be forfeited under a normalization violation if the Company pursued allocation of credits to GMO with the IRS.

Q. Has KCPL ever presented any justification to Staff why GMO was not included in these arbitration proceedings from the beginning of the arbitration process?

A. No. In fact, in her rebuttal testimony, Ms. Hardesty makes no attempt whatsoever to explain or justify KCPL's or Great Plains Energy's actions failing to allocate any of the advanced coal ITC between KCPL and GMO. In none of the data request responses KCPL has made any attempt to justify the failure to allow GMO to share in the tax benefit relating to Iatan 2.

Q. Did GMO ever apply for any of the Iatan 2 tax credits?

A. Yes. KCPL indicated that GMO applied for these tax credits after the Aquila acquisition by GPE in October 2008. In response to Staff Data Request No. 386 (Item 8), KCPL stated that GMO requested in October 2008 consideration of the Iatan 2 tax credit filing an "application for the advanced coal investment tax credits after it became aware that a new allocation round was available and that there was still $250 million of credits to be awarded." In this response, KCPL further stated that the IRS denied GMO's request "and indicated that the full $125 million of credits available for the Iatan 2 plant project had already been awarded to KCP&L in the 2007 allocation round."

Q. When did Empire request the Iatan 2 tax credits?

A. KCPL indicated in its response to Staff Data Request No. 386 that after the Company received notice that the IRS denied the GMO application, Empire started its arbitration proceedings "to have [tax] credits reallocated to [Empire] by the panel." KCPL further stated:

> The Company did not include GMO in the arbitration proceedings since it felt strongly that income taxes were the responsibility of each owner and because GMO's application had just been denied. In December 2009, the arbitration panel issued its order to allocate credits

> to Empire (via an amended Memorandum of Understanding by the IRS). The order does not require any credits to be reallocated or the monetary equivalent of its proportionate share of the credits to be paid to GMO.

KCPL indicated that because the IRS denied GMO's application for the Iatan 2 tax credits and GMO was not included in the arbitration order, the Company decided the IRS would not likely reallocate any credits to GMO.

Q. What is the Memorandum of Understanding referenced above?

A. This is an agreement entered into by the IRS and KCPL to execute the findings of the arbitration panel concerning reallocation of the tax credits to Empire.

Q. Could KCPL have included GMO in the arbitration process at the time Empire was included?

A. Yes and that is exactly what KCPL should have done. But, because GMO was no longer independent entity acting solely on its behalf, no one properly represented its interests in obtaining these tax benefits for itself and its customers.

Q. Did KCPL act in a prudent matter regarding the treatment of GMO in the allocation of the Iatan 2 tax credits?

A. No. Once the ruling was made in favor of Empire by the arbitration panel, KCPL should have done the right thing and acted in its affiliate's behalf by including GMO in the re-allocation request to the IRS. The IRS was not going to grant any more than the $125 million amount—it had already indicated that to KCPL. But KCPL should have included Iatan 2's other taxing paying partner and KCPL affiliate, GMO, in this process. Since the IRS would not award an amount greater than $125 million for Iatan 2 advanced coal credits, it would likely be indifferent to the allocation of that amount among KCPL, GMO and Empire.

But just as KCPL initially ignored Empire's stake in the tax credits, KCPL continued to ignore GMO's interests. The difference between the two entities was that as a non-KCPL affiliate, Empire could pursue all actions necessary to protect its interests and the interests of its customers. GMO had no one to protect its interests. As a consequence, GMO ended up with no tax benefits assigned to it.

Q. Is GMO required to pay for any costs relating to Iatan 2?

A. Yes. There is a partnership agreement between all the owners of Iatan 2 which specifically identifies each partner's ownership share and all related cost responsibilities. Like all the other partners, GMO is required to pay for all costs to operate, maintain, repair and construct plant additions for Iatan 2. All costs associated with this plant are billed to each of the partners based on ownership share percentage. GMO must pay monthly payments for its share of these costs, yet was conveniently not given an opportunity to obtain the offsetting benefits of the advanced coal tax credits.

Q. Did Staff make an adjustment in this case to allocate GMO its proportionate share of the advanced coal credit?

A. Yes, Staff made an adjustment to allocate to GMO its 18% ownership share of the Iatan 2 advanced coal tax credit. Since GMO was not represented during the arbitration proceedings, owns 18% of Iatan 2, and has its own rate structure and customer base, Staff made an adjustment of $26.5 million to allocate GMO its proportionate ownership share of the advanced coal tax credit. Given that GMO (and ultimately its customers) were responsible for payment of 18% of the Iatan 2 unit's construction cost, it is only fair and prudent to also allow GMO (and ultimately its customers) 18% of the tax benefits associated with Iatan 2 construction. With GMO's revenue requirement being determined independently

from KCPL, GMO's cost of service should be developed to include all applicable credits as well as its costs.

Q. Does KCPL agree with the Staff's adjustment?

A. No, but the only reason the Company gives for its opposition to the Staff's adjustment are alleged adverse income tax consequences if the Staff' prevails on this issue. KCPL witness. Hardesty asserts in her rebuttal testimony on Page 9, Line 14, that the Company believes that it would be a violation of the Internal Revenue Service (IRS) normalization rules under Internal Revenue Code Section (IRC) 46(f)(2)(A) and Regulation 1.46-6(b)(4) to allocate advanced coal ITC directly or indirectly to an entity that did not claim the credit on its tax return. I have included the pertinent paragraphs below and attached both IRC Section 46(f), Regulation 1.46-6 and the KCPL election of investment tax credit to this testimony as Surrebuttal Schedules 5, and 6, respectively:

> 46(f)(2)(A) COST OF SERVICE REDUCTION.—If the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by more than a ratable portion of the credit determined under subsection (a) and allowable by Section 38 (determined without regard to this subsection), or
>
> 46(f)(2)(B) Rate Base Reduction.—If the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of the credit determined under subsection (a) and allowable by section 38 (determined without regard to this subsection).
>
> Regulation 1.46-6(b)(4):
> **(i)** Cost of service or rate base is also considered to have been reduced by reason of all or a portion of a credit if such reduction is made in an indirect manner.
>
> **(ii)** One type of such indirect reduction is any ratemaking decision in which the credit is treated as operating income (subject to ratemaking regulation) or is treated less favorably than the capital that would have been provided if the credit were unavailable. For example, if the credit is accounted for as nonoperating income on a company's regulated books of account but a ratemaking decision has the effect of treating the credit as operating income in determining rate of return to common

shareholders, then cost of service has been indirectly reduced by reason of the credit.

**(iii)** A second type of indirect reduction is any ratemaking decision intended to achieve an effect similar to a direct reduction to cost of service or rate base. In determining whether a ratemaking decision is intended to achieve this effect, consideration is given to all the relevant facts and circumstances of each case, including, but not limited to—

**(A)** The record of the proceeding,

**(B)** The regulatory body's orders or opinions (including any dissenting views), and

**(C)** The anticipated effect of the ratemaking decision on the company's revenues in comparison to a direct reduction to cost of service or rate base by reason of the investment tax credits available to the regulated company.

**(iv)** This subdivision (iv) describes a situation that is not an indirect reduction to cost of service or rate base by reason of all or a portion of a credit. The ratemaking treatment of credits may affect the financial condition of a company, including the company's ability to attract new capital, the cost of that capital, the company's future financial requirements, the market price of the company's securities, and the degree of risk attributable to investment in those securities. The financial condition may be reflected in certain customary financial indicators such as the comparative capital structure of the company, coverage ratios, price/earnings ratios, and price/book ratios. Under the facts and circumstances test of paragraph (b)(4)(iii) of this section, the consideration of a company's financial condition by a regulatory body is not an indirect reduction to cost of service or rate base, even though such condition, as affected by the ratemaking treatment of the company's investment tax credits, is considered in the development of a reasonable rate of return on common shareholders' investment.

Q. Considering the above highlighted IRS code language on cost of service reductions does Staff use this method in the ratemaking process?

A. Yes. As quoted below from "Accounting for Public Utilities" by Hahne and Aliff dated November 2010 Page 17.04(2) paragraph [3] Determination of Cost of Service Reduction (see Schedule 4, KCPL Election of Investment Tax Credit):

> Utility companies electing Option 2 amortize ITC to operating income by reducing the cost of service. The regulations provide that "cost of service" is the amount required by a taxpayer to provide regulated goods or services. Cost of service includes operating expenses (including salaries and cost of materials, etc.) maintenance expenses, depreciation expense, tax expense, and interest expense.
>
> The regulations state that any effect on taxpayers permitted return on investment that results in a reduction in the taxpayer's rate base does not constitute a reduction in cost of service even though, as a technical ratemaking term, "cost of service" ordinarily includes a permitted return on investment. In addition, taking into account a deduction for the additional interest that the taxpayer would pay or accrue if the credit were unavailable in determining federal income tax expense ("synchronization of interest") does not constitute a reduction in cost of service for purposes of Section 46(f)(2). As described above, the regulation consider any direct or indirect reductions to cost of service or rate base in assessing compliance with the normalization requirements

Q. Does Staff believe this issue should be judged on the basis of the alleged IRS normalization rules?

A. No. Staff does not believe the determination of GMO getting its 18% ownership share of the Iatan 2 tax credits should be based on the tax normalization rules "scare tactic" employed by KCPL.

More specifically, the Company is addressing this issue on the sole basis that providing any benefit of these tax credits to GMO would result in violation of the federal tax code. However, this is not the issue. The basis for the disagreement between KCPL and Staff is essentially the management decision of the Great Plains and KCPL to not provide any part of the IRS awarded $125 million for the tax credits resulting from the ownership of Iatan 2.

KCPL put the normalization rule violation in play when it excluded GMO from the Iatan 2 tax credits. KCPL could have completely avoided the normalization rule issue if it had acted in a prudent matter to share in the tax benefits awarded to the Iatan 2 owners by the IRS, or at least the owners who are required to pay federal income taxes. Just as Empire was

entitled to its share of these tax credits, GMO also had a stake in those benefits. KCPL was awarded $125 million for the newly constructed Iatan 2 and made the decision to keep all the tax benefits for itself. It took an arbitration ruling which KCPL appealed and lost for Empire to get any of the tax benefits from its ownership share. KCPL did not request the IRS nor notify the arbitration court that another Iatan 2 partner and KCPL affiliate, GMO, was an 18% owner of Iatan 2. Since KCPL did not represent the interest of GMO or its customers, GMO was not awarded any of the tax benefits.

KCPL is now attempting to hide behind the "protection" of the IRS code to support its position on this issue, citing potential tax normalization violations. Even if KCPL's contentions on this point are correct, that is still not the issue. KCPL has only itself to blame for the situation they find themselves in regarding the matter in which it treated its partners, more specifically GMO. While Empire was initially treated in the same matter as GMO by KCPL, as a non-affiliated third party it had a voice and a means to express that voice. Accordingly, Empire was able to obtain the tax benefits to which it was entitled. Since GMO had no one representing it, Staff has had to be its voice. Staff recommends that GMO be allocated its 18% ownership share of the Iatan 2 advanced coal tax credits by requiring KCPL to re-apply, at its shareholders' expense, to the IRS for a further reallocation of the $125 million Iatan 2 tax benefit to allow GMO its fair share.

Q. Does Staff believe allocating the Iatan 2 tax benefits to GMO for ratemaking purposes would violate the tax normalization rules?

A. It may be possible. But this situation is clearly the doing of KCPL and its decision not to represent GMO in the proper allocation of the tax benefits generated by Iatan 2. KCPL should be required to take all actions necessary to ensure GMO is treated

fairly regarding the Iatan 2 tax credits. This means KCPL should return to the IRS and request a reallocation to include GMO in the division of the advanced coal credits.

KCPL should take all necessary steps to ensure there are no adverse tax consequences to either GMO, KCPL or their parent, GPE. The Company must commit to seek the proper approvals from the IRS so as not to violate the all important normalization rules.

Q. Did the reallocation of the Iatan 2 tax credits to Empire result in a normalization violation?

A. No. KCPL did not have to pay any of its deferred taxes to the IRS after the reallocation to Empire took place. Because KCPL had to request the proper approvals from the IRS for the reallocation of the tax benefits for Empire after the arbitration decision, no normalization violation occurred. If KCPL had acted in a prudent and reasonable manner and included GMO in this reallocation process at the time Empire's took place, then no normalization violation would have occurred. Reallocating the advanced coal credits to both Empire and GMO at that time would not have triggered a tax normalization violation.

After the successful reallocation of these tax benefits to Empire, Staff sees no reason to believe that going back to the IRS with another proposed reallocation of the very same tax benefits—but this time for GMO—would be any less successful.

Q. Does Staff disagree with the KCPL view that a violation of the normalization rules, if it occurs in this instance, would require recapture of prior deferred income taxes?

A. No. Staff agrees with how Ms. Hardesty's description of the consequences of a possible normalization violation. Deferred taxes would have to be paid back to the IRS. Staff does not want this result to happen and is not supporting this happening in any way. What is necessary to happen is to require KCPL, as the representative of GMO, to go back to

the IRS and seek a ruling to reallocate GMO its proper share based on its ownership percentage of the Iatan 2 tax credits.

Q. Would this require the IRS to agree with the reallocation of the Iatan 2 tax credits?

A. Just as when Empire received a favorable arbitration outcome, the IRS had to agree to the reallocation of these tax benefits. It would be expected that the IRS would have to approve any reallocation of the Iatan 2 tax credits to GMO.

Q. Why does Staff believe the IRS would approve a reallocation of these tax benefits to GMO?

A. Even though the IRS initially denied the application of GMO in late 2008, KCPL was seeking an increased amount over the $125 million level the IRS awarded to the Iatan 2 project. In this instance, Staff believes the IRS would reallocate the amount to GMO because KCPL would not be requesting any more than the $125 million level it has already received, a portion of which went to Empire after the arbitration ruling. Certainly, it would have been the proper time to request IRS approval of an allocation of tax credits to GMO at the time of Empire reallocation, but KCPL made a deliberate and conscious decision not to include its newly acquired affiliate. But since this was not done, KCPL should be required to seek another reallocation of this important tax benefit for GMO. Not to do so would be detrimental to GMO and its customers.

Since the IRS would not be asked to increase the amount awarded for Iatan 2 project, it should be indifferent to this reallocation to GMO just as it was respecting Empire.

Q. How would the costs to seek IRS approval be treated?

A. KCPL should pay for all costs relating to any letter ruling or approvals from the IRS from its corporate funds. Customers should not have to pay for KCPL's mistake in judgment to not seek to provide GMO a share of these tax benefits. KCPL did not meet its responsibilities to its Iatan 2 partner and its affiliate, GMO, and did not represent GMO's interest. KCPL should take the responsibility for its decisions and be required to take all necessary actions to remedy this situation.

Q. Would Staff need to be involved in the process of addressing this matter with the IRS?

A. Staff believes it would be necessary to monitor the progress of this process and, especially, would want to review the draft communications to the IRS concerning KCPL's application to reallocate the Iatan 2 tax credits on behalf of GMO.

In the past, where there have been tax code issues with utilities resulting from the ratemaking process, Staff has requested to see draft requests for IRS letter rulings to ensure that the language is fair and accurate regarding the particular tax matter in question.

Q. How does KCPL file its federal income tax return?

A. GPE files a consolidated income tax return including the tax results of KCPL and GMO.

Q. Who should have ensured that the credit was claimed for GMO on its tax return?

A. GMO's and KCPL's tax obligation is included in GPE's consolidated federal income tax return. Therefore, both GPE and KCPL should have allocated GMO its appropriate share of the credit and included it for GMO in the consolidated tax returns.

Q. KCPL addresses the Company's opinion concerning Staff's re-allocation adjustment on pages 8 through 13 of Ms. Hardesty's rebuttal testimony wherein she consistently insists that the Company believes that this allocation would be a violation of the normalization rules and would have to be repaid to the IRS by KCPL for a normalization violation. Does the Staff agree with the Company's opinion?

A. No. GPE files a consolidated federal income tax return with the IRS which includes KCPL and GMO as subsidiaries. In addition, included in the GPE 2008 consolidated federal tax return, which was filed with the IRS, was IRS Form 3468 Investment Credit and IRS Form 3800 General Business Credit. These two forms were used to report the advanced coal credit amount to the IRS for tax year 2008. The names on both these forms were Great Plains Energy Incorporated and Subsidiaries, with the GPE identification number. Therefore, the Staff believes that since the advanced coal credit is being filed under GPE's name and not KCPL's, it should not be a violation of the IRS's normalization rule for the Commission to allocate the credit between two GPE affiliates for ratemaking purposes. This would simply be an allocation issue or an intercompany transaction. I have attached these forms to this testimony as Surrebuttal Schedules 9 and 10, respectively.

Q. Ms. Hardesty states on page 10, Lines 8-18 of her rebuttal that:

> Several private letter rulings have interpreted the restrictions against indirect reductions of cost of service related to ITC and have held that various ratemaking proposals would violate the normalization requirements. Most recently, PLR 200945006 addressed the sale of regulated gas distribution assets from one utility to another. At issue was whether the accumulated deferred ITC of the selling utility could be transferred to the buying utility to ultimately be used to reduce the rates of the buying utility. The IRS National Office held that the selling utility would violate the requirements of the investment tax credit normalization rules set forth in former section 46(f), if it directly or indirectly passes the accumulated deferred ITC balance to another taxpayer who did not claim such ITC tax benefits. Therefore any direct

or indirect allocation of credits to GMO from KCP&L would also be normalization violation under IRS regulations.

Does Staff agree with this conclusion?

A. No. The current issue is not about the accumulated deferred ITC of KCPL. The advanced coal tax credit is a current ITC that was just awarded to KCPL. As of September 30, 2010, KCPL's advanced coal ITC amount that was already filed with the IRS and used is $29,151,153 with the remaining $77,957,534 unused or committed. Therefore, Staff believes that if the Company is truly concerned about an alleged normalization violation resulting from rate treatment of the advanced coal ITC, then it has other options besides choosing to perpetuate an inequitable and unfair allocation of tax benefits between the two affiliates. These other options include establishing another arbitration that includes GMO, or filing amended or corrected consolidated tax returns to correct the mistake of not allocating GMO its appropriate share of the advanced coal credit. If, for some reason, the IRS does determine that adoption of the Staff's recommendation on this issue would result in a normalization violation, then KCPL needs to determine the best way to prevent this violation from occurring and negatively affecting not only KCPL's cost of service but also GMO's cost of service and its customers. An appropriate resolution of this issue must include both allocation of a proportionate amount of advanced coal credits to GMO and protection of the Company's normalization tax benefits.

Q. What actions does the Staff recommend that the Commission take regarding this issue?

A. The Staff continues to recommend that the Commission accept Staff's adjustment to allocate part of the coal credits to GMO. If concerned with possible normalization violations as a result of this action, the Commission can:

1) Order KCPL to obtain a letter ruling on this point from the IRS, determining whether such Commission action would actually result in normalization rules violation; and/or

2) Order KCPL to initiate an arbitration proceeding for GMO.

In the event the Commission determines that it will not re-allocate a proportionate share of advance coal credits to GMO, it can consider taking the following alternative actions:

1) Order a proportionate reduction in GMO's cost of service in an unrelated cost of service area to pass on the equivalent of the proportionate tax credit benefit to GMO and its customers; or

2) Leave all of KCPL's coal credits as a reduction to its cost of service, but for ratemaking purposes impute a proportionate amount of credits (18% of the total) as a reduction to GMO's cost of service in addition to KCPL's share of credits; or

3) Order a reduction to KCPL's and GMO's Return on Equity of 50 basis points on account of KCPL's imprudence and abuse of its affiliated relationship with GMO in this instance.

Q. Are there any other issues related to the advanced coal credit that needs to be addressed in this case?

A. Yes. On page 12 of Ms. Hardesty' rebuttal testimony, she states that the amortization of the advanced coal credits cannot occur faster than over the life used for book purposes of depreciation for Iatan Unit 2. The proposed amortization period for the advanced coal credits by the Company and Staff is currently 50 years in the case. However, Staff has requested a longer depreciable book life for Iatan Unit 2 in this case (60 years). KCPL argues that if the depreciable book life of Iatan 2 is ultimately authorized to be something other than

50 years in this proceeding, then the life used for the amortization of the advanced coal ITC should also be changed to be consistent with the Iatan 2 life.

Q Does the Staff agree with this argument?

A. Yes. Staff agrees that the amortization period for the advanced coal credits should align with the ratable portion of the credit over the life used for book purposes of depreciation for Iatan Unit 2. It is the Staff's position that when the Commission renders its decision in this case on the depreciation issues, the Staff and Company can recalculate the amount of amortization for the advanced coal credit in this rate case to be consistent with those findings.

**KANSAS CITY (KC) EARNINGS TAX**

Q. Please describe the Kansas City (KC) earnings issues in this rate case.

A Staff normalized the KC earnings tax in this rate case by removing the KC earnings tax from the income tax calculation and including the actual KC earnings tax paid for calendar year 2009 in the Staff's Income Statement, Accounting Schedule 9. This item was treated as part of the tax calculation in KCPL's last rate case, Case No. ER-2009-0089 and included in the Staff's Schedule 11, Income Tax calculation. This adjustment to normalize the earnings tax is necessary to properly reflect an amount for the local Kansas City tax in current rates. During the review of KCPL costs, Staff discovered when this tax was made part of the tax calculation in KCPL's last rate case, it significantly overstated costs. When the earnings tax was included in the tax calculation on Staff Accounting Schedule 11, using the percentage ratio of .650% to factor up for income taxes, it was creating a significant difference between the amount of earnings taxes actually paid and the level that was determined in the tax calculation. For example, in KCPL's last rate case,

Staff included $887,104 for earnings taxes computed as part of the tax when ultimately the Company **actually** only paid $74,443 for 2009.

Q. How was the KC earnings tax rate of .650% determined?

A. This tax percentage was developed by the Company and Staff in the 2009 rate case in an attempt to "fix" the overstatement of this tax when it was used as part of the overall tax factor up computation. However, even using this decreased amount still resulted in higher than actual paid amounts in the revenue requirement calculation.

The actual tax rate for the KC earnings tax is 1% and has in past cases been reflected in the overall income tax rate. In prior rate cases it was discovered that this rate, when used in the overall tax calculation, resulted in higher amount of KC earnings taxes included in rates than what KCPL had to actually pay to the city of Kansas City. Therefore, Staff and Company both worked together to resolve this difference. As referenced earlier, this "fix" simply did not work and the .650% revised tax rate continue to result in higher amount included in rates compared to what was paid to city of Kansas City.

Q. Does KCPL dispute the claim that the revised KC earnings tax rate results in higher taxes included in rates?

A. Yes. On page 16, Lines 3-7, Ms. Hardesty states she does not agree "that the method used by the Company in this case and by the Staff in prior cases to compute Kansas City earnings tax overstate costs."

However, a review of the amounts included in rates for this cost in relation to the actual amounts paid clearly show the tax rate calculation method does not properly reflect costs for the KC earnings taxes. A comparison of these actual tax costs with amounts

included in rates for the last three rate cases rates illustrates how including the earnings tax in the tax calculation to compute this cost overstates the amount of earnings tax:

| Calendar Year | Actual Earnings Tax | Rate Case Earning Tax | Difference |
|---|---|---|---|
| 2009 | $74,443 | $887,104 | $812,661 |
| 2008 | $438,185 | $593,636 | $155,451 |
| 2007 | $541,401 | $682,009 | $140,608 |

As can be seen from the example above, KCPL has over-recovered this expense in every one of their previous three rate cases. Additionally, KCPL projected 2010 actual earnings tax is approximately $300,000. In this case, KCPL is requesting almost $1 million when they included this expense in their tax calculation for their cost of service.

Q. Does the Company agree with Staff's method to normalize the KC earnings tax?

A. No. On page 13, Lines 16-19, KCPL witness Ms. Hardesty states that "by removing the Kansas City earnings tax from the income tax calculation and adding a portion of KCPL's 2009 Kansas City earnings tax paid to general taxes, Mr. Harrison is ignoring the fundamental relationship between the Kansas City earnings tax and income earned by KCPL."

Q. Do you agree with KCPL's opinion that Staff is ignoring the fundamental relationship between the Kansas City earnings tax and income earned by KCP&L.?

A. No. Staff is merely attempting to normalize the level of KC earnings tax that is developed in this rate case to represent the level which is going to be actually paid to the city. By using the tax calculation method that was included in the three previous rate cases, KCPL was allowed to over-recover this expense by $1,108,720. This amount does not

include the approximate $700,000 in the current rate case if Staff continued to use the method that was used in previous KCPL rate cases.

Q. On Page 14, Lines 18-21, Ms. Hardesty states "In fact, as stated earlier, Kansas City earnings tax is computed using income and expenses as determined for federal income tax purposes." Therefore, it should be recomputed in a fashion similar to how federal and state income taxes are computed." How was the KC earnings tax computed for GMO by the Company and Staff in the last rate case and this rate case?

A. GMO had to pay KC earnings taxes when it was part of the former Aquila, Inc (Aquila) entity because it had operations in and around the Kansas City area. Aquila's corporate offices were located in downtown Kansas City. In past Aquila rate cases and in the last and current GMO rate cases, both the utility and Staff included KC earnings taxes based on amounts booked in the test year. Therefore, the KC earnings tax for GMO was calculated using the same approach and method that Staff used in this KCPL rate case. In other words, neither the Staff nor GMO computed the KC earnings tax in its tax calculation. Therefore, the amount of KC earnings tax that was included in the Staff's cost of service for GMO-MPS and GMO- L&P were the test year unadjusted normalized level of KC earnings tax.

Q. Are there other reasons why Staff believes that the prior method of including the three factor method and including it in the tax calculation to compute KC earnings tax for KCPL overstates the costs?

A. Yes. One of the three factors referred to above used to determine the KC earnings tax is payroll. This part of the factor is overstated because KCPL includes GMO's payroll in its computation of the KCPL ratio for KC earnings tax.

Data Request 120.4 asked if:

> MPS's payroll was included in the calculation for MPS's KC earnings tax calculation or is it included in KCPL's earnings tax calculation?

The Company responded:

> MPS's payroll expense would be included in the computation of MPS's net profit and it would not be an expense in the computation of KCPL's net profit. But, MPS's payroll is not included in the Kansas City, Missouri compensation related apportionment factor for MPS and it is included as a part of KCPL's compensation related apportionment factor computations.

Therefore, to continue to include the compensation related apportionment factor for MPS in the Staff's tax calculation to compute the KC earnings tax for KCPL without allocating a portion of it to GMO will constantly overstate this expense for KCPL's customers.

Q. What are some of the other differences between how the KC earnings tax, federal and state taxes for KCPL are computed that need to be considered?

A. KC earnings tax is different from federal and state income taxes because federal and state income taxes have a rate base offset, (accumulated deferred income taxes, ADIT), included in the cost of service for the difference between accelerated and straight line depreciation while the KC earnings tax does not. Even though KCPL is allowed to take bonus depreciation deductions and are allowed to reclassify their repair costs due to an IRS allowed change in accounting method, both of which decreases the amount of earnings tax actually paid on their city tax return, these deduction differences are not included in the ADIT rate base offset to track the difference that can be used to decrease future KC earnings tax.

Q. Does Staff believe that an appropriate percentage ratio can be developed in order to include the earnings tax calculation in Staff Accounting Schedule 11, Income taxes?

A. Yes. Staff believes that an analysis can be done to develop an appropriate percentage ratio to use in the income tax calculation to establish an appropriate amount of KC earnings tax for the cost of service.

Q. Are there other issues concerning KC earnings tax that needs to be addressed in this testimony?

A. Yes. There is an issue concerning whether a portion of the KC earnings tax should be allocated to the state of Kansas and GMO customers. The actual earnings tax for KCPL, as determined by the city of Kansas City, is calculated by dividing the amount of gross receipts tax paid to Kansas City, and KCPL's payroll and plant identified within the Kansas City area by the amount of total company gross receipts, payroll and plant. This ratio is then multiplied by KCPL's total company net income to calculate the earnings taxes. The ratio that was used by the Company when they filed their 2009 KC earnings tax was 36.8810%.

Because the Kansas City earnings are required as a right to conduct business in the city of Kansas City, Staff believes that 25% of the earnings taxes should be allocated to Kansas and GMO customers. This is because the KCPL corporate office building and a predominate number of KCPL employees are located inside the Kansas City, Missouri area which directly results in a higher payment being made to the city of Kansas City for the earnings tax.

Q. Does the Company agree with Staff that some portion of the KC earnings tax should be allocated to Kansas GMO customers?

A. No. On page 15, Lines 5-8, of Ms. Hardesty's rebuttal testimony she states that "While they agree that some of the work spent by KCP&L employees in Kansas City,

Missouri locations may support Kansas KCP&L customers and GMO customers. They believe that work performed at locations by KCP&L employees outside of Kansas City, Missouri also supports Kansas City, Missouri KCP&L customers."

Q. Does this statement support Staff's position that there is a need to allocate a portion of the KC earnings tax to the total company?

A. Yes. This tax expense is no different from any other expense incurred by KCPL which is allocated between KCPL Missouri, KCPL Kansas and KCPL GMO customers. For example, all of KCPL's and GMO's payroll, benefits and all other costs are allocated between all of KCPL's entities which include the portion that is allocated to the state of Kansas.

**EXCESS DEFERRED INCOME TAXES**

Q. What concerns does the Company have with the Staff's Excess Deferred Income Taxes?

A. On page 16, Lines 4 through 14 of Ms. Hardesty' rebuttal testimony, she says in part that that the Staff includes an adjustment to flow back excess deferred taxes over the approximate depreciable book life of the property for which the deferred taxes are associated. The Staff's adjustment does not appear to be adjusted for the change in depreciable book lives requested by the Staff in this case. Since book depreciation is needed to determine how much of the timing differences reverse in a period, a change to the book depreciation rates will impact the amount of excess deferred taxes that should be flowed back to ratepayers.

Q Does the Staff agree with this statement?

A. The Staff is in agreement that the excess deferred income taxes are amortized over the approximate depreciable book life of the property for which the deferred taxes were

created. Staff also agrees that the excess deferred taxes should not flow back to ratepayers any more rapidly than by a proportionate amount of deferred taxes which represents the timing differences related to that property when it reverses for the same time period. It is the Staff's position that when the Commission renders its decision in this case on the depreciation issue, the Staff and Company can recalculate the amount of amortization for the excess deferred income taxes in this rate case.

Q. Does this conclude your surrebuttal testimony?

A. Yes, it does.

**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

| | | |
|---|---|---|
| In the Matter of the Application of Kansas City Power & Light Company for Approval to Make Certain Changes in its Charges for Electric Service to Continue the Implementation of Its Regulatory Plan | ) ) ) ) ) | File No. ER-2010-0355 |

AFFIDAVIT OF PAUL R. HARRISON

STATE OF MISSOURI )
) ss.
COUNTY OF COLE )

Paul R. Harrison, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of 31 pages to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.

Paul R. Harrison
Paul R. Harrison

Subscribed and sworn to before me this 5th day of January, 2011.

Notary Public

NIKKI SENN
Notary Public - Notary Seal
State of Missouri
Commissioned for Osage County
My Commission Expires: October 01, 2011
Commission Number: 07287016

# SCHEDULE 1

# HAS BEEN DEEMED

# HIGHLY CONFIDENTIAL

# IN ITS ENTIRETY

**HC** **NP**
Version

# SCHEDULE 2

# HAS BEEN DEEMED

# HIGHLY CONFIDENTIAL

# IN ITS ENTIRETY

**HC** **NP**
Version

# SCHEDULE 3

# HAS BEEN DEEMED

# HIGHLY CONFIDENTIAL

# IN ITS ENTIRETY

**HC** **NP**
Version

KANSAS CITY POWER & LIGHT COMPANY

1330 BALTIMORE AVENUE

KANSAS CITY, MISSOURI 64141

MICHAEL SELTZER
VICE PRESIDENT
AND TAX COUNSEL

June 17, 1975



CERTIFIED MAIL

Internal Revenue Service Center
2306 East Bannister Road
Kansas City, Missouri 64170

Re: Investment Credit; Public Utility Property Election

Dear Sir:

Pursuant to the provisions of Section 46(f) of the Internal Revenue Code of 1954 (as redesignated by Public Law 94-12), and to insure that this public utility corporation is entitled to treat the increase in investment credit provided by Section 301 of the Tax Reduction Act of 1975 in the same manner as originally elected under the Revenue Act of 1971, it hereby restates or confirms its original election filed on February 24, 1972. For protective purposes, the following information is being submitted.

The name of this taxpayer is KANSAS CITY POWER & LIGHT COMPANY, whose address is 1330 Baltimore Avenue, Kansas City, Missouri 64141, and whose taxpayer identification number is 44-0308720.

For all of its "Section 46(f) property", this taxpayer hereby makes the election provided by Paragraph (2) of Section 46(f) which option provides as follows:

> "(2) SPECIAL RULE FOR RATABLE FLOW-THROUGH. - If the taxpayer makes an election under this paragraph within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary or his delegate, paragraph (1) shall not apply, but no credit shall be allowed by section 38 with respect to any property described in section 50 which is public utility property (as defined in paragraph (5) ) of the taxpayer -
> (A) COST OF SERVICE REDUCTION. - If the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by more than a ratable portion of the credit allowable by section 38 (determined without regard to this subsection), or
> (B) RATE BASE REDUCTION. - If the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of the credit allowable by section 38 (determined without regard to this subsection)."

Please acknowledge receipt of this election, by stamp receipting the enclosed additional copy of the election and returning it in the enclosed self-addressed envelope which requires no postage.

Respectfully submitted,

KANSAS CITY POWER & LIGHT COMPANY

By _____
Vice President

(CORPORATE SEAL)

ms-hm

cc - Federal Power Commission
Kansas Corporation Commission
Missouri Public Service Commission

Accounting Department

KANSAS CITY POWER & LIGHT COMPANY

1330 BALTIMORE AVENUE

KANSAS CITY, MISSOURI 64141

MICHAEL SELTZER
ASSISTANT SECRETARY AND
ASSISTANT TREASURER

February 24, 1972

RECEIVED

FEB 28 1972

SERVICE CENTER DIRECTOR
INTERNAL REVENUE SERVICE CENTER
2306 E. BANNISTER ROAD
KANSAS CITY, MISSOURI 64170

CERTIFIED MAIL

Director
Internal Revenue Service Center
Midwest Region
U. S. Treasury Department
2306 East Bannister Road
Kansas City, Missouri 64170

Re: Investment Credit; Public Utility Property Election

Dear Sir:

Pursuant to the provisions of Section 46(e) of the Internal Revenue Code of 1954 as added by Section 105 of the Revenue Act of 1971 and T.D. 7161 approved February 11, 1972, this corporation timely makes the election set out below and submits the following required information:

The name of this taxpayer is KANSAS CITY POWER & LIGHT COMPANY, whose address is 1330 Baltimore Avenue, Kansas City, Missouri 64141 and whose taxpayer identification number is 44-0308720.

For all of its "Section 46(e) property", this taxpayer hereby makes the election provided by Paragraph (2) of Section 46(e) which option provides as follows:

> "(2) SPECIAL RULE FOR RATABLE FLOW-THROUGH. - If the taxpayer makes an election under this paragraph within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary or his delegate, paragraph (1) shall not apply, but no credit shall be allowed by section 38 with respect to any property described in section 50 which is public utility property (as defined in paragraph (5)) of the taxpayer -

Director
Internal Revenue Service Center

(A) COST OF SERVICE REDUCTION. - If the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by more than a ratable portion of the credit allowable by section 38 (determined without regard to this subsection), or
(B) RATE BASE REDUCTION. - If the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of the credit allowable by section 38 (determined without regard to this subsection)."

Please acknowledge receipt of this election, by stamp receipting the enclosed additional copy of the election and returning it in the enclosed self-addressed envelope which requires no postage.

Respectfully submitted,

KANSAS CITY POWER & LIGHT COMPANY

(CORPORATE SEAL)

By _____
Assistant Secretary and
Assistant Treasurer.

ms-rmk

cc: Federal Power Commission
Kansas Corporation Commission
Missouri Public Service Commission

RECEIVED
FEB 28 1972
SERVICE CENTER DIRECTOR
INTERNAL REVENUE SERVICE CENTER
2306 E. BANNISTER ROAD
KANSAS CITY, MISSOURI 64170

IRC, 89FED ¶549, Sec. 46, **AMOUNT OF CREDIT**, Subsec. (f), LIMITATION IN CASE OF CERTAIN REGULATED COMPANIES.--

**Sec. 46 AMOUNT OF CREDIT** Subsec. (f) LIMITATION IN CASE OF CERTAIN REGULATED COMPANIES.--

**46(f)(1)** GENERAL RULE.--Except as otherwise provided in this subsection, no credit determined under subsection (a) shall be allowed by section 38 with respect to any property described in section 50 (as in effect before its repeal by the Revenue Act of 1978) which is public utility property (as defined in paragraph (5)) of the taxpayer--

**46(f)(1)(A)** COST OF SERVICE REDUCTION.--If the taxpayer's cost of service for ratemaking purposes is reduced by reason of any portion of the credit determined under subsection (a) and allowable by section 38 (determined without regard to this subsection); or

**46(f)(1)(B)** RATE BASE REDUCTION.--If the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of the credit determined under subsection (a) and allowable by section 38 (determined without regard to this subsection).

Subparagraph (B) shall not apply if the reduction in the rate base is restored not less rapidly than ratably. If the taxpayer makes an election under this sentence within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary, the immediately preceding sentence shall not apply to property described in paragraph (5)(B) if any agency or instrumentality of the United States having jurisdiction for ratemaking purposes with respect to such taxpayer's trade or business referred to in paragraph (5)(B) determines that the natural domestic supply of the product furnished by the taxpayer in the course of such trade or business is insufficient to meet the present and future requirements of the domestic economy.

**46(f)(2)** SPECIAL RULE FOR RATABLE FLOW-THROUGH.--If the taxpayer makes an election under this paragraph within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary, paragraph (1) shall not apply, but no credit determined under subsection (a) shall be allowed by section 38 with respect to any property described in section 50 (as in effect before its repeal by the Revenue Act of 1978) which is public utility property (as defined in paragraph (5)) of the taxpayer--

**46(f)(2)(A)** COST OF SERVICE REDUCTION.--If the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by more than a ratable portion of the credit determined under subsection (a) and allowable by section 38 (determined without regard to this subsection), or

**46(f)(2)(B)** RATE BASE REDUCTION.--If the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of the credit determined under subsection (a) and allowable by section 38 (determined without regard to this subsection).

**46(f)(3)** SPECIAL RULE FOR IMMEDIATE FLOW-THROUGH IN CERTAIN CASES.--In the case of property to which section 167(1)(2)(C) applies, if the taxpayer

makes an election under this paragraph within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary, paragraphs (1) and (2) shall not apply to such property.

**46(f)(4)** LIMITATION.--

**46(f)(4)(A)** IN GENERAL.--The requirements of paragraphs (1), (2), and (9) regarding cost of service and rate base adjustments shall not be applied to public utility property of the taxpayer to disallow the credit with respect to such property before the first final determination which is inconsistent with paragraph (1), (2), or (9) (as the case may be) is put into effect with respect to public utility property (to which this subsection applies) of the taxpayer. Thereupon, paragraph (1), (2), or (9) shall apply to disallow the credit with respect to public utility property (to which this subsection applies) placed in service by the taxpayer--

**46(f)(4)(A)(i)** before the date that the first final determination, or a subsequent determination, which is inconsistent with paragraph (1), (2), or (9) (as the case may be) is put into effect, and

**46(f)(4)(A)(ii)** on or after the date that a determination referred to in clause (i) is put into effect and before the date that a subsequent determination thereafter which is consistent with paragraph (1), (2), or (9) (as the case may be) is put into effect.

**46(f)(4)(B)** DETERMINATIONS.--For purposes of this paragraph, a determination is a determination made with respect to public utility property (to which this subsection applies) by a governmental unit, agency, instrumentality, or commission or similar body described in subsection (c)(3)(B) which determines the effect of the credit determined under subsection (a) and allowed by section 38 (determined without regard to this subsection)--

**46(f)(4)(B)(i)** on the taxpayer's cost of service or rate base for ratemaking purposes, or

**46(f)(4)(B)(ii)** in the case of a taxpayer which made an election under paragraph (2) or the election described in paragraph (9), on the taxpayer's cost of service for ratemaking purposes or in its regulated books of account or rate base for ratemaking purposes.

**46(f)(4)(C)** SPECIAL RULES.--For purposes of this paragraph--

**46(f)(4)(C)(i)** a determination is final if all rights to appeal or to request a review, a rehearing, or a redetermination, have been exhausted or have lapsed,

**46(f)(4)(C)(ii)** the first final determination is the first final determination made after the date of the enactment of this subsection, and

**46(f)(4)(C)(iii)** a subsequent determination is a determination subsequent to a final determination.

**46(f)(5)** PUBLIC UTILITY PROPERTY.--For purposes of this subsection, the term "public utility property" means--

**46(f)(5)(A)** property which is public utility property within the meaning of subsection (c)(3)(B), and

**46(f)(5)(B)** property used predominantly in the trade or business of the furnishing or sale of (i) steam through a local distribution system or (ii) the transportation of gas or steam by pipeline, if the rates for such furnishing or sale are established or approved by a governmental unit, agency, instrumentality, or commission described in subsection (c)(3)(B).

**46(f)(6)** RATABLE PORTION.--For purposes of determining ratable restorations to base under paragraph (1) and for purposes of determining ratable portions under paragraph (2)(A), the period of time used in computing depreciation expense for purposes of reflecting operating results in the taxpayer's regulated books of account shall be used.

**46(f)(7)** REORGANIZATIONS, ASSETS ACQUISITIONS, ETC.--If by reason of a corporate reorganization, by reason of any other acquisition of the assets of one taxpayer by another taxpayer, by reason of the fact that any trade or business of the taxpayer is subject to ratemaking by more than one body, or by reason of other circumstances, the application of any provisions of this subsection to any public utility property does not carry out the purposes of this subsection, the Secretary shall provide by regulations for the application of such provisions in a manner consistent with the purposes of this subsection.

**46(f)(8)** PROHIBITION OF IMMEDIATE FLOWTHROUGH.--An election made under paragraph (3) shall apply only to the amount of the credit determined under subsection (a) and allowable under section 38 with respect to public utility property (within the meaning of the first sentence of subsection (c)(3)(B)) determined as if the Tax Reduction Act of 1975, the Tax Reform Act of 1976, the Energy Act of 1978, and the Revenue Act of 1978 had not been enacted. Any taxpayer who had timely made an election under paragraph (3) may, at his own option and without regard to any requirement imposed by an agency described in subsection (c)(3)(B), elect within 90 days after the date of the enactment of the Tax Reduction Act of 1975 (in such manner as the Secretary shall prescribe) to have the provisions of paragraph (3) apply with respect to the amount of the credit determined under subsection (a) and allowable under section 38 with respect to such property which is in excess of the amount determined under the preceding sentence. If such taxpayer does not make such an election, paragraph (1) or (2) (whichever paragraph is applicable without regard to this paragraph) shall apply to such excess credit, except that if neither paragraph (1) nor (2) is applicable (without regard to this paragraph), paragraph (1) shall apply unless the taxpayer elects (in such manner as the Secretary shall prescribe) within 90 days after the date of the enactment of the Tax Reduction Act of 1975 to have the provisions of paragraph (2) apply. The provisions of this paragraph shall not be applied to disallow such excess credit before the first final determination which is inconsistent with such requirements is made, determined in the same manner as under paragraph (4).

**46(f)(9)** [Repealed]

**46(f)(10)** USE OF INCONSISTENT ESTIMATES AND PROJECTIONS, ETC., FOR PURPOSES OF PARAGRAPHS (1) AND (2).--

**46(f)(10)(A)** IN GENERAL.--One way in which the requirements of paragraph (1) or (2) are not met is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with the requirements of paragraph (1) or paragraph (2), as the case may be.

**46(f)(10)(B)** USE OF INCONSISTENT ESTIMATES AND PROJECTIONS.--The procedures and adjustments which are to be treated as inconsistent for purposes of subparagraph (A) shall include any procedure or adjustment for ratemaking purposes which uses an estimate or projection of the taxpayer's qualified investment for purposes of the credit allowable by section 38 unless such estimate or projection is consistent with the estimates and projections of property which are used, for ratemaking purposes, with respect to the taxpayer's depreciation expense and rate base.

**46(f)(10)(C)** REGULATORY AUTHORITY.--The Secretary may by regulations prescribe procedures and adjustments (in addition to those specified in subparagraph (B)) which are to be treated as inconsistent for purposes of subparagraph (A).

# Federal Taxes - Final/Temp/Prop. Regs., Regulation, §1.46-6. , Internal Revenue Service, Limitation in case of certain regulated companies

http://prod.resource.cch.com/resource/scion/document/default/%28%40%40FNL01+S1.46-6%29fnl0109013e2c83f97746

⚠ **Reg. §1.46-6 does not reflect P.L. 98-369, P.L. 99-514 or P.L. 101-508.** ⚠

## (a) *In general*

**(1) *Scope of section.***—This section does not reflect amendments made to section 46 after enactment of the Revenue Act of 1971, other than the redesignation of section 46(e) as section 46(f) by the Tax Reduction Act of 1975.

**(2) *Disallowance of credit.***—Under section 46(f), a credit otherwise allowable under section 38 (credit) will be disallowed in certain cases with respect to section 46(f) property as defined in paragraph (b)(1) of this section. Paragraph (f) of this section describes circumstances under which a determination put into effect by a regulatory body will result in the disallowance of the credit. Such a determination will result in a disallowance only if section 46(f)(1) or (2) applies to such property and such determination affects the taxpayer's cost of service or rate base in a manner inconsistent with section 46(f)(1) or (2) (whichever is applicable).

**(3) *General rules.***—The provisions of section 46(f)(1) and (2) are limitations on the treatment of the credit for ratemaking purposes and for purposes of the taxpayer's regulated books of account only. Under the provisions of section 46(f)(1), the credit may not be flowed through to income (*i.e.,* used to reduce taxpayer's cost of service) but in certain circumstances may be used to reduce rate base (provided that such reduction is restored not less rapidly than ratably). If an election is made under section 46(f)(2), the credit may be flowed through to income (but not more rapidly than ratably) and there may not be any reduction in rate base. If an election is made under section 46(f)(3), none of the limitations of section 46(f)(1) or (2) apply to certain section 46(f) property of the taxpayer. Thus, under the provisions of section 46(f)(3), no credit is disallowed if the credit is treated in any manner for ratemaking purposes, including any manner of treatment permitted under the limitations of section 46(f)(1) or (2).

**(4) *Elections.***—For rules relating to the manner of making, on or before March 9, 1972, the three elections listed in section 46(f)(1), (2), and (3), see 26 CFR 12.3. For rules relating to the application of such elections, see paragraph (h) of this section.

**(5) *Cross references.***—For rules with respect to the treatment of corporate reorganizations, asset acquisitions, and taxpayers subject to the jurisdiction of more than one regulatory body, etc., see paragraph (j) of this section.

**(6) *Nonapplication of prior law.***—Under section 105(e) of the Revenue Act of 1971, section 203(e) of the Revenue Act of 1964, 78 Stat. 35, does not apply to section 46(f) property.

**(b) *Definitions.***—For purposes of this section, the following definitions apply:

**(1) *Section 46(f) property.***—Section 46(f) property is property described in section 50 that is—

(i) Public utility property within the meaning of section 46(c)(3)(B) (other than nonregulated communication property described in §1.46-3(g)(2)(iv)) or

(ii) Property used predominantly in the trade or business of the furnishing or sale of steam through a local distribution system or of the transportation of gas or steam by pipeline, if the rates for the trade or business are regulated within the meaning of §1.46-3(g)(2)(iii).

For purposes of determining whether property is used predominantly in the trade or business of transportation of gas by pipeline (or of transportation of gas by pipeline and of furnishing or sale of gas through a local distribution system), the rules prescribed in §1.46-3(g)(4) apply except that accounts 365 through 371 inclusive (Transmission Plant) are added to the accounts listed in §1.46-3(g)(4)(i).

## (2) *Cost of service*

(i)

(A) For purposes of this section, cost of service is the amount required by a taxpayer to provide regulated goods or services. Cost of service includes operating expenses (including salaries, cost of materials, etc.), maintenance expenses, depreciation expenses, tax expenses, and interest expenses. For purposes of this section, any effect on a taxpayer's permitted return on investment that results from a reduction in the taxpayer's rate base does not constitute a reduction in cost of service, even though, as a technical ratemaking term, cost of service ordinarily includes a permitted return on investment. In addition, taking into account a deduction for the additional interest that the taxpayer would pay or accrue if the credit were unavailable in determining Federal income tax expense (synchronization of interest) does not constitute a reduction in cost of service for purposes of section 46(f)(2). This adjustment to Federal income tax expense may be taken into account in determining cost of service for the regulated accounting period or periods that include the taxable year to which the adjustment relates or for any subsequent regulated accounting period.

(B) See paragraph (b)(3)(ii)(B) of this section for rules relating to the amount of additional interest that the taxpayer would pay or accrue if the credit were unavailable.

(ii) In determining whether, or to what extent, a credit has been used to reduce cost of service, reference shall be made to any accounting treatment that affects cost of service. Examples of such treatment include reducing by all or a portion of the credit the amount of Federal income tax expense taken into account for ratemaking purposes and reducing the depreciable bases of property by all or a portion of the credit for ratemaking purposes.

## (3) *Rate base*

(i) For purposes of this section, rate base is the monetary amount that is multiplied by a rate of return to determine the permitted return on investment.

(ii)

(A) In determining whether, or to what extent, a credit has been used to reduce rate base, reference shall be made to any accounting treatment that affects rate base. In addition, in those cases in which the rate of return is based on the taxpayer's cost of capital, reference shall be made to any accounting treatment that reduces the permitted return on investment by treating the credit less favorably than the capital that would have been provided if the credit were unavailable. Thus, the credit may not be assigned a cost of capital rate that is less than the overall cost of capital rate, determined on the basis of a weighted average, for the capital that would have been provided if the credit were unavailable.

(B) For purposes of determining the cost of capital rate assigned to the credit and the amount of additional interest that the taxpayer would pay or accrue, the composition of the capital that would have been provided if the credit were unavailable may be determined—

(1) On the basis of all the relevant facts and circumstances; or

(2) By assuming for both such purposes that such capital would be provided solely by common shareholders, preferred shareholders, and long-term creditors in the same proportions and at the same rates of return as the capital actually provided to the taxpayer by such shareholders and creditors.

For purposes of this section, capital provided by long-term creditors does not include deferred taxes as described in section 167(l)(3)(G) or 168(e)(3)(B)(ii).

(C) If a taxpayer's overall rate of return is based on a deemed or hypothetical capital structure, paragraph (b)(3)(ii)(B) of this section shall be applied by treating the deemed or hypothetical capital as if it were the capital actually provided to the taxpayer and determining the composition of the capital that would have been provided if the credit were unavailable in a manner consistent with such treatment.

(iii) Whether, or to what extent, a credit has been used to reduce rate base for any period to which pre-June 23, 1986, rates apply will be determined under 26 CFR 1.46-6(b)(3) and (4) (revised as of April 1, 1985) if such a determination avoids disallowance of a credit that would be disallowed

under paragraph (b)(3)(ii) or (4)(ii) of this section. For this purpose, a period to which pre-June 23, 1986, rates apply is any period for which the effect of the credit on rate base for ratemaking purposes is established under a determination put into effect (within the meaning of paragraph (f) of this section) before June 23, 1986.

### (4) *Indirect reductions to cost of service or rate base*

(i) Cost of service or rate base is also considered to have been reduced by reason of all or a portion of a credit if such reduction is made in an indirect manner.

(ii) One type of such indirect reduction is any ratemaking decision in which the credit is treated as operating income (subject to ratemaking regulation) or is treated less favorably than the capital that would have been provided if the credit were unavailable. For example, if the credit is accounted for as nonoperating income on a company's regulated books of account but a ratemaking decision has the effect of treating the credit as operating income in determining rate of return to common shareholders, then cost of service has been indirectly reduced by reason of the credit.

(iii) A second type of indirect reduction is any ratemaking decision intended to achieve an effect similar to a direct reduction to cost of service or rate base. In determining whether a ratemaking decision is intended to achieve this effect, consideration is given to all the relevant facts and circumstances of each case, including, but not limited to—

- (A) The record of the proceeding,
- (B) The regulatory body's orders or opinions (including any dissenting views), and
- (C) The anticipated effect of the ratemaking decision on the company's revenues in comparison to a direct reduction to cost of service or rate base by reason of the investment tax credits available to the regulated company.

(iv) This subdivision (iv) describes a situation that is not an indirect reduction to cost of service or rate base by reason of all or a portion of a credit. The ratemaking treatment of credits may affect the financial condition of a company, including the company's ability to attract new capital, the cost of that capital, the company's future financial requirements, the market price of the company's securities, and the degree of risk attributable to investment in those securities. The financial condition may be reflected in certain customary financial indicators such as the comparative capital structure of the company, coverage ratios, price/earnings ratios, and price/book ratios. Under the facts and circumstances test of paragraph (b)(4)(iii) of this section, the consideration of a company's financial condition by a regulatory body is not an indirect reduction to cost of service or rate base, even though such condition, as affected by the ratemaking treatment of the company's investment tax credits, is considered in the development of a reasonable rate of return on common shareholders' investment.

## (c) *General rule*

**(1) *In general.***—Section 46(f)(1) applies to all of the taxpayer's section 46(f) property except property to which an election under section 46(f)(2) or (3) applies. Under section 46(f)(1), the credit for the taxpayer's section 46(f) property will be disallowed if—

(i) The taxpayer's cost of service for ratemaking purposes is reduced by reason of any portion of such credit, or

(ii) The taxpayer's rate base is reduced by reason of any portion of the credit and such reduction in rate base is not restored or is restored less rapidly than ratably within the meaning of paragraph (g) of this section.

**(2) *Insufficient natural domestic supply.***—The provisions of paragraph (c)(1)(ii) of this section shall not apply to permit any reduction in taxpayer's rate base with respect to its short supply property if it made an election under the last sentence of section 46(f)(1) on or before March 9, 1972.

**(3) *Short supply property.***—For purposes of this section, section 46(f) property is short supply property if—

(i) The property is described in paragraph (b)(1)(ii) of this section,

(ii) The regulatory body described in section 46(c)(3)(B) that has jurisdiction for ratemaking purposes with respect to such trade or business is an agency or instrumentality of the United States, and

(iii) This regulatory body makes a short supply determination and the determination is in effect on the date such property is placed in service.

**(4) *Short supply determination.***—A short supply determination is made or revoked on the date of its publication in the FEDERAL REGISTER. It is a determination that the natural domestic supply of gas or steam is insufficient to meet the present and future requirements of the domestic economy.

## (5) *Dates short supply determination in effect*

(i) A short supply determination is considered to be in effect with respect to section 46(f) property placed in service at any time before the determination is revoked. However, a short supply determination made after June 18, 1979, is not considered to be in effect with respect to section 46(f) property placed in service before such determination was made.

**(d) *Special rule for ratable flow-through.***—If an election was made under section 46(f)(2) on or before March 9, 1972, section 46(f)(2) applies to all of the taxpayer's section 46(f) property except property to which an election under section 46(f)(3) applies. Under section 46(f)(2), the credit for the taxpayer's section 46(f) property will be disallowed if—

(1) The taxpayer's cost of service, for ratemaking purposes or in its regulated books of account, is reduced by more than a ratable portion of such credit within the meaning of paragraph (g) of this section or

(2) The taxpayer's rate base is reduced by reason of any portion of such credit.

**(e) *Flow-through property.***—If a taxpayer made an election under section 46(f)(3) on or before March 9, 1972, section 46(f)(1) and (2) do not apply to the taxpayer's section 46(f) property to which section 167(l)(2)(C) applies. In the case of an election under section 46(f)(3), a credit will not be disallowed, notwithstanding a determination by a regulatory body having jurisdiction over such taxpayer that reduces the taxpayer's cost of service or rate base by reason of such credit. In general, section 167(l)(2)(C) applies to property with respect to which a taxpayer may use a flow-through method of accounting (within the meaning of section 167(l)(3)(H)) to take into account the allowance for depreciation under section 167(a). Section 167(l)(2)(C) applies to property even though the taxpayer does not use a flow-through method of accounting with respect to the property. Section 167(l)(2)(C) does not apply to property if the taxpayer can not use a flow-through method of accounting with respect to the property. For example, section 167(l)(2)(C) does not apply to property with respect to which an election under section 167(l)(4)(A) applies. Thus, such property does not qualify for an election under section 46(f)(3).

## (f) *Limitations*

**(1) *In general.***—This paragraph provides rules relating to limitations on the disallowance of credits under section 46(f)(4). Key terms are defined in paragraphs (f)(7), (8), and (9) of this section.

**(2) *Disallowance postponed.***—There is no disallowance of a credit before the first final inconsistent determination is put into effect for the taxpayer's section 46(f) property.

**(3) *Time of disallowance.***—A credit is disallowed—

(i) When the first final inconsistent determination is put into effect and

(ii) When any inconsistent determination (whether or not final) is put into effect after the first final inconsistent determination is put into effect.

**(4) *Credits disallowed.***—A credit is disallowed for section 46(f) property placed in service (within the meaning of §1.46-3(d)) by the taxpayer—

(i) Before the date any inconsistent determination described in paragraph (f)(2) of this section is put into effect and

(ii) On or after such date and before the date a subsequent consistent determination (whether or not final) is put into effect.

**(5) *Barred years.***—No amount of credit for a taxable year is disallowed under paragraph (f)(3) of this section if, for such year, assessment of a deficiency is barred by any law or rule of law.

**(6) *Notification and other requirements.***—The taxpayer shall notify the district director of a disallowance of a credit under paragraph (f)(3) of this section within 30 days of the date that the applicable determination is put into effect. In the case of such a disallowance, the taxpayer shall recompute its tax liability for any affected taxable year, and such recomputation shall be made in the form of an amended return where necessary.

**(7) *Determinations.***—For purposes of this paragraph, the term determination refers to a determination made with respect to section 46(f) property (other than property to which an election under section 46(f)(3) applies) by a regulatory body described in section 46(c)(3)(B) that determines the effect of the credit—

**(i)** For purposes of section 46(f)(1), on the taxpayer's cost of service or rate base for ratemaking purposes or

**(ii)** In the case of a taxpayer that made an election under section 46(f)(2), on the taxpayer's cost of service, for ratemaking purposes or in its regulated books of account, or on the taxpayer's rate base for ratemaking purposes.

A regulatory body does not have to take affirmative action to make a determination. Thus, a regulatory body's failure to take action on a rate schedule filed by a taxpayer is a determination if the rates can be put into effect without further action by the regulatory body.

**(8) *Types of determinations.***—For purposes of this paragraph—

**(i)** The term inconsistent refers to a determination that is inconsistent with section 46(f)(1) or (2) (as the case may be). Thus, for example, a determination to reduce the taxpayer's cost of service by more than a ratable portion of the credit would be a determination that is inconsistent with section 46(f)(2). As a further example, such a determination would also be inconsistent if section 46(f)(1) applied because no reduction in cost of service is permitted under section 46(f)(1).

**(ii)** The term consistent refers to a determination that is consistent with section 46(f)(1) or (2) (as the case may be).

**(iii)** The term final determination means a determination with respect to which all rights to appeal or to request a review, a rehearing, or a redetermination have been exhausted or have lapsed.

**(iv)** The term first final inconsistent determination means the first final determination put into effect after December 10, 1971, that is inconsistent with section 46(f)(1) or (2) (as the case may be).

**(9) *Put into effect.***—A determination is put into effect on the later of—

**(i)** The date it is issued (or, if a first final inconsistent determination, the date it becomes final) or

**(ii)** The date it becomes operative.

**(10) *Examples.***—The provisions of this paragraph may be illustrated by the following examples:

*Example (1).* Corporation X, a calendar-year taxpayer engaged in a public utility activity is subject to the jurisdiction of regulatory body A. On September 15, 1971, X purchases section 46(f) property and places it in service on that date. For 1971, X takes the credit allowable by section 38 with respect to such property. X does not make any election permitted by section 46(f). On October 9, 1972, A makes a determination that X must account for the credit allowable under section 38 in a manner inconsistent with section 46(f)(1). The determination, which was the first determination by A after December 10, 1971, becomes final on January 1, 1973, and holds that X must retroactively adjust the manner in which it accounted for the credit allowable under section 38 starting with the taxable year that began on January 1, 1972. Since, under the provisions of paragraph (f)(8) of this section, the determination by A is put into effect on January 1, 1973 (the date it becomes final), the credit is retroactively disallowed with respect to any of X's section 46(f) property placed in service before January 1, 1973, on any date which occurs during a taxable year with respect to which an assessment of a deficiency has not been barred by any law or rule of law. In addition, the credit is disallowed with respect to X's section 46(f) property placed in service on or after January 1, 1973, and before the date that a subsequent determination by A, which as to X is consistent with section 46(f)(1), is put into effect. Thus, X must amend its income tax return for 1971 to reflect the retroactive disallowance of the credit otherwise allowable under section 38 with respect to the section 46(f) property placed in service on September 15, 1971.

*Example (2).* The facts are the same as in example (1), except that the first inconsistent determination by A becomes final on April 5, 1972, and requires X to account for the credit for all taxable years beginning on or after January 1, 1973, in a manner inconsistent with section 46(f)(1). Under the provisions of paragraph (f)(8) of this section, the determination was put into effect on January 1, 1973 (the date it became operative). The result is the same as in example (1).

*Example (3).* The facts are the same as in example (1), except that on June 1, 1975, A issues a determination that X shall retroactively account for the credit allowable by section 38 in a manner consistent with the provisions of section 46(f)(1) for taxable years beginning on or after January 1, 1971. The determination becomes final on January 5, 1976, in the same form as originally issued. The result is the same as in example (1) with respect to property X places in service before June 1, 1975. The credit is allowed with respect to property X places in service on or after June 1, 1975 (the date that the consistent determination is put into effect).

## (g) *Ratable methods*

**(1) *In general.*—**Under this paragraph (g), rules are prescribed for purposes of determining whether or not, under section 46(f)(1), a reduction in the taxpayer's rate base with respect to the credit is restored less rapidly than ratably and whether or not under section 46(f)(2) the taxpayer's cost of service for ratemaking purposes is reduced by more than a ratable portion of such credit.

**(2) *Regulated depreciation expense.*—**What is ratable is determined by considering the period of time actually used in computing the taxpayer's regulated depreciation expense for the property for which a credit is allowed. Regulated depreciation expense is the depreciation expense for the property used by a regulatory body for purposes of establishing the taxpayer's cost of service for ratemaking purposes. Such period of time shall be expressed in units of years (or shorter periods), units of production, or machine hours and shall be determined in accordance with the individual useful life system or composite (or other group asset) account system actually used in computing the taxpayer's regulated depreciation expense. A method of restoring, or reducing, is ratable if the amount to be restored to rate base, or to reduce cost of service (as the case may be), is allocated ratably in proportion to the number of such units. Thus, for example, assume that the regulated depreciation expense is computed under the straight line method by applying a composite annual percentage rate to original cost (as defined for purposes of computing regulated depreciation expense). If, with respect to an item of section 46(f) property, the amount to be restored annually to rate base is computed by applying a composite annual percentage rate to the amount by which the rate base was reduced, then the restoration is ratable. Similarly, if cost of service is reduced annually by an amount computed by applying a composite annual percentage rate to the amount of the credit, cost of service is reduced by a ratable portion. If such composite annual percentage rate were revised for purposes of computing regulated depreciation expense beginning with a particular accounting period, the computation of ratable restoration or ratable portion (as the case may be) must also be revised beginning with such period. A composite annual percentage rate is determined solely by reference to the period of time actually used by the taxpayer in computing its regulated depreciation expense without reduction for salvage or other items such as over and under accruals. A composite annual percentage rate determined by taking into account salvage value or other items shall be considered to be ratable in the case of a determination (whether or not final) issued before March 22, 1979, and any rate order (whether or not final) that is entered into before June 20, 1979, in response to a rate case filed before April 23, 1979. For this purpose, the term rate order does not include an order by a regulatory body that perfunctorily adopts rates as filed if such rates are suspended or subject to rebate.

## (h) *Elections*

## (1) *Applicability of elections*

(i) Any election under section 46(f) applies to all of the taxpayer's property eligible for the election, whether or not the taxpayer is regulated by more than one regulatory body.

(ii) Section 46(f)(1) applies to all of the taxpayer's section 46(f) property in the absence of an election under either section 46(f)(2) or (3). If an election is made under section 46(f)(2), section 46(f)(1) does not apply to any of the taxpayer's section 46(f) property.

(iii) An election made under the last sentence of section 46(f)(1) applies to that portion of the taxpayer's section 46(f) property to which section 46(f)(1) applies and which is short supply property within the meaning of paragraph (c)(2) of this section.

(iv) If a taxpayer makes an election under section 46(f)(2) and makes no election under section 46(f)(3), the election under section 46(f)(2) applies to all of the taxpayer's section 46(f) property.

(v) If a taxpayer makes an election under section 46(f)(3), such election applies to all of the taxpayer's section 46(f) property to which section 167(l)(2)(C) applies. Section 46(f)(1) or (2) (as the case may be) applies to that portion of the taxpayer's section 46(f) property that is not property to which section 167(l)(2)(C) applies. Thus, for example, if a taxpayer makes an election under section 46(f)(2) and also makes an election under section 46(f)(3), section 46(f)(3) applies to all of the taxpayer's section 46(f) property to which section 167(l)(2)(C) applies, and section 46(f)(2) applies to the remainder of the taxpayer's section 46(f) property.

(2) ***Method of making elections.***—See 26 CFR 12.3 for rules relating to the method of making the elections described in section 46(f)(1), (2), or (3).

(i) [Reserved]

## (j) *Reorganizations, asset acquisitions, multiple regulation, etc.*

## (1) *Taxpayers not entirely subject to jurisdiction of one regulatory body*

(i) If a taxpayer is required by a regulatory body having jurisdiction over less than all of its property to account for the credit under a determination that is inconsistent with section 46(f)(1) or (2) (as the case may be), such credit shall be disallowed only with respect to property subject to the jurisdiction of such regulatory body.

(ii) For purposes of this paragraph (j), a regulatory body is considered to have jurisdiction over property of a taxpayer if the property is included in the rate base for which the regulatory body determines an allowable rate of return for ratemaking purposes or if expenses with respect to the property are included in cost of service as determined by the regulatory body for ratemaking purposes. For example, if regulatory body A, having jurisdiction over 60 percent of an item of corporation X's section 46(f) property, makes a determination which is inconsistent with section 46(f), and if regulatory body B, having jurisdiction over the remaining 40 percent of such item of property, makes a consistent determination (or if the remaining 40 percent is not subject to the jurisdiction of any regulatory body), then 60 percent of the credit for such item will be disallowed. For a further example, if regulatory body A, having jurisdiction over 60 percent of X's section 46(f) property, has jurisdiction over 100 percent of a particular generator, 100 percent of the credit for such generator will be disallowed.

(iii) For rules which provide that the 3 elections under section 46(f) may not be made with respect to less than all of the taxpayer's property eligible for the election, see paragraph (h)(1)(i) of this section.

(2) [Reserved]

## (k) *Treatment of accumulated deferred investment tax credits upon the deregulation of public utility property*

## (1) *Scope*

(i) ***In general.***—This paragraph (k) provides rules for the application of former sections 46(f)(1) and 46(f)(2) of the Internal Revenue Code to a taxpayer with respect to public utility property that ceases, whether by disposition, deregulation, or otherwise, to be public utility property with respect to the taxpayer and that is not described in paragraph (k)(1)(ii) of this section (deregulated public utility property).

**(ii) *Exception.*—**This paragraph (k) does not apply to property that ceases to be public utility property with respect to the taxpayer on account of an ordinary retirement within the meaning of §1.167(a)-11(d)(3)(ii).

## (2) *Ratable amount*

**(i) *Restoration of rate base reduction.*—**A reduction in the taxpayer's rate base on account of the credit with respect to public utility property that becomes deregulated public utility property is restored ratably during the period after the property becomes deregulated public utility property if the amount of the reduction remaining to be restored does not, at any time during the period, exceed the restoration percentage of the recoverable stranded cost of the property at such time. For this purpose—

**(A)** The stranded cost of the property is the cost of the property reduced by the amount of such cost that the taxpayer has recovered through regulated depreciation expense during the period before the property becomes deregulated public utility property;

**(B)** The recoverable stranded cost of the property at any time is the stranded cost of the property that the taxpayer will be permitted to recover through rates after such time; and

**(C)** The restoration percentage for the property is determined by dividing the reduction in rate base remaining to be restored with respect to the property immediately before the property becomes deregulated public utility property by the stranded cost of the property.

**(ii) *Cost of service reduction.*—**Reductions in the taxpayer's cost of service on account of the credit with respect to public utility property that becomes deregulated public utility property are ratable during the period after the property becomes deregulated public utility property if the cumulative amount of the reduction during such period does not, at any time during the period, exceed the flowthrough percentage of the cumulative stranded cost recovery for the property at such time. For this purpose—

**(A)** The stranded cost of the property is the cost of the property reduced by the amount of such cost that the taxpayer has recovered through regulated depreciation expense during the period before the property becomes deregulated public utility property;

**(B)** The cumulative stranded cost recovery for the property at any time is the stranded cost of the property that the taxpayer has been permitted to recover through rates on or before such time; and

**(C)** The flowthrough percentage for the property is determined by dividing the amount of credit with respect to the property remaining to be used to reduce cost of service immediately before the property becomes deregulated public utility property by the stranded cost of the property.

**(3) *Cross reference.*—**See §1.168(i)-(3) for rules relating to the treatment of balances of excess deferred income taxes when public utility property becomes deregulated public utility property.

## (4) *Effective/applicability dates*

**(i) *In general.*—**Except as provided in paragraph (k)(4)(ii) of this section, this paragraph (k) applies to public utility property that becomes deregulated public utility property with respect to a taxpayer after December 21, 2005.

**(ii) *Property that becomes public utility property of the transferee.*—**This paragraph (k) does not apply to property that becomes deregulated public utility property with respect to a taxpayer an account of a transfer on or before March 20, 2008, if after the transfer the property is public utility property of the transferee.

**(iii) *Application of regulation project (REG-104385-01).*—**A reduction in the taxpayer's cost of service will be treated as ratable if it is consistent with the proposed rules in regulation project (REG-104385-01) (68 FR 10190) March 4, 2003, and occurs during the period beginning on March 5, 2003, and ending on the earlier of—

**(A)** The last date on which the utility's rates are determined under the rate order in effect on December 21, 2005; or

**(B)** December 21, 2007. [Reg. §1.46-6.]

# [*T.D.* 7602, 3-20-79. *Amended by T.D.* 8089, 5-21-86 *and T.D.* 9387, 3-19-2008 (*corrected* 4-4-2008).]

Company Name: KCPL MO
Case Description: 2010 KCPL Rate Case
Case: ER-2010-0355

Response to Hyneman Chuck Interrogatories – Set MPSC_20101005
Date of Response: 10/27/2010

Question No. :0386
Reference the following statement in GPE's 2009 10-K. "Great Plains Energy and KCP&L recognized deferred federal tax benefits of $37.2 million in 2009 and $29.2 million of current and $45.0 million of deferred federal tax benefits in 2008. However, tax laws require KCP&L to reduce income tax expense for ratemaking and financial statement purposes ratably over the life of the plant. Therefore, Great Plains Energy and KCP&L concurrently recognized a separate deferred advanced coal ITC expense to offset the current and deferred federal tax benefit. At December 31, 2009, Great Plains Energy and KCP&L had $111.4 million of deferred advanced coal ITC. Great Plains Energy and KCP&L will recognize the tax benefits of the ITC over the life of the plant once it is placed in service. See Note 17 for a related legal proceeding." 1. Please provide each and every source document used by GPE to conclude that this federal income tax credit (not a tax timing difference but a permanent difference) is required to be used to reduce income tax expense for ratemaking purposes ratably over the life of the plant 2. Please provide each and every source document used by GPE to conclude that this federal income tax credit (not a tax timing difference but a permanent difference) is required to be used to reduce income tax expense for financial statement purposes ratably over the life of the plant. 3. For items one and two above, please describe KCPL's understanding of these documents and how it determined the required ratemaking treatment noted above. 4. For items one and two above, please describe KCPL's understanding of these documents and how it determined the required financial statement treatment noted above. 5. Does KCPL believe that FAS 71 (or its new title under the recent GAAP codification) will allow for different ratemaking treatment than treating this tax credit to reduce income tax expense for ratemaking purposes ratably over the life of the plant? Please explain. If yes, what are the available alternative treatments? 6. Does KCPL believe that FAS 71 (or its new title under the recent GAAP codification) will allow for different financial reporting treatment than treating this tax credit to reduce income tax expense for financial statement purposes ratably over the life of the plant? Please explain. If yes, what are the available alternative treatments? 7. What was the dollar amount of the tax credit taken for this Iatan 2 Advanced Coal Tax Credit on GPE's tax returns for 2007, 2008 and 2009? 8. Please list each and every reason why GPE will not allow GMO, as a co-owner of the Iatan 2 construction project, to share in the benefits of this tax credit? 9. Please provide a list of the names of each and every KCPL employee who was involved in the decision not to share this tax credit with GMO and who provided input regarding the decision not to share the credit with GMO. Provide all documentation in KCPL's or GPE's possession regarding the decision not to share the credit with GMO. This documentation should include but not be limited to the studies, analyses, memorandums, letters, e-mails. 10.

Please provide the name of the KCPL employee(s) who made the decision not to share this tax credit with GMO? 11. Please provide a detailed description of how GPE and KCPL are accounting for this tax credit in its respective books and records, including a description of all accounts used, journal entries made, and any other impact on revenues, gains, expenses and losses since the IRS approved the credit through the current date. 12. Please identify all personnel who represented the interests of KCPL Greater Missouri Operations relating to the Iatan Advanced Coal Tax Credit issue. Provide all documentation for any input that KCPL Greater Missouri Operations personnel gave to KCPL or GPE regarding the Iatan Advanced Coal Tax Credit issue both prior to GPE's acquisition of GMO and subsequent to the acquisition. 13. Identify all employees who work for and/or are assigned to Great Plains Energy's wholly owned subsidiary KCPL Greater Missouri Operations.

RESPONSE:
1&2. Please see data request number 0124 for the source documents KCPL used to determine that it is required to reduce income tax expense for ratemaking and financial statement purposes ratably over the life of the plant.

3&4. Please see the file attached named "Q0386_2007 Advanced Coal Credit.doc" for the analysis done by KCPL to determine how the coal credits should be accounted for ratemaking and financial statement purposes

5&6. The treatment of the advanced coal credits in this case is not controlled by FAS 71. The treatment of the advanced coal credit is required by IRC Section 46(f). Any change from this treatment would be a normalization violation and would require KCPL to recapture the advanced coal credits and the remaining unamortized ITC from Wolf Creek and other Electric Assets. Any recaptured amount used to reduce federal taxes in prior years would be required to be repaid to the IRS.

7. KCPL generated and used $29,151,583 of advanced coal credits on the 2007 Great Plains Energy's (GPE) consolidated federal return. It also generated $46,921,017 and $31,214,900 of coal credits in 2008 and 2009, respectively. But, they have not been used to offset GPE consolidated tax liability yet and are carried forward for use in future years. GPE has up to 20 years to use the credits before they expire.

8. Before the acquisition of GMO by GPE, GMO did not apply for Section 48A Qualifying Advanced Coal Project Investment Tax Credits in the allocation round for 2006 or 2007. GMO would likely not have been able to utilize the credits since it was not paying income taxes due to significant net operating losses. In October 2008, subsequent to the acquisition by GPE, GMO did file an application for the advanced coal investment tax credits after it became aware that a new allocation round was available and that there was still $250 million of credits to be awarded. The IRS denied GMO's application and indicated that the full $125 million of credits available for the Iatan 2 plant project had already been awarded to KCP&L in the 2007 allocation round. This was the first indication by the IRS that a definition of a project was not limited to the amount

owned by a taxpayer, but included an entire project even if it was owned by multiple parties.

Shortly after the Company received the denial letter from the IRS for GMO's application, Empire began the arbitration proceedings to have credits reallocated to them by the panel. The Company did not include GMO in the arbitration proceedings since it felt strongly that income taxes were the responsibility of each owner and because GMO's application had just been denied. In December of 2009, the arbitration panel issued its order to allocate credits to Empire (via an amended Memorandum of Understanding by the IRS). The order does not require any credits to be reallocated or the monetary equivalent of its proportionate share of the credits to be paid to GMO.

Since the IRS denied GMO's application for credits and because GMO was not included in the arbitration order, the Company determined, in consultation with outside counsel, that it was likely that the IRS would not reallocate credits to GMO. Therefore, it did not request the IRS to do so and it has not included any credits for GMO in the rate case proceedings.

In addition, Section 48A Qualifying Advanced Coal Project Investment Tax Credits (ITC) are subject to the normalization rules set forth in IRC Section 46(f). IRC Section 46(f)(2)(A) states that if the taxpayer's cost of service for ratemaking purposes or its regulated books of account is reduced by more than a ratable portion of the credit, then no credit is allowed. Since GMO has not been awarded any Section 48A credits, it is not allowed to include any Section 48A credit to reduce income tax expense for ratemaking purposes.

Regulation 1.46-6(b)(4) also states that the indirect reductions to cost of service of a taxpayer are also considered a violation. This includes any ratemaking decision intended to achieve an effect similar to a direct reduction to cost of service. Several private letter rulings have interpreted the restrictions against indirect reductions of cost of service related to ITC and have held that various ratemaking proposals would violate the normalization requirements. Most recently, PLR 200945006 addressed the sale of regulated gas distribution assets from one utility to another. At issue was whether the accumulated deferred ITC of the selling utility could be transferred to the buying utility to ultimately be used to reduce the rates of the buying utility. The IRS National Office held that the selling utility would violate the requirements of the investment tax credit normalization rules set forth in former section 46(f), if it directly or indirectly passes the accumulated deferred ITC balance to another taxpayer who did not claim such ITC tax benefits. Therefore any indirect allocation of credits to GMO would also be normalization violation under IRS regulations.

Per the Tax Reform Act of 1986 Section 211(b), the penalty for a violation of the ITC normalization requirements is the recaptured/repayment to the IRS the greater of ITC claimed in all open tax years as of the date of the violation or the amount of ITC tax credit remaining on the taxpayers' books of account. This would include all accumulated deferred ITC remaining on GMO for any other previous qualifying investment tax credit

properties. Therefore, if GMO included benefits of Section 48A credits in violation of the normalization rules, GMO would be not only be including benefits of Section 48A credits that it never received on any tax return, it would have to pay the IRS for all outstanding ITC remaining on its books for previous investment tax credit properties. The remaining ITC on GMO books for previous ITC is $4,251,295 at September 30, 2010.

IRC Code Section 46(f), Regulation 1.46-6 and PLR 200945006 have previously been provided in data request 0966 for Case EO-2010-0259.

9. Curtis Blanc, Darrin Ives, Lori Wright, Terry Bassham, Bill Riggins, Gerald Reynolds, Melissa Hardesty. All communications and analysis of this issue were with outside counsel and are privileged communications.

10. The decision that GMO was not eligible to share Section 48A Qualifying Advanced Coal Project Investment Tax Credits was an internal collaborative decision considering the factors provided in the response to Question 8 above and involved everyone listed in Question 9, in consultation with outside counsel.

11. Please see a description of how the credit is being accounted for in KCPL's books and records in the file attached for question 3&4. The file named "Q0386_Coal ITC FAS109.xls" contains a summary of all entries booked through September 30, 2010 related the advanced coal tax credits.

12. There was no communication whereby GMO employees provided input to GPE or KCPL employees regarding the advanced coal credit issue before GPE acquired GMO. After the acquisition, employees of KCPL also represented GMO's interests regarding the advanced coal investment tax credit and the interests and positions of each affiliated company were considered throughout the process of assessing and recording the advanced coal credits as outlined in the response to Question 8 above.

13. All employees are KCPL employees. KCPL and GMO operate under a Joint Operating Agreement for the provision of services by KCPL employees to GMO.

Prepared by: Melissa Hardesty, Tax
Teresa Laidacker, Legal

Files attached:
Privilege Log - DR 386_10-26-2010.pdf
Q0386_2007 Advanced Coal Credit.doc
Q0386_Coal ITC FAS109.xls
Q0386 MO Verification.pdf

# SCHEDULE 8

# HAS BEEN DEEMED

# HIGHLY CONFIDENTIAL

# IN ITS ENTIRETY

**HC NP**
Version

# SCHEDULE 9

# HAS BEEN DEEMED

# PROPRIETARY

# IN ITS ENTIRETY

P NP
Version

# SCHEDULE 10

# HAS BEEN DEEMED

# PROPRIETARY

# IN ITS ENTIRETY

P NP
Version