

Exhibit No.:

Issue: Transition Costs, Arbitration  
Costs, Iatan 1 Turbine Trip  
AFUDC, Iatan 2 Budget, Rate  
Case Expense, Iatan Regulatory  
Assets.

Witness: Keith A. Majors

Sponsoring Party: MoPSC Staff

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**MISSOURI PUBLIC SERVICE COMMISSION**

**UTILITY SERVICES DIVISION**

**SURREBUTTAL TESTIMONY**

**OF**

**KEITH A. MAJORS**

**Great Plains Energy, Inc.  
KANSAS CITY POWER & LIGHT COMPANY**

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

*Jefferson City, Missouri  
January, 2011*

**\*\* Denotes Highly Confidential Information \*\***

*Staff* Exhibit No. KCP&L-231  
Date 1/18/11 Reporter LMB  
File No. ER-2010-0355

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**KEITH A. MAJORS**  
**KANSAS CITY POWER & LIGHT COMPANY**  
**FILE NO. ER-2010-0355**

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1 Budget and Cost Control, and John Weisensee concerning rate case expenses and the Iatan  
2 Unit 1 and 2 construction accounting regulatory assets in their rebuttal testimony.

3 **EXECUTIVE SUMMARY**

4 Q. Please provide a summary of your surrebuttal testimony.

5 A. I address KCPL's proposal to recover the costs to integrate its regulated utility  
6 operations with the former Aquila, Inc. (Aquila) as a result of Great Plains Energy's (GPE)  
7 acquisition of Aquila's Missouri electric properties on July 14, 2008. The Missouri Public  
8 Service Commission (Commission) approved this acquisition in its Report and Order (Report  
9 and Order) in Case No. EM-2007-0374 (the "Acquisition case"). These costs are referred to  
10 as "transition costs." It is Staff's position that KCPL has already recovered transition costs  
11 through retained synergies by means of regulatory lag.

12 I respond to the rebuttal testimony of Melissa Hardesty on the subject of costs relating  
13 to the arbitration concerning Iatan Unit 2 tax credit. It is Staff's position that KCPL should  
14 not recover legal expenses incurred for the arbitration in the cost of service.

15 I respond to the rebuttal testimony of Brent Davis on the subject of Staff's adjustment  
16 of AFUDC incurred for the Iatan Unit 1 turbine trip in the first quarter of 2009. It is Staff's  
17 position that KCPL should not recover the incremental AFUDC accrued on the Iatan Unit 1  
18 AQCS project due to the delay caused by the turbine trip.

19 I respond to the rebuttal testimony of Daniel Meyer and Forrest Archibald concerning  
20 the Iatan Project Budget, specifically the July 2009 reforecast and Mr. Meyer's comments on  
21 the Staff's November 3, 2010 Construction Audit and Prudence Review report.

22 I also address John Weisensee's rebuttal testimony rate case expenses, and the Iatan 1  
23 and 2 regulatory assets commonly referred to as construction accounting. I will discuss

1 several adjustments Staff made to the amortized level of rate case expense for the current rate  
2 case, as well as other rate case expense matters.

3 **TRANSITION COST RECOVERY**

4 Q. Please summarize Staff's direct and rebuttal testimony concerning this issue.

5 A. Staff's position is that KCPL and GMO have already recovered all of the  
6 transition costs associated with GPE's acquisition of Aquila by the synergies it retained,  
7 through KCPL and GMO, through regulatory lag.

8 Q. Can you summarize Mr. Ives' rebuttal testimony?

9 A. Mr. Ives offers testimony that the Commission authorized and ordered direct  
10 rate recovery in the Report and Order in the acquisition case. He makes several erroneous  
11 assumptions concerning that Report and Order, and largely ignores the analysis offered in my  
12 direct testimony.

13 Q. Referring to Mr. Ives's rebuttal testimony on page 2, he uses the term  
14 "revisionist history" in reference to the acquisition case. Do you know what he means by  
15 this term?

16 A. I am not entirely sure why Mr. Ives uses this term. In fact, he uses this term  
17 several places in his rebuttal testimony.

18 Revisionist is defined in The American Heritage ® College Dictionary of the English  
19 Language, Third Edition, Copyright © 1993 by Houghton Mifflin Company, as follows:

20 ... Advocacy of the revision of an accepted, usually long-standing  
21 view, theory, or doctrine, especially a revision of a political doctrine or  
22 a view concerning history.

23  
24 Staff is not advocating a revisit or change of the Report and Order in  
25 Case No. EM-2007-0374. Staff is not disputing any particular fact in the acquisition case.

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1 Staff is not proposing any new theory or doctrine. Staff did review the Commission's Report  
2 and Order in that case and particularly relies on paragraphs 13 and 14 on page 284 of that  
3 Report and Order:

4 **13. Nothing in this order shall be considered a finding by the**  
5 **Commission of the value for ratemaking purposes of the**  
6 **transactions herein involved.**

7 **14. The Commission reserves the right to consider any**  
8 **ratemaking treatment to be afforded the transactions herein**  
9 **involved in a later proceeding.**

10 Paragraph 13 states clearly that the Commission has made no findings concerning the  
11 value for ratemaking purposes of the transactions referred to in the Report and Order.  
12 Paragraph 14 states clearly that the Commission reserves the right to consider the ratemaking  
13 treatment of the transactions referred to in the Report and Order in a later proceeding.  
14 Paragraphs 13 and 14 refer to transactions authorized by the Commission to allow GPE to  
15 acquire Aquila. The ratemaking treatment and valuation, although not specifically  
16 enumerated, would include the amortized transition costs that KCPL has included in the cost  
17 of service in this case.

18 Staff does not dispute or disregard Paragraphs 13, 14, or any other portion of the  
19 Commission's Report and Order in the acquisition case. Mr. Ives seems to imply that Staff's  
20 interpretation of the above paragraphs entails "revisionist history". In reality, Mr. Ives'  
21 inexplicable disregard of the facts presented in Staff's Cost of Service report is the  
22 "fatal flaw" of his positions presented in direct and rebuttal testimony.

23 Q. Does KCPL challenge Staff's overall conclusion relating to recovery of  
24 transition costs?

25 A. Mr. Ives has not made any attempt to dispute the fact that KCPL has recovered  
26 through retained synergies, an amount greater than transition costs before a single dollar of

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1 savings is flowed to ratepayers. Mr. Ives does not dispute the fact that the majority of the  
2 acquisition savings has not been reflected in rates and will not be until May 4, 2011, the  
3 expected date of any rate increase authorized by the Commission in this case. GMO rates will  
4 not change until one month later, June 4, 2011. Mr. Ives did not take issue with Staff's  
5 demonstration of the concepts of regulatory lag and how it has significantly benefited KCPL  
6 and GMO.

7 Q. What fact or facts does Mr. Ives accuse Staff of "revising"?

8 A. Staff, on page 189 of Staff's Cost of Service Report in this case, stated that "the  
9 Commission did not specify the method KCPL and GMO would recover transition costs".  
10 Referring to the aforementioned Paragraphs 13 and 14 of the Commission Report and Order in  
11 the acquisition case, the Commission did not appear to specify any value or ratemaking  
12 treatment concerning the authorized transactions, which would include transition costs.

13 Mr. Ives quotes the Commission's Report and Order in the acquisition on page 3 of his  
14 rebuttal testimony. The relevant section emphasized by KCPL is on page 241 of the Report  
15 and Order:

16 **3. Final Conclusions Regarding Transaction and Transition Cost**  
17 **Recovery**

18 **... If the Commission determines that it will approve the merger**  
19 **when it performs its balancing test (in a later section in this Report**  
20 **and Order), the Commission will authorize KCPL and Aquila to**  
21 **defer transition costs to be amortized over five years.**  
22

23 At no point does this section or the entirety of paragraph 3 on page 241 mention  
24 "rates", "ratemaking", or "cost of service", notwithstanding Footnote 930. In fact, in  
25 Paragraph 13 on page 284, the Commission specifically stated that "[n]othing in this order  
26 shall be considered a finding by the Commission of the value for ratemaking purposes of the

1 transactions herein involved.” Mr. Ives incorrectly concludes the Commission ordered or  
2 implied the only recovery of transition costs would occur through a five year amortization  
3 through the cost of service. Mr. Ives also ignores Paragraphs 13 and 14 when the Commission  
4 did not make a determination of the value for ratemaking of the transition costs.

5 In fact, Mr. Ives quotes another section of page 241 of the Report and Order:

6 **(3) the uncontested recovery of transition costs is appropriate**  
7 **and justified. The Commission further concludes that it is not a**  
8 **detriment to the public interest to deny recovery of the transaction**  
9 **costs associated with the merger and not a detriment to the public**  
10 **interest to allow recovery of transition costs of the merger...**

11 Again, Mr. Ives incorrectly correlates the Commission’s authorization of the deferral  
12 and amortization of transition costs with their inclusion in the cost of service. From the  
13 section above, the Commission concluded that it was not a detriment to the public interest to  
14 allow recovery of transition costs of the merger. However, “recovery” is not defined in this  
15 section, but it is referred to in conjunction with “regulatory lag” in Paragraph 321 on page 120  
16 of the Report and Order:

17 **321. Since the Applicants have agreed to recover any merger**  
18 **savings through “regulatory lag” as part of the traditional**  
19 **ratemaking process, there is no net detriment to customers...**

20 The real issue between KCPL and Staff is what “recovery” of a cost can mean,  
21 specifically the difference between indirect rate recovery through regulatory lag and direct  
22 rate recovery through the cost of service. The Commission did recognize that KCPL could  
23 “recover” savings through “regulatory lag”. Mr. Ives does not address the benefits KCPL has  
24 reaped from regulatory lag through retained synergies in regards to the recovery of transition  
25 costs the Commission authorized.

26 Mr. Ives, for reasons that are not clearly supported or explained, supports the use of  
27 regulatory lag to recover the benefits of the acquisition – integration synergies, but rejects the

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1 use of regulatory lag to recover the costs to achieve the synergies – transition costs. The Staff  
2 believes that Mr. Ives', and consequently KCPL and GMO's proposal is inconsistent and not  
3 adequately supported in testimony.

4 Again, Paragraphs 13 and 14 on page 241 of the Report and Order specifically state  
5 that the Commission has made no ratemaking determination concerning the transactions in  
6 that order.

7 Q. On page 4, Mr. Ives' rebuttal testimony states "[t]he Staff's primary testimony  
8 regarding transition costs suggests that transition costs **should** be recovered through the  
9 synergy savings retained through regulatory lag" (emphasis added). Is this Staff's position?

10 A. No. Mr. Ives apparently did not examine Staff's analysis presented in the  
11 Cost of Service report. This analysis was elaborated on and explored in my rebuttal testimony  
12 in this case. My testimony is that transition costs have already been recovered through  
13 regulatory, not that they should be. Because they have been fully recovered, any retained  
14 synergy savings over transition costs not reflected in rates have and will continue to accrue to  
15 GPE shareholders until rates change.

16 If customers have to reimburse KCPL and GMO for costs already recovered, KCPL  
17 and GMO will reap a wind fall from their customers. If amortized transition costs are  
18 included in the cost of service, customers will pay KCPL and GMO for costs that they have  
19 already recovered for benefits the customers have waited 34 months to realize.

20 Q. Mr. Ives refers to page 238 of the acquisition Report and Order on page 4 of  
21 his rebuttal testimony. What is your interpretation of the section Mr. Ives referred to?

22 A. Mr. Ives emphasized an excerpt of page 238 of the Report and Order:

1                   **(4) because the Applicants have agreed to recover any merger**  
2                   **savings through “regulatory lag” as part of the traditional**  
3                   **ratemaking process there is no net detriment to customers...**

4                   Mr. Ives does not understand that the Commission recognized that recovery of cost  
5 does not have to be explicitly in the cost of service to be recovered. Because no rate change  
6 occurred on July 14, 2008, the date of acquisition, any and all savings related to the  
7 acquisition of Aquila would accrue to shareholders until those rates changed. The recovery of  
8 synergy savings was made by KCPL and GMO because the savings that occurred were still  
9 reflected in rates. Ratepayers were paying for costs that were no longer being incurred for the  
10 production, transmission, and distribution of electric utility services in excess of the total  
11 amount of transition costs.

12                  Q.     Mr. Ives states on page 6 of his rebuttal testimony that \$163.6 million of  
13 cumulative regulated synergies will be returned to ratepayers through the second quarter of  
14 2013. What is your analysis of this statement?

15                  A.     Mr. Ives’ statement exemplifies how KCPL and GMO, through regulatory lag,  
16 have benefited significantly more than ratepayers from the synergies from the acquisition.  
17 The following table is a summary of those savings using the figure from Mr. Ives’ testimony:

<b>Synergy Benefits through 2013, in Millions</b>		
	<b>Customer Benefit</b>	<b>Shareholder Benefit</b>
<b>Regulated Synergies</b>	344.2	
<b>Corporate Synergies</b>		401.0
<b>Retained Regulated Synergies</b>	(180.6)	180.6
<b>Net Benefit Through 2013</b>	<b>\$ 163.6</b>	<b>\$ 581.6</b>

18                  The projected net benefit to ratepayers through is \$163.6, as Mr. Ives states in his  
19 rebuttal testimony. However, Mr. Ives does not mention that KCPL and GMO will benefit

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1 from over **half a billion** in synergies through 2013, more than **three and a half** times that  
2 of ratepayers.

3 Q. Mr. Ives used an inflation factor of 3.1% on page 6 of his rebuttal testimony  
4 when he refers to his analysis. Does the rate of inflation change over time?

5 A. Yes, it does. In fact, during the time period from 2009 to 2010, the  
6 Consumer Price Index – Urban (“CPI-U”) decreased for the first time since 1982, the base  
7 year used by the Bureau of Labor Statistics (BLS). The table below is the year to year  
8 inflation rate from 2005 through 2009:

Year	Inflation Rate
2005	3.4%
2006	3.2%
2007	2.8%
2008	3.8%
2009	-0.4%
5 Year Average	2.56%
2007-9 Average	2.07%

9 While Mr. Ives utilized 3.1%, which is the average inflation rate during 2005-7, it is  
10 noteworthy that the rate changes from year to year. When Mr. Ives projects that  
11 \$163.6 million of synergy savings will be returned to ratepayers it must be understood that his  
12 and KCPL and GMO’s assumptions may change over time.

13 Q. On page 7 of his rebuttal, Mr. Ives claims the customer benefit is understated in  
14 his analysis due to the identification of additional synergies. Do you agree with this  
15 statement?

16 A. Yes. However, Mr. Ives identifies that the additional synergies would be  
17 reflected in some future test year cost of service. He fails to mention that shareholders receive  
18 the benefit of additional synergies far in advance of customers who must wait until rates  
19 change, assuming those savings are reflected in the test year. The current case is the **first** case

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1 since the acquisition of Aquila that synergies have been embedded in the test year cost  
2 of service.

3 Q. Mr. Ives states on page 8: "...once returned to ratepayers as reflected in test  
4 year cost of service, the synergy savings are perpetual benefits to ratepayers, with no further  
5 retention by the Company and its shareholders." How long have ratepayers had to wait to see  
6 benefits in the test year cost of service?

7 A. Ratepayers will have waited nearly three years, (34 months) before any  
8 synergies will be reflected in the test year cost of service in a rate case. In the meantime,  
9 shareholders have enjoyed the lion's share of synergy savings since the acquisition  
10 was completed.

11 Q. On page 8, Mr. Ives states: "Mr. Majors' position is that it is impossible for the  
12 Company to recover transition costs." Is this your position?

13 A. No, not at all. Staff has supported recovery of transition costs of mergers in the  
14 past. Staff does not support recovery when a company has no costs to recover as in this case.  
15 What Mr. Ives fails to recognize is that the Company has fully recovered these transition costs  
16 already. It would be inappropriate to reflect the transition costs in rates if the Company has  
17 already recovered those costs. How could Staff support such a rate proposal—it would be  
18 tantamount to double recovery of these costs?

19 Mr. Ives either does not recognize or simply chooses to ignore the concepts of  
20 regulatory lag and recovery of cost I described in my rebuttal testimony, because Mr. Ives  
21 doesn't appear to consider them in his direct or rebuttal testimony. It is not my position that it  
22 is impossible for KCPL to recover transition costs; my position is the costs have already been  
23 recovered, so there is nothing further to recover.

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1           On July 14, 2008, neither KCPL nor GMO decreased the rates they were charging  
2 customers. Customers were still paying for employees that no longer worked for either  
3 company, benefits that were no longer being paid, and a wide variety of other costs that were  
4 no longer being incurred by the company. When costs are in rates that a utility does not pay,  
5 shareholders retain the extra funds that were paid by customers through rates. In 2009, KCPL  
6 and GMO retained payroll savings immediately starting July 14, 2008 until September 1, 2009  
7 when rates changed from the 2009 rate case. While some savings were reflected in those rates  
8 as explained by Mr. Ives, the Company retained further savings post-September 30, 2008  
9 through the time rates change once again in this case which will not occur until May 2011. As  
10 it relates to the current situation, KCPL achieved synergy savings in excess of the costs to  
11 achieve those savings before a single dollar of savings were passed on to customers.

12           Q.     Mr. Ives claims that Staff's argument consists of "faulty circular logic". What  
13 is your reaction to this accusation?

14           A.     It is hard to know what Mr. Ives is referring to as he doesn't really explain  
15 what he means by this statement. Again, Mr. Ives does not recognize the benefits to  
16 shareholders provided by regulatory lag. I examined the facts provided by KCPL through  
17 discovery. The facts from the information provided by KCPL clearly indicated that KCPL  
18 had recovered through retained synergies more than the amount of recoverable transition  
19 costs, facts that Mr. Ives chooses to ignore. If the facts did not show that KCPL had already  
20 recovered transition costs, then Staff's position would have been different. Staff's standard  
21 was by no means "no recovery of transition costs", as alleged by Mr. Ives on page 9 of his  
22 rebuttal testimony. Staff analyzed the data provided by KCPL, and met with Mr. Ives and  
23 other company representatives. Based on the data analyzed, Staff came to the conclusion that

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1 all transition costs have been recovered through retained synergy savings. This is a fact that  
2 Mr. Ives does not seem to address or recognize. There is nothing circular about the fact if you  
3 have a cost that has been fully recovered there is nothing more to recover and no additional  
4 cost should be in rates.

5 KCPL makes no attempt to dispute it has recovered transition costs from retained  
6 savings, yet in a complete about face, "circular fashion," the Company wants its customers to  
7 pay it the transition costs. Staff believes this makes no sense whatsoever.

8 Q. On page 10, Mr. Ives states concerning corporate retained synergies: "It is  
9 inappropriate to view those savings as an offset to costs the Commission said the Company  
10 could recover." Do you agree with that statement?

11 A. It depends on the circumstances; however, in this situation, KCPL and GMO  
12 have plenty of retained savings strictly from the regulated synergies that have resulted in full  
13 recovery of transition costs.

14 Mr. Ives seems to imply that Staff is offsetting KCPL's transition costs through  
15 corporate retained savings, which is not Staff's position. However, corporate retained  
16 synergies are relevant to understanding the complete picture of the costs and benefits of the  
17 acquisition of Aquila, which is why I listed them in my analysis in my direct and rebuttal  
18 testimony, and have discussed them here. The following chart show on a high level the costs  
19 and the benefits relating to the acquisition, both corporate and regulated retained, as well as  
20 the \$163.6 million flowed to ratepayers projected through 2013, 5 years after the acquisition  
21 as described by Mr. Ives in his rebuttal testimony:

<b>Synergy Benefits through 2013, in Millions</b>		
	<b>Customer Benefit</b>	<b>Shareholder Benefit</b>
<b>Regulated Synergies</b>	344.2	
<b>Corporate Synergies</b>		401.0
<b>Retained Regulated Synergies</b>	(180.6)	180.6
<b>Net Benefit Through 2013</b>	<b>\$ 163.6</b>	<b>\$ 581.6</b>
Total Recoverable Transition Costs	(51.9)	(6.1)
Total Transaction Costs		(40.2)
<b>Total Benefit Realized Through 2013 With Amortized Transition Costs</b>	<b>\$ 111.7</b>	<b>\$ 535.3</b>

1 The amount of synergies retained by KCPL, both total corporate and total regulated less the  
2 amount flowed to ratepayers totals \$581.6 million. If the Commission were to authorize  
3 KCPL and GMO to amortize transition costs through the cost of service as shown in the above  
4 table, the total benefits to shareholders versus that of ratepayers would become more lopsided  
5 than it already is. Again, in consideration of page 284 of the Commission's Report and Order  
6 in the acquisition case, the Commission has not yet authorized KCPL and GMO to recognize  
7 the amortization of transition costs directly in the cost of service for setting rates.

8 Q. Mr. Ives asserts that because KCPL has not had the chance to demonstrate that  
9 synergy savings exceed amortized transition costs, KCPL has not begun the to amortize  
10 transition costs. What is Staff's opinion of KCPL's position?

11 A. Mr. Ives seems to believe that if every succeeding rate case is settled with no  
12 mention of transition cost amortization, as was the case with Cases ER-2009-0089 and  
13 ER-2009-0090, then KCPL would be allowed to keep the transition cost regulatory asset on its  
14 books indefinitely. Certainly, in consideration of the recovery of transition costs KCPL and  
15 GMO have made through retained synergies, keeping an asset on the books that has already  
16 been recovered would be inappropriate.

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1 Q. Mr. Ives sites Generally Accepted Accounting Principles (GAAP), specifically  
2 SFAS 71, in his defense of KCPL not beginning the amortization of transition costs. What is  
3 your evaluation of this argument?

4 A. Mr. Ives sites Paragraph 9 of SFAS 71. I will repeat Part B. of that  
5 paragraph here:

6 b. Based on available evidence, the future revenue will be provided to  
7 permit recovery of the previously incurred cost rather than to provide  
8 for expected levels of similar future costs...

9 The "future revenue" in this statement is the utility rates KCPL and GMO receive.  
10 The "previously incurred cost" is the transition costs. What this statement means is that the  
11 revenues KCPL and GMO were receiving, specifically for the costs KCPL and GMO were not  
12 incurring after the acquisition, recover the previously incurred transition cost.

13 I agree with Mr. Ives when he states on page 14 of his rebuttal testimony: "It is clear in  
14 this paragraph that in order to have a deferred regulatory asset, the expectation must be that  
15 future revenues will return an amount at least equal to the deferred amount." In this case the  
16 Commission did refer to recovery on page 238 of the Report and Order:

17 **(4) because the Applicants have agreed to recover any merger**  
18 **savings through "regulatory lag" as part of the traditional**  
19 **ratemaking process there is no net detriment to customers...**

20 Mr. Ives does not make the connection between the recovery the Commission discussed in the  
21 Report and Order and the excerpt from SFAS 71.

22 Q. Did KCPL propose to start the amortization of transition costs in the  
23 acquisition case sooner than their current position?

24 A. Yes. Referring to Lori Wright's Direct Testimony filed April 2, 2007 in  
25 Case No. EM-2007-0374, Ms. Wright stated the following concerning transition costs,  
26 referred to as "costs to achieve":

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1 Q. What treatment do the Joint Applicants propose for costs to  
2 achieve?

3 A. As set out in the Joint Application, the Joint Applicants request  
4 costs to achieve be allocated to Great Plain's Energy's various  
5 regulatory units (Kansas City Power & Light Company, Aquila  
6 Networks-MPS, Aquila Networks-L&P and St. Joseph Industrial  
7 Steam), booked as a regulatory asset and amortized into cost of service  
8 over five (5) years, **beginning on January 1, 2008, or the month**  
9 **immediately following consummation of the Merger, whichever**  
10 **occurs later.** (emphasis added)

11 Ms. Wright apparently had no issue with SFAS 71 when she proposed the  
12 amortization of transition costs without direct rate recovery in the acquisition case. It is  
13 noteworthy that Ms. Wright filed this testimony in an acquisition case, not a rate case. When  
14 Ms. Wright refers to "cost of service", she does not refer to "rates", nor does she refer to the  
15 pending KCPL rate case ER-2007-0291 which was a rate case. If the Commission ordered the  
16 amortization of transition costs to begin after the consummation of the acquisition with no  
17 change in rates, then the amortization would have begun with no specific recovery in the cost  
18 of service in rates.

19 Q. When should have KCPL and GMO started the amortization of the  
20 transition costs?

21 A. Staff believes the Company should have started the amortization at the time of  
22 the effective date of rates in the first rate case after the acquisition as instructed by the  
23 Commission the acquisition case.

24 As detailed in Paragraph 327 on page 122, GPE and Aquila (Applicants) requested  
25 amortization beginning with the first rate cases:

26 **327. Applicants request that the Commission allow the surviving**  
27 **entities to defer both transaction and transition costs and to**  
28 **amortize them over a five-year period beginning with the first rate**  
29 **cases post-transaction for Aquila and KCPL subject to "true up"**  
30 **of actual transition and transaction costs in those future rate**  
31 **cases...**

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1 September 1, 2009 was the date of the rate increase in Case Nos. ER-2009-0089 and  
2 ER-2009-0090. Because KCPL and GMO have not yet started the amortization they are not  
3 in compliance with the Commission's July 1, 2008 Order in the acquisition case.

4 Q. KCPL and GMO, in the acquisition case, claimed that synergies would be  
5 realized in the administrative and general (A&G) category of costs. Are KCPL and GMO's  
6 A&G costs low compared to other electric utilities in the region?

7 A. No. Staff examined the 2009 FERC Form 1 documents for KCPL, GMO,  
8 Westar, Empire District Electric, and AmerenUE (now Ameren MO) electric utilities. Staff  
9 quantified the A&G costs per average number of customers, per megawatt hour sold, and per  
10 dollar of electric operating revenue. The following tables summarize the result of that  
11 examination:

<b>Administrative &amp; General Expenses per Average Customer</b>						
	Empire	GMO	KCPL	Combined KCPL and GMO	Ameren UE MO Basis	Westar
A&G Expenses	28,579,310	66,976,333	142,093,271	209,069,604	243,925,979	82,212,174
Average Number of Customers	168,023	312,030	510,335	822,365	1,187,613	367,763
A&G Cost per Customer	\$ 170.09	\$ 214.65	\$ 278.43	\$ 254.23	\$ 205.39	\$ 223.55

<b>Administrative &amp; General Expenses per Megawatt Hour Sold (MWH)</b>						
	Empire	GMO	KCPL	Combined KCPL and GMO	Ameren UE MO Basis	Westar
A&G Expenses	28,579,310	66,976,333	142,093,271	209,069,604	243,925,979	82,212,174
MWH Sold	5,409,839	8,112,391	20,062,162	28,174,553	47,078,720	17,273,734
A&G Cost per MWH Sold	\$ 5.28	\$ 8.26	\$ 7.08	\$ 7.42	\$ 5.18	\$ 4.76

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<b>A&amp;G Expenses per Electric Operating Revenue</b>						
	Empire	GMO	KCPL	Combined KCPL and GMO	Ameren UE MO Basis	Westar
A&G Expenses	28,579,310	66,976,333	142,093,271	209,069,604	243,925,979	82,212,174
Total Electric Operating Revenues	433,133,378	646,851,923	1,317,389,133	1,964,241,056	2,630,362,110	1,070,490,601
A&G Cost Per Electric Revenue Dollar	\$ 0.07	\$ 0.10	\$ 0.11	\$ 0.11	\$ 0.09	\$ 0.08

1 In comparison to Empire District Electric, AmerenUE, and Westar, KCPL and GMO  
2 combined have the highest A&G costs per megawatt hour sold, per dollar of electric operating  
3 revenue, and per customer. What this analysis shows is that while KCPL has claimed  
4 significant savings from the acquisition, its administrative and general costs are the highest in  
5 the Kansas and Missouri region. The fact is that KCPL and GMO, while enjoying significant  
6 corporate retained benefits, have not flowed a comparable amount of regulated synergy  
7 savings to its regulated electric utility operations. This analysis was based on the  
8 2009 FERC Form 1, the same cost period as the test year of the current case. In effect, KCPL  
9 and GMO customers are paying in the majority of cases the highest Administrative and  
10 General costs in the region for their electric service.

11 Q. Please summarize your surrebuttal testimony regarding transition costs.

12 A. Staff has significant evidence, as discussed in my direct and rebuttal testimony,  
13 that KCPL and GMO have already recovered transition costs through regulatory lag and  
14 retained synergies. Mr. Ives has not made any attempt to dispute the fact that KCPL has  
15 already recovered the transition costs for the Aquila acquisition. KCPL witness Darrin Ives  
16 would have the Commission ignore simple facts and include in the cost of service costs which  
17 KCPL has more than recovered, based on the sole fact that synergy savings exceed amortized  
18 transition costs. KCPL and GMO are requesting ratepayers, who are already paying the  
19 highest A&G costs in the state, to pay for costs which they have already fully recovered.

1 ADVANCED COAL CREDIT ARBITRATION COSTS

2 Q. Please summarize the section of Staff's Cost of Service Report concerning  
3 this issue.

4 A. On pages 122-23 of the Cost of Service Report, Staff proposed to remove  
5 \$41,764 of legal expenses relating to the arbitration of Internal Revenue Code Section 48A  
6 Qualifying Advanced Coal Project Tax Credits (tax credits). On December 8, 2010, I filed  
7 rebuttal testimony concerning this issue with an updated adjustment of \$456,647.

8 Staff proposed to remove these costs from the test year based on the decision of an  
9 arbitration panel, in a dispute between The Empire District Electric (Empire) and KCPL  
10 regarding allocation of the Section 48A tax credits, and the nature of KCPL's actions  
11 surrounding that arbitration. Specifically, the arbitration panel found that \*\* \_\_\_\_\_

12 \_\_\_\_\_  
13 \_\_\_\_\_ \*\* (emphasis  
14 added). KCPL's actions appear to violate the Fair Dealing section of the GPE Code of Ethical  
15 Business Conduct, as discussed in Staff's Cost of Service Report. None of the costs incurred  
16 in the arbitration proceedings have benefited ratepayers.

17 Q. Can you summarize Melissa Hardesty's rebuttal testimony on this issue?

18 A. Ms. Hardesty testifies that because KCPL entered into the arbitration  
19 proceedings to maximize the benefit to ratepayers, it is only logical that the costs incurred in  
20 participating in the arbitration should be recovered by KCPL.

21 Q. What was the outcome of the arbitration concerning the tax credits?

22 A. For ease of reference, the Final Arbitration Award from the Arbitration Panel  
23 dated December 30, 2009 is attached Schedule 1 of my surrebuttal testimony. The arbitration

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1 panel issued a decision ordering KCPL and Empire to jointly seek a reallocation of the tax  
2 credit from the Internal Revenue Service (IRS) which would give Empire its representative  
3 share of the total tax credit worth approximately \$17.7 million.

4 Q. Did KCPL and Empire immediately seek a reallocation?

5 A. No. KCPL appealed the arbitration decision to both the United States District  
6 Court for the Western District of Missouri and the Circuit Court of Platte County, Missouri,  
7 on April 29, 2010 and May 17, 2010, respectively.

8 Q. What was the final outcome of KCPL's appeal?

9 A. \*\* \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_ \*\* This document is attached to  
12 my surrebuttal testimony as Schedule 2.

13 Q. How much has KCPL spent in these proceedings?

14 A. In the test year, KCPL spent \$456,647 in legal fees in relation to the arbitration  
15 proceedings. Through October 31, 2010, the total amount KCPL has spent is \$617,240 in  
16 legal fees for both the arbitration proceedings and its appeal of the arbitration  
17 panel's decision.

18 Q. Has any of the \$617,240 benefitted KCPL ratepayers?

19 A. No. None of the incremental legal fees have provided benefit to  
20 KCPL ratepayers.

1 **IATAN UNIT 1 TURBINE TRIP AFUDC**

2 Q. On pages 60-61, of his rebuttal testimony, KCPL witness Brent Davis describes the  
3 Iatan Unit 1 turbine work as being relevant to the project. Does Staff agree that the turbine  
4 work was relevant?

5 A. Yes. Staff does not dispute the relevancy of the turbine work. Staff is not  
6 making an adjustment to any of the costs directly related to the turbine work. In fact,  
7 Staff is not proposing an adjustment to the AFUDC charged to the actual turbine work,  
8 which totals \*\* \_\_\_\_\_ \*\*. As of September 30, 2009, the costs of the High Pressure  
9 turbine upgrade activity was \*\* \_\_\_\_\_ \*\*, net of joint owner billings.

10 The issue is that the delay due to the turbine trip increased the AFUDC accrued on  
11 the Iatan 1 AQCS. As discussed in Staff's Cost of Service Report for KCPL in  
12 Case No. ER-2010-0355 on pages 124-26, and Staff's Cost of Service Report for GMO in  
13 Case No. ER-2010-0356 on pages 142-44, I provided additional relevant information  
14 concerning the adjustment in the November 3, 2010 Construction Audit and Prudence  
15 Review that Mr. Davis addresses. I am not sure whether or not Mr. Davis read or was  
16 aware of those sections in Staff's Cost of Service Reports, but he does not address them  
17 in his rebuttal testimony.

18 **IATAN PROJECT BUDGET AND COST CONTROL**

19 Q. What KCPL witness rebuttal testimony are you responding to?

20 A. Witnesses Daniel Meyer and Forrest Archibald, throughout their rebuttal  
21 testimony, attempt to address the issue of KCPL's compliance with the cost control feature of  
22 the KCPL Experimental Regulatory Plan to identify and explain any cost overruns from the  
23 Definitive Estimate for Iatan 1 AQCS and Iatan 2.

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1 Q. What is the issue concerning the testimony of Mr. Meyer and Mr. Archibald?

2 A. Their testimony ignores the term "cost overruns" and instead refers to "budget  
3 variances." Budget variances occur when various budget items differ from actual costs.  
4 Budget variances can and do occur on projects that do not experience cost overruns. Cost  
5 overruns are created when budget variances reach a certain condition, but not all budget  
6 variances are cost overruns. Cost overruns occur when the sum of all negative (increased  
7 costs) budget variances exceed the sum of all positive (decreased cost) budget variances plus  
8 the contingency level plus the baseline budget. Since KCPL refused to provide the  
9 information that supports the contingency levels contained in the Iatan 1 AQCS and Iatan 2  
10 control budget estimate (CBE) or Definitive Estimate as specified in the KCPL Regulatory  
11 Plan, no one aside from KCPL can identify which budget variances were provided for in the  
12 contingency versus the budget variances that were not considered.

13 KCPL defined its contingency as an amount that "consists of funds for unforeseeable  
14 elements of cost within the defined project scope." (KCPL response to Staff Data Request No.  
15 819, Case No ER-2009-0089).

16 Q. Can Staff make a detailed analysis of the contingency of Iatan Unit 1 or  
17 Iatan Unit 2?

18 A. No. Staff requested support for the contingency for both Iatan Unit 1 and  
19 Iatan Unit 2 control budget estimates in Staff Data Request Nos. 490 and 491 in  
20 Case No. ER-2009-0089:

21 Question No. : 0490

22 Please provide copies of all the documentation supporting the  
23 development, review, analysis and approval of the contingency and  
24 executive contingency included in the control budget estimate for  
25 environmental upgrades at Iatan 1.  
26

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1                    Question No. : 0491

2                    Please provide copies of all the documentation supporting the  
3                    development, review, analysis and approval of the contingency and  
4                    executive contingency included in the control budget estimate for  
5                    Iatan 2.

6                    The only response that was not privileged was Schedule 3 attached to this testimony. KCPL  
7                    has not provided enough documentation to explain the causes to exhaust its contingency  
8                    versus the items that caused KCPL to experience actual costs in excess of its definitive  
9                    estimate including the Company's determination of adequate contingency to prevent actual  
10                    costs exceeding the definitive estimate total.

11                    Instead of addressing the identification and explanation of the cost overruns  
12                    experienced and continued to be experienced at the Iatan Construction Project, KCPL  
13                    witnesses use the documentation used to support new budget amounts, or what they refer to as  
14                    "cost reforecasts" once KCPL acknowledged that the Iatan Construction Project costs would  
15                    exceed its definitive estimates. The documentation for the cost reforecasts were initially  
16                    called "R&O" items after the Risk & Opportunity table that was developed under  
17                    David Price's leadership of the Iatan Construction Project [May 2007 through January 2008].  
18                    The Iatan 1 AQCS had one cost reforecast and was based on R&O documentation. Iatan 2  
19                    had four cost reforecasts.

20                    Q.     Has KCPL correlated its reforecast process with standard industry practices?

21                    A.     Staff requested support for the term "reforecast" as used in KCPL witness  
22                    testimonies in Staff Data Request No. 419, Case No. ER-2009-0089. KCPL provided an  
23                    article attached as Schedule 4. This article also appears as Schedule DFM2010-4 in  
24                    Daniel Meyer's Direct Testimony in this case. This article was written by  
25                    Mr. John F. Rowe, P.E, published in The Association for the Advancement of  
26                    Cost Engineering International Transactions. It is a brief, but informative article that KCPL

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1 witnesses Brent Davis and Kenneth Roberts relied on as an “industry source,” and that  
2 Mr. Meyer cites as support for the reforecast process. Contrary to the importance KCPL’s  
3 witnesses place on reforecasts, nowhere in the article does the term “reforecast” appear in  
4 accordance with changing a budget number. Mr. Meyer provided this article as authority  
5 supporting the practice of reforecasting a project’s estimate. The importance of this article is  
6 the distinction between how this industry source identifies items in a cost tracking system and  
7 how KCPL tracks costs using the CBE, May 2008 and March 2010 reforecasts, and the  
8 management internal transfers in the cost portfolio.

9 The following is the definition Mr. John F. Rowe uses for “Current Budget”:

10 **Current Budget**

11 Taken from the project cost report, it should include all budget  
12 transfers/changes that resulted from the evolution of contract scope **up**  
13 **until contract award** and, as discussed, should also include an  
14 amount to cover change orders. When bids are received and the  
15 contract is awarded, the budget should be re-set to equal the original  
16 contract amount plus an initial contingency (CI) by transferring  
17 budget to/from allocated and/or project contingency. Ideally, this  
18 budget will not be changed again until the contract is completed and  
19 excess budget is returned to contingency. (emphasis added)

20 This is a very different description from what KCPL tracks its costs to in its cost  
21 control system, and is not the same concept as “Current Budget” in the “K Reports” given to  
22 Staff and attached to Mr. Meyer’s rebuttal testimony. In direct contrast to the industry source  
23 Mr. Meyer endorses, the KCPL cost control system does not track the December 2006 CBE to  
24 the Estimate at Completion (EAC). On page 4 of the attached industry source article cited by  
25 Mr. Meyer, a table is shown of a common industry cost system. On the far right column  
26 appears an amount referred to as “Contingency Surplus (Deficit).” This amount is the  
27 difference between the “Current Budget” and the “Estimate at Completion.” In this case,  
28 given the definition provided by Mr. Rowe, the Iatan Project CBE is analogous to

1 "Current Budget." Mr. Rowe states above: "[i]deally, this budget will not be changed  
2 again..."

3 The following is the definition Mr. John F. Rowe uses for "Current Forecast":

4 **Current Forecast**

5 Before a contract is bid, this will equal the current budget, less the  
6 amount included to cover change orders. After contract award, field  
7 construction management personnel typically maintain the current  
8 forecast as previously discussed. Note that the current forecast should  
9 not include any factors to predict the value of unidentified changes, as  
10 the CTS will account for these.

11 Using the definitions above and incorporated into the example in the article, KCPL's  
12 May 2008 reforecast, July 2009 reforecast, March 2010 and November 2010 should not have  
13 been used for changing budget numbers, rather they should have been used in the EAC as  
14 "Current Forecast" numbers. Mr. Rowe defines EAC in the same article:

15 **Estimate at Completion (EAC)**

16 This number is simply the sum of the current forecast (F) provided by  
17 our field construction management staff and Retained Contingency  
18 (CR)... The author has used this EAC value as an early warning of  
19 contracts that are trending toward exceeding agency contract  
20 authorization limits. It often provides a warning several months before  
21 an overrun becomes readily apparent, but tends to be unreliable until a  
22 contract is at least 25 percent complete, as discussed earlier.

23 In the subsequent Iatan 2 reforecasts the R&O items were replaced by cost projection folders  
24 (CPs). These CP's provided less detailed information than contained in the predecessor R&O  
25 to support changing the budget for Iatan 2 (current budget) the last three (3) times.  
26 Mr. Archibald verified to Staff numerous times in some of the meetings that he cites in his  
27 rebuttal testimony that KCPL did not track actual project costs by R&O or CPs.

28 When KCPL changed the CBE, to which it tracked actual costs, with R&Os and CPs  
29 that cannot be tracked to actual costs, KCPL lost the ability to track the December 2006  
30 Control Budget Estimate to actual costs. This is in direct contrast to the cost control system

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1 | advocated by Mr. Meyer's "industry source." Thus, the documentation provided by KCPL  
2 | cannot identify cost overruns from the CBE since the essential actual cost information is  
3 | absent to compare to the estimated amount contained in the R&Os and CPs. In addition, after  
4 | the R&Os and CPs are used to support current budget modifications the new budget line items  
5 | are modified by internal budget transfers as budget surpluses in certain areas are moved to  
6 | address budget deficiencies in other areas. These internal budget transfers do not identify  
7 | these changes by R&O or CP or actuals thus preventing the tracking of their estimated costs  
8 | against actual costs. This is an essential feature for a cost control function that would identify  
9 | cost overruns from a budget for identification. Instead, KCPL compares forecasted numbers  
10 | which cannot be traced to actual costs to estimates at completion.

11 | Another point the industry source makes is that "[d]uring the construction phase, the  
12 | estimate at completion (EAC) of the contract packages changes more quickly than at any other  
13 | phase of the project." Again, nowhere in this excerpt or in the entire document provided by  
14 | Mr. Meyer does his industry source endorse changing the initial budget.

15 | Q. Mr. Meyer on pages 58-59 of his rebuttal testimony disagrees with Staff on the  
16 | nature of scope changes related to the unit train cars in the July 2009 reforecast. What is your  
17 | response to Mr. Meyer's explanation of the unit train cars in the July 2009 reforecast?

18 | A. Mr. Meyer's explanation that the budgeted costs for the unit train should and  
19 | were reallocated into general contingency conflicts with the definition and concept of  
20 | contingency as defined by The Association for the Advancement of Cost Engineering  
21 | International *Cost Engineering Terminology*, as attached to his direct testimony. The  
22 | definition of contingency in that document:

23 | CONTINGENCY – An amount added to an estimate to allow for items,  
24 | conditions, or events for which the state, occurrence, and/or effect is uncertain

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1 and that experience shows will likely result, in aggregate, in additional costs.  
2 Typically estimated using statistical analysis or judgment based on past asset  
3 or project experience. **Contingency usually excludes; 1) major scope**  
4 **changes such as changes in end product specification, capacities, building**  
5 **sizes, and location of the asset or project (see management reserve),**  
6 2) extraordinary events such as major strikes and natural disasters,  
7 3) management reserves, and 4) escalation and currency effects. Some of the  
8 items, conditions, or events for which the state, occurrence, and/or effect is  
9 uncertain include, but are not limited to, planning and estimating errors and  
10 omissions, minor price fluctuations (other than general escalation), design  
11 developments and changes within the scope, and variations in market and  
12 environmental conditions. Contingency is generally included in most  
13 estimates, and is expected to be expended. (1/04) (emphasis added)

14 The section in bold conflicts with Mr. Meyer's assessment of the July 2009 reforecast. The  
15 unit train is the set of railcars that deliver coal to Iatan Unit 2. KCPL made the decision, as  
16 explained in Mr. Meyer's rebuttal testimony, that leasing the railcars was a better option than  
17 purchasing the railcars. This is a major scope change as the current capital requirements are,  
18 according Mr. Meyer, \$39.2 million. The end product specification of Iatan Unit 2 will not  
19 include an owned unit train; rather, the trains will be leased as an ongoing operating expense.

20 Q. Does Staff have a position on the decision to lease the railcars versus  
21 buying them?

22 A. Not at this time.

23 Q. Mr. Meyer states on page 59 concerning the decision to lease the railcars: "[it]  
24 will result in a savings to KCPL's customers in this rate case." Is this an accurate statement?

25 A. Yes. The Iatan Unit 2 project will have \$39.2 million less invested capital in it  
26 reducing the total amount to be recovered from ratepayers in rate base. However, the  
27 customers will still pay for the leases of the railcars over the life of the plant.

28 Additionally, by moving the cost of the railcars, a change in scope, to general project  
29 contingency, actual cost variances are masked from fully impacting the total forecasted cost of  
30 the project, as can be seen in the chart of the July 2009 reforecast in Mr. Meyer's

1 rebuttal testimony. The effect is that the completed Iatan Unit 2 will have less owned  
2 equipment, namely the railcars, for the same amount of money.

3 **RATE CASE EXPENSE**

4 Q. Please describe Staff's adjustments to rate case expense.

5 A. Staff proposed to remove \$1.7 million in legal expenses related to invoices  
6 which were not initially provided by KCPL. I will discuss the status of Staff's discovery and  
7 the significant delay in receiving invoices. I also proposed to remove costs related to a former  
8 employee who is now a consultant, as explained in my rebuttal testimony. The consultant's  
9 salary and benefits as of September 30, 2008 are already being collected in rates and will  
10 continue to be through the effective date of rates by KCPL through Staff's payroll  
11 annualization in the prior rate case No. ER-2009-0089.

12 Q. Did Staff request invoices paid for rate case expenses?

13 A. Yes. Staff requested all rate case expense invoices in Staff Data Request No.  
14 141 in this case on June 25, 2010. The response to the request for invoices by KCPL on  
15 July 12:

16 ...To provide all invoices is a voluminous request. If a specific  
17 vendor invoice or invoices is required, please advise.

18 Staff then submitted Staff Data Request No. 141.1 on September 3, 2010 for rate case  
19 invoices over \$5,000 for a more narrow review. KCPL responded on September 23, 2010. In  
20 the response, KCPL provided "face sheets" of a significant amount of legal invoices, which  
21 were insufficient and incomplete. In Staff's Cost of Service Report, I sponsored an  
22 adjustment to rate case expense for approximately \$1.7 million in vendor invoices which  
23 KCPL had not provided.

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1 Staff submitted yet another Staff Data Request on November 3 to obtain invoices it  
2 should have received in July. Staff Data Request No. 141.2 requested complete invoice  
3 support for vendors Morgan Lewis & Bockius, Pegasus Global Holdings, Schiff Hardin, and  
4 Stinson Morrison & Hecker, the vendors which comprise Staff's \$1.7 adjustment to rate case  
5 expense. KCPL did provide the invoices with redactions, with a privilege log, on  
6 November 29, 2010.

7 Q. Why did Staff initially request invoices specifically from these vendors?

8 A. At the time, these vendors took priority for rate case invoices for review due to  
9 the amount KCPL paid for their services in relation to other rate case expense vendors. KCPL  
10 provided only face sheets of invoices for these as well as every other legal invoices Staff was  
11 to have received. Staff also wanted to narrow the scope of the request to expedite  
12 KCPL's response.

13 Based on the initial review of the invoices received, Staff expanded its scope to obtain  
14 all rate case invoices over \$1,000 in Staff Data Request No. 141.3 on November 24, 2010.  
15 KCPL requested, and was granted a two-week extension to provide invoices which should  
16 have been provided months in advance. KCPL eventually provided the legal invoices  
17 requested 36 days after the request, only 6 days ago on December 30, 2010, 6 months after  
18 Staff's initial request. This delay in receiving invoices has put Staff significantly behind  
19 schedule in reviewing the invoices and determining a prudent and reasonable amount of rate  
20 case expense.

21 Q. What amount of rate case expense did KCPL propose in its direct case, updated  
22 through June 2010?

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1           A.     For its 2010 rate case, KCPL deferred \$2.98 million of rate case expense,  
2 including costs incurred after the true-up of Case No. ER-2009-0089. KCPL requests an  
3 amortization of those costs over two years for an annual amortization of \$1.49 million.

4           Q.     Other than not receiving invoices, does Staff take any other issue with rate case  
5 expense?

6           A.     Yes. KCPL procured legal services from no less than 9 vendors which charged  
7 to Missouri rate case expense. The following table is a list of legal vendors that Staff is  
8 aware of:

DUANE MORRIS
FISCHER & DORITY
MORGAN LEWIS & BOCKIUS LLP
POLSINELLI SHALTON FLANIGAN SUELTHAUS PC
SCHIFF HARDIN LLP
SKADDEN ARPS SLATE MEAGHER & FLOM LLP
SONNENSCHN EIN NATH & ROSENTHAL LLP
SPENCER FANE BRITT & BROWNE LLP
STINSON MORRISON HECKER LLP

9           Q.     Did the Kansas Corporation Commission (KCC) take any issue with KCPL's  
10 level of rate case expense?

11          A.     Yes. KCC Docket No. 10-KCPE-415-RTS was KCPL's rate case in its Kansas  
12 jurisdiction. I have attached the relevant section of the KCC order as Schedule 5.

13          Q.     Please describe the rate case expense issue in Kansas.

14          A.     The KCC appeared to have some of the same difficulties Staff has had in  
15 obtaining detailed information to make a review of charges by specific consultants  
16 and attorneys.

17                   The KCC noted that:

18                   "The attempt to determine rate case expense is hampered by a lack of  
19 detailed information in the record...Because that detailed information

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1 is not contained in this record, the Commission has considered  
2 denying recovery of all rate case expense in this proceeding.”

3 The KCC goes on to state:

4 In deciding to take this course, the Commission has concluded that the  
5 amount of rate case expense established in this Order for KCPL to  
6 recover from its ratepayers will be Interim Rate Relief.

7 The KCC estimated total rate case expense costs of \$7.2 million. Of this amount, \$5 million  
8 was estimated for legal services alone.

9 Q. What determination did the KCC eventually make regarding rate case expense?

10 A. The KCC identified several vendors whose work was not fully documented or  
11 duplicative, and excluded them from rate case expense. The Commission did not include any  
12 expenses for NextSource, The Communication Counsel of America, Duane Morris, and  
13 Morgan Lewis & Bockius. The KCC noted the duplicative nature of  
14 Ms. Barbara Van Gelder’s services, and determined that recovery of those expenses would be  
15 unjust and unreasonable. The KCC found expenses requested for Schiff Hardin were  
16 “particularly troubling.”

17 The KCC concluded that \$4.5 million was an appropriate amount of rate case expense,  
18 exclusive of costs for the KCC and CURB, \$1.7 million less than what KCPL requested.

19 Q. Has Staff made any conclusions concerning rate case expense?

20 A. Due in most part to KCPL’s delay in providing complete invoices, Staff at this  
21 time has no other adjustments other than those I discussed in Staff’s Cost of Service Report  
22 and my rebuttal testimony. As I explained in my rebuttal testimony, Staff will update rate case  
23 expense through the true-up, provided KCPL provides complete invoices to review. At that  
24 time, a thorough review of the invoices can be completed.

25

1 **IATAN UNIT 1 AND 2 REGULATORY ASSETS**

2 Q. In Mr. Weisensee's rebuttal testimony on pages 5-6, he explains that Staff did  
3 not include the Iatan Unit 1 and Iatan Unit 2 regulatory assets. Why did Staff not include  
4 these assets or the amortization thereof?

5 A. I explain Staff's position concerning the Iatan Unit 1 regulatory asset in my  
6 rebuttal testimony. Staff's proposed disallowances of the costs of both the Iatan Unit 1 AQCS  
7 project and the Iatan Common Plant essentially remove the need for construction accounting  
8 on the plant expenditures not included in rates in the prior case.

9 I explain Staff's position concerning the Iatan Unit 2 regulatory asset in Staff's Cost of  
10 Service Report. Additionally, Staff witness Cary Featherstone proposes in his surrebuttal  
11 testimony that the Regulatory Amortizations should be used as an offset for the construction  
12 accounting calculation for inclusion in future rates in conjunction with Staff's examination of  
13 Iatan Unit 2 construction accounting calculations in the true-up of December 31, 2010. I  
14 support his proposal.

15 Q. Does that conclude your surrebuttal testimony?

16 A. Yes, it does.



**SCHEDULES 1 through 4**

**HAVE BEEN DEEMED**

**HIGHLY CONFIDENTIAL**

**IN THEIR ENTIRETY**

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners: Thomas E. Wright, Chairman  
Joseph F. Harkins  
Ward Loyd

In the Matter of the Application )  
of Kansas City Power & Light Company ) Docket No. 10-KCPE-415-RTS  
to Modify its Tariffs to Continue the )  
Implementation of its Regulatory Plan )

**ORDER: 1) ADDRESSING PRUDENCE; 2) APPROVING  
APPLICATION, IN PART; & 3) RULING ON PENDING REQUESTS**

The above captioned matter is before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, and being fully advised in all matters of record, the Commission makes the following findings of fact and conclusions of law:

**I. BACKGROUND**

**A. General**

On December 17, 2009, Kansas City Power & Light Co. (KCPL or the Company) filed the captioned Application for a rate change per K.S.A. 66-117 and K.A.R. 82-1-231. The current docket represents the fourth and final rate case in the series of four rate applications that were contemplated in the Stipulation and Agreement (1025 S&A or Regulatory Plan) that was approved by the Commission in Docket No. 04-KCPE-1025-GIE. The Regulatory Plan represented a collaborative effort and resulted in KCPL committing to make substantial investments in its electric infrastructure over a five-year period.

In the 1025 Docket, KCPL, the Commission, the Staff of the State Corporation Commission of the State of Kansas (Staff), the Citizens' Utility Ratepayer Board (CURB), and

The Commission approves specific adjustments to the Spanos Study as proposed by Dunkel. Otherwise, the Commission adopts the recommendations contained in the Spanos Study. To summarize these decisions, Staff has prepared a list of depreciation rates by account that is attached to this Order as Exhibit III.

### 13. Rate Case Expense

Several issues have been raised involving rate case expense. First, KCPL has amortized Kansas rate case expense over four years for each of KCPL's three prior rate cases under the Regulatory Plan, beginning with the effective date of new rates in each case. Staff witness Hull recommended a decrease in KCPL's annual cost of service of \$370,026 based on a re-amortization of the balance of deferred costs from these prior rate cases. Annual additions or subtractions of rate case costs have created layers within this asset account with each layer amortized separately. Total amortization expense for each rate case varies depending on what layer or layers were included in the expense calculations. Hull proposed the unamortized balance of the Deferred Rate Case Costs as of December 31, 2010, be amortized over a four-year period to ensure KCPL will not collect more than the authorized amount in its cost of service from the amortization period of the various layers of cost.<sup>315</sup> CURB agreed with Staff's proposal but urged this decision be deferred to a later docket reviewing rate case expense for Docket 09-246 and this docket.<sup>316</sup>

KCPL witness Weisensee opposed this approach, noting costs from each case are amortized as a separate "vintage" and will not be completely amortized until December 2011, July 2013, and November 2014. If amortization of one vintage is completed during an interim period between this rate case and KCPL's next case, Weisensee proposed the over-amortization

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<sup>315</sup> Hull Direct, pp. 3-4 and Exh. KSH-1.

<sup>316</sup> CURB Proposed Findings, pp. 79-80.

can offset the remaining rate case costs in other vintages, noting Staff's method will lengthen the time for KCPL to recover these costs.<sup>317</sup>

The Commission finds Staff's proposal is reasonable and will ensure that ratepayers are only responsible for rate case expense incurred for these prior cases. The Commission rejects KCPL's proposal to apply over-amortization to remaining rate case costs in other vintages. The Commission adopts Staff's adjustment to re-amortize the balance of the deferred rate case costs and directs that KCPL's annual cost of service be decreased by Staff's adjustment to reflect this re-amortization.

Second, CURB asked the Commission to adjust KCPL's claim for rate case expense costs associated with Docket 09-246. CURB witness Crane asserted KCPL estimated its rate case costs would be approximately \$800,000 for the Kansas jurisdiction for Docket 09-246 but now asks to recover \$2,314,299 for rate case expense, an increase of almost 200%. Crane recognized issues arose during Docket 09-246 that lead KCPL to engage additional witnesses; issues included costs associated with Iatan Unit 1 environmental upgrades and with Iatan Unit 2, use of budgeted versus actual cost data, and common plant allocations. But in her opinion some hourly rates were excessive. She recommended shareholders be responsible for 50% of rate case expense costs claimed for Docket 09-246, which is still 44% higher than the original estimated costs.<sup>318</sup>

Wiesensee agreed Crane identified those issues resulting in higher than anticipated rate case expense, but he disagreed the costs were excessive. The Iatan-related issues were complex and the procedural schedule in Docket 09-246 was amended to include additional testimony and oral arguments. He noted \$2 million of rate case costs were incurred in the final eight months

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<sup>317</sup> Wiesensee Rebuttal, pp. 33-34.

<sup>318</sup> Crane Direct, pp. 86-87.

before new rates took effect and the month following implementation, with over \$500,000 incurred in the final two months.<sup>319</sup> Of the \$2.3 million of costs for Docket 09-246, combined costs for the KCC and CURB totaled \$746,000.<sup>320</sup>

The Commission concludes KCPL will be allowed to recover rate case expense costs requested for Docket 09-246. Crane recognized the issues to be addressed during proceedings in Docket 09-246 increased in number and complexity, requiring additional expert witnesses to be engaged and further proceedings to be conducted. Although requiring shareholders to share some rate case expenses with ratepayers is appropriate in some situations, the Commission will not require this in Docket 09-246.

Third, CURB opposed KCPL's claim for recovery of certain FERC-jurisdictional costs for rate case expense relating to transmission formula rate cases. These costs involve FERC cases in which KCPL is establishing transmission rates that affect its retail and firm wholesale customers. This annualized cost is allocated to Kansas, Missouri, and full-requirements firm wholesale jurisdictions based on the Energy allocation discussed by Weisensee. FERC does not allow these costs to be deferred and amortized but instead requires the costs to be expensed as incurred.<sup>321</sup> Crane recommended recovery of FERC-jurisdictional costs be denied because the only rationale given for their recovery in Kansas-jurisdictional rates was an inability to recover them elsewhere.<sup>322</sup> Weisensee noted Crane misunderstood his prior testimony in which he discussed FERC's requirement regarding deferral versus expense to illustrate rate case expense is treated differently for FERC rate cases than for Kansas retail rate cases. FERC allows recovery of these costs, but KCPL must annualize them in its Kansas retail rate case similar to any other

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<sup>319</sup> Weisensee Rebuttal, p. 36.

<sup>320</sup> Weisensee Rebuttal, pp. 37-38.

<sup>321</sup> Weisensee Direct, pp. 60-61.

<sup>322</sup> Crane Direct, pp. 88-89.

costs. Kansas retail customers should pay for properly allocated FERC transmission rate case expense incurred to establish transmission rates.<sup>323</sup> The Commission finds KCPL's request to recover FERC transmission rate case costs is proper and approves their recovery.

Last, the Commission must determine what rate case expense costs to pass through to KCPL ratepayers for this rate case. No party recommended a specific adjustment to rate case expense. Staff noted an adjustment for rate case expense could not be reasonably estimated at the time Staff's testimony was filed and stated these costs can be trued-up later in the proceeding. Staff recommended amortizing rate case expense over a four-year period.<sup>324</sup>

Crane expected this last rate case under the Regulatory Plan to have higher costs than the three prior rate cases, but asserted the Company would have taken this into account in estimating rate case expense of \$2.1 million, noting no new issues have arisen that were a surprise.<sup>325</sup> During the hearing, CURB opposed allowing any amount above KCPL's initial request for \$2.1 million in rate case expense<sup>326</sup> and noted in particular the number of attorneys representing KCPL present during the hearing.<sup>327</sup> Although not proposing an adjustment during the hearing, Crane urged the Commission to share rate case expenses 50/50 between shareholders and ratepayers because both benefit from rate cases.<sup>328</sup> Crane argued CURB should be able to review documentation submitted for rate case expense and proposed rate case expense costs be considered in an abbreviated rate case proceeding to allow discovery and examination of these expenses.<sup>329</sup>

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<sup>323</sup> Weisensee Rebuttal, pp. 37-38.

<sup>324</sup> Hull Direct, p. 4.

<sup>325</sup> Crane Direct, p. 85; Tr. Vol. 11, pp. 2564-65 (Crane).

<sup>326</sup> Tr. Vol. 1, p. 117 (Rarrick).

<sup>327</sup> Tr. Vol. 10, pp. 2112-16 (Rarrick).

<sup>328</sup> Tr. Vol. 11, p. 2533 (Crane).

<sup>329</sup> Tr. Vol. 11, pp. 2542-44 (Crane).

Weisensee agreed actual costs could not be incurred until this proceeding was completed. Noting in Docket 09-246 more than \$500,000 was recorded on the financial books in the final month before rates went into effect and in the month following, he proposed an allowance of \$500,000 be included for late occurring costs in this case.<sup>330</sup> Weisensee understood Staff would not oppose recovery of actual rate case expense costs up to the date of the Order in this case. But he did not oppose CURB and Staff having time to review or audit this expense, noting it would take time.<sup>331</sup>

Determining rate case expense while this proceeding is still being litigated is difficult. Rate case expense costs accumulate as long as a proceeding continues. Yet, the Commission must determine an amount to include in the revenue requirement to compensate KCPL for its expenses incurred in this proceeding. Parties have proposed the Commission take up this issue as part of an abbreviated rate case, but, as explained elsewhere, the Commission has declined KCPL's request to approve an abbreviated rate case.

In Kansas, the general rule is that prudently incurred rate case expenses are among the reasonably necessary expenses a public utility is entitled to recover in a rate-case proceeding. As with all expenses sought to be recovered as part of the revenue requirement, the utility has the burden to establish this expense is known and measurable.<sup>332</sup> The Company also has the burden of proof to establish rate case expenses are reasonable and prudent.<sup>333</sup> The record must contain substantial evidence to support the Commission's decision granting rate case expense.<sup>334</sup>

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<sup>330</sup> Weisensee Rebuttal, p. 35.

<sup>331</sup> Tr. Vol. 10, pp. 2218-20 (Weisensee).

<sup>332</sup> *Home Telephone Co. v. Kansas Corporation Comm'n*, 31 Kan. App. 2d 1002, 1015, 76 P.3d 1071 (2003).

<sup>333</sup> *Kansas Industrial Consumers v. Kansas Corporation Comm'n*, 36 Kan. App. 2d 83, 111, 138 P.3d 338 (2006).  
*E.g., Gulf States Utility Company v. Texas Public Utility Comm'n*, 128 P.U.R. 4<sup>th</sup> 441, 446 (D. Tex. 1991).

<sup>334</sup> *Home Telephone*, 31 Kan. App. 2d at 1015.

The Commission has a long-standing policy of including fair and reasonable rate case expenses that are prudently incurred in costs to be borne by ratepayers.<sup>335</sup> But to recover rate case expense costs, the Commission has required a company to provide actual documentation of expenses incurred rather than relying on estimates.<sup>336</sup> The Commission must weigh competing policies in determining the recovery of appropriate and reasonable rate case expenses. The Kansas Court of Appeals, reviewing this decision, noted, "Rate case expenditures involve some degree of management choice and discretion whether to incur the expenses."<sup>337</sup>

Elsewhere in this Order, the Commission has relied upon the Kansas Supreme Court's definition of prudence as "carefulness, precaution, attentiveness and good judgment."<sup>338</sup> In making its review here, the Commission, like a trial court reviewing attorney fees, should be considered an expert in making this decision and will draw from its knowledge and expertise in evaluating the value of services rendered in this proceeding.<sup>339</sup>

The attempt to determine rate case expense is hampered by a lack of detailed information in the record. Frequently, when a tribunal is called upon to review whether expenses incurred in a proceeding are reasonable, information is provided about the time and amount of services rendered, the general nature and character of the services revealed by the invoices, whether attorneys or consultants presented testimony or other tangible work product that was made a part of the record, the nature and importance of this litigation, and the degree of professional ability,

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<sup>335</sup> *In the Matter of the Application of Westar Energy, Inc.*, Docket No. 05-WSEE-981-RTS, Order on Reconsideration, issued February 13, 2006, ¶ 93. See *Driscoll v. Edison Light & Power Co.*, 307 U.S. 104, 120-21 (1939) ("[T]he utility should be allowed its fair and proper expenses for presenting its side to the commission.")

<sup>336</sup> *In the Matter of an Audit and General Rate Investigation of Rural Telephone Company*, KCC Docket 01-RRLT-083-AUD, Order Setting Revenue Requirements, issued June 26, 2001, ¶ 70.

<sup>337</sup> 36 Kan. App. 2d. at 111, quoting *Citizens Utility Board v. ICC*, 166 Ill. 2d 111, 129-30, 651 N.E.2d 1089 (1995).

<sup>338</sup> *Kansas Gas & Electric v. Kansas Corporation Comm'n*, 239 Kan. 483, 495, 720 P.2d 1063 (1986).

<sup>339</sup> *Westar Energy v. Wittig*, \_\_\_ Kan. App. 2d \_\_\_, \_\_\_, 235 P.3d 515, 533 (2010); *Johnson v. Westhoff Sand Co.*, 281 Kan. 930, 940, 135 P.3d 1127 (2006).

skill, and experience called for and used during the course of the proceeding.<sup>340</sup> KCPL and its experienced team of attorneys know these requirements and should have provided this information for the Commission's review. Because that detailed information is not contained in this record, the Commission has considered denying recovery of all rate case expense in this proceeding. Upon reflection, however, the Commission has concluded such a ruling would be improper.<sup>341</sup> Instead, the Commission will exercise its judgment to determine an amount of rate case expense that is prudent, just, and reasonable that KCPL will be allowed to recover from ratepayers as part of this proceeding.<sup>342</sup>

To address this issue, the Commission reviewed KCPL's responses to Data Requests 554 and 555 inquiring about rate case expenses; these responses are made a part of the administrative record of this proceeding. KCPL submitted summarized total expenses to September 30, 2010, and estimated expenses until the end of this proceeding. The documentation to support these estimates contains very little detailed information that would enable the Commission to make an individualized review of charges by specific consultants and attorneys.<sup>343</sup> In fact, documentation presented for some vendors, including law firms, provides nothing by which to determine total hours, hourly rates, subject matter addressed, etc. Therefore, the Commission must rely upon its expertise in reviewing rate case expense costs to determine what expenses were prudent and are just and reasonable to recover from ratepayers.

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<sup>340</sup> E.g., *In re Union Electric Co.*, 2010 WL 1178770, at 7, citing *State ex rel. GS Technologies Operating Co., Inc. v. Public Service Comm'n*, 116 S.W.3d 680, 693 (Mo App. 2003). See *Westar Energy*, 235 P.3d at 529, citing Kansas Rules of Professional Conduct (KRPC) 1.5(a) (2009 Kan. Ct. R. Annot. 460).

<sup>341</sup> *Columbus Telephone Co. v. Kansas Corporation Comm'n*, 31 Kan. App. 2d 828, 835, 75 P.3d 257 (2003).

<sup>342</sup> *In re Petition of PNM Gas Services*, 129 N.M. 1, 25-27 (NM Sup. 2000) (Commission should reduce fees to a reasonable and prudent amount rather than completely deny excessive rate case expense.). See also, *Sheila A. v. Whiteman*, 259 Kan. 549, 565, 913 P.2d 181 (1996) (trial court erred in denying plaintiffs' entire claim for expenses in lengthy class action suit).

<sup>343</sup> *Westar Energy*, 235 P.3d at 529-30.

In deciding to take this course, the Commission has concluded that the amount of rate case expense established in this Order for KCPL to recover from its ratepayers will be Interim Rate Relief.<sup>344</sup> By allowing recovery of an amount through Interim Rate Relief, KCPL will recover rate case expense costs the Commission has determined are prudent as well as just and reasonable. But if parties contest this amount, further proceedings to evaluate rate case expense will occur in a separate docket. Several reasons support using Interim Rate Relief to recover rate case expense costs here. First, because a detailed record is not available, the Commission is not able to evaluate specific amounts that should be allowed for each consultant or attorney. Second, prior rate cases under the Regulatory Plan, such as Docket 09-246, have illustrated the difficulty in accurately predicting rate case expense while the proceeding is ongoing. Third, an Order must issue by November 22, 2010; time does not allow scheduling of discovery, briefing, and argument about rate case expense between filing of post-hearing briefs and the Order date. Fourth, by using Interim Rate Relief, the Commission will set rates that include rate case expense found to be prudent, just, and reasonable, but this decision is subject to challenge. Finally, this Order will set a specific amount of rate case expense for this docket, cutting off conjecture about future costs that are not known or measurable at this time.<sup>345</sup>

In response to DRs 554 and 555, KCPL estimated total rate case expense will be \$8,319,363.<sup>346</sup> This includes estimated costs for the KCC and CURB totaling \$1,169,712. KCPL has no control over costs incurred by the KCC and CURB and these charges will be removed in considering KCPL's rate case expense. Thus, the estimated rate case expense for KCPL costs only is \$7,149,711.

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<sup>344</sup> *In re Wolf Creek Nuclear Generating Facility*, Final Order, Docket No. 84-KG&E-197-RTS, pp. 105-06.

<sup>345</sup> *Columbus Telephone*, 31 Kan. App. 2d at 835.

<sup>346</sup> The Commission will round up cents to the next dollar.

In setting the rate case expense, the Commission has balanced the interests of all concerned parties, including investors vs ratepayers, present ratepayers vs future ratepayers, and the public interest.<sup>347</sup> The Commission has also taken into account its knowledge and experience in determining appropriate expenses to be included in a utility's revenue requirements.<sup>348</sup> As discussed below, the Commission concludes an appropriate amount of rate case expense for KCPL to recover from its ratepayers in this rate case for KCPL costs only is \$4,500,000. Costs for the KCC and CURB will be added to that amount for the total rate case expense costs. This cost will be amortized over four years. The Commission addresses reasons for its decision.

The Commission has reviewed estimates from the numerous expert consultants KCPL used in this case. The Commission finds that generally KCPL's decisions regarding use of consultants were prudent. To the extent these consultants conducted studies or otherwise provided information that is in the administrative record of this proceeding and did not duplicate work of other witnesses, these costs are considered prudent, just and reasonable. The following consultants provided helpful information: Black & Veatch Corporation (witness Loos); Financo, Inc. (witness Hadaway); Gannett Fleming, Inc. (witness Spanos); Management Applications Consulting, Inc. (witness Normand); Pegasus Global Holdings, Inc. (witness Nielsen); Siemens Energy, Inc. (Line Loss Study); Tower Watson (Pension Study); Kuhn & Wittenborn, Inc. (Notice of Public Hearing); and Xcellence, Inc. (Copying). The estimated expenses for housing attorneys, consultants, and KCPL employees during the Evidentiary Hearing were high considering the Company's proximity to the Commission's offices. The Commission concludes the shareholders should have some responsibility for paying housing costs.

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<sup>347</sup> *Kansas Gas & Electric*, 239 Kan. at 489.

<sup>348</sup> *Home Telephone*, 31 Kan. App. 2d at 1015.

The Commission could not determine what Nextsource, Inc., did for KCPL during this rate case. Nextsource is described as providing "Internal staffing – regulatory research/processing" but KCPL does not explain why its own employees could not do this work. The Commission finds the record does not support including costs for Nextsource as rate case expense to be recovered from ratepayers. Nor will the Commission allow KCPL to recover the expense for The Communication Counsel of America, Inc., which trained KCPL witnesses. Although witness preparation is important for an evidentiary hearing of this significance, such preparation is routinely part of the services counsel performs before a hearing. The Commission is permitted to disallow duplicative expenses.<sup>349</sup> KCPL hired numerous capable attorneys to litigate this proceeding. While KCPL's management may have seen an advantage in providing certain witnesses with additional witness training, the Commission finds these services duplicate attorney preparation for an evidentiary hearing and will not allow these costs to be recovered as rate case expense.

KCPL estimated rate case expense attributable to legal services only exceeds \$5 million in this case. Based upon its experience in rate case proceedings, the Commission finds this amount excessive, even accounting for the complex issues considered in this proceeding. In considering attorney fees, the Commission was particularly struck by the lack of detail defining services performed by the numerous attorneys that made no appearance in this proceeding. Information was not provided that would have allowed the Commission to determine an appropriate hourly rate or number of hours expended by attorneys involved in this case. Invoices from some firms reflected charges for multiple attorneys working on multiple projects for KCPL with a portion attributed to this proceeding but no explanation about how that amount was determined.

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<sup>349</sup> *Sheila A.*, 259 Kan. at 568-69.

The Commission found estimated charges for some legal services particularly disconcerting. For example, KCPL requested recovery in rate case expense of costs for Duane Morris, estimated at \$395,593. This firm was described as providing "2010 Rate Case legal research." The Commission did not find any record of an attorney from this law firm participating in this proceeding. This firm may have advised management during this proceeding, but it was not an active participant in the docket. The Commission finds allowing expenses for this law firm to be recovered from ratepayers would be unjust and unreasonable.

Nor will the Commission approve recovery of costs for Morgan Lewis & Bockius as rate case expense. One attorney from this firm, Barbara Van Gelder, appeared during the first week of the three-week hearing and cross-examined Staff's expert witness on prudence, Walter Drabinski. Other attorneys were present throughout this entire hearing, including two former KCC General Counsels, one former KCC Assistant General Counsel, and KCPL's in-house counsel. Apparently Van Gelder was hired specifically to cross-examine Drabinski. KCPL is free to decide how it will present its case, but this firm's involvement clearly duplicated work being performed by other very capable attorneys. Allowing expenses for Morgan Lewis to be recovered from ratepayers in rate case expense would be unjust and unreasonable.

The Commission is also concerned that, based upon review of a small number of invoices, that errors exist in KCPL's estimate of costs. The Commission found two errors in listing costs for legal services. Invoices for Sonnenschein Nath & Rosenthal to 9/30/2010 totaled \$56,444, which is \$942 less than the amount shown in KCPL's list of cumulative rate case expense; also, invoices for Schiff Hardin to 9/30/2010 totaled \$371,306, which is \$19,322 less than reflected in KCPL's cumulative rate case expense estimate. Although this is not a

significant amount, the Commission is concerned other errors are contained in KCPL's statement of rate case expense.

The Commission finds expenses requested for Schiff Hardin particularly troubling. This firm served KCPL in several roles. One attorney from Schiff Hardin, Kenneth M. Roberts, testified at the hearing about advice this firm gave KCPL's management related to construction projects, suggesting the firm acted as a consultant. But a significant number of exhibits in the record reflect deleted material based upon KCPL's attorney/client privilege with Schiff Hardin. No attorney from Schiff Hardin entered an appearance in this proceeding, but Roberts and at least one other attorney were present during the first week of the hearing.<sup>350</sup> Schiff Hardin invoices confirm the hourly rates for its attorneys exceed those for experienced attorneys in the Kansas City metropolitan area. Roberts testified his hourly rate was \$550.<sup>351</sup> Recently, the local hourly rate for an experienced attorney in the Kansas City metropolitan area with specialized expertise was determined to be \$295.<sup>352</sup> The highest hourly rate for the most experienced attorney representing KCPL from the Kansas City metropolitan area in this proceeding is \$390. Unfortunately, the record is not adequate to allow the Commission to consider whether adopting a "fee customarily charged in the locality for similar legal services" is appropriate for this case, as allowed in KRPC 1.5(a)(3), and, if appropriate, to determine that rate.<sup>353</sup>

The Commission recognizes that this case was complex with prudence issues concerning construction of a major generation facility. Even though the issues were complex, the Commission finds it unreasonable to require ratepayers to be responsible for the entire rate case expense costs being sought by KCPL. The Commission is particularly concerned about

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<sup>350</sup> Tr. Vol. 5, p. 1109 (Roberts).

<sup>351</sup> Tr. Vol. 5, p. 1120 (Roberts).

<sup>352</sup> *Westar Energy*, 235 P.3d at 531.

<sup>353</sup> 235 P.3d at 531.

requiring ratepayers to pay such high legal costs when no opportunity is available to review the services rendered to evaluate whether law firms adjusted charges for duplication of services of multiple attorneys when setting their fees. The Commission, in reviewing rate case expense costs, can use its knowledge and experience from other rate cases to set an appropriate amount to be recovered from ratepayers. Taking all factors into account, the Commission concludes that \$4,500,000 is an appropriate amount for KCPL costs only to include as rate case expense costs that will be recovered from ratepayers. The rate case expense costs for the KCC and CURB will be added to this amount, resulting in a total rate case expense of \$5,669,712.

Finally, the Commission addresses CURB's request for an opportunity to review and challenge rate case expense costs exceeding KCPL's initial estimated amount of \$2.1 million. Following the end of the evidentiary hearing, the Commission considered the problems faced in setting a schedule to allow discovery and review by the parties before the deadline to issue the Order on November 22, 2010. The Commission was unable to fashion a schedule that allowed a detailed review and still permitted a decision on rate case expense to be included in this Order. The Commission concluded its obligation to include a reasonable and prudent amount of rate case expense outweighed a decision that would effectively deny recovery of any rate case expense in this Order. Having made this decision, the Commission exercised its discretion to set reasonable and prudent rate case expense costs but designated them as Interim Rate Relief. If parties seek to challenge the amount of rate case expense approved in this Order, a subsequent proceeding will allow full review of this issue. If that challenge is successful and establishes the rate case expense costs approved in this Order were not prudent, just or reasonable, the Commission will establish a new amount of rate case expense for this docket that will be included as an adjustment in a future KCPL rate case.